

Minimum and maximum generation rates

- 3.2. 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.
- 3.3. 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.

4. Variation

- 4.1. Subject to clause 4.2, this Deed can only be varied by the written agreement of the Proponent and the Territory, with the written consent of the Nominated Person, if any. The parties to this Deed hold the benefit of the covenant provided for in this clause 4.1 on trust for the benefit of the Nominated Person, if any.
- 4.2. In accordance with the Act, this Deed cannot be varied without the approval of the Minister.

5. Costs

- 5.1. 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.
- 5.2. 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.

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 would 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 replacement personnel and contractors acceptable to the Territory and at the earliest reasonable opportunity.
- 6.4. To be acceptable to the Territory, such personnel and contractors must have equivalent skills, training, experience and expertise as the Specified Personnel or Specified Contractors which they are replacing.

7. Term and Termination of Deed

- 7.1. 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, or upon the election of the Proponent in accordance with clause

17.16(12).

8. Transfer, Surrender & Cancellation of FiT entitlement

Application of Act

- 8.1. The Proponent must not surrender or transfer the FiT entitlement otherwise than in accordance with the Act.
- 8.2. 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).
- 8.3. 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

- 8.4 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 8.9, for the Nominated Person.
- 8.5 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.
- 8.6 The Territory gives the undertakings in clauses 8.4 and 8.5 above for the benefit of the Proponent and the Nominated Person. The Proponent holds the benefit of the undertaking in clauses 8.4 and 8.5 above on trust for the Nominated Person, if any.
- 8.7 Subject to clauses 8.8 and 8.9 the person specified in Item 9 of Schedule 1, if any, is appointed as the Nominated Person for the purposes of this clause 8.
- 8.8 The Nominated Person may be changed by written notice to the Territory in accordance with clause 8.9, subject to clause 8.1.
- 8.9 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 8 and, where such person is a new Nominated Person for the purposes of clause 8.8, such notice must include the consent of the Nominated Person to be replaced.
- 8.10 This Deed is not intended to limit or vary the operation of the Act. Nothing in this clause 8 is to be taken to limit or fetter any right, power, obligation or function of the Territory or the Minister under the Act.

9. Electricity laws

- 9.1. 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.
- 9.2. The Proponent must for the duration of the term of its FiT entitlement:
- (1) 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;
 - (2) not do anything, or permit anything to be done on its behalf, which requires the approval of AEMO or the NSP, without having that approval;
 - (3) 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;
 - (4) 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;
 - (5) 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 which 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
 - (6) comply with any FiT support payment guidelines issued by the Minister under section 20 of the Act.

10. Access to documents, premises and the Site

- 10.1. 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 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.
- 10.2. 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, which the Proponent or an interested person has access to, and which the Territory, on reasonable grounds, considers relevant to a monitoring purpose.
- 10.3. The Proponent must ensure that it and any interested person gives to the Territory copies of any documents, information or data which the Territory requests under clause 10.2 above, within the time stated in the production notice.
- 10.4. For the purposes of this clause 10 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 the Proposal.

- 10.5. 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.

11. Requirement to register and transfer certificates under the *Renewable Energy (Electricity) Act 2000 (Cth)*

- 11.1. 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 has received payment of the FiT support payment.
- 11.2. The Proponent must, at no cost to the Territory, execute and provide to the Territory any instruments, documents or information which the Territory reasonably requires to account for and manage the certificates transferred to it under this clause.
- 11.3. 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 payment of the FiT support payment, occurring in that year.
- 11.4. 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 payment of the FiT support payment in respect of such eligible electricity generated, the Proponent must create and transfer the relevant large-scale generation certificates to the Territory in accordance with this clause 11; 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 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.

12. Reports

- 12.1. The Proponent must provide to the Territory the reports in the manner and at the times stated in Schedule 5.

13. Providing false or misleading information

- 13.1. 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.
- 13.2. 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.
- 13.3. 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.

- 13.4. 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.
- 13.5. The Proponent acknowledges that providing false or misleading information may be an offence under the *Crimes Act 1900* (ACT).

14. Ownership, use of materials and confidential information

- 14.1. Schedule 6 sets out the parties' obligations in relation to intellectual property rights in materials and disclosure of confidential information.

15. Insurance and indemnity

Proponent's insurance

- 15.1. 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.
- 15.2. The Proponent must produce evidence that it has in place the insurance required under clause 15.1 above within 14 days of a request being made by the Territory.

Indemnity

- 15.3. 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 and each Generating Unit, 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.
- 15.4. The indemnity in clause 15.3 above:
 - (1) applies regardless of any statutory, Territory or Ministerial approval, licence or entitlement given to the Proponent or in respect of its Proposal; and
 - (2) 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.
- 15.5. 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 15.3 above.

16. Safety, Health & Environment Plan

- 16.1. Schedule 7 sets out the obligations of the Proponent in relation to issues of safety, health and environmental protection.

17. General Terms and Conditions

General responsibilities of parties

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

No employment, partnership or agency relationship

- 17.2. 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.
- 17.3. 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

- 17.4. 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

- 17.5. 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 which the Minister may have under the Act.

Precedence of instruments

- 17.6. The provisions of the Act take precedence over the terms and conditions of this Deed to the extent of any inconsistency between them.
- 17.7. 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.

Governing law and compliance with the law

- 17.8. 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.
- 17.9. The Proponent must comply with the laws from time to time in force in the Territory in implementing the Proposal and operating the Generating System and in relation to all incidental activities.

Notices

- 17.10. 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:
- (1) if delivered by hand, on delivery;
 - (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
 - (3) 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
 - (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

- 17.11. Nothing in this clause limits or in any way alters the effect of any provisions of the Act relating to the giving of notice for any purpose.

Survival of clauses

- 17.12. The obligations in Schedule 6 and clauses 11, 15.3, 15.4, 15.5 and 17.16 survive the expiration or earlier termination of this Deed and the transfer, surrender and cancellation of the Proponent's FiT entitlement.

Force Majeure and Change of Law

- 17.13. 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 directly by:

- (a) a force majeure event that is entirely outside of the control of the Proponent and which 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.

- 17.14. A force majeure event for the purposes of clause 17.13(a) includes:

- (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; and
- (f) acts or omissions by the Clean Energy Regulator in relation to the creation or transfer of large-scale generation certificates.

- 17.15. 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 17.13, 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.

Payment on repeal or amendment of the Act

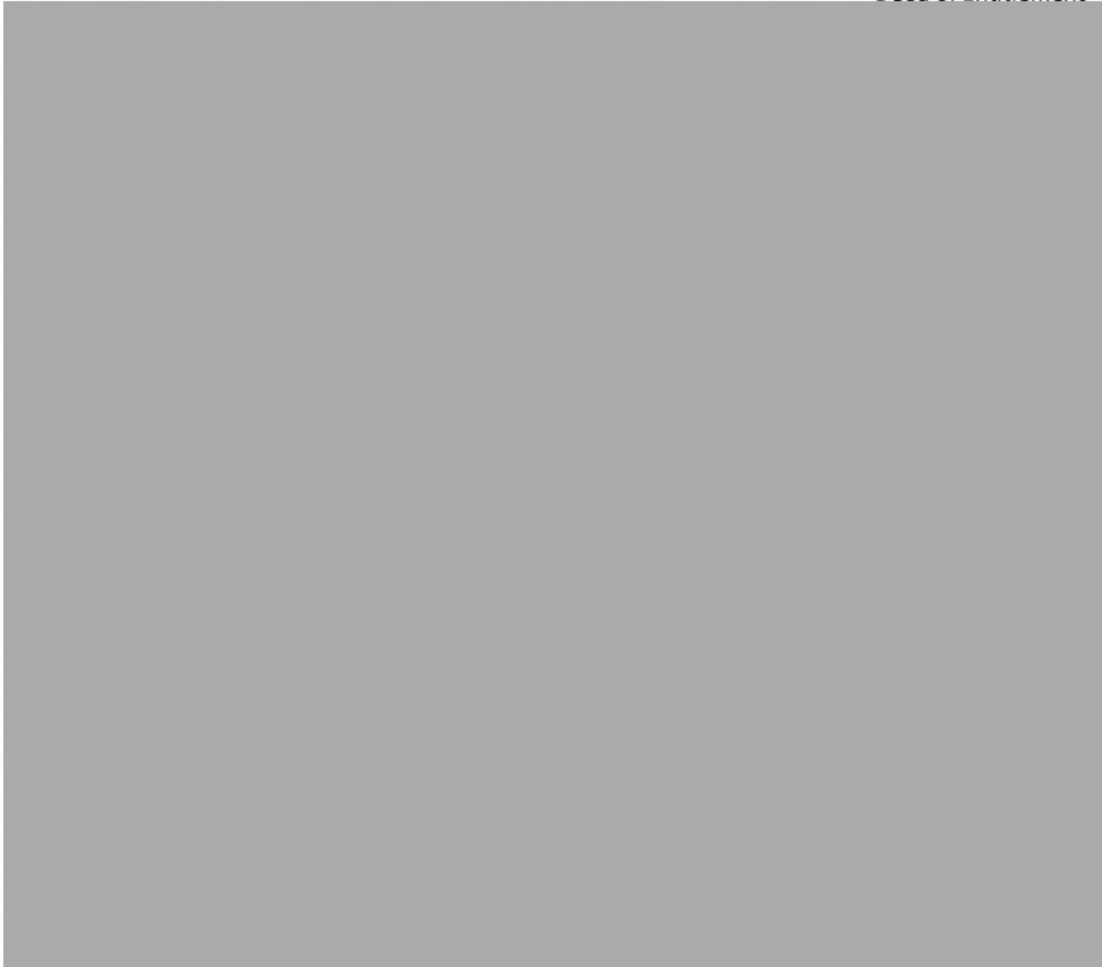
17.16

- (1) The Proponent will be entitled to be paid an amount in accordance with this clause 17.16 in the event that, within the period between the date of grant of the FiT Entitlement and 31 March 2034:
 - (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**).

- (2) Subject to, and in accordance with, sub-clauses (3) to (18) of this clause 17.16, 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 which require the Proponent to make a payment at a future time), including without limitation payment for:
 - (a) any net loss, costs and expenses which 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.
- (3) The Proponent will not be paid an amount in respect of, or compensated for, any losses, costs or expenses which 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.
- (4) The Proponent will not be paid any amount in respect of, or compensated for loss, expense, cost, damage or liability of any kind:
 - (a) which 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.
- (5) Any amount payable by the Territory under this clause 17.16 will be offset by:
- (a) any amount which 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 repeal which the Proponent acquired for the purpose of implementing its Proposal pursuant to this Deed provided that such sale was on an arm's length basis, or otherwise an amount that reflects the Market Value of those assets; and
 - (c) the Market Value of the assets owned by the Proponent which it acquired for the purpose of implementing its Proposal pursuant to this Deed (including but not limited to its interest in the land at the Site, the Generating System including associated plant and equipment and any connection assets), but excluding any amount calculated under sub-clause (5)(b).
- (6) In making a claim for payment under this clause, the Proponent will provide to the Territory its detailed written estimation (including reasonable evidence) of the Net Compensation Amount as calculated in accordance with this clause, and the Parties will negotiate in good faith to agree on the Net Compensation Amount to be paid under this clause. The Territory (acting reasonably) will be under no obligation to agree to any Net Compensation Amount under this clause which has not been substantiated in detail by the Proponent and supported by reasonable evidence. The Proponent will maintain and will provide the Territory with access to any records that the Territory reasonably requires to enable its own assessment of the Net Compensation Amount.
- (7) The Territory will pay any Net Compensation Amount agreed by the Parties under sub-clause (6), or as determined by the Independent Expert under sub-clauses (13) to (18), to the Proponent within 30 Business Days of such agreement or determination. The Parties agree (and agree to instruct the Independent Expert) that the Net Compensation Amount will be adjusted to include all losses, costs and expenses under sub-clause (2) incurred by the Proponent, and any offset amounts under sub-clause (5), up to the date the Net Compensation Amount is agreed or determined.
- (8) In no event shall the Territory's liability under this clause exceed the cap amounts set out below in respect of the annual FiT entitlement period in which the amendment or repeal occurs:



- (9) Payment by the Territory of the full amount agreed to by the Proponent under this clause will constitute full and final settlement of any liability that the Territory has to the Proponent under this clause and the Proponent agrees not to make any further claim against the Territory for any further compensation for any losses, cost, damage or expense, arising directly or indirectly from the amendment or repeal.
- (10) The Proponent agrees that, during the period between the date that the Proponent has actual or constructive knowledge that the amendment or repeal is likely to occur and the date the Net Compensation Amount is determined under this clause , it will not voluntarily undertake any transaction that has the effect of materially diminishing the net assets of the Proponent, including without limitation by any dividend payment, share buy back, capital reduction, transfer of assets other than on arms' length basis or redemption of any redeemable preference shares, provided that nothing in this sub-clause (10) prevents the Proponent from entering into and forming transactions in the ordinary course of business.
- (11) If the Proponent takes any action contrary to sub-clause (10) then the Parties agree that the effect that such action had on diminishing the net assets of the Proponent is to be disregarded for the purposes of determining the offset amounts under sub-clauses (5)(b) and (c).
- (12) The Parties agree that if the Proponent is paid any amount under this clause the Proponent may elect at its sole discretion to terminate this Deed.



Appointment of Independent Expert and Determination of Net Compensation Amount

- (13) If the Parties, despite having negotiated in good faith, cannot agree on the Market Value of the assets for the purposes of clause 5(c), or cannot resolve any dispute about a proper amount for sub-clause 5(b), within 20 Business Days of the written estimation provided by the Proponent to the Territory under sub-clause (6), then the Parties must appoint the Independent Expert to determine the Net Compensation Amount to be paid by the Territory under this clause 17.16 and the provisions of sub-clauses (14) to (18) will apply to the determination of the Net Compensation Amount by the Independent Expert.
- (14) If the Parties have not agreed on the Independent Expert within 40 Business Days of the written estimation provided by the Proponent to the Territory under sub-clause (6), then the Parties agree that the Independent Expert shall be selected (based on the same criteria for selecting the Independent Expert) by the President for the time being of the Institute of Chartered Accountants in Australia, Australian Capital Territory Branch.
- (15) The Parties must instruct the Independent Expert to have regard to all normal valuation factors that the Independent Expert thinks are relevant, including the assumptions that there is a willing but not anxious buyer and a willing but not anxious seller of the assets and that there is reasonable time in which to sell the assets being valued in the open market (and for that purpose 120 Business Days is deemed to be a reasonable time).
- (16) The Parties agree that the Independent Expert's terms of appointment will include the following requirements:
- (a) the Independent Expert must have regard to any principles set out in this deed and all relevant material in relation to the determination of the Net Compensation Amount;
 - (b) the Independent Expert must consult with the Parties concerning the proposed Net Compensation Amount, the methodology of its determination and the relevant materials they have considered;
 - (c) the Independent Expert must keep confidential all information provided by or on behalf of the Parties to the Independent Expert;
 - (d) the Independent Expert may make inquiries in relation to any matter he or she considers appropriate, and take the advice of any other person the Independent Expert wishes (including with any suitably qualified legal advisor who is independent of each Party);
 - (e) the Independent Expert must make a draft report (which must include reasons for its determination) available to the Parties within 20 Business Days after their appointment;
 - (f) the Independent Expert must meet with representatives of the Parties to discuss any queries they may have in relation to the draft report; and
 - (g) the Independent Expert must use their reasonable endeavours to notify the Parties of the Independent Expert's determination within 10 Business Days

after the date on which the Independent Expert makes his or her draft report available.

- (16) The Parties agree that the Independent Expert acts as an expert and not as an arbitrator and that the dispute not be an arbitration for the purpose of the *Commercial Arbitration Act 1986 (ACT)*.
- (17) The Parties will provide the Independent Expert with access to any documents, records or information in its possession or control that the Independent Expert reasonably requires to enable its determination of the Net Compensation Amount, and copies of any such documents, records or information provided to the Independent Expert will be provided to the other Party.
- (18) The Independent Expert's determination is, subject to any manifest error, error of law or a failure by the Independent Expert to follow the requirements under sub-clause (16), final and binding on the Parties. All costs of the Independent Expert in providing its determination will be borne by the Territory.

Schedule 1: Deed Details

Item 1.	Contact Officers	<p>For the Territory: Richard Bourne</p> <p><i>Name:</i> Richard Bourne <i>Position:</i> Manager, Solar Auction Secretariat, Environment and Sustainable Development Directorate <i>Address:</i> 12 Wattle Street, Lyneham, ACT 2602 <i>Email:</i> Richard.Bourne@act.gov.au <i>Telephone:</i> (02) 6205 0828 <i>Facsimile:</i> (02) 6207 2244</p> <p>For the Proponent:</p> <p>[REDACTED]</p> <p><i>Address:</i> Level 7, 39 Martin Place, Sydney, NSW 2000 <i>Email:</i> [REDACTED] <i>Telephone:</i> [REDACTED] <i>Facsimile:</i> 02 8257 4701</p>
Item 2.	Term of FiT entitlement	20 years from the Completion Date
Item 3.	Completion Date	31 March 2014
Item 4.	Minimum annual quantity of eligible electricity	7,400 MWh
Item 5.	Maximum annual quantity of eligible electricity	42,293 MWh
Item 6.	Amount of FiT	\$186.00/MWh
Item 7.	Site	Tuggeranong block 1633
Item 8.	Public Liability Insurance	Public liability insurance: \$20 million (In respect of each claim)
Item 9.	Nominated Person	To be advised in writing to the Territory by the Proponent in accordance with this Deed.

Schedule 2: Generating System

Location:	Tuggeranong block 1633, The Australian Capital Territory
Maximum power output that the unit could produce as measured at the AC output terminals of the inverter:	20.0MW
Generating System configuration	The generating system will consist of approximately 83,000 multicrystalline silicon PV modules equating to no more than 24.07MW(DC), connected by a series of inverters and a single connection point to the ACT electricity distribution network.

Schedule 8: Consent to be appointed as Nominated Person

I consent to [Name of proposed Nominated Person] being appointed as a Nominated Person for the purposes of the Deed of Entitlement entered into on xx August 2012 between the Australian Capital Territory and FRV Royalla Solar Farm Pty Limited in relation to the *Electricity Feed-in (Large-scale Renewable Generation) Entitlement 2012 (No 1)* made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*.

Signed:

Date: _____

Name:

As an authorised person for and on behalf of [Name of Nominated Person/Company Name]

Position:

ACN or ABN:

[I, [Name of Nominated Person to be replaced], consent to my removal, and the appointment of the person specified above, as a Nominated Person, for the purposes of the Deed of Entitlement entered into between the Australian Capital Territory and FRV Royalla Solar Farm Pty Limited in relation to the *Electricity Feed-in (Large-scale Renewable Generation) Entitlement 2012 (No 1)* made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*.

Signed:

Date: _____

Name:

As an authorised person for and on behalf of [Name of Nominated Person/Company Name to be replaced]

Position:

ACN or ABN:

Address for service of copy of notices (see clauses 2.7 and 8.4): XXXXX]



DATE OF THIS Deed 5th September 2012

Executed as a Deed for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY

in the presence of:

[Redacted Signature]

Signature of Territory delegate

[Redacted Signature]

DAVID PAPPAS

Print name

Print name

Executed as a Deed by

[Redacted Signature]

Print name

) [Redacted Signature]
)
)

Signature of director/ individual

*DELETE whichever is not applicable (see note below)

for and on behalf of

FRV Royalla Solar Farm Pty Limited
ACN 158 394 677

in the presence of:

[Redacted Signature]

Signature of director/ secretary/ witness*

*DELETE whichever is not applicable (see note below)

.....



[Redacted Signature]

Print name

Note:

Date: Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.

Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Proponent's constitution.

Individual: Must be signed by the individual Proponent and witnessed.



ACT
Government

Environment and
Sustainable Development



Level 7, 39 Martin Place
SYDNEY NSW 2000



Variation to Deed of Entitlement between FRV Royalla Solar Farm Pty Limited and the Australian Capital Territory, dated 5 September 2012 – Agreement under the Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011

I refer to your recent request to vary the Deed of Entitlement (Deed) to reflect the following:



You have advised the replacement contractors have the same level of skills and experience as those they are replacing.

In terms of clause 4.2 of the Deed, the Minister has approved this variation.

Accordingly, the attachment to this letter, once signed and dated by authorised representatives of FRV Royalla Solar Farm Pty Limited and the Territory, together with this letter, will serve as the written agreement for the variation, as per clause 4.1 of the Deed.



Ben Ponton
Acting Director-General

29 January 2013

DATE OF THIS Variation

29 JANUARY 2013

Executed as a Variation for and on behalf of the

AUSTRALIAN CAPITAL TERRITORY

in the presence of:

) [Redacted Signature]
)
) Signature of Territory delegate

BEN PONTON

Print name

[Redacted Name]

Print name

Executed as a variation by

[Redacted Name]

Print name

) [Redacted Signature]
)
) Signature of director

for and on behalf of

FRV Royalla Solar Farm Pty Limited
ACN 158 394 677

in the presence of: /

[Redacted Name]

Print name

.....
Affix
common seal
if required
under
constitution

Note:

Date: Must be dated on the date the last party signs the Variation or, if signed counterparts of the Variation are exchanged, the date of exchange. Also date the cover page.

Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Proponent's constitution.

Individual: Must be signed by the individual Proponent and witnessed.



FOTOWATIO
RENEWABLE
VENTURES

12 April 2013

Mr Ben Ponton
GPO Box 158
Canberra ACT 2601

Dear Ben,

**RE: VARIATION TO DEED OF ENTITLEMENT BETWEEN FRV ROYALLA PTY LTD AND AUSTRALIAN
CAPITAL TERRITORY – 5 SEPTEMBER 2012 (DEED)**

We refer to your letter dated 4 April and enclose your executed counterpart of the Deed.

Thank you for your assistance with finalising the Deed.

Kind regards,



Schedule 3: Milestones

Milestone	Date

.....
Signature of territory delegate

.....
Signature of witness

.....
Signature of FRV director/~~individual~~

.....

DATE OF THIS Variation 11 April 2013

DATE OF THIS Variation 11 April 2013

Executed as a Variation for and on behalf of the

AUSTRALIAN CAPITAL TERRITORY

in the presence of:

[Redacted signature area]

Signature of witness

[Redacted name area]

Print name

Executed as a variation by

[Redacted name area]

Print name

[Redacted signature area]

) Signature of Territory delegate

BEN PONTON

Print name

) [Redacted signature area]

) Signature of director/ individual*

*DELETE whichever is not applicable (see note below)

for and on behalf of

FRV Royalla Solar Farm Pty Limited
ACN 158 394 677

in the presence of: /

[Redacted signature area]

Print name

Affix
common seal
if required
under
constitution

Note:

Date: Must be dated on the date the last party signs the Variation or, if signed counterparts of the Variation are exchanged, the date of exchange. Also date the cover page.

Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Proponent's constitution.

Individual: Must be signed by the individual Proponent and witnessed.



AUSTRALIAN CAPITAL TERRITORY

DEED OF VARIATION

Dated

14 January 2016 ~~2015~~

Parties

AUSTRALIAN CAPITAL TERRITORY

**FRV ROYALLA SOLAR FARM PTY
LIMITED**

**VARIATION TO DEED OF
ENTITLEMENT**

Prepared by

GH: EPD

Version

Execution

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) (**Territory**) represented by the Environment and Sustainable Development Directorate.

FRV Royalla Solar Farm Pty Limited ACN 158 394 677
level 7, 39 Martin Place, Sydney, NSW 2000 (**Proponent**).

BACKGROUND

- A. The Territory and the Proponent executed a Deed of Entitlement on 5 September 2012 in relation to the grant of a FiT entitlement to the Proponent made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (**Act**).
 - B. In accordance with the terms of the Deed of Entitlement the Parties agreed, in writing, to variations to the Deed of Entitlement, on 21 October 2014, 29 January 2013 and 11 April 2013.
 - C. The parties now agree to the following further variations to the Deed of Entitlement on the following terms and conditions.
-

IT IS AGREED by the parties as follows.

1. Interpretation

Capitalised terms used in this Deed of Variation have the same meaning as in the Deed of Entitlement.

2. Effective Date

The variations to the Deed of Entitlement described in this Deed of Variation, take effect on the date that the last party to do so executes this Deed of Variation.

3. Variation

- (1) The Deed of Entitlement is varied as indicated in track changes on the attached version of the Deed of Entitlement.
- (2) The Deed of Entitlement is varied by the replacement of the existing Schedule 4 with a new Schedule 4.
- (3) In accordance with subclauses (1) and (2) of this clause 3, the copy of the Deed of Entitlement attached will comprise the terms and conditions of the

Deed of Entitlement binding the parties at the date this Deed of Variation takes effect.

- (4) The earlier variations to the *Deed of Entitlement* referred to in part B of the Background above have been consolidated into the attached version of the *Deed of Entitlement*.

Executed as a Deed

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY)
in the presence of:)



Signature of Territory delegate



Print name

..... 23/12/15

Date

..... DORTE EKELUND

Print name

SIGNED for and on behalf of
FRV Royalla Solar Farm Pty Limited
in the presence of:

)
)
)

[Redacted]

Print name

Signature of authorised officer

.....
Date 14 / 01 / 16

[Redacted]

.....
Print name and position

.....
Signature of second authorised officer*
*see note below

.....
Date

.....
Print name and position

Affix common seal
if required under
constitution

Note:

Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cwlth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Recipient's constitution.



ACT
Government

Environment and
Sustainable Development

Attachment to Deed of Variation between:

FRV Royalla Solar Farm Pty Limited
and
Australian Capital Territory

DEED OF ENTITLEMENT

Date

Parties

AUSTRALIAN CAPITAL TERRITORY

AND

FRV Royalla Solar Farm Pty Limited

AGREEMENT UNDER THE ELECTRICITY FEED-IN
(LARGE-SCALE RENEWABLE ENERGY
GENERATION) ACT 2011

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* (**Territory**) represented by the Environment and Sustainable Development ~~Planning~~ Directorate.

FRV Royalla Solar Farm Pty Limited, ACN 158 394 677, Level 7, 39 Martin Place, Sydney NSW 2000 (**Proponent**).

Background

- (A) The Proponent participated in a competitive process (auction) run by the Territory pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (Act)* and, pursuant to that auction, has been granted by notifiable instrument (*Electricity Feed-in (Large-scale Renewable Generation) Entitlement 2012 (No 1)*) a FiT entitlement subject to certain conditions.
- (B) Section 12(1)(b)(iii) of the Act provides that one of the conditions of a FiT entitlement is that the holder complies with any written agreement which the Minister requires the holder to enter into with the Territory pursuant to section 12(3) of the Act.
- (C) This Deed comprises the written agreement which the Minister requires the Proponent to enter into pursuant to section 12(3) of the Act.
- (D) This Deed was varied by way of written consent on 29 January 2013, 11 April 2013 and on 21 October 2014. The Parties have subsequently agreed to vary this Deed on the following terms and conditions.

IT IS AGREED by the parties as follows:

1. Interpretation

Definitions

1.1. The following definitions apply in this Deed, unless the context otherwise requires.

Act	means the <i>Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011</i> .
AEMO	means Australian Energy Market Operator Limited ACN 072 010 327, or any replacement or successor body.
AER	means the Australian Energy Regulator which is established under section 44AE of the <i>Competition and Consumer Act 2010 (Cth)</i> or any replacement or successor body.
Auction	means the competitive process established by the Request for Proposals issued by the Minister under the Act pursuant to which the Proponent has been granted a FiT entitlement on conditions.

Breach notice	means a notice given by the Territory to the Proponent in accordance with clause 2.4.
Business Day	means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Canberra and Sydney.
Change in Law	means: <ul style="list-style-type: none"> (a) the repeal, amendment or enactment of any law, statute, order, regulation or by-laws of the Commonwealth or any State or Territory of Australia (b) any condition imposed on the Proponent's FiT entitlement, or amendment to the FiT entitlement by the Minister 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); and (c) a change to the National Electricity Law or the National Electricity Rules.
Clean Energy Regulator	means the regulator established under the <i>Clean Energy Regulator Act 2011</i> (Cth) or any replacement or successor body.
Commencement Date	means 5 September 2012.
Completion Date	means the date specified in Item 3 Schedule 1.
Connection Agreement	means the agreement between the NSP and the Proponent by which the NSP provides access to the Network and related electricity distribution or transmission services.
Connection Point	means a point of supply of electricity to the Network agreed to by the Proponent and the NSP.
Contact Officers	means, in relation to each party, the representatives whose names and contact details are specified in Item 1 of Schedule 1 or as notified from time to time by one party to the other.
Cure Plan	means a cure plan agreed between the parties in accordance with clause 2.4A.
Deed	means this deed, including any schedules and attachments.
Deed of Indemnity	means the deed of indemnity to be entered into between each Group Member (other than the Proponent) and the Territory in the form of Schedule 9.
Directorate or ESDD/EPD	means the Environment and Sustainable Development Planning Directorate, an administrative unit of the Territory.
Eligible electricity	has the same meaning as in the Act
Feed-in Tariff or FiT	has the same meaning as in the Act and, in relation to the Proponent, is the amount specified in Item 6 of Schedule 1.
FiT entitlement	has the same meaning as in the Act.
FiT support payment	has the same meaning as in the Act.

Generating System	means the generating system described in Schedule 2 in respect of which the Proponent has been granted a FiT entitlement.
Generating Unit	means a generator of electricity and all the equipment essential to its functioning as a single entity.
Group Member	means any entity in the Royalla Group.
Independent Expert	means a firm of chartered accountants selected by the Parties in accordance with sub-clauses 17.16(13) to (18) that meets the following criteria: <ul style="list-style-type: none"> (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 Solar Auction; (c) The firm has experience in valuing solar farm or other renewable energy assets; and (d) the firm (and individuals to be utilized by the firm) are not arbitrators.
Insolvency Event	means the occurrence of any one or more of the following events in relation to the Proponent: <ul style="list-style-type: none"> (a) an application is made to a court for an order 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 Corporations Act 2001 (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 which has a substantially similar effect to any of the above paragraphs of this definition.
Intended cancellation notice	means an <i>intended cancellation notice</i> issued pursuant to subsection 13(2) of the Act.
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, the Generating System including associated plant and equipment and any connection assets) as determined in accordance with clause 17.16.
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 (SA)</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 <i>National Electricity Law</i> , as amended from time to time, or any replacement or successor rules of conduct.
Net Compensation Amount	means all losses, costs and expenses as calculated in accordance with clause 17.16(2) less any offset amounts calculated in accordance with clause 17.16(5), as agreed by the Parties in accordance with clause 17.16.
Network	means the network (as defined in the <i>National Electricity Rules</i>) 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 <i>National Electricity Rules</i>) which 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 8.7.
Notifiable Instrument	means the notifiable instrument pursuant to which the Proponent is granted a FiT entitlement under the Act.
Premises	means any premises which the Royalla Group uses, or any premises which personnel, employees, agents or contractors of a Group Member use (including places at which any material is stored) for the purpose of implementing the Proposal.
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 in relation to the development, construction, financing and operation of 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 2.4.



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: (a) when used in a geographical sense, the Australian Capital Territory; and (b) when used in any other sense, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth).
Territory Law	means any law, statute, order, regulation, notifiable instrument or by-law of the Territory.

General

- 1.2. In this Deed, unless a *contrary* intention is expressed:
- (1) references to 'Proponent' include any employees, agents or subcontractors of the Proponent; and
 - (2) 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.

2. Conditions of entitlement***Compliance with this Deed is a condition of the Proponent's FiT entitlement***

- 2.1. 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.

Failure to comply with an obligation under this Deed is not, of itself, a breach of a condition of the proponent's FiT entitlement

- 2.1A 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 2.4 and the requirements that follow from the issue of a breach notice set out in this clause 2 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

- 2.2. The Proponent's obligation to ensure compliance with this Deed as a condition of its entitlement to FiT support payments is in addition to, 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

- 2.3. Subject to clause 17.13, a failure to comply with an obligation under this Deed and a failure to meet the requirements of a breach notice issued under clause 2.4 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.

Breach of this Deed

- 2.4 If the Proponent fails to meet an obligation provided for under this Deed, and clause 17.13 does not apply in respect of such failure, then the Territory may issue a written notice to the Proponent (**breach notice**) which:
- (a) specifies the obligation which the Proponent has failed to meet; and
 - (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, which shall be no less than 90 Business Days.
- 2.4A The Territory and the Proponent will negotiate in good faith to agree the Cure Plan within 15 Business Days of receipt by the Territory of the Proposed Cure Plan, or any such longer period as agreed in writing between the Parties.
- 2.4B Any Cure Plan agreed under clause 2.4A 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 not 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.
- 2.4C If the Proponent has cured or addressed the relevant failure specified in the breach notice within the default period of time provided under clause 2.4(c) or within the timeframe specified in a Cure Plan agreed under clause 2.4A, 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.
- 2.5 A failure by the Proponent to cure or address the relevant failure in accordance with a Cure Plan agreed under clause 2.4A, or if no Cure Plan is agreed within the timeframe specified in clause 2.4A, then 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.
- 2.6 The Territory will give a copy of any *breach notice* issued to the Proponent, and any notice of cure under clause 2.4C, to the Nominated Person, if any, at the address for the Nominated Person specified in Item 9 of Schedule 1, or as otherwise by written notice in accordance with clause 8.8, as soon as reasonably practicable after issuing the notice to the Proponent. The Territory gives the undertaking in this clause 2.6 for the benefit of the Nominated Person.
- 2.7 This Deed is not intended to limit or vary the operation of the Act. Nothing in this clause is to be taken to limit or fetter any right, power, obligation or function of the Territory or the Minister under the Act.
- 2.8 For the avoidance of doubt, this clause does not require the Territory to issue a breach notice in relation to a failure by the Proponent to meet a condition of the Proponent's FiT entitlement where that condition applies irrespective of this Deed.
- 2.9 For the avoidance of doubt, neither of the following events will, of itself, constitute a breach of this Deed:
- (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.

3. Implementation of Proposal

- 3.1. The Proponent must ensure that the Proposal is implemented, and that all Milestones are achieved by the dates specified in Schedule 3, in accordance with the provisions of this Deed and to a standard of care, skill and diligence expected of a person who regularly acts in the

capacity in which the Proponent, and other persons involved in implementing the Proposal, will be acting.

- 3.1A The obligations in clause 3.1 are strict obligations and the Proponent is bound to ensure compliance with them regardless of whether the Proponent is specifically named in the Proposal as the person who will undertake a particular obligation, and regardless of whether the Proponent subcontracts for the performance of any obligation on its behalf.

Minimum and maximum generation rates

- 3.2. 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.
- 3.3. 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.

Varying the Proposal

- 3.4 The Proponent may not vary its Proposal without the written approval of the Territory, which approval the Territory may grant or refuse to grant at its absolute discretion.
- 3.5 The Territory may impose such conditions as it sees fit on its grant of an approval to vary the Proposal.
- 3.6 A breach of a condition of a grant of approval imposed under clause 3.5 will be a breach of this Deed.

4. Variation

- 4.1 Subject to clause 4.2, this Deed can only be varied by the written agreement of the Proponent and the Territory, with the written consent of the Nominated Person, if any. The parties to this Deed hold the benefit of the covenant provided for in this clause 4.1 on trust for the benefit of the Nominated Person, if any.
- 4.2. In accordance with the Act, this Deed cannot be varied without the approval of the Minister.
- 4.3 Despite any other provision of this Deed, but subject to clause 4.5, following completion of the final Milestone the Territory must not unreasonably withhold or delay providing any and all consents or approvals required to give effect to a change in the control of any Group Member or a change in ownership of any Group Member if:
- (a) **(financial capacity)** the proposed new owner of a Group Member or co-investor in a Group Member has the financial capacity to perform the financial obligations it will assume in relation to the ongoing operation of the Generating System; and
 - (b) either:
 - i. **(expertise and experience)** the proposed new owner of a Group Member or co-investor in a Group Member has demonstrated that it has the expertise and experience required to operate the Generating System; or
 - ii **(no operational change)** the arrangements in place for operating the Generating System immediately prior to the proposed change in control or ownership will remain in place immediately following the proposed change in control or ownership; or

- iii **(new operating arrangements)** arrangements will be in place immediately following the proposed change in control or ownership which will ensure such expertise and experience is applied in relation to the operation of the Generating System.

- 4.4 The Proponent must provide to the Territory any information and documentation which the Territory reasonably requires to satisfy itself that the conditions in clause 4.3 have been, or will be met.
- 4.5 The Territory acknowledges and agrees that a change in the control of any Group Member or a change in the ownership of any Group Member may occur without the consent or approval of the Territory in connection with 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, and such event will not be a breach of this Deed.

5. Costs

- 5.1. 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 or on behalf of the Proponent.
- 5.2. 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-imbusement or otherwise.

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 would 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 replacement personnel and contractors acceptable to the Territory and at the earliest reasonable opportunity.
- 6.4. To be acceptable to the Territory, such personnel and contractors must have equivalent skills, training, experience and expertise as the Specified Personnel or Specified Contractors which they are replacing.
- 6.5 The Territory acknowledges and agrees that a change in the Specified Personnel or Specified Contractors may occur without the consent or approval of the Territory in connection with 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, and such event will not be a breach of this Deed.

7. Term and Termination of Deed

- 7.1. 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, or upon the election of the Proponent in accordance with clause 17.16(12).

8. Transfer, Surrender & Cancellation of FiT entitlement

Application of Act

- 8.1. The Proponent must not surrender or transfer the FiT entitlement otherwise than in accordance with the Act.
- 8.2. 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).
- 8.3. 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

- 8.4. 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 8.9, for the Nominated Person.
- 8.5. 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.
- 8.6. The Territory gives the undertakings in clauses 8.4 and 8.5 above for the benefit of the Proponent and the Nominated Person. The Proponent holds the benefit of the undertaking in clauses 8.4 and 8.5 above on trust for the Nominated Person, if any.
- 8.7. Subject to clauses 8.8 and 8.9 the person specified in Item 9 of Schedule 1, if any, is appointed as the Nominated Person for the purposes of this clause 8.
- 8.8. The Nominated Person may be changed by written notice to the Territory in accordance with clause 8.9, subject to clause 8.1.
- 8.9. 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 8 and, where such person is a new Nominated Person for the purposes of clause 8.8, such notice must include the consent of the Nominated Person to be replaced.
- 8.10. This Deed is not intended to limit or vary the operation of the Act. Nothing in this clause 8 is

to be taken to limit or fetter any right, power, obligation or function of the Territory or the Minister under the Act.

9. Electricity laws

- 9.1. 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.
- 9.2. The Proponent must for the duration of the term of its FiT entitlement:
- (1) 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;
 - (2) not do anything, or permit anything to be done on its behalf, which requires the approval of AEMO or the NSP, without having that approval;
 - (3) 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;
 - (4) 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;
 - (5) 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 which 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
 - (6) comply with any FiT support payment guidelines issued by the Minister under section 20 of the Act.

10. Access to documents, premises and the Site

- 10.1. 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 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.
- 10.2. 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, which the Proponent or an interested person has access to, and which the Territory, on reasonable grounds, considers relevant to a monitoring purpose.
- 10.3. The Proponent must ensure that it and any interested person gives to the Territory copies of any documents, information or data which the Territory requests under clause 10.2 above, within the time stated in the production notice.

- 10.4. For the purposes of this clause 10 interested person means:
- (1) any employee of the Proponent; or
 - (2) any other person, including any contractor, consultant, adviser or agent of a member of the Royalla Group, engaged by or on behalf of any member of the Royalla Group in relation to implementing the Proposal.
- 10.5. 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, and agrees to ensure that any other person involved in implementing the Proposal does the same.
- 10.6. The Proponent must ensure that access to the Site and Premises, and cooperation to facilitate an inspection of the Site and the Premises, is provided to the Territory in accordance with this clause 10, regardless of whether the Proponent owns, has possession of, or controls access to, the Site or Premises.

11. Requirement to register and transfer certificates under the *Renewable Energy (Electricity) Act 2000 (Cth)*

- 11.1. 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 has received payment of the FiT support payment.
- 11.2. The Proponent must, at no cost to the Territory, execute and provide to the Territory any instruments, documents or information which the Territory reasonably requires to account for and manage the certificates transferred to it under this clause.
- 11.3. 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 payment of the FiT support payment, occurring in that year.
- 11.4. 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 payment of the FiT support payment in respect of such eligible electricity generated, the Proponent must create and transfer the relevant large-scale generation certificates to the Territory in accordance with this clause 11; 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 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.

12. Reports

- 12.1. The Proponent must provide to the Territory the reports in the manner and at the times stated in Schedule 5.

13. Providing false or misleading information

- 13.1. 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.
- 13.2. 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.
- 13.3. 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.
- 13.4. 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.
- 13.5. The Proponent acknowledges that providing false or misleading information may be an offence under the *Crimes Act 1900 (ACT)*.

14. Ownership, use of materials and confidential information

- 14.1. Schedule 6 sets out the parties' obligations in relation to intellectual property rights in materials and disclosure of confidential information.

15. Insurance and indemnity

Proponent's insurance

- 15.1. The Proponent must effect and maintain and must ensure that the Royalla Group effects and maintains 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.
- 15.2. The Proponent must produce evidence that the Royalla Group has in place the insurance required under clause 15.1 within 14 days of a request being made by the Territory.

Indemnity

- 15.3. 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 and each Generating Unit, 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.
- 15.4. The indemnity in clause 15.3 above:
- (1) applies regardless of any statutory, Territory or Ministerial approval, licence or entitlement given to the Proponent or in respect of its Proposal; and
 - (2) applies in respect of acts and omissions of any person acting on behalf of the Proponent as though such acts or omissions were done by the Proponent.
- 15.5. 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 15.3 above.

- 15.6. The Proponent must ensure that each Group Member (other than the Proponent) executes an indemnity on the terms and conditions set out in Schedule 9 to this Deed.

16. Safety, Health & Environment Plan

- 16.1. Schedule 7 sets out the obligations of the Proponent in relation to issues of safety, health and environmental protection.

17. General Terms and Conditions

General responsibilities of parties

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

No employment, partnership or agency relationship

- 17.2. 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.

- 17.3. 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

- 17.4. 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

- 17.5. 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 which the Minister may have under the Act.

Precedence of instruments

- 17.6. The provisions of the Act take precedence over the terms and conditions of this Deed to the extent of any inconsistency between them.
- 17.7. 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.

Governing law and compliance with the law

- 17.8. 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.
- 17.9. The Proponent must comply with the laws from time to time in force in the Territory in

implementing the Proposal and operating the Generating System and in relation to all incidental activities.

Notices

17.10. 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:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (3) 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
- (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

17.11. Nothing in this clause limits or in any way alters the effect of any provisions of the Act relating to the giving of notice for any purpose.

Survival of clauses

17.12. The obligations in Schedule 6 and clauses 11, 15.3, 15.4, 15.5 and 17.16 survive the expiration or earlier termination of this Deed and the transfer, surrender and cancellation of the Proponent's FIT entitlement.

Force Majeure and Change of Law

17.13. 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 directly by:

- (a) a force majeure event that is entirely outside of the control of the Proponent and which 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.

17.14. A force majeure event for the purposes of clause 17.13(a) includes:

- (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; and
- (f) acts or omissions by the Clean Energy Regulator in relation to the creation or transfer of large-scale generation certificates.

17.15. 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 17.13, 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.

Payment on repeal or amendment of the Act

17.16

- (1) The Proponent will be entitled to be paid an amount in accordance with this clause 17.16 in the event that, within the period between the date of grant of the FiT Entitlement and 31 March 2034:
- (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**).
- (2) Subject to, and in accordance with, sub-clauses (3) to (18) of this clause 17.16, 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 which require the Proponent to make a payment at a future time), including without limitation payment for:
- (a) any net loss, costs and expenses which 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.
- (3) The Proponent will not be paid an amount in respect of, or compensated for, any losses, costs or expenses which 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.

- (4) The Proponent will not be paid any amount in respect of, or compensated for loss, expense, cost, damage or liability of any kind:
- (a) which 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.
- (5) Any amount payable by the Territory under this clause 17.16 will be offset by:
- (a) any amount which 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 repeal which the Proponent acquired for the purpose of implementing its Proposal pursuant to this Deed provided that such sale was on an arm's length basis, or otherwise an amount that reflects the Market Value of those assets; and
 - (c) the Market Value of the assets owned by the Proponent which it acquired for the purpose of implementing its Proposal pursuant to this Deed (including but not limited to its interest in the land at the Site, the Generating System including associated plant and equipment and any connection assets), but excluding any amount calculated under sub-clause (5)(b).
- (6) In making a claim for payment under this clause, the Proponent will provide to the Territory its detailed written estimation (including reasonable evidence) of the Net Compensation Amount as calculated in accordance with this clause, and the Parties will negotiate in good faith to agree on the Net Compensation Amount to be paid under this clause. The Territory (acting reasonably) will be under no obligation to agree to any Net Compensation Amount under this clause which has not been substantiated in detail by the Proponent and supported by reasonable evidence. The Proponent will maintain and will provide the Territory with access to any records that the Territory reasonably requires to enable its own assessment of the Net Compensation Amount.

- (7) The Territory will pay any Net Compensation Amount agreed by the Parties under sub-clause (6), or as determined by the Independent Expert under sub-clauses (13) to (18), to the Proponent within 30 Business Days of such agreement or determination. The Parties agree (and agree to instruct the Independent Expert) that the Net Compensation Amount will be adjusted to include all losses, costs and expenses under sub-clause (2) incurred by the Proponent, and any offset amounts under sub-clause (5), up to the date the Net Compensation Amount is agreed or determined.
- (8) In no event shall the Territory's liability under this clause exceed the cap amounts set out below in respect of the annual FiT entitlement period in which the amendment or repeal occurs:

Amendment or repeal occurs between (dates inclusive):	Cap amount

- (9) Payment by the Territory of the full amount agreed to by the Proponent under this clause will constitute full and final settlement of any liability that the Territory has to the Proponent under this clause and the Proponent agrees not to make any further claim against the Territory for any further compensation for any losses, cost, damage or expense, arising directly or indirectly from the amendment or repeal.
- (10) The Proponent agrees that, during the period between the date that the Proponent has actual or constructive knowledge that the amendment or repeal is likely to occur and the date the Net Compensation Amount is determined under this clause , it will not voluntarily undertake any transaction that has the effect of materially

diminishing the net assets of the Proponent, including without limitation by any dividend payment, share buy back, capital reduction, transfer of assets other than on arms' length basis or redemption of any redeemable preference shares, provided that nothing in this sub-clause (10) prevents the Proponent from entering into and forming transactions in the ordinary course of business.

- (11) If the Proponent takes any action contrary to sub-clause (10) then the Parties agree that the effect that such action had on diminishing the net assets of the Proponent is to be disregarded for the purposes of determining the offset amounts under sub-clauses (5)(b) and (c).
- (12) The Parties agree that if the Proponent is paid any amount under this clause the Proponent may elect at its sole discretion to terminate this Deed.

Appointment of Independent Expert and Determination of Net Compensation Amount

- (13) If the Parties, despite having negotiated in good faith, cannot agree on the Market Value of the assets for the purposes of clause 5(c), or cannot resolve any dispute about a proper amount for sub-clause 5(b), within 20 Business Days of the written estimation provided by the Proponent to the Territory under sub-clause (6), then the Parties must appoint the Independent Expert to determine the Net Compensation Amount to be paid by the Territory under this clause 17.16 and the provisions of sub-clauses (14) to (18) will apply to the determination of the Net Compensation Amount by the Independent Expert.
- (14) If the Parties have not agreed on the Independent Expert within 40 Business Days of the written estimation provided by the Proponent to the Territory under sub-clause (6), then the Parties agree that the Independent Expert shall be selected (based on the same criteria for selecting the Independent Expert) by the President for the time being of the Institute of Chartered Accountants in Australia, Australian Capital Territory Branch.
- (15) The Parties must instruct the Independent Expert to have regard to all normal valuation factors that the Independent Expert thinks are relevant, including the assumptions that there is a willing but not anxious buyer and a willing but not anxious seller of the assets and that there is reasonable time in which to sell the assets being valued in the open market (and for that purpose 120 Business Days is deemed to be a reasonable time).
- (16) The Parties agree that the Independent Expert's terms of appointment will include the following requirements:
 - (a) the Independent Expert must have regard to any principles set out in this deed and all relevant material in relation to the determination of the Net Compensation Amount;
 - (b) the Independent Expert must consult with the Parties concerning the proposed Net Compensation Amount, the methodology of its determination and the relevant materials they have considered;
 - (c) the Independent Expert must keep confidential all information provided by or

on behalf of the Parties to the Independent Expert;



- (d) the Independent Expert may make inquiries in relation to any matter he or she considers appropriate, and take the advice of any other person the Independent Expert wishes (including with any suitably qualified legal advisor who is independent of each Party);
 - (e) the Independent Expert must make a draft report (which must include reasons for its determination) available to the Parties within 20 Business Days after their appointment;
 - (f) the Independent Expert must meet with representatives of the Parties to discuss any queries they may have in relation to the draft report; and
 - (g) the Independent Expert must use their reasonable endeavours to notify the Parties of the Independent Expert's determination within 10 Business Days after the date on which the Independent Expert makes his or her draft report available.
- (17) The Parties agree that the Independent Expert acts as an expert and not as an arbitrator and that the dispute not be an arbitration for the purpose of the *Commercial Arbitration Act 1986 (ACT)*.
- (18) The Parties will provide the Independent Expert with access to any documents, records or information in its possession or control that the Independent Expert reasonably requires to enable its determination of the Net Compensation Amount, and copies of any such documents, records or information provided to the Independent Expert will be provided to the other Party.
- (19) The Independent Expert's determination is, subject to any manifest error, error of law or a failure by the Independent Expert to follow the requirements under sub-clause (16), final and binding on the Parties. All costs of the Independent Expert in providing its determination will be borne by the Territory.

17.17 For the avoidance of doubt, the Parties ~~Agree~~agree that a loss, cost or expense which:

- (1) is incurred by any Group Member as a result of an amendment or repeal as defined in clause 17.16(1); and
- (2) is a loss, cost or expense in respect of which the Proponent would have been entitled to receive payment under clause 17.16 had it been incurred directly by the Proponent in implementing the Proposal,

is a liability incurred by the Proponent in its reliance on the grant of the FiT entitlement for the purposes of clause 17.16(2) if it is a loss, cost or expense for which the Proponent has indemnified the Group Member.

Schedule 1: Deed Details

Item 1.	Contact Officers	<p>For the Territory: Richard Bourne</p> <p><i>Name:</i> Richard Bourne<u>Greg Buckman</u></p> <p><i>Position:</i> Manager, Solar Auction Secretariat, Environment and Sustainable Development<u>Planning</u> Directorate</p> <p><i>Address:</i> 16 Challis Street, Dickson, ACT 2602</p> <p><i>Email:</i> Richard.Bourne<u>greg.buckman@act.gov</u> .au</p> <p><i>Telephone:</i> (02) 6205 0828 <u>4435</u></p> <p><i>Facsimile:</i> (02) 6207 2316</p> <p>For the Proponent:</p> <p></p> <p><i>Address:</i> Level 7, 39 Martin Place<u>25, 88 Phillip Street,</u> Sydney; NSW 2000</p> <p></p> <p><i>Facsimile:</i> 02-8257-4701<u>NA</u></p>
Item 2.	Term of FiT entitlement	20 years from the Completion Date
Item 3.	Completion Date	31 March 2014
Item 4.	Minimum annual quantity of eligible electricity	7,400 MWh
Item 5.	Maximum annual quantity of eligible electricity	42,293 MWh
Item 6.	Amount of FiT	\$186.00/MWh
Item 7.	Site	Tuggeranong block 1633
Item 8.	Public Liability	Public liability insurance: \$20 million

	Insurance	(In respect of each claim)
Item 9.	Nominated Person	National Australia Bank Limited

Schedule 2: Generating System

Location:	Tuggeranong block 1633, The Australian Capital Territory
Maximum power output that the unit could produce as measured at the AC output terminals of the inverter:	20.0MW
Generating System configuration	The generating system will consist of approximately 83,000 multicrystalline silicon PV modules equating to no more than 24.07MW(DC), connected by a series of inverters and a single connection point to the ACT electricity distribution network.

Schedule 8: Consent to be appointed as Nominated Person

I consent to National Australia Bank Limited (ABN 12 004 044 937) being appointed as a Nominated Person for the purposes of the Deed of Entitlement entered into on 5 September 2012 between the Australian Capital Territory and FRV Royalla Solar Farm Pty Limited in relation to the *Electricity Feed-in (Large-scale Renewable Generation) Entitlement 2012 (No 1)* made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*.

Signed:

Date: 23 August 2013

Name:



As an authorised person for and on behalf of National Australia Bank Limited

Position:



ABN: 12 004 044 937

Address for service of copy of notices (see clauses 2.6 and 8.4):

| Address: Level 25, 255 George St, Sydney NSW 2000 Australia

| Attention:



| Phone:

| Mobile:



Fax: +61 (2) 9237 1634

| Email:



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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Environment and Planning Directorate.

SWF1 OPERATIONS PTY LTD ACN 601 425 316 in its capacity as trustee for the SWF1 Operations Trust (ABN 34 830 863 882) (**Proponent**).

1 Background

- 1.1 The Proponent participated in a competitive process (auction) run by the Territory pursuant to the Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (the Act) and, pursuant to that auction, has been granted by notifiable instrument *Electricity Feed-in (Large-scale Renewable Energy Generation) FIT Entitlement 2016 (No 2)* a FIT entitlement subject to certain conditions.
- 1.2 Section 12(1)(b)(iii) of the Act provides that one of the conditions of a FIT entitlement is that the holder complies with any written agreement that the Minister requires the holder to enter into with the Territory pursuant to section 12(3) of the Act.
- 1.3 This Deed comprises the written agreement that the Minister requires the Proponent to enter into pursuant to section 12(3) of the Act.

2 Interpretation

Definitions

- 2.1 The following definitions apply in this Deed, unless the context otherwise requires.

Act	means the Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011.
AEMO	means Australian Energy Market Operator Limited ACN 072 010 327, or any replacement or successor body.
AER	means the Australian Energy Regulator which is established under section 44AE of the Competition and Consumer Act 2010 (Cth) or any replacement or successor body.
Auction	means the competitive process established by the Request for Proposals issued by the Minister under the Act pursuant to which the Proponent has been granted a FIT entitlement on conditions.
Breach notice	means a notice given by the Territory to the Proponent in accordance with clause 4.1.
Business Day	means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Canberra.

Change in Control	means in relation to the Proponent , where a person who did not (directly or indirectly) effectively Control the Proponent at the date of grant of FiT entitlement , either alone, or together with others, acquires Control of the Proponent.
Change in Law	means: <ul style="list-style-type: none"> (a) the repeal, amendment or enactment of any law, statute, order, regulation or by-laws of the Commonwealth or any State or Territory of Australia (b) any condition imposed on the Proponent's FiT entitlement, or amendment to the FiT entitlement, by the Minister 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); and (c) a change to the National Electricity Law or the National Electricity Rules.
Clean Energy Regulator	means the regulator established under the Clean Energy Regulator Act 2011 (Cth) or any replacement or successor body.
Completion Date	means the date specified in Item 3a Schedule 1.
Confidential Information	means Proponent Confidential Information and Territory Confidential Information
Connection Agreement	means the agreement between the NSP and the Proponent by which the NSP provides access to the Network and related electricity distribution, transmission services or other assets.
Connection Point	means a point of supply of electricity to the Network agreed to by the Proponent and the NSP.
Contact Officers	means, in relation to each party, the representatives whose names and contact details are specified in Item 1 of Schedule 1 or as notified from time to time by one party to the other.

Control

in relation to the Proponent includes:

1. the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in the Proponent;
2. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the Proponent;
3. the ability to appoint or remove all or a majority of the directors of the Proponent;
4. the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of the Proponent;
5. any other means, whether direct or indirect, of dominating the decision making and financial operating policies of the Proponent.

Corporate Group



Cure Plan

means a cure plan agreed between the parties in accordance with clause 4.2.

Deed

means this deed, including any schedules and attachments.

Deed Material

means all material created, written or otherwise brought into existence by or on behalf of the Proponent as part of, or for the purpose of, implementing the Proposal and complying with this Deed, including all reports (whether in draft or final form), documents, information and data stored by any means but does not include Proponent Material.

Deed of Indemnity	means the deed of indemnity to be entered into by each Group Member (other than the Proponent) and the Territory in the form of Schedule 9.
Directorate or EPD	means the Environment and Planning Directorate, an administrative unit of the Territory.
Eligible electricity	has the same meaning as in the Act
Feed-in Tariff or FiT	has the same meaning as in the Act and, in relation to the Proponent, is the amount specified in Item 6 of Schedule 1.
FiT entitlement	has the same meaning as in the Act.
FiT support payment	has the same meaning as in the Act.
FiT Support Start Date	means the date specified in Item 3b Schedule 1.
Generating System	means the generating system described in Schedule 2 in respect of which the Proponent has been granted a FiT entitlement.
Generation Control Asset	means any wind monitoring equipment at the Site, and any systems used for monitoring or controlling the Generating System or the Generation Network, other than the systems of the operator of the Network or AEMO.
Generation Network	means the electric power network which connects Generating Units within the Generating System and connects the Generating System to the Network, and includes all power transformers, inverters, converters, conditioners, and metering and monitoring equipment on the Generating System side of the point of connection to the Network.
Generation Resources	means the Generating System, the Generation Control Assets, and the Generation Network.
Generating Unit	means a generator of electricity and all the equipment essential to its functioning as a single entity.
Group Member	means a member of the Corporate Group but excludes, where the context requires, the Proponent.

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 Corporations Act 2001 (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.

Material Assets means these assets in relation to the Proposal:

- (a) the Generation Resources;
- (b) spares, inventory and manuals in relation to the Generation Resources, other than those owned by the manufacturer or distributor of those spares and inventory;
- (c) any leasehold interest in any of the Site;
- (d) any licence to use any of the Site;
- (e) the rights and interests in the Connection Agreement (other than the rights and interest of the NSP);
- (f) the rights and interests in the contracts to engineer, procure or construct any of the Generation Resources and/or Site Premises, other than the rights and interests of the person undertaking that engineering, procurement or construction;
- (g) the rights and interests in the contracts to operate and/or maintain any of the Generation Resources and/or Site Premises, other than the rights and interests of the person undertaking that operation or maintenance.

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 National Electricity (South Australia) Act 1996 (SA) and applied as a law of the jurisdiction in which the Generating System is located.
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 12.8.
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 Corporate Group, or any premises which any personnel, employees, agents or contractors of a Group Member use (including places at which any material is stored), for the purpose of implementing the Proposal.

Proponent Confidential Information	<p>means information provided by the Proponent to the Territory:</p> <ul style="list-style-type: none"> (a) that the Proponent notifies to the Territory is confidential; or (b) that the Territory knows, or ought reasonably know, is confidential; <p>but does not include information that:</p> <ul style="list-style-type: none"> (a) is, or becomes, public knowledge other than by breach of this Deed; (b) has been independently developed or acquired by the Territory; or (c) has been notified by the Proponent to the Territory as not, or no longer being, confidential.
Proponent Material	<p>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.</p>
Proponent's FiT entitlement	<p>means the FiT entitlement granted to the Proponent under the Notifiable Instrument.</p>
Proposal	<p>means to the extent that it is set out in the Schedules to this Deed, 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.</p>
Proposed Cure Plan	<p>means a cure plan proposed by the Proponent in accordance with clause 4.2.</p>
Specified Contractor	<p>means any contractor named in Schedule 4.</p>
Specified Personnel	<p>means any person named in Schedule 4.</p>
Site	<p>means the site of the Generating System specified in Item 7 of Schedule 1.</p>
Site Premises	<p>means any Premises on the Site</p>
Term of FiT entitlement	<p>means the term of the Proponent's FiT entitlement as specified in the Notifiable Instrument and set out in Item 2 of Schedule 1.</p>

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 Australian Capital Territory (Self-Government) Act 1988 (Cth).

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 12.14 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; and
 - (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 4.1(c) 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:

- (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 details of replacement personnel and/or contractors acceptable to the Territory, and appoint the acceptable replacement personnel and/or contractors 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 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 and 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 5), 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 (or such longer period as is reasonable if the Site or Premises are not controlled or owned by a Group Member), enter and inspect the Site or Premises, including (to the extent relevant to the implementation of the Proposal) 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 are relevant to the implementation of the Proposal, 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, pursuant to obligations entered into prior to 1 January 2016.
- 9.4 For the purposes of this clause 9, interested person means :
- a. any employee or officer of a Group Member; and
 - b. any other contractor, consultant, adviser or agent of a Group Member, or other person engaged by or on behalf of any Group Member in relation to implementing 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, and agrees to ensure that any interested person does the same.
- 9.6 The Proponent must ensure that:
- a. access to the Site and Premises;
 - b. cooperation of any interested person to facilitate access to the Site and Premises; and
 - c. cooperation of any interested person to ensure compliance with any production notice;
- is provided to the Territory in accordance with this clause 9 regardless of whether the Proponent owns, has possession of, or controls access to the Site, Premises, data or documentation however if the Site or Premises are not controlled or owned by a Group Member or a related party thereof, the Territory's access and inspection rights will be subject to the Territory complying with any reasonable site rules or limitations imposed on those rights of access and inspection by the relevant party that owns or controls the Premises and are required for occupation, health and safety reasons.

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 has received a FIT support payment or, following the surrender of a Grant of Entitlement, would have been eligible for a FIT support payment had the surrender not occurred.

- 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 FiT support payment in respect of such eligible electricity generated, the Proponent must create and 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 never 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 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 or the capacity of the generating system (**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, and must ensure that each Group Member who implements the Proposal or owns or operates the Material Assets effects and maintains or otherwise has the benefit of, for the term of its FiT entitlement, all insurance coverage required to be effected by it and the Group Members 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 and each Generating Unit, 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, or as a contractor or sub-contractor to 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.
- 11.6 The Proponent must ensure that each Group Member as at the date of this Deed (other than the Proponent) executes an indemnity in favour of the Territory on the terms and conditions set out in Schedule 9 to this Deed on or before the date of this Deed.
- 11.7 Where a person becomes a Group Member after the execution of this Deed, the Proponent must ensure that that Group Member executes a deed in favour of the Territory agreeing to be bound as an Indemnifying Party jointly and severally with the other Group Members on the terms and conditions set out in Schedule 9 to this Deed, on or before 7 days after that person has become a Group Member.

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 acknowledges that the requirement to create and transfer Large-scale Generation Certificates under clause 10 of this Deed will survive a surrender of the Grant of FiT Entitlement under section 14 of the Act.
- 12.3 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).
- 12.4 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

- 12.5 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 12.9, to the new Nominated Person.

- 12.6 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.
- 12.7 Subject to clauses 12.8 and 12.9, the person specified in Item 9 of Schedule 1, if any, is appointed as the Nominated Person for the purposes of this clause 12.
- 12.8 The Nominated Person may be changed by written notice to the Territory in accordance with clause 12.9.
- 12.9 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 12.8, such notice must include the consent of the Nominated Person to be replaced.

Governing law and compliance with the law

- 12.10 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.
- 12.11 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

- 12.12 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.
- 12.13 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

- 12.14 Any failure by the Proponent to comply with an obligation under this Deed, including without limitation to achieve a Milestone or to supply the minimum quantity of eligible electricity specified in Schedule 1 within the time specified in this Deed, will not amount to a failure to meet an obligation under this Deed (including the schedules) to the extent that such failure is caused directly 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.
- (c) For the avoidance of doubt the Proponent's entitlement to relief under clause 12.14(a) above will include force majeure events that affect the performance of an equivalent obligation of a subcontractor to the Proponent under a subcontract or performance by a party that is the subject of an obligation under Schedule 6, provided such force majeure event is entirely outside of the control of the Proponent or that subcontractor or party that is the subject of an obligation under Schedule 6 and that it would be unreasonable to expect the Proponent or that subcontractor or party that is the subject of an obligation under Schedule 6 to have anticipated and factored into its planning when establishing and agreeing to the timelines provided for by this Deed.

12.15 A force majeure event for the purposes of clause 12.14(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; or
- (f) acts or omissions by the Clean Energy Regulator in relation to the creation or transfer of large-scale generation certificates.

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 sections 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-imbusement 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.
- 15.11 The provisions of this Deed take precedence over the content of the Proposal to the extent of any inconsistency between them.

Providing false or misleading information

- 15.12 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.
- 15.13 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.
- 15.14 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.
- 15.15 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.
- 15.16 The Proponent acknowledges that providing false or misleading information may be an offence under the Crimes Act 1900 (ACT).

Act to take precedence

- 15.17 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 clause 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 16.3, 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 2 March 2036:

- (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 repeal that the Proponent acquired for the purpose of implementing its Proposal, pursuant to this Deed, provided that such sale was on an arm's length basis, or otherwise an amount that reflects the Market Value of those assets; and
- (c) the Market Value of the assets owned by the Proponent that it acquired for the purpose of implementing its Proposal pursuant to this Deed (including, but not limited to, its interest in the land at the Site, the Generating System including associated plant and equipment and any connection assets), but excluding any amount calculated under sub-clause (6)(b).

- 16.7 In making a claim for payment under this clause, the Proponent will provide to the Territory its detailed written estimation (including reasonable evidence) of the Net Compensation Amount as calculated in accordance with this clause within 90 days of the occurrence of an event described in clause 16.2, and the Parties will negotiate in good faith to agree on the Net Compensation Amount to be paid under this clause. The Territory (acting reasonably) will be under no obligation to agree to any Net Compensation Amount under this clause that has not been substantiated in detail by the Proponent and supported by reasonable evidence. The Proponent will maintain and will provide the Territory with access to any records that the Territory reasonably requires to enable its own assessment of the Net Compensation Amount.
- 16.8 The Territory will pay any Net Compensation Amount agreed by the Parties under clause 16.7, or as determined by the Independent Expert under clauses 16.15 to 16.21, to the Proponent within 30 Business Days of such agreement or determination. The Parties agree (and agree to instruct the Independent Expert) that the Net Compensation Amount will be adjusted to include all losses, costs and expenses under clause 16.3 incurred by the Proponent, and any offset amounts under clause 16.6, up to the date the Net Compensation Amount is agreed or determined.
- 16.9 In no event, whether during the Term of the FIT entitlement or following its expiration, and whether during or after the Term of this Deed, or following earlier termination of this Deed, shall the Territory's liability for a claim made under this clause exceed the cap amount that applies at the date of the amendment or repeal specified in the following table:



- 16.10 If the Proponent makes two or more claims under this clause because of the occurrence of two or more separate instances of an amendment or repeal, the Territory will take into account, in determining whether (or the extent to which) a cap amount has been reached in relation to the latest amendment or repeal, every earlier payment made by the Territory under this clause. In such event, the maximum liability of the Territory in relation to the latest amendment or repeal will be the cap amount specified in the table that applies to the latest amendment or repeal, less the sum of all earlier payments made to the Proponent under this clause.
- 16.11 Payment by the Territory of the full amount agreed to by the Proponent under this clause will constitute full and final settlement of any liability that the Territory has to the Proponent under this clause and the Proponent agrees not to make any further claim against the Territory for any further compensation for any losses, cost, damage or expense, arising directly or indirectly from the amendment or repeal.
- 16.12 The Proponent agrees that, during the period between the date that the Proponent has actual or constructive knowledge that the amendment or repeal is likely to occur, and the date the Net Compensation Amount is determined under this clause, it will not voluntarily undertake any transaction that has the effect of materially diminishing the Market Value of the net assets of the Proponent, including without limitation, by any dividend payment, share buyback, capital reduction, transfer of assets other than on arm's length basis or redemption of any redeemable preference shares, provided that nothing in this clause prevents the Proponent from entering into and forming transactions in the ordinary course of business.

- 16.13 If the Proponent takes any action contrary to clause 16.10 then the Parties agree that the effect that such action had on diminishing the Market Value of the net assets of the Proponent is to be disregarded for the purposes of determining the offset amounts under clauses 16.6 (b) and (c).
- 16.14 The Parties agree that if the Proponent is paid any amount under this clause the Proponent may elect, at its sole discretion, to terminate this Deed. In this event, the Minister will repeal the Grant of Entitlement associated with the relevant generating system.

Appointment of Independent Expert and Determination of Net Compensation Amount

- 16.15 If the Parties, despite having negotiated in good faith, cannot agree on the Market Value of the assets for the purposes of clause 16.6 (c), or cannot resolve any dispute about a proper amount for clause 16.6(b), within 20 Business Days of the written estimation provided by the Proponent to the Territory under clause 16.7, then the Parties must appoint the Independent Expert to determine the Net Compensation Amount to be paid by the Territory under this section 16 and the provisions of clauses 16.16 to 16.21 will apply to the determination of the Net Compensation Amount by the Independent Expert.
- 16.16 If the Parties have not agreed on the Independent Expert within 40 Business Days of the written estimation provided by the Proponent to the Territory under clause 16.7, then the Parties agree that the Independent Expert shall be selected (based on the same criteria for selecting the Independent Expert) by the President for the time being of the Institute of Chartered Accountants in Australia, Australian Capital Territory Branch.
- 16.17 The Parties must instruct the Independent Expert to have regard to all normal valuation factors that the Independent Expert thinks are relevant, including the assumptions that there is a willing, but not anxious, buyer and a willing, but not anxious, seller of the assets and that there is reasonable time in which to sell the assets being valued in the open market (for that purpose 120 Business Days is deemed to be a reasonable time).
- 16.18 The Parties agree that the Independent Expert's terms of appointment will include the following requirements:
- a) the Independent Expert must have regard to any principles set out in this Deed, and all relevant material, in relation to the determination of the Net Compensation Amount;
 - b) the Independent Expert must consult with the Parties concerning the proposed Net Compensation Amount, the methodology of its determination, and the relevant materials they have considered;
 - c) the Independent Expert must keep confidential all information provided by, or on behalf of the Parties, to the Independent Expert;
 - d) the Independent Expert may make inquiries in relation to any matter he or she considers appropriate, and take the advice of any other person the Independent Expert wishes (including with any suitably qualified legal advisor who is independent of each Party);
 - e) the Independent Expert must make a draft report available to the Parties (that must include reasons for its determination) within 20 Business Days after its appointment;
 - f) the Independent Expert must meet with representatives of the Parties to discuss any queries it might have in relation to the draft report; and
 - g) the Independent Expert must use reasonable endeavours to notify the Parties of its determination within 10 Business Days after the date on which it makes its draft report available.

- 16.19 The Parties agree that the Independent Expert acts as an expert and not as an arbitrator and that the dispute will not be an arbitration for the purpose of the *Commercial Arbitration Act 1986 (ACT)*.
- 16.20 The Parties will provide the Independent Expert with access to any documents, records or information in its possession or control that the Independent Expert reasonably requires to enable its determination of the Net Compensation Amount, and copies of any such documents, records or information provided to the Independent Expert will be provided to the other Party.
- 16.21 The Independent Expert's determination is, subject to any manifest error, error of law or a failure by the Independent Expert to follow the requirements under clause 16.18, final and binding on the Parties. All costs of the Independent Expert in providing its determination will be borne by the Territory.

17 Ownership of material

- 17.1 Subject to the rights of any third party, ownership of:
- (a) all Deed Material, including any intellectual property rights in that material, vests on its creation in the Proponent;
 - (b) all Proponent Material, including any intellectual property rights in that material, remains with the Proponent; and
 - (c) all Territory Material, including any intellectual property rights in that material, remains with the Territory.

Licence of material

- 17.2 This clause 17 does not limit, or affect in any way, a party's obligation to comply with its obligations under items 17.7 and 17.14 below (Non-disclosure of Confidential Information).
- 17.3 The Territory grants to the Proponent a royalty-free, non-exclusive licence to use the Territory Material for the Term.
- 17.4 For the purpose of clause 17.3 above "use" means to supply, reproduce, publish, perform, communicate on-line, adapt and broadcast for such purposes as are reasonably necessary for the Proponent to implement the Proposal and to ensure compliance with this Deed, and such other uses agreed by the Territory.
- 17.5 The Proponent grants to the Territory, its contractors and agents, a royalty-free, perpetual, non-exclusive licence to use the Proponent Material and Deed Material.
- 17.6 For the purpose of clause 17.5 above "use" means to supply, reproduce, publish, perform, communicate on-line, adapt and broadcast for the following purposes:
- (a) the Territory's own internal briefing and reporting requirements;
 - (b) Ministerial and Cabinet briefing;
 - (c) undertaking, and publishing the results of, and reviews of, the FIT capacity release made under the Act;
 - (d) policy development;
 - (e) assessing and ensuring the Proponent's compliance with this Deed; and
 - (f) administration of the Act and this Deed generally.

Third party rights

17.7 The Proponent must ensure:

- (a) the use of any Proponent Material or Deed Material by the Territory in accordance with the licence in clause 17.5, above, will not infringe the intellectual property rights of any third party; and
- (b) no fees, royalties, or other payments, are payable in respect of any third party rights as a result of the Territory's (or its contractors', or agents') use of any such material in accordance with the licence in clause 17.5 above.

Moral rights

17.8 The Proponent must, in relation to the authors of any work that comprises, or forms part of, any Deed Material or the Proponent Material provided by the Proponent to the Territory:

- (a) use its best endeavours to include in the material an attribution of those authors; and
- (b) procure from those authors their genuine written consent for the Territory to:
 - perform any act in respect of the work in accordance with the licence given under clause 17.5 above;
 - in so doing not to attribute the author as the author of the work; and
 - materially alter the work in any way.

Safekeeping and preservation of material

17.9 The Proponent must ensure the safe-keeping and proper preservation of all Deed Material, Proponent Material and Territory Material in its possession or control for the Term of the FIT entitlement and deliver to the Territory all Territory Material on the expiration or termination of this Deed (other than copies of material that the Territory has authorised the Proponent to retain).

Non-disclosure of Confidential Information

17.10 The Proponent must:

- (a) use Territory Confidential Information held in connection with this Deed, or the Act, or in relation to implementing the Proposal, only for the purposes of fulfilling its obligations under this Deed and not to disclose any of the Territory's confidential information without the prior approval of the Territory;
- (b) comply with the "Information Privacy Principles" set out in the *Privacy Act 1988* (Cth) as if they were provisions of this Deed and the Proponent was a collector and record-keeper of the personal information as defined in the Act; and
- (c) notify the Territory, immediately, if the Proponent becomes aware that a disclosure of Territory Confidential Information is required by law, or an unauthorised disclosure of Territory Confidential Information has occurred.

- 17.11 Except as provided in this Deed, the Proponent must not disclose Territory Confidential Information to any person without the prior written consent of the Territory except to the extent that the Territory Confidential Information is:
- (a) required or authorised to be disclosed by law;
 - (b) disclosed to the Proponent's solicitors, auditors, insurers or professional advisers or financiers or bona fide potential financiers;
 - (c) generally available to the public; or
 - (d) in the possession of the Proponent without restriction in relation to disclosure before the date of receipt from the Territory.
- 17.12 The Proponent must take all reasonable measures to ensure that Territory Confidential Information accessed, or held by it in connection with this Deed, is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose including by imposing upon the Proponent's personnel obligations of confidentiality and ensuring that only its authorised personnel have access to Territory Confidential Information.
- 17.13 The Proponent acknowledges that the publication or communication of any fact or document by a person that has come to its knowledge, or into its possession or custody by virtue of the performance of this Deed (other than to a person to whom the Proponent is authorised to publish or disclose the fact or document), may be an offence under section 153 of the *Crimes Act 1900 (ACT)*; the maximum penalty for which is 2 years imprisonment.

Territory's use of Proponent Confidential Information

- 17.14 Except as provided in this Deed, the Territory must not disclose Proponent Confidential Information to any person without the prior written consent of the Proponent (whose consent will not be unreasonably withheld) except to the extent that the Proponent's Confidential Information:
- (a) is required, or is authorised to be, disclosed under law. For the avoidance of doubt, disclosure of information for the purposes of allowing the electricity distributor to comply with its obligations under the Act will be considered required or authorised by law;
 - (b) is reasonably necessary for the enforcement of the criminal law;
 - (c) is disclosed to the Territory's solicitors, auditors, insurers or advisers;
 - (d) is generally available to the public;
 - (e) is in the possession of the Territory, without restriction, in relation to disclosure before the date of receipt from the Proponent;
 - (f) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
 - (g) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

18 Indemnification of Group Members

Outline of this clause

- *The purpose of this clause is to clarify the rights and obligations of the parties in relation to clause 16 as applying in the context of a company group corporate structure.*
- *The intention of this clause is to confirm that:*
 - *a loss, cost or expense incurred by a Group Member in implementing the Proposal, for which the Proponent has indemnified a Group Member, will be taken into account in determining the Net Compensation Amount under clause 16, provided that it is a loss, cost or expense which the Proponent would have been entitled to take into account had the Proponent incurred the loss, cost or expense; and*
 - *any obligation, limitation or prohibition that applies to the conduct or circumstances of the Proponent under clause 16 which would have had the effect of limiting or reducing (including to zero) the Net Compensation Amount payable to the Proponent under clause 16, applies in the same way to the conduct and circumstances of Group Members for the purpose of determining the Net Compensation Amount.*

Definitions

18.1 In this clause 18:

- | | |
|--------------------------|---|
| Covered Loss | means a loss, cost or expense incurred by the Proponent in its reliance on the grant of FIT entitlement for the purposes of clause 16.3. |
| Group Member Loss | means a loss, cost or expense incurred by a Group Member which, had it been incurred by the Proponent, would have been a Covered Loss. |
| Indemnity Loss | means any amount payable by the Proponent to another Group Member as indemnification or compensation for a Group Member Loss. |
| Excluded Loss | means a Group Member loss which: <ul style="list-style-type: none">(a) had it been incurred by the Proponent, the Proponent would have been prevented from claiming under clause 16, including without limitation, by virtue of clause 16.4 or clause 16.5; or(b) arises from any liability of a Group Member to another Group Member (but not including an Indemnity Loss). |

Relevant Period means the period of time from the date that the Proponent has notice that the amendment or repeal is likely to occur until the date the Net Compensation Amount is determined under clause 16.

Indemnity of Group Members

- 18.2 The Parties agree that an Indemnity Loss is a Covered Loss, unless it is an Excluded Loss.
- 18.3 The Territory will not be liable to pay compensation to the Proponent under clause 16 for any loss, cost, damage or expense incurred by a Group Member which is not an Indemnity Loss.
- 18.4 The Parties agree that:
- (a) despite the involvement of Group Members in implementing the Proposal; and
 - (b) notwithstanding subclause 18.2,
- the amount payable by the Territory under clause 16.2 will not exceed the amount that it would be liable to pay to the Proponent had the Proponent directly implemented the Proposal in its own right..
- 18.5 The liability of the Territory to pay compensation to the Proponent under clause 16 in relation to an Indemnity Loss will be offset by:
- (a) any amount that becomes payable to a Group Member under statute as a direct result of the amendment or repeal; and
 - (b) the proceeds paid or payable on the sale of any assets where such sale occurred after the date of amendment or repeal and which a Group Member acquired for the purpose of implementing the Proposal, provided that such sale was on an arm's length basis, or otherwise an amount that reflects the Market Value of those assets; and
 - (c) the Market Value of the assets of a Group Member which it acquired for the purpose of implementing the Proposal (including but not limited to any interest in the land at that Site, the Generating System including associated or incidental plant and equipment, and any connection assets) but excluding any amount calculated under subclause 18.5 (b) above.
- 18.6 The Proponent indemnifies the Territory against any claims made against the Territory (including without limitation for legal costs on a full indemnity basis) by any Group Member for compensation for any loss, cost, damage or expense incurred by the Group Member arising directly or indirectly from an amendment or repeal.
- 18.7 If during the Relevant Period a Group Member voluntarily undertakes any transaction that has the effect of materially diminishing the Market Value of any assets referred to in subclause 18.5(b) or (c) above, including without limitation, by any dividend payment, share buyback, capital reduction, transfer of assets other than on arm's length basis, or redemption of any redeemable shares, then the effect that such action had on diminishing the Market Value of those assets is to be disregarded for the purposes of determining the offset amounts under subclauses 18.5(b) and (c) above.
- 18.8 For the purposes of determining the Relevant Period in subclause 18.7 above, every Group Member is deemed to have notice that an amendment or repeal is likely to occur at the date that that the Proponent has actual or constructive knowledge that the amendment or repeal is likely to occur.

- 18.9 The Proponent will ensure that every Group Member will provide the Independent Expert with access to any documents, records or information in the possession or control of the Group Member that the Independent Expert reasonably requires to enable its determination of the Net Compensation Amount, and to provide copies of such documents, records or information to the Territory.
- 18.10 No undertakings, acknowledgements or rights given, or representations made, by the Territory to the Proponent under clause 16 or this clause 18, are given or made by the Territory for the benefit of any person other than the Proponent (including without limitation, any Group Member other than the Proponent).
- 18.11 The Proponent does not hold any right, interest or entitlement by virtue of clause 16 or this clause 18 for the benefit of any other person, including without limitation any Group Member.
- 18.12 No person other than the Proponent (including without limitation, any Group Member other than the Proponent) shall have any right, interest or entitlement to bring, or cause to be brought, whether directly or indirectly, by virtue of any trust or otherwise, any claim, proceeding, cause or action against the Territory in respect of any right, interest or entitlement given to the Proponent under this clause 18 or clause 16.
- 18.13 The Parties agree that the Outline to this clause 18 above is for interpretive guidance only. To the extent of any inconsistency between the Outline and the numbered provisions of this clause 18, the numbered provisions take precedence.
- 18.14 The Independent Expert is bound to apply this clause 18 in determining the Net Compensation Amount under clause 16.

Schedule 1- Deed Details

Item 1.	Contact Officers	<p>For the Territory:</p> <p><i>Name:</i> Greg Buckman <i>Position:</i> Senior Policy Officer <i>Address:</i> 16 Challis Street, Dickson, ACT, 2602 <i>Email:</i> greg.buckman@act.gov.au <i>Telephone:</i> (02) 6205 4435 <i>Focsimile:</i> (02) 6207 3216</p> <p>For the Proponent:</p> <p>[Redacted] <i>Address:</i> PO Box 1708, Newcastle, NSW, 2300 <i>Email:</i> [Redacted] <i>Telephone:</i> [Redacted]</p>
Item 2.	Term of FIT entitlement	20 years from 1 May 2018
Item 3a.	Completion Date	As specified in Schedule 3: 30 April 2018
Item 3b.	FIT Support Start Date	As specified in Notifiable Instrument: 1 May 2018
Item 4.	Minimum annual quantity of eligible electricity	69,940 MWh
Item 5.	Maximum annual quantity of eligible electricity	397,704 MWh
Item 6.	Amount of FIT	FIT \$89.10/MWh
Item 7.	Site	Located in the Northern Tablelands of NSW, around 28km east of Inverell and 18km west of Glen Innes
Item 8.	Public Liability Insurance	Public liability insurance: \$20 million (in respect of each claim)
Item 9.	Nominated Person	<p>[Redacted] <i>Address:</i> PO Box 1708, Newcastle, NSW, 2300 [Redacted]</p>

Schedule 2- Generating System

Location:	As per Schedule 1, item 7
Maximum power (AC) output that the generating system could produce as measured at the point of connection to the electricity network:	100.0MW
Generating System configuration:	The generating system will consist of up to 32 wind turbine generators of 3.2MW or similar arrangement subject to competitive tender, connected via a transformer to a single point of connection to the national electricity system.

Execution page for Deed of Entitlement

DATE OF THIS Deed 25 February 2016

Executed as a Deed for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY

) [Redacted]
) [Redacted]

in the presence of:

) Signature of Territory delegate

[Redacted]

DORTE EKELUND

Print name

Print name

[Redacted]

Executed as a Deed by

[Redacted]

) [Redacted]
) [Redacted]
) Signature of director/~~individual~~

Print name

*DELETE whichever is not applicable (see note)

for and on behalf of

SWF1 Operations Pty Ltd
ACN 601 425 316

in the presence of:

[Redacted]

.....



Print name

Note:

Date: Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.

Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Proponent's constitution.

Individual: Must be signed by the Individual Proponent and witnessed.



ACT
Government

DEED OF VARIATION

Parties

AUSTRALIAN CAPITAL TERRITORY

**SWF1 OPERATIONS PTY LTD
ACN 601 425 316**

**VARIATION OF DEED OF
ENTITLEMENT FOR SAPPHIRE WIND
FARM (STAGE 1)**

Prepared by

The Environment and Planning Directorate
16 Challis Street
DICKSON
ACT 2602
Ph: 62054435
Ref: GB:12082016

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Environment and Planning Directorate.

SWF1 Operations Pty Ltd ACN 601 425 316 in its capacity as trustee for the SWF1 Operations Trust (ABN 34 830 863 882) (**Proponent**).

BACKGROUND

- A. The Territory and the Proponent executed a deed of entitlement on 25 February 2016 in relation to the grant of a FiT entitlement to the Proponent made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (ACT) (**Deed of Entitlement**).
- B. The parties agree to vary the Deed of Entitlement on the following terms and conditions.

Definitions

1. Unless otherwise defined or the context requires otherwise, capitalised terms that are defined in the Deed of Entitlement have the same meaning in this Deed of Variation.

Approval

2. The Territory approves the new corporate structure as set out in Schedule 4 of this Deed of Variation for the implementation of the Proposal, subject only to any conditions specified in clause 4 of this Deed of Variation and consents to the associated Change of Control.
3. The Territory and the Proponent acknowledge and agree to waive the requirement, set out at clause 13.1 of the Deed of Entitlement, for the Nominated Person to be a party to this Deed of Variation.

Conditions

4. The Territory's approval of the new corporate structure as set out in the diagram in Schedule 4 of this Deed of Variation is subject to the following conditions:
 - i. The assets and liabilities of the Group Members as a whole and as defined in the Deed of Entitlement are unchanged as a whole by the transactions.
 - ii. The Proponent's commitments set out in Schedule 6 of the Deed of Entitlement remain unchanged as a result of this Deed of Variation.

- iii. SWF Nominees Pty Ltd as trustee for the SWF Asset Trust will hold the interest in the land for the Site.
- iv. SWF Nominees Pty Ltd as trustee for the SWF Asset Trust will make the Site and Generating System available to the Proponent so as to enable the Proponent to generate and supply eligible electricity to the network in accordance with the Deed of Entitlement and other conditions of its FiT entitlement.

IT IS AGREED by the parties as follows:

1. Variation

In accordance with section 13 of the Deed of Entitlement, the definition of Corporate Group in clause 2.1 of the Deed of Entitlement is deleted and replaced with the new definition, set out in the Annexure to this Deed of Variation below, and Schedules 3 and 4 are deleted and replaced with new Schedules 3 and 4, set out in the Annexure to this Deed of Variation below.

EXECUTED AS A DEED

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY
in the presence of:

[Redacted Signature]

) Signature of Territory delegate

[Redacted Name]

Print name

8/9/2016
.....
Date

DORTE EKELUND.
.....
Print name

SIGNED by
SWF1 Operations Pty Ltd in
accordance with section 127 of the
Corporations Act 2001 (Cth) by:

[Redacted Signature]

) Signature of Director

[Redacted Signature]

Signature of Director/Secretary

7/9/2016
.....
Date

[Redacted Name]

Print name

7/9/2016
.....
Date

[Redacted Name]

Print name

Note:

Company:

Must be signed in accordance with section 127 of the *Corporations Act 2001 (Cth)*, for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.

Large-scale Solar Auction
Deed of Entitlement

DEED OF ENTITLEMENT

Date

15 August 2013

Parties

AUSTRALIAN CAPITAL TERRITORY

AND

OneSun Capital 10MW Operating Pty Ltd

AGREEMENT UNDER THE ELECTRICITY FEED-
IN (LARGE-SCALE RENEWABLE ENERGY
GENERATION) ACT 2011

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* (**Territory**) represented by the Environment and Sustainable Development Directorate.

OneSun Capital 10MW Operating Pty Ltd, ACN 159 029 017,
Lowy Wilcock and Co, Level 6, 72 Pitt Street, Sydney, NSW 2000 (**Proponent**).

Background

- (A) The Proponent participated in a competitive process (auction) run by the Territory pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011 (Act)* and, pursuant to that auction, has been granted by notifiable instrument (*Electricity Feed-in (Large-scale Renewable Energy Generation) Entitlement 2013 (No 2)*) a FiT entitlement subject to certain conditions.
- (B) Section 12(1)(b)(iii) of the Act provides that one of the conditions of a FiT entitlement is that the holder complies with any written agreement which the Minister requires the holder to enter into with the Territory pursuant to section 12(3) of the Act.
- (C) This Deed comprises the written agreement which the Minister requires the Proponent to enter into pursuant to section 12(3) of the Act.

IT IS AGREED by the parties as follows:

1. Interpretation

Definitions

1.1. The following definitions apply in this Deed, unless the context otherwise requires.

Act	means the <i>Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011</i> .
AEMO	means Australian Energy Market Operator Limited ACN 072 010 327, or any replacement or successor body.
AER	means the Australian Energy Regulator which is established under section 44AE of the <i>Competition and Consumer Act 2010 (Cth)</i> or any replacement or successor body.
Auction	means the competitive process established by the Request for Proposals issued by the Minister under the Act pursuant to which the Proponent has been granted a FiT entitlement on conditions.
Breach notice	means a notice given by the Territory to the Proponent in accordance with clause 2.4.

Business Day	means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Canberra and Sydney.
Change in Law	means: <ul style="list-style-type: none"> (a) the repeal, amendment or enactment of any law, statute, order, regulation or by-laws of the Commonwealth or any State or Territory of Australia (b) any condition imposed on the Proponent's FiT entitlement, or amendment to the FiT entitlement by the Minister 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); and (c) a change to the National Electricity Law or the National Electricity Rules.
Clean Energy Regulator	means the regulator established under the <i>Clean Energy Regulator Act 2011</i> (Cth) or any replacement or successor body.
Completion Date	means the date specified in Item 3 Schedule 1.
Connection Agreement	means the agreement between the NSP and the Proponent by which the NSP provides access to the Network and related electricity distribution or transmission services.
Connection Point	means a point of supply of electricity to the Network agreed to by the Proponent and the NSP.
Contact Officers	means, in relation to each party, the representatives whose names and contact details are specified in Item 1 of Schedule 1 or as notified from time to time by one party to the other.
Cure Plan	means a cure plan agreed between the parties in accordance with clause 2.4A.
Deed	means this deed, including any schedules and attachments.
Directorate or ESDD	means the Environment and Sustainable Development Directorate, an administrative unit of the Territory.
Eligible electricity	has the same meaning as in the Act
Feed-in Tariff or FiT	has the same meaning as in the Act and, in relation to the Proponent, is the amount specified in Item 6 of Schedule 1.
FiT entitlement	has the same meaning as in the Act.
FiT support payment	has the same meaning as in the Act.
Generating System	means the generating system described in Schedule 2 in respect of which the Proponent has been granted a FiT entitlement.
Generating Unit	means a generator of electricity and all the equipment essential to its functioning as a single entity.

Independent Expert	means a firm of chartered accountants selected by the Parties in accordance with sub-clauses 17.18 (13) to (18) that meets the following criteria: <ul style="list-style-type: none"> (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 Solar Auction; (c) The firm has experience in valuing solar farm or other renewable energy assets; and (d) the firm (and individuals to be utilized by the firm) are not arbitrators.
Insolvency Event	means the occurrence of any one or more of the following events in relation to the Proponent: <ul style="list-style-type: none"> (a) an application is made to a court for an order 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 Corporations Act 2001 (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 which has a substantially similar effect to any of the above paragraphs of this definition.
Intended cancellation notice	means an <i>intended cancellation notice</i> issued pursuant to subsection 13(2) of the Act.
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, the Generating System including associated plant and equipment and any connection assets) as determined in accordance with clause 17.18.
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 (SA)</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 <i>National Electricity Law</i> , as amended from time to time, or any replacement or successor rules of conduct.
Net Compensation Amount	means all losses, costs and expenses as calculated in accordance with clause 17.18 (2) less any offset amounts calculated in accordance with clause 17.18 (5), as agreed by the Parties in accordance with clause 17.18.
Network	means the network (as defined in the <i>National Electricity Rules</i>) 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 <i>National Electricity Rules</i>) which 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 8.8.
Notifiable Instrument	means the notifiable instrument pursuant to which the Proponent is granted a FIT entitlement under the Act.
Premises	means any premises which 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'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.
Proposed Cure Plan	means a cure plan proposed by the Proponent in accordance with clause 2.4.
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: <ul style="list-style-type: none"> (a) when used in a geographical sense, the Australian Capital Territory; and (b) when used in any other sense, the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth).
Territory Law	means any law, statute, order, regulation, notifiable instrument or by-law of the Territory.

General

1.2. In this Deed, unless a *contrary* intention is expressed:

- (1) references to 'Proponent' include any employees, agents or subcontractors of the Proponent; and
- (2) 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.

2. Conditions of entitlement

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

2.1. 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.

Failure to comply with an obligation under this Deed is not, of itself, a breach of a condition of the proponent's FIT entitlement

2.1A 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 2.4 and the requirements that follow from the issue of a breach notice set out in this clause 2 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

2.2. The Proponent's obligation to ensure compliance with this Deed as a condition of its entitlement to FIT support payments is in addition to, 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

2.3. Subject to clause 17.15, a failure to comply with an obligation under this Deed and a failure to meet the requirements of a breach notice issued under clause 2.4 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.

Breach of this Deed

2.4. If the Proponent fails to meet an obligation provided for under this Deed, and clause 17.15 does not apply in respect of such failure, then the Territory may issue a written notice to the Proponent (**breach notice**) which:

- (a) specifies the obligation which the Proponent has failed to meet; and
- (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, which shall be no less than 90 Business Days.

- 2.4A The Territory and the Proponent will negotiate in good faith to agree the Cure Plan within 15 Business Days of receipt by the Territory of the Proposed Cure Plan, or any such longer period as agreed in writing between the Parties.
- 2.4B Any Cure Plan agreed under clause 2.4A 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 not 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.
- 2.4C If the Proponent has cured or addressed the relevant failure specified in the breach notice within the default period of time provided under clause 2.4(c) or within the timeframe specified in a Cure Plan agreed under clause 2.4A, 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.
- 2.5 A failure by the Proponent to cure or address the relevant failure in accordance with a Cure Plan agreed under clause 2.4A, or if no Cure Plan is agreed within the timeframe specified in clause 2.4A, then 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.
- 2.6 The Territory will give a copy of any *breach notice* issued to the Proponent, and any notice of cure under clause 2.4C, to the Nominated Person, if any, at the address for the Nominated Person specified in Item 9 of Schedule 1, or as otherwise by written notice in accordance with clause 8.8, as soon as reasonably practicable after issuing the notice to the Proponent. The Territory gives the undertaking in this clause 2.6 for the benefit of the Nominated Person.
- 2.7 This Deed is not intended to limit or vary the operation of the Act. Nothing in this clause is to be taken to limit or fetter any right, power, obligation or function of the Territory or the Minister under the Act.
- 2.8 For the avoidance of doubt, this clause does not require the Territory to issue a breach notice in relation to a failure by the Proponent to meet a condition of the Proponent's FIT entitlement where that condition applies irrespective of this Deed.
- 2.9 For the avoidance of doubt, neither of the following events will, of itself, constitute a breach of this Deed:
- (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.

3. Implementation of Proposal

- 3.1. 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 and 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

- 3.2. 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.
- 3.3. 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.

4. Variation

- 4.1. Subject to clause 4.2, this Deed can only be varied by the written agreement of the Proponent and the Territory, with the written consent of the Nominated Person, if any. The parties to this Deed hold the benefit of the covenant provided for in this clause 4.1 on trust for the benefit of the Nominated Person, if any.
- 4.2. In accordance with the Act, this Deed cannot be varied without the approval of the Minister.

5. Costs

- 5.1. 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.
- 5.2. 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.

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 would 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 replacement personnel and contractors acceptable to the Territory and at the earliest reasonable opportunity.
- 6.4. To be acceptable to the Territory, such personnel and contractors must have equivalent skills, training, experience and expertise as the Specified Personnel or Specified Contractors which they are replacing.

7. Term and Termination of Deed

- 7.1. 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, or upon the election of the Proponent in accordance with clause

17.18 (12).

8. Transfer, Surrender & Cancellation of FiT entitlement

Application of Act

- 8.1. The Proponent must not surrender or transfer the FiT entitlement otherwise than in accordance with the Act.
- 8.2. 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).
- 8.3. 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

- 8.4. 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 8.9, the new Nominated Person.
- 8.5. 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.
- 8.6. The Territory gives the undertakings in clauses 8.4 and 8.5 above for the benefit of the Proponent and the Nominated Person. The Proponent holds the benefit of the undertaking in clauses 8.4 and 8.5 above on trust for the Nominated Person, if any.
- 8.7. Subject to clauses 8.8 and 8.9 the person specified in Item 9 of Schedule 1, if any, is appointed as the Nominated Person for the purposes of this clause 8.
- 8.8. The Nominated Person may be changed by written notice to the Territory in accordance with clause 8.9, subject to clause 8.1.
- 8.9. 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 8 and, where such person is a new Nominated Person for the purposes of clause 8.8, such notice must include the consent of the Nominated Person to be replaced.
- 8.10. This Deed is not intended to limit or vary the operation of the Act. Nothing in this clause 8 is to be taken to limit or fetter any right, power, obligation or function of the Territory or the Minister under the Act.

9. Electricity laws

- 9.1. 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.
- 9.2. The Proponent must for the duration of the term of its FIT entitlement:
- (1) 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;
 - (2) not do anything, or permit anything to be done on its behalf, which requires the approval of AEMO or the NSP, without having that approval;
 - (3) 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;
 - (4) 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;
 - (5) 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 which 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
 - (6) comply with any FIT support payment guidelines issued by the Minister under section 20 of the Act.

10. Access to documents, premises and the Site

- 10.1. 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 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.
- 10.2. 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, which the Proponent or an interested person has access to, and which the Territory, on reasonable grounds, considers relevant to a monitoring purpose.
- 10.3. The Proponent must ensure that it and any interested person gives to the Territory copies of any documents, information or data which the Territory requests under clause 10.2 above, within the time stated in the production notice.
- 10.4. For the purposes of this clause 10 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 the Proposal.

- 10.5. 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.

11. Requirement to register and transfer certificates under the *Renewable Energy (Electricity) Act 2000 (Cth)*

- 11.1. 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 has received payment of the FIT support payment.
- 11.2. The Proponent must, at no cost to the Territory, execute and provide to the Territory any instruments, documents or information which the Territory reasonably requires to account for and manage the certificates transferred to it under this clause.
- 11.3. 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 payment of the FIT support payment, occurring in that year.
- 11.4. 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 payment of the FIT support payment in respect of such eligible electricity generated, the Proponent must create and transfer the relevant large-scale generation certificates to the Territory in accordance with this clause 11; 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 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.

12. Reports

- 12.1. The Proponent must provide to the Territory the reports in the manner and at the times stated in Schedule 5.

13. Providing false or misleading information

- 13.1. 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.
- 13.2. 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.
- 13.3. 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.

- 13.4. 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.
- 13.5. The Proponent acknowledges that providing false or misleading information may be an offence under the *Crimes Act 1900* (ACT).

14. Ownership, use of materials and confidential information

- 14.1. Schedule 6 sets out the parties' obligations in relation to intellectual property rights in materials and disclosure of confidential information.

15. Insurance and indemnity

Proponent's insurance

- 15.1. 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.
- 15.2. The Proponent must produce evidence that it has in place the insurance required under clause 15.1 above within 14 days of a request being made by the Territory.

Indemnity

- 15.3. 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 and each Generating Unit, or any other activity undertaken by the Proponent under this Deed except to the extent that the Territory caused the relevant loss, damage, injury or death.
- 15.4. The indemnity in clause 15.3 above:
- (1) applies regardless of any statutory, Territory or Ministerial approval, licence or entitlement given to the Proponent or in respect of its Proposal; and
 - (2) 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.
- 15.5. 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 15.3 above.

16. Safety, Health & Environment Plan

- 16.1. Schedule 7 sets out the obligations of the Proponent in relation to issues of safety, health and environmental protection.

17. General Terms and Conditions

General responsibilities of parties

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

17.1A In granting a FIT entitlement and in entering into this Deed Of Entitlement, neither the Territory nor the Minister give any warranty or make any representation about the prospects of successful implementation of the Proponent's proposal.

Proponent Trust responsibilities

- 17.2 The Proponent acts as trustee of the OneSun Capital Trust and, in relation to this Deed of Entitlement:
- a. is liable in its capacity as trustee of that trust;
 - b. it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity towards meeting the conditions of its FIT entitlement, including its obligations under this Deed;
 - c. it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust;
 - d. it represent and warrant that:
 - i. such trust has been duly established and currently exists;
 - ii. It is the duly appointed, current and only trustee of that trust;
 - iii. as such trustee it has the power to enter into and perform its obligations under this Deed, and to meet the conditions of its FIT entitlement;
 - iv. it has an unqualified right of indemnity out of the assets of the trust in respect of its obligations;
 - v. conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed; and
 - vi. no breach of the relevant trust deed exists or would arise.

No employment, partnership or agency relationship

- 17.3. 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.
- 17.4. 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.

Representation of successful proposal Implementation

17.5 In granting a FIT entitlement and in entering into this Deed Of Entitlement, neither the territory nor the Minister give any warranty or make any representation about the prospects of successful implementation of the Proponent's proposal.

Severability

17.6. 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

17.7. 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 which the Minister may have under the Act.

Precedence of instruments

- 17.8. The provisions of the Act take precedence over the terms and conditions of this Deed to the extent of any inconsistency between them.
- 17.9. 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.

Governing law and compliance with the law

- 17.10. 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.
- 17.11. The Proponent must comply with the laws from time to time in force in the Territory in implementing the Proposal and operating the Generating System and in relation to all incidental activities.

Notices

- 17.12. 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:
- (1) if delivered by hand, on delivery;
 - (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
 - (3) 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
 - (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.
- 17.13. Nothing in this clause limits or in any way alters the effect of any provisions of the Act relating to the giving of notice for any purpose.

Survival of clauses

- 17.14. The obligations in Schedule 6 and clauses 11, 15.3, 15.4, 15.5 and 17.18 survive the expiration or earlier termination of this Deed and the transfer, surrender and cancellation of the Proponent's FIT entitlement.

Force Majeure and Change of Law

- 17.15. 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 directly by:
- (a) a force majeure event that is entirely outside of the control of the Proponent and which 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.

17.16. A force majeure event for the purposes of clause 17.15 (a) includes:

- (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;
- (f) acts or omissions by the Clean Energy Regulator in relation to the creation or transfer of large-scale generation certificates; and
- (g) those acts or omissions of the distributor that make performance of the Proponent's obligations impossible or financially punitive.

17.17. 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 17.15, 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.

Payment on repeal or amendment of the Act

17.18

- (1) The Proponent will be entitled to be paid an amount in accordance with this clause 17.18 in the event that, within the period between the date of grant of the FIT Entitlement and [expiry date]:
 - (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,

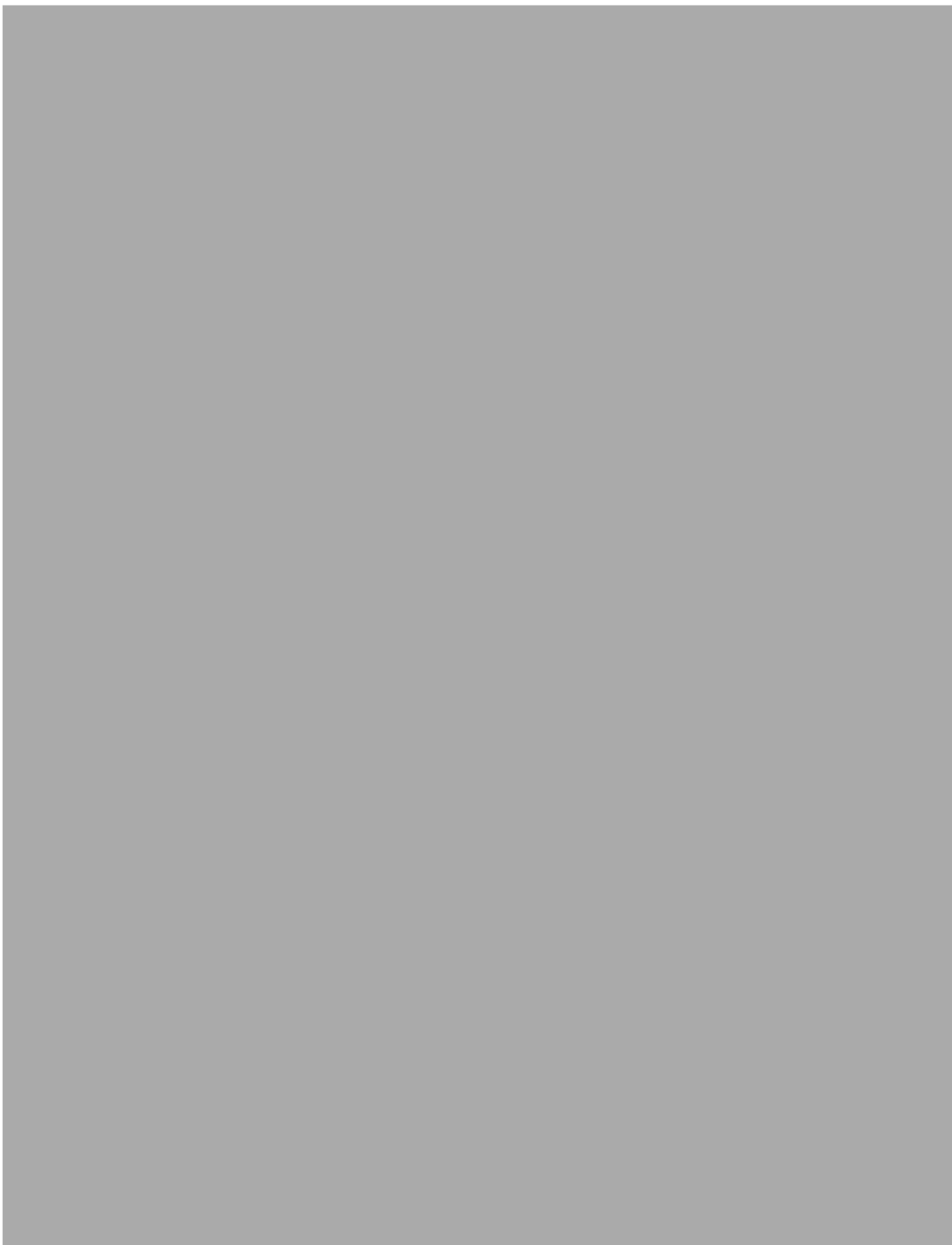
and such amendment, repeal, enactment or condition terminates the Proponent's right to receive, reduces the amount of, or otherwise directly adversely affects the value of, the FIT Support Payments that the Proponent is entitled to receive at the date of the grant of the FIT Entitlement, or such amendment, 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**).

- (2) Subject to, and in accordance with, sub-clauses (3) to (18) of this clause 17.18, 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

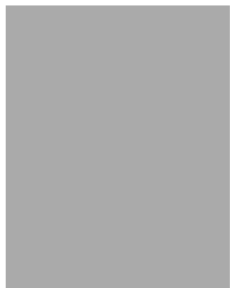
Proponent has actual knowledge that the amendment or repeal was likely to occur (including those losses, costs and expenses incurred which require the Proponent to make a payment at a future time), including without limitation payment for:

- (a) any net loss, costs and expenses which 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.
- (3) The Proponent will not be paid an amount in respect of, or compensated for, any losses, costs or expenses which 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.
- (4) The Proponent will not be paid any amount in respect of, or compensated for loss, expense, cost, damage or liability of any kind:
- (a) which 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.
- (5) Any amount payable by the Territory under this clause 17.18 will be offset by:
- (a) any amount which 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 repeal which the Proponent acquired for the purpose of implementing its Proposal pursuant to this Deed provided that such sale was on an arm's length basis, or otherwise an amount that reflects the Market Value of those assets; and
 - (c) the Market Value of the assets owned by the Proponent which it acquired for the purpose of implementing its Proposal pursuant to this Deed (including but not limited to its interest in the land at the Site, the Generating System including associated plant and equipment and any connection assets), but excluding any amount calculated under sub-clause (5)(b).
- (6) In making a claim for payment under this clause, the Proponent will provide to the Territory its detailed written estimation (including reasonable evidence) of the Net Compensation Amount as calculated in accordance with this clause, and the Parties will negotiate in good faith to agree on the Net Compensation Amount to be paid under this clause. The Territory (acting reasonably) will be under no obligation to agree to any Net Compensation Amount under this clause which has not been substantiated in detail by the Proponent and supported by reasonable evidence. The Proponent will maintain and will provide the Territory with access to any records that the Territory reasonably requires to enable its own assessment of the Net Compensation Amount.
- (7) The Territory will pay any Net Compensation Amount agreed by the Parties under sub-clause (6), or as determined by the Independent Expert under sub-clauses (13) to (18), to the Proponent within 30 Business Days of such agreement or determination. The Parties agree (and agree to instruct the Independent Expert) that the Net Compensation Amount will be adjusted to include all losses, costs and expenses under sub-clause (2) incurred by the Proponent, and any offset amounts under sub-clause (5), up to the date the Net Compensation Amount is agreed or determined.
- (8A) In no event, whether during the Term of the FIT entitlement or following its expiration, and whether during or after the Term of this Deed, or following earlier termination of this Deed, shall the Territory's liability for a claim made under this clause exceed the cap amount that applies at the date of the amendment or repeal specified in the following table:



- (8B) If the Proponent makes two or more claims under this clause because of the occurrence of two or more separate instances of an amendment or repeal, the Territory will take into account, in determining whether (or the extent to which) a cap amount has been reached in relation to the latest amendment or repeal, every earlier payment made by the Territory under this clause.



In such event, the maximum liability of the Territory in relation to the latest amendment or repeal will be the cap amount specified in the table that applies to the latest amendment or repeal, less the sum of all earlier payments made to the Proponent under this clause.

- (9) Payment by the Territory of the full amount agreed to by the Proponent under this clause will constitute full and final settlement of any liability that the Territory has to the Proponent under this clause and the Proponent agrees not to make any further claim against the Territory for any further compensation for any losses, cost, damage or expense, arising directly or indirectly from the amendment or repeal.
- (10) The Proponent agrees that, during the period between the date that the Proponent has actual or constructive knowledge that the amendment or repeal is likely to occur and the date the Net Compensation Amount is determined under this clause, it will not voluntarily undertake any transaction that has the effect of materially diminishing the net assets of the Proponent, including without limitation by any dividend payment, share buyback, capital reduction, transfer of assets other than on arm's length basis or redemption of any redeemable preference shares, provided that nothing in this sub-clause (10) prevents the Proponent from entering into and forming transactions in the ordinary course of business.
- (11) If the Proponent takes any action contrary to sub-clause (10) then the Parties agree that the effect that such action had on diminishing the net assets of the Proponent is to be disregarded for the purposes of determining the offset amounts under sub-clauses (5)(b) and (c).
- (12) The Parties agree that if the Proponent is paid any amount under this clause the Proponent may elect at its sole discretion to terminate this Deed. In this event, the Minister will repeal the Grant of Entitlement associated with the relevant generating system.

Appointment of Independent Expert and Determination of Net Compensation Amount

- (13) If the Parties, despite having negotiated in good faith, cannot agree on the Market Value of the assets for the purposes of clause 5(c), or cannot resolve any dispute about a proper amount for sub-clause 5(b), within 20 Business Days of the written estimation provided by the Proponent to the Territory under sub-clause (6), then the Parties must appoint the Independent Expert to determine the Net Compensation Amount to be paid by the Territory under this clause 17.18 and the provisions of sub-clauses (14) to (18) will apply to the determination of the Net Compensation Amount by the Independent Expert.
- (14) If the Parties have not agreed on the Independent Expert within 40 Business Days of the written estimation provided by the Proponent to the Territory under sub-clause (6), then the Parties agree that the Independent Expert shall be selected (based on the same criteria for selecting the Independent Expert) by the President for the time being of the Institute of Chartered Accountants in Australia, Australian Capital Territory Branch.
- (15) The Parties must instruct the Independent Expert to have regard to all normal

valuation factors that the Independent Expert thinks are relevant, including the assumptions that there is a willing but not anxious buyer and a willing but not anxious seller of the assets and that there is reasonable time in which to sell the assets being valued in the open market (and for that purpose 120 Business Days is deemed to be a reasonable time).

- (16) The Parties agree that the Independent Expert's terms of appointment will include the following requirements:
- (a) the Independent Expert must have regard to any principles set out in this Deed and all relevant material in relation to the determination of the Net Compensation Amount;
 - (b) the Independent Expert must consult with the Parties concerning the proposed Net Compensation Amount, the methodology of its determination and the relevant materials they have considered;
 - (c) the Independent Expert must keep confidential all information provided by or on behalf of the Parties to the Independent Expert;
 - (d) the Independent Expert may make inquiries in relation to any matter he or she considers appropriate, and take the advice of any other person the Independent Expert wishes (including with any suitably qualified legal advisor who is independent of each Party);
 - (e) the Independent Expert must make a draft report (which must include reasons for its determination) available to the Parties within 20 Business Days after their appointment;
 - (f) the Independent Expert must meet with representatives of the Parties to discuss any queries they may have in relation to the draft report; and
 - (g) the Independent Expert must use their reasonable endeavours to notify the Parties of the Independent Expert's determination within 10 Business Days after the date on which the Independent Expert makes his or her draft report available.
- (17) The Parties agree that the Independent Expert acts as an expert and not as an arbitrator and that the dispute not be an arbitration for the purpose of the *Commercial Arbitration Act 1986 (ACT)*.
- (18) The Parties will provide the Independent Expert with access to any documents, records or information in its possession or control that the Independent Expert reasonably requires to enable its determination of the Net Compensation Amount, and copies of any such documents, records or information provided to the Independent Expert will be provided to the other Party.
- (19) The Independent Expert's determination is, subject to any manifest error, error of law or a failure by the Independent Expert to follow the requirements under sub-clause (16), final and binding on the Parties. All costs of the Independent Expert in providing its determination will be borne by the Territory.

Schedule 1: Deed Details

Item 1.	Contact Officers	<p>For the Territory: Richard Bourne</p> <p><i>Name:</i> Richard Bourne</p> <p><i>Position:</i> Manager, Solar Auction Secretariat, Environment and Sustainable Development Directorate</p> <p><i>Address:</i> 16 Challis Street, Dickson, ACT 2602</p> <p><i>Email:</i> Richard.Bourne@act.gov.au</p> <p><i>Telephone:</i> (02) 6205 0828</p> <p><i>Facsimile:</i> (02) 6207 2316</p> <p>[Redacted]</p> <p><i>Address:</i> 8 Oswald Street, Darling Point, NSW, 2027</p> <p><i>Email:</i> [Redacted]</p> <p><i>Telephone:</i> [Redacted]</p> <p><i>Facsimile:</i> [Redacted]</p>
Item 2.	Term of FIT entitlement	20 years from the Completion Date
Item 3.	Completion Date	28 April 2015
Item 4.	Minimum annual quantity of eligible electricity	2,265 MWh
Item 5.	Maximum annual quantity of eligible electricity	12,370 MWh
Item 6.	Amount of FIT	\$186.00/MWh (GST exclusive)
Item 7.	Site	Coree block 76
Item 8.	Public Liability Insurance	Public liability insurance: \$20million (in respect of each claim)
Item 9.	Nominated Person	To be advised in writing to the Territory by the Proponent in accordance with this Deed.

Schedule 2: Generating System

Location:	Coree block 76, The Australian Capital Territory
Maximum power output that the unit could produce as measured at the AC output terminals of the inverter:	7.0MW
Generation System configuration:	The generating system will consist of approximately 26,100 polycrystalline 290W PV panels equating to no more than 7.58MW(DC), connected by a series of inverters and a single connection point to the ACT electricity distribution network.

Schedule 8: Consent to be appointed as Nominated Person

I consent to [Name of proposed Nominated Person] being appointed as a Nominated Person for the purposes of the Deed of Entitlement entered into on xx July 2013 between the Australian Capital Territory and OneSun Capital 10MW Operating Pty Ltd in relation to *Electricity Feed-in (Large-scale Renewable Energy Generation) Entitlement 2013 (No 2)* made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*.

Signed:

Date: _____

Name:

As an authorised person for and on behalf of [Name of Nominated Person/Contact Name]

Position:

ACN or ABN:

Address for service of copy of notices (see clauses 2.6 and 8.4):

DATE OF THIS Deed 15 August 2013

Executed as a Deed for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY



in the presence of:

) Signature of Territory delegate



.....
DORTE EKELUND
.....

Print name

Print name

Executed as a Deed by



)
)
) Signature of director/individual*

Print name

*DELETE whichever is not applicable (see note below)

for and on behalf of

OneSun Capital 10MW Operating Pty Ltd
ACN 159 029 017

in the presence of:



.....



Print name

Note:

Date: Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.

Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Proponent's constitution.

Individual: Must be signed by the individual Proponent and witnessed.





ACT
Government

DEED OF VARIATION

Parties

AUSTRALIAN CAPITAL TERRITORY

**ONESUN CAPITAL 10MW OPERATING
PTY LTD ACN 159 029 017**

**VARIATION OF DEED OF
ENTITLEMENT FOR THE LARGE-
SCALE SOLAR AUCTION**

Prepared by

The Environment and Planning Directorate
16 Challis Street
DICKSON
ACT 2602
Ph: 62054435
Ref: GB:02102015

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Environment and Sustainable Development Directorate.

ONESUN CAPITAL 10MW OPERATING PTY LTD ACN 159 029 017 of Level 6, 72 Pitt Street, Sydney, NSW 2000 (**Proponent**).

BACKGROUND

- A. The Territory and the Proponent executed a deed of entitlement on 15 August 2013 in relation to the grant of a FiT entitlement to the Proponent made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (ACT) (**Deed of Entitlement**).
- B. The parties agree to amend the Deed of Entitlement on the following terms and conditions.

IT IS AGREED by the parties as follows:

1. Interpretation and Governing Law

- (1) Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Deed of Entitlement have the same meaning for the purpose of this Deed.
- (2) This Deed is 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.

2. Effective Date

- (1) The variations to the Deed of Entitlement described in this Deed, take effect on the date that the last party to do so executes this Deed.
- (2) This deed is intended only to vary the Deed of Entitlement and not to terminate, discharge, rescind or replace it.
- (3) The amendments to the Deed of Entitlement do not affect the validity or enforceability of the Deed of Entitlement.

3. Variation

In accordance with clause 4 of the Deed of Entitlement, Schedules 1, 3 and 4 are deleted and replaced with new Schedules 1, 3 and 4, and a new Schedule 9 is inserted into the Deed of Entitlement as set out in the Annexure.

EXECUTED AS A DEED

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY)
in the presence of *///*)

[Redacted Signature]

Signature of Territory delegate

21/4/16

.....
Date

Dorte Elkelund

.....
Print name

[Redacted Print Name]

Print name

SIGNED by)
ONESUN CAPITAL 10MW)
OPERATING PTY LTD in accordance)
with section 127 of the *Corporations Act*)
2001 (Cth))

[Redacted Signature]

.....
Signature of Director

20th of April 2016

.....
Date

[Redacted Print Name]

Print name

[Redacted Print Name]

Print name

Note:

Company:

Must be signed in accordance with section 127 of the *Corporations Act 2001 (Cth)*, for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.