



ACT
Government

Environment and Planning

DEED OF ENTITLEMENT

Ararat Wind Farm

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

Date 29 JANUARY 2015

Parties **Australian Capital Territory**
and
Ararat Wind Farm Pty Ltd
and
RES Australia Pty Ltd

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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**).
- Ararat Wind Farm Pty Ltd** ACN 158 062 358 of Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW 2063 (**Proponent**).
- RES Australia Pty Ltd** ACN 106 637 754 of Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW 2063 (**Nominated Person**).

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 2015 (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 <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</i> (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 3 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 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.
Control	<p>in relation to the Proponent includes:</p> <ol style="list-style-type: none"> 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.
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.
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.
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.
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 that a provisional liquidator, or receiver, or receiver and manager, be appointed, and the application is not withdrawn, struck out or dismissed within 15 business days of it being made; (b) a liquidator or provisional liquidator is appointed; (c) an administrator or a controller (as defined under section 9 of the <i>Corporations Act 2001</i> (Cth)) is appointed to it or any of its assets; (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, other than the application of solvent reconstruction; or (e) anything occurs under the law of any jurisdiction that has a substantially similar effect to any of the above paragraphs of this definition.
Intended cancellation notice	means an intended cancellation notice issued pursuant to subsection 13(2) of the Act.
Milestones	means the milestones set out in Schedule 3.
Minister	means the Minister responsible for administering the Act, or his or her delegate.
MW	means one megawatt, the unit of electrical power.
MWh	means one megawatt-hour, the unit of electrical energy.
National Electricity Law	means the National Electricity Law set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> and applied as a law of the Australian Capital Territory by the <i>Electricity (National Scheme) Act 1997</i> .
National Electricity Market	means the market for wholesale trading in electricity operated by AEMO under the National Electricity Rules, or any replacement or successor market.
National Electricity Rules	means the national electricity rules established under the National Electricity Law, as amended from time to time, or any replacement or successor rules of conduct.

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

Proposal	means the proposal submitted by the Proponent in the Auction and approved by the Minister to develop, construct, finance and operate the Generating System at the Site and to supply renewable energy to a specified network and in respect of which the Proponent has been granted a FiT entitlement, or as subsequently varied with the written approval of the Territory from time to time.
Proposed Cure Plan	means a cure plan proposed by the Proponent in accordance with clause 4.1.
Specified Contractor	means any contractor named in Schedule 4.
Specified Personnel	means any person named in Schedule 4.
Site	means the site of the Generating System specified in Item 7 of Schedule 1.
Term of FiT entitlement	means the term of the Proponent's FiT entitlement as specified in the Notifiable Instrument and set out in Item 2 of Schedule 1.
Territory	means: when used in a geographical sense, the Australian Capital Territory; and when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988 (Cth)</i> .
Territory Confidential Information	means the kind of information that: <ul style="list-style-type: none"> (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: <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 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 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 12.12, a failure to comply with an obligation under this Deed, and a failure to meet the requirements of a breach notice issued under clause 4.1, will be a failure to comply with a condition of the Proponent's FiT entitlement regardless of whether the failure was the result of any act or omission or fault on the part of the Proponent.

Reports

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

4 Breach of this Deed

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

the Proponent.

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

5 Implementation of Proposal

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

Minimum and maximum generation rates

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

Scheduling of maintenance

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

6 Specified Personnel & Specified Contractors

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

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

7 Electricity laws

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

8 Implementation of Plans

Safety, Health & Environment Plan

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

Scope and Content of SH&E Plan Requirements

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

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

Community Engagement Plan

- 8.9 The Proponent must meet the commitments and undertake the activities in Schedule 5 in the manner specified in schedule 5, and within any timeframes specified in schedule 5, and without limiting the foregoing, must otherwise implement the Community Engagement Plan set out in its Proposal.

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, and without limiting the foregoing, must otherwise implement the ACT Investment Plan set out in its Proposal.

9 Access to documents, premises and the Site

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

10 Transfer of renewable energy certificates

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

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

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

11 Insurance and indemnity

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

12 Transfer, Surrender & Cancellation of FiT entitlement

Application of Act

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

Intended cancellation notice and Nominated Person

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

Governing law and compliance with the law

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

Notices

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

- (b) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (c) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (d) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

12.12 Nothing in this section 12 limits, or in any way alters, the effect of any provisions of the Act relating to the giving of notice for any purpose.

Force Majeure and Change in Law

12.13 Any failure by the Proponent to comply with an obligation under this Deed, including without limitation to achieve a Milestone within the time specified in this Deed, will not amount to a failure to meet an obligation under this Deed to the extent that such failure is caused by:

- (a) a force majeure event that is entirely outside of the control of the Proponent and that it would be unreasonable to expect the Proponent to have anticipated and factored into its planning when establishing and agreeing to the timelines provided for by this Deed; or
- (b) a Change in Law made after the date of execution of this Deed.

12.14 A force majeure event for the purposes of clause 12.13(a) is an event entirely outside the control of the Proponent, including, but not limited to:

- (a) fire, storm, flood or other natural disaster;
- (b) war, whether declared or not;
- (c) riot, industrial disturbance or other civil unrest;
- (d) acts of vandalism, sabotage, or terrorism;
- (e) failure of the network or the connecting network service provider to meet their obligations to connect the generator under National Electricity Law; or
- (f) acts or omissions by the Clean Energy Regulator in relation to the creation or transfer of large-scale generation certificates.

12.15 The Proponent shall at all times keep the Territory fully informed of the occurrence of any event or change in law referred to in clause 12.13, and the extent to which (including the reasons why) it considers it will, or is likely to, delay the performance by the Proponent of its obligations under this Deed.

13 Variation

13.1 Subject to clause 13.2 this Deed can only be varied by the written agreement of the Proponent, the Territory, and the Nominated Person, if any.

13.2 In accordance with the Act, this Deed cannot be varied without the approval of the Minister.

14 Term and Termination of Deed

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

Survival of clauses

- 14.2 The obligations in clauses 9, 10, 11, 12, 15, 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-imburement or otherwise.

No employment, partnership or agency relationship

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

Severability

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

No waiver

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

Precedence of instruments

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

Providing false or misleading information

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

Act to take precedence

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

16 Payment on repeal or amendment of the Act

Definitions

16.1 In this clause 16:

Independent Expert

means a firm of chartered accountants selected by the Parties in accordance with clauses 16.15 to 16.18 that meets the following criteria:

- (a) the firm is independent of each Party;
- (b) neither party has previously engaged the firm to provide services in relation to the Large-scale Wind Auction;
- (c) the firm has experience in valuing wind farm or other renewable energy assets; and

the firm (and individuals to be utilised by the firm) are not arbitrators.

Market Value

means the market value of the assets of the Proposal (including, but not limited to, its interest in the land at the Site and the Generating System including associated plant and equipment and any connection assets) as determined in accordance with section 16.

Net Compensation Amount

means all losses, costs and expenses as calculated in accordance with clause 16.3 less any offset amounts calculated in accordance with clause 16.6, as agreed by the Parties or determined by the Independent Expert in accordance with clause 16.

16.2 The Proponent will be entitled to be paid an amount in accordance with this clause 16 in the event that, within the period between the date of grant of the FiT entitlement and 29 March 2035:

- (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

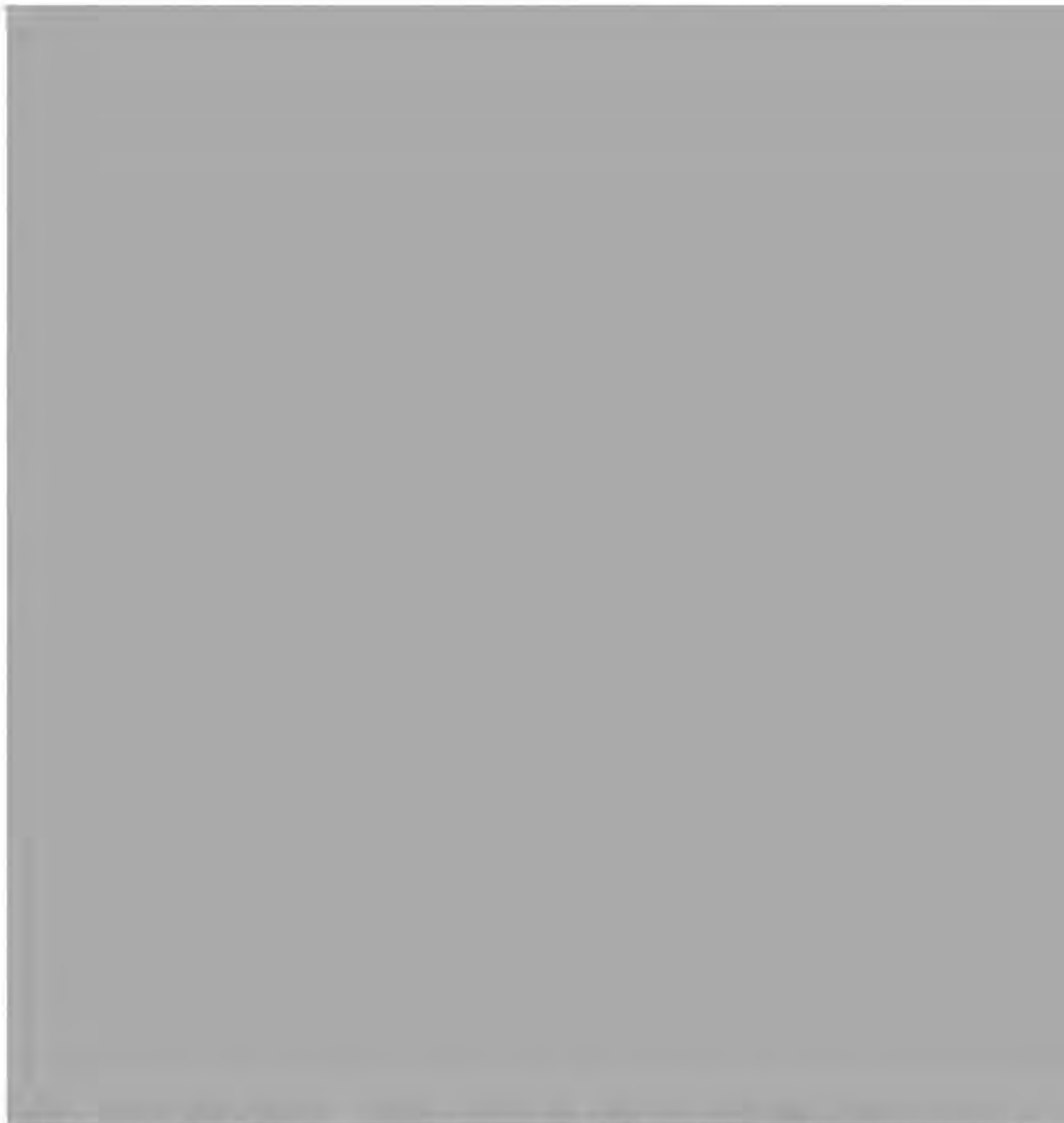
prospective liability for losses, costs and expenses incurred by the Proponent in its reliance on the grant of the FiT entitlement up to the date the Proponent has actual knowledge that the amendment or repeal was likely to occur (including those losses, costs and expenses incurred that require the Proponent 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

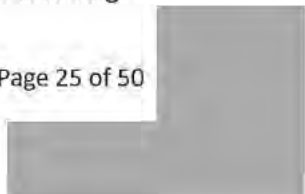
repeal that the Proponent acquired for the purpose of implementing its Proposal, pursuant to this Deed, provided that such sale was on an arm's length basis, or otherwise an amount that reflects the Market Value of those assets; and

(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, financiers or professional advisers;
- (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.



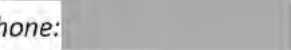
17.13 The Proponent acknowledges that the publication or communication of any fact or document by a person that has come to its knowledge, or into its possession or custody by virtue of the performance of this Deed (other than to a person to whom the Proponent is authorised to publish or disclose the 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.

Schedule 1 – Deed Details

Item 1.	Contact Officers	<p>For the Territory: <i>Name: Greg Buckman</i> <i>Position: Senior Policy Officer</i> <i>Address: 16 Challis Street, Dickson, ACT, 2602</i> <i>Email: Greg.Buckman@act.gov.au</i> <i>Telephone: (02) 6205 4435</i> <i>Facsimile: (02) 6207 3216</i></p> <p>For the Proponent:  <i>Address: Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW, 2067</i> <i>Email: </i> <i>Telephone: </i> <i>Facsimile: XXXX</i></p>
Item 2.	Term of FiT entitlement	As specified in the Proponent's Grant of Feed-in Tariff Entitlement
Item 3.	Completion Date	As specified in Schedule 3
Item 4.	Minimum annual quantity of eligible electricity	54,284 MWh
Item 5.	Maximum annual quantity of eligible electricity	364,800 MWh
Item 6.	Amount of FiT (AUD ex GST)	FiT \$87.00/MWh
Item 7.	Site	Located in the Ararat Rural City Council area and Northern Grampians Shire Council area in the state of Victoria in accordance with Planning Permits 09/004799 and 5.2009.94.1 granted under the <i>Planning and Environment Act 1987 Victoria</i> .
Item 8.	Public Liability Insurance	Public liability insurance: \$20 million (in respect of each claim)

Item 9.	Nominated Person	Name: RES Australia Pty Ltd ACN: 106 637 754 Address for service of copy of notices (see clauses 12.11 and 12.4): Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW 2063
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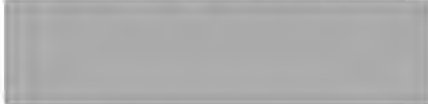
Schedule 2 – Generating System

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:	80.5MW
Generating System configuration:	The generating system will consist of up to 27 certified wind turbine generators suitable for meeting the Proponent's obligations under the Deed, and a series of transformers connected to a single point of connection to the national electricity Network.

Schedule 8– Consent to be appointed as Nominated Person

I consent to RES Australia Pty Ltd being appointed as a Nominated Person for the purposes of the Deed of Entitlement entered into on 29/01/2015 between the Australian Capital Territory and Ararat Wind Farm Pty Ltd in relation to the grant of a FiT entitlement under *Electricity Feed-in (Large-scale Renewable Energy Generation) Entitlement 2015 (No 2)* made pursuant to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*.

Signed:



Date:

29 JANUARY 2015

Name:



As an authorised person for and on behalf of RES Australia Pty Ltd

Position:



ACN: 106 637 754

Address for service of copy of notices (see clauses 4.5 and 12.4):

Execution page

DATE OF THIS Deed 29 JANUARY 2015

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

) [Redacted]
) [Redacted]

in the presence of:

) Signature of Territory delegate

[Redacted]

Signature of witness

DORTE EKELUND.

Print name

[Redacted]

Print name

Executed as a Deed by

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

[Redacted]

Print name

*DELETE whichever is not applicable (see note)

for and on behalf of

Ararat Wind Farm Pty Ltd
ACN 158 062 358

in the presence of:

[Redacted]

Print name



Note:

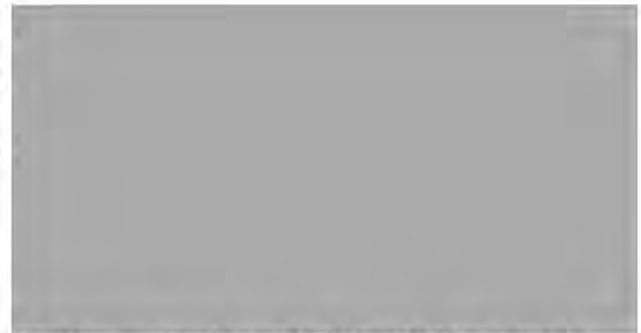
Date: Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed are exchanged, the date of exchange. Also date the cover page.

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.

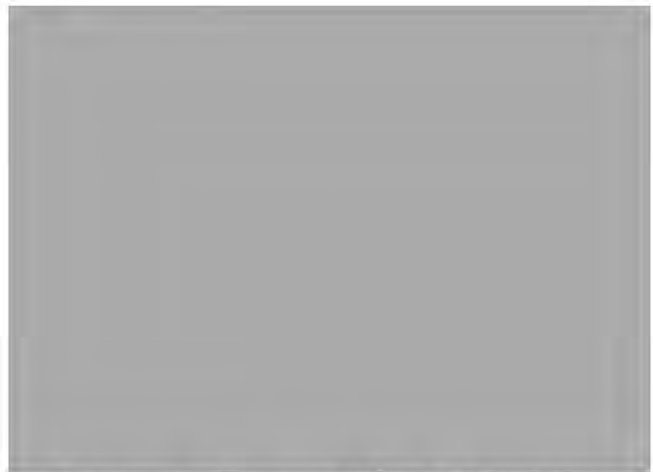
Individual: Must be signed by the individual Proponent and witnessed.



Executed as a Deed by or on behalf of)
RES Australia Pty Ltd (as Nominated Person))
ACN 106 637 754)



Print name and position/office held in relation to Nominated Person



Print name and position/office held in relation to Nominated Person



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.*





AUSTRALIAN CAPITAL TERRITORY

DEED OF VARIATION

Parties

AUSTRALIAN CAPITAL TERRITORY

**ARARAT WIND FARM PTY LTD (AS
PROPONENT)**

**RES AUSTRALIA PTY LTD (AS
NOMINATED PERSON)**

**VARIATION TO DEED OF
ENTITLEMENT**

Prepared by

ACTGS

Version

Execution version

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

Ararat Wind Farm Pty Ltd ACN 158 062 358 of c/- PricewaterhouseCoopers, Freshwater Place, 2 Southbank Boulevard, Southbank, Victoria (**Proponent**).

RES Australia Pty Ltd ACN 106 637 754 of Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW 2063 (**Nominated Person**).

BACKGROUND

- A. The Territory, the Proponent and the Nominated Person executed a Deed of Entitlement on 29 January 2015 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* (**Deed of Entitlement**).
- B. The parties agree to vary the Deed of Entitlement on the following terms and conditions.
-

IT IS AGREED by the parties as follows.

1. 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.

2. Variation

- (1) The Deed of Entitlement is varied as indicated in tracked changes on the version of the Deed of Entitlement set out in the Annexure.
- (2) The Deed of Entitlement is further varied by the insertion of a new Schedule 9, and the replacement of existing Schedule 4 with a new Schedule 4 in the form in which they appear in the version of the Deed of Entitlement set out in the Annexure.
- (3) In accordance with subclauses (1) and (2) of this clause 2, the Deed of Entitlement attached will comprise the terms and conditions of the Deed of Entitlement binding the parties on and from the date this Deed of Variation takes effect in accordance with clause 1.

Execution page

Executed as a deed for and on behalf of)
the **AUSTRALIAN CAPITAL TERRITORY**)
in the presence of:)

Signature of Territory delegate

[Redacted signature]

Signature of witness

27 November 2015
.....
Date

[Redacted name]

Print name

Dorte Ekkelund
.....
Print name

Executed as a deed by **Ararat Wind Farm Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

sign
here



Company Secretary/Director

print
name

sign
here



Director

print
name

Executed as a deed by **RES Australia Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

sign
here



Company Secretary/Director

print
name

sign
here



Director

print
name

ANNEXURE – Deed of Entitlement

Execution page

Executed as a deed for and on behalf of)
the **AUSTRALIAN CAPITAL TERRITORY**)
in the presence of:) Signature of Territory delegate

.....
Signature of witness Date

.....
Print name Print name

Executed as a deed by **Ararat Wind Farm Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

sign here
▶ [Redacted Signature]
Company Secretary/Director

print name
sign here
▶ [Redacted Signature]
Director

print name
[Redacted Name]

Executed as a deed by **RES Australia Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth) by

sign here
▶ [Redacted Signature]
Company Secretary/Director

print name
sign here
▶ [Redacted Signature]
Director

print name
[Redacted Name]

ANNEXURE

[Note: to insert Deed of Entitlement with changes marked.]

Attachment to Deed of Variation



DEED OF ENTITLEMENT

Ararat Wind Farm

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

Date _____

Parties **Australian Capital Territory**

and

Ararat Wind Farm Pty Ltd

and

RES Australia Pty Ltd

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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**).

Ararat Wind Farm Pty Ltd ACN 158 062 358 of Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW 2063 (**Proponent**).

RES Australia Pty Ltd ACN 106 637 754 of Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW 2063 (**Nominated Person**).

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 2015 (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

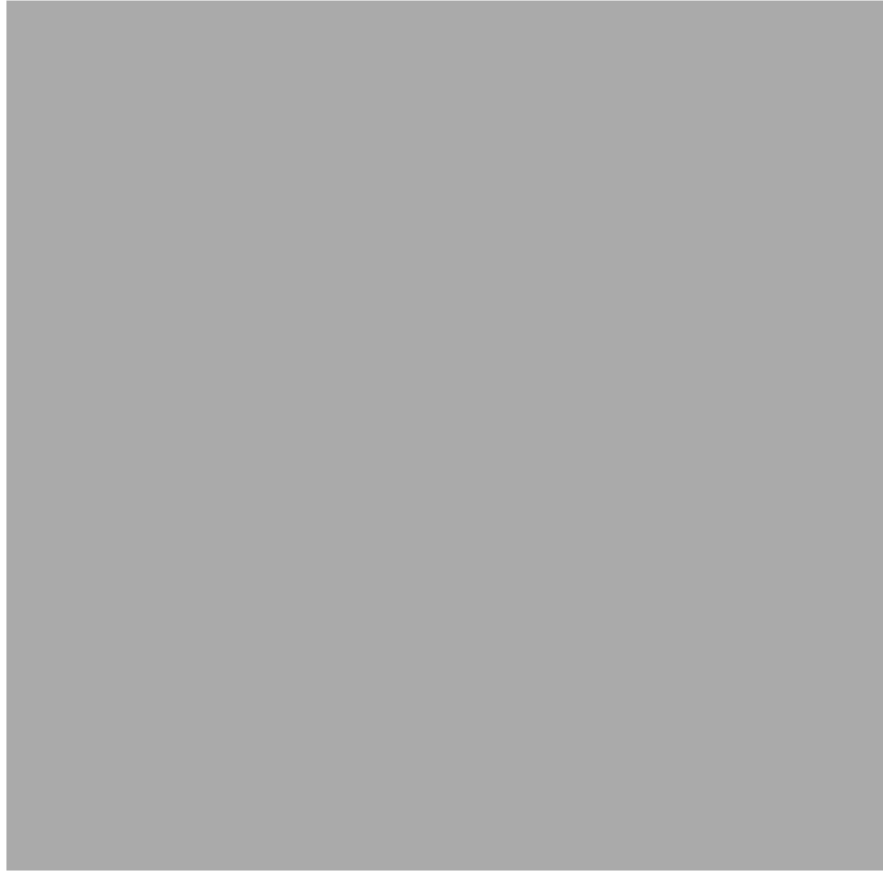
Definitions

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

Act	means the <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.

Ararat Group

means, collectively, the Proponent and each of the following members:



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.
<u>Commencement Date</u>	<u>means 29 January 2015.</u>
Completion Date	means the date specified in Item 3 Schedule 1 Schedule 1 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 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 Schedule 1 Schedule 1 or as notified from time to time by one party to the other.
Control	in relation to the Proponent includes: <ol style="list-style-type: none"> 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.
Cure Plan	means a cure plan agreed between the parties in accordance with clause 4.24.24.2 .
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.
<u>Deed of Indemnity</u>	<u>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.</u>
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 Schedule 1 Schedule 1 .
FIT entitlement	has the same meaning as in the Act.
FIT support payment	has the same meaning as in the Act.

Format
Expand

Generating System	means the generating system described in Schedule 2 <u>Schedule 2</u> 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.
<u>Group Member</u>	<u>means a member of the Ararat Group but excludes, where the context requires, the Proponent.</u>
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 that a provisional liquidator, or receiver, or receiver and manager, be appointed, and the application is not withdrawn, struck out or dismissed within 15 business days of it being made; (b) a liquidator or provisional liquidator is appointed; (c) an administrator or a controller (as defined under section 9 of the <i>Corporations Act 2001</i> (Cth)) is appointed to it or any of its assets; (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, other than the application of solvent reconstruction; or (e) anything occurs under the law of any jurisdiction that has a substantially similar effect to any of the above paragraphs of this definition.
Intended cancellation notice	means an intended cancellation notice issued pursuant to subsection 13(2) of the Act.
Milestones	means the milestones set out in Schedule 3.
Minister	means the Minister responsible for administering the Act, or his or her delegate.
MW	means one megawatt, the unit of electrical power.
MWh	means one megawatt-hour, the unit of electrical energy.
National Electricity Law	means the National Electricity Law set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> and applied as a law of the Australian Capital Territory by the <i>Electricity (National Scheme) Act 1997</i> .

National Electricity Market	means the market for wholesale trading in electricity operated by AEMO under the National Electricity Rules, or any replacement or successor market.
National Electricity Rules	means the national electricity rules established under the National Electricity Law, as amended from time to time, or any replacement or successor rules of conduct.
Network	means the network (as defined in the National Electricity Rules) to which the Proponent, in accordance with the Proposal, is to connect the Generating System.
Network Service Provider or NSP	means the Network Service Provider (as defined in the National Electricity Rules) that owns, operates or controls the Network and with whom the Proponent is to enter into a Connection Agreement.
Nominated Person	means the person, if any, appointed as Nominated Person under clause 12.6.
Notifiable Instrument	means the Notifiable Instrument pursuant to which the Proponent is granted a FiT entitlement under the Act.
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained, from the information or opinion.
Premises	means any premises that the <u>Ararat Group uses, or any premises which any personnel, employees, agents or contractors of a Group Member use (including places at which any material is stored),</u> 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 Proponent; or (c) has been notified by the Proponent to the Territory as not, or no longer being, confidential.

Proponent Material	means all material owned by the Proponent, or by another person prior to the Proponent entering into this Deed, and used by the Proponent for the purpose of implementing the Proposal, or complying with this Deed, including documents, information and data stored by any means.
Proponent's FIT entitlement	means the FIT entitlement granted to the Proponent under the Notifiable Instrument.
Proposal	means the proposal submitted by the Proponent in the Auction and approved by the Minister to develop, construct, finance and operate the Generating System at the Site and to supply renewable energy to a specified network and in respect of which the Proponent has been granted a FIT entitlement, or as subsequently varied with the written approval of the Territory from time to time.
Proposed Cure Plan	means a cure plan proposed by the Proponent in accordance with clause 4.1.
Specified Contractor	means any contractor named in Schedule 4.
Specified Personnel	means any person named in Schedule 4.
Site	means the site of the Generating System specified in Item 7 of Schedule 1 <u>Schedule 1</u> .
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 <u>Schedule 1</u> .
Territory	means: when used in a geographical sense, the Australian Capital Territory; and when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988 (Cth)</i> .

Territory Confidential Information

means the kind of information that:

- (a) is, or relates to, documents, submissions, consultations, policies, strategies, practices and procedures of the Territory that are by their nature confidential;
- (b) is notified by the Territory to the Proponent as being confidential;
- (c) in accessing it, or receiving it from the Territory, the Proponent ought reasonably to know is confidential; or
- (d) is Personal Information of a person provided by the Territory to the Proponent;

but does not include information that:

- (a) is, or becomes, public knowledge other than by breach of this Deed;
- (b) has been independently developed or acquired by the Proponent; or
- (c) has been notified by the Territory to the Proponent as not, or no longer being confidential.

Territory Law

means any law, statute, order, regulation, Notifiable Instrument or by-law of the Territory.

Territory Material

means any material provided by the Territory to the Proponent for the purposes of this Deed including documents, equipment, information and data stored by any means.

General

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

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

3 Conditions of entitlement

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

- 3.1 In accordance with the Act, the Proponent's FIT entitlement and right to receive FIT support payments is conditional upon the Proponent ensuring compliance with the terms and conditions of this Deed.
- 3.2 A failure to comply with an obligation under this Deed is not, of itself, a breach of this Deed and is not, of itself, a failure by the Proponent to comply with a condition of its FIT entitlement. However, a failure by the Proponent to meet the requirements of a breach notice subsequently issued by the Territory in accordance with clause 4.1, and the requirements that follow from the issue of a breach notice set out in this 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 12.12, 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~~Schedule 7~~Schedule 7~~.

4 Breach of this Deed

- 4.1 If the Proponent fails to meet an obligation provided for under this Deed, and clause 12.13 does not apply in respect of such failure, then the Territory may issue a written notice to the Proponent (**breach notice**) that:
 - (a) specifies the obligation that the Proponent has failed to meet;
 - (b) requires the Proponent to provide a Proposed Cure Plan to the Territory within 30 Business Days of receipt by the Proponent of the breach notice, or any such longer period specified in the breach notice and
 - (c) specifies a default period of time that shall be no less than 90 Business Days.
- 4.2 The Territory and the Proponent will negotiate in good faith to agree the Cure Plan within 20 Business Days of receipt by the Territory of the Proposed Cure Plan, or any such longer period that is agreed in writing between the Parties.
- 4.3 Any Cure Plan agreed under clause 4.2 must set out, at a minimum and without limitation:

- (a) details of how the Proponent (or the Nominated Person with the written consent of the Proponent) will rectify the failure, or take such action to address the failure, as specified in the breach notice; and
- (b) a reasonable timeframe, being no less than 30 Business Days, within which the Proponent (or the Nominated Person with the written consent of the Proponent) will address, or remedy, the relevant failure and provide a written report to the Territory setting out the steps so taken to remedy the failure.

4.4 If the Proponent or the Nominated Person has cured or addressed the relevant failure specified in the breach notice within the default period of time provided under clause 4.1(c), or within the timeframe specified in a Cure Plan agreed under clause 4.2, then the Territory must promptly give written notice to the Proponent (and the Nominated Person) accordingly, and the Proponent will be taken to have cured the relevant failure under this Deed.

4.5 A failure by the Proponent to cure or address the relevant failure in accordance with a Cure Plan agreed under clause 4.2, or if no Cure Plan is agreed within the timeframe specified in clause 4.2 then a failure by the Proponent to cure the relevant failure within the default period of time specified in the breach notice, is a breach of this Deed and a breach of a condition of the Proponent's FIT entitlement under the Act.

The Territory will give a copy of any breach notice issued to the Proponent, and any notice of cure under clause 4.4, to the Nominated Person, if any, at the address for the Nominated Person specified in Item 9 of ~~Schedule 1~~~~Schedule 1~~~~Schedule 1~~, or as otherwise stipulated by written notice in accordance with clause 12.7, at the same time as issuing the notice to the Proponent.

4.6 For the avoidance of doubt, neither of the following events will, of itself, constitute a breach of this Deed or a breach of a condition of the Proponent's FIT entitlement:

- (a) an Insolvency Event in respect of the Proponent; or
- (b) the enforcement by a Nominated Person or any third party of any rights under a security or other finance document that such a Nominated Person or third party has with respect to the Proponent.

4.7 The Territory acknowledges that, without limiting the liability of the Proponent under this Deed, neither the Nominated Person nor any third party appointed under the Nominated Person's security is or will be liable for any obligation or liability of the Proponent under this Deed or otherwise by reason only of the Nominated Person or third party attempting to remedy a breach of this Deed or exercising any of the rights, powers, or remedies under the Nominated Person's security.

4.8 The Territory consents to the Proponent giving security over any and all of its assets the subject of the Proposal, including its rights under this Deed.

5 Implementation of Proposal

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

Minimum and maximum generation rates

- 5.2 Within 12 months of the Completion Date, the Proponent must supply to the Network the minimum annual quantity of eligible electricity specified in Item 4 of ~~Schedule 1~~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~~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.
- 6.3 Where Specified Personnel or Specified Contractors are unable to undertake such work, the Proponent must immediately notify the Territory. In such circumstances the Proponent must, if requested by the Territory, provide the details of replacement personnel and contractors acceptable to the Territory at the earliest reasonable opportunity.
- 6.4 To be acceptable to the Territory, such personnel and contractors must have, as a minimum, equivalent skills, training, experience and expertise as the Specified Personnel or Specified Contractors that they are replacing.
- 6.5 Unless as it occurs as a direct result of the circumstances described in clause 4.6(b), a Change in Control of the Proponent prior to successful completion by the Proponent of the final Milestone, without the Territory's prior written consent, will constitute a breach of this Deed.
- 6.6 The Territory may, in its absolute and unfettered discretion, grant consent to a Change in Control of the Proponent prior to successful completion by the Proponent of the final Milestone, and in the event that the Territory grants such consent, the Territory may impose such conditions as the Territory deems fit.
- 6.7 Unless as it occurs as a direct result of the circumstances described in clause 4.6(b), a Change in Control of the Proponent after completion by the Proponent of the final Milestone, without the prior written consent of the Territory, will constitute a breach of this Deed. The Territory may not unreasonably withhold its consent to a Change in Control of the Proponent after completion by the Proponent of the final Milestone.
- 6.8 The Territory's policy at the Date of this Deed is that it will not grant its consent to a Change in Control of the Proponent prior to the successful completion by the Proponent of the final Milestone.

7 Electricity laws

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

8 Implementation of Plans

Safety, Health & Environment Plan

- 8.1 The Proponent must prepare a safety, health and environment (SH&E) plan that outlines in detail how it will comply, and ensure that the construction and operation of the Generating System will comply with every law, and every licence or other approval, made under any law that applies to the Proponent and/or the Facility with respect to their operations, including plans detailing compliance with any law, licence or other approval enacted, imposed or given after the date of the Deed of Entitlement or the Proponent's FiT entitlement comes into effect.
- 8.2 To the extent that laws, licences and approvals are not in effect on the date of the Deed of Entitlement with respect to safety, health and environmental regulation applicable to the Facility, the Proponent must prepare an SH&E Plan, that addresses the minimum SH&E requirements set out in this clause 8.
- 8.3 For the purposes of preparing any SH&E Plan, in the event of an inconsistency between a requirement under, or the Proponent's obligation to comply with:
- (a) a law, licence or approval; and
 - (b) the matters set out in this clause 8;

a requirement under, and an obligation to comply with, a law, licence or approval, will take precedence to the extent of any inconsistency. If the requirements set out in clause 8.2 can reasonably be complied with concurrently with requirements under an applicable law, licence or approval, the Proponent will address the matters set out in 8.2 to the fullest reasonable extent in an SH&E Plan.

- 8.4 The Proponent must submit a draft SH&E Plan by the Milestone date set out in Schedule 3 - Milestones for review by the Minister.
- 8.5 If the Minister requests that the draft SH&E Plan be revised for the purposes of ensuring the Proponent's compliance with SH&E laws in the Territory (or any other jurisdiction), then the Proponent must revise the Plan in accordance with the request and submit a revised Plan to the Minister within 3 weeks from the date of receipt of the request, or such longer period as nominated in the request.
- 8.6 It is a condition of the FIT entitlement that a Proponent adhere to the SH&E Plan as reviewed by the Minister.
- 8.7 Any review by the Minister of an SH&E Plan shall not be construed as the Minister providing any representation that compliance with the Plan will result in avoidance of all health, safety and environmental risks, or that compliance with the Plan will result in compliance by the Proponent with all relevant laws and regulations. It remains the sole responsibility of the Proponent to ensure that it complies with all laws and regulations and that it take its own steps to guard against all health, safety and environmental risks.

Scope and Content of SH&E Plan Requirements

- 8.8 A Proponent will prepare an SH&E Plan that clearly identifies in detail:
 - (a) that the generating system will be constructed in accordance with all relevant codes and standards for wind generation;
 - (b) that the generating system will be commissioned by a qualified electricity generation organisation and certified fit for that purpose;
 - (c) that the generating system will be operated in accordance with the SH&E Plan and procedures that detail:
 - the scope of SH&E impacts;
 - the parties responsible for SH&E; and
 - the procedures for verifying SH&E performance;
 - (d) safeguards, systems, procedures, risks, risk identification, risk minimisation and management, and all other matters to prevent and to remedy adverse SH&E impacts, on:
 - employees, visitors and neighbours within the vicinity (including aircraft) of the Facility;
 - systems that the Facility affects and in particular the electricity distribution system; and
 - the environment of the ACT as defined under the *Environment Protection Act 1997* (ACT) or the environment of the relevant host jurisdiction as defined under its local environment protection laws;
 - (e) all hazards, including potential hazards, introduced by the generating system, including all

hazardous substances present in, and emissions created by, the generating system and controlled during the operation and disposal of the generating system;

- (f) how to assess the potential for harm or impact associated with all hazards, hazardous substances and emissions of the generating system;
- (g) the party that is responsible for mitigating the harm or impacts;
- (h) the mitigation activity to be performed by the Proponent;
- (i) the method of verifying and validating the mitigation activities;
- (j) how the generating system complies with the requirements of the *ACT Work Safety Act 2008*, or similar requirements of any other participating jurisdiction that may apply to the generating system;
- (k) the SH&E reports that will be provided to the Minister (see ~~Schedule 7~~~~Schedule 7~~~~Schedule 7~~), or the Minister's delegate as required by the Deed; and
- (l) the methods and controls planned for final disposal of the generation equipment.

Community Engagement Plan

- 8.9 The Proponent must meet the commitments and undertake the activities in Schedule 5 in the manner specified in schedule 5, and within any timeframes specified in schedule 5, and without limiting the foregoing, must otherwise implement the Community Engagement Plan set out in its Proposal.

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, and without limiting the foregoing, must otherwise implement the ACT Investment Plan set out in its Proposal.

9 Access to documents, premises and the Site

- 9.1 For the purpose of determining whether a Proponent is complying with, or has complied with, the Act, or for the purpose of determining whether there has been a failure to comply with, or a breach of a term or condition of this Deed, or other condition of the Proponent's FIT entitlement (monitoring purpose), an authorised employee, or authorised agent of the Territory may, upon giving 24 hours notice, enter and inspect the Site or Premises, including any building or facility on the Site or Premises.
- 9.2 The Territory may by written notice (production notice) given to the Proponent, request that the Proponent provide to the Territory, within the time stated in the notice, copies of any documents or information, or data stored by any means, that the Proponent or an interested person has access to, and that the Territory, on reasonable grounds, considers relevant to a monitoring purpose.
- 9.3 The Proponent must ensure that it and any interested person gives to the Territory copies of any documents, information or data that the Territory requests under clause 9.2 above, within the time stated in the production notice.

9.4 For the purposes of this clause 9, interested person means :

9.4.1 any employee or officer of a Group Member~~the Proponent;~~ and and

~~9.3-19.4.2~~ any other person, including, without limitation any contractor, consultant, adviser or agent of the Proponent, a Group Member, or other person engaged by or on behalf of the Proponent, any Group Member in relation to implementing or operating the Proposal.

9.5 The Proponent agrees to fully cooperate with, and do all things reasonably necessary, to facilitate an inspection of the Site and Premises by an authorised person under this clause for a monitoring purpose, and agrees to ensure that any interested person does the same.

9.6 The Proponent must ensure that:

9.6.1 access to the Site and Premises;

9.6.2 cooperation of any interested person to facilitate access to the Site and Premises;
and

9.6.3 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.

10 Transfer of renewable energy certificates

10.1 The Proponent must, at no cost to the Territory, create and transfer to the Territory, Large-scale Generation Certificates under the *Renewable Energy (Electricity) Act 2000* (Cth) in respect of all eligible electricity generated by the generating system for which the Proponent is entitled to receive a FiT support payment.

10.2 The Proponent must ensure that its generating system is approved as a GreenPower Generator under National GreenPower Accreditation Program Rules.

10.3 The Proponent must, at no cost to the Territory, execute and provide to the Territory any instruments, documents or information that the Territory reasonably requires to account for and manage the certificates transferred to it under this clause. This includes registration by the Proponent as an accredited GreenPower generator.

10.4 The Proponent must, within 3 months of the end of a financial year, transfer to the Territory Large-scale Generation Certificates created in relation to generation of eligible electricity, for which the Proponent has received the FiT support payment occurring in that year.

10.5 Where this Deed is validly terminated, the Parties agree that the following obligations shall apply in relation to any Large-scale Generation Certificates in respect of all eligible electricity generated by the generation system up until, and including, the effective date of termination:

(a) where, as at the effective date of termination, the Proponent has received the FiT support payment in respect of such eligible electricity generated, the Proponent must transfer the relevant Large-scale Generation Certificates to the Territory in accordance with clause 10.1; and

(b) where, as at the effective date of termination, the Proponent has not received payment of the FiT support payment in respect of such eligible electricity generated, the Proponent shall be entitled to retain all existing and future Large-scale Generation Certificates (including all legal and beneficial rights and interests in such certificates) and the Proponent will have no further obligations to the Territory in respect of the creation and transfer of any Large-scale Generation Certificates under this Deed.

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

11 Insurance and indemnity

- 11.1 The Proponent must effect and maintain, and must ensure that each Group Member who implements the Proposal or owns or operates the Generating System 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 1Schedule 1Schedule 1, with a reputable insurer approved by the Territory.
- 11.2 The Proponent must produce evidence that it has in place the insurance required under clause 11.1 above within 14 days of a request being made by the Territory.
- 11.3 The Proponent indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Proponent in connection with the preparation, submission and implementation of the Proposal, including the operation of the Generating System, or any other activity undertaken by the Proponent under this Deed except to the extent that the Territory caused the relevant loss, damage or injury.
- 11.4 The indemnity in clause 11.3 above:
- (a) applies regardless of any statutory, Territory or Ministerial approval, licence or entitlement given to the Proponent or in respect of its Proposal; and
 - (b) applies in respect of acts and omissions of any person acting on behalf of the Proponent as though such acts or omission were done by the Proponent.
- 11.5 The Proponent must, at its own expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in clause 11.3 above.
- ~~11.5~~11.6 The Proponent must ensure that each Group Member (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.

12 Transfer, Surrender & Cancellation of FiT entitlement

Application of Act

- 12.1 The Proponent must not surrender or transfer the FIT entitlement otherwise than in accordance with the Act.

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

Intended cancellation notice and Nominated Person

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

Governing law and compliance with the law

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

Notices

- 12.11 Any notice, including any other communication, required to be given or sent to either party under this Deed, must be in writing and given to the relevant Contact Officer. A notice under this Deed will be deemed to have been given:
- (a) if delivered by hand, on delivery;
 - (b) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
 - (c) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or

(d) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

12.12 Nothing in this section 12 limits, or in any way alters, the effect of any provisions of the Act relating to the giving of notice for any purpose.

Force Majeure and Change in Law

12.13 Any failure by the Proponent to comply with an obligation under this Deed, including without limitation to achieve a Milestone within the time specified in this Deed, will not amount to a failure to meet an obligation under this Deed to the extent that such failure is caused by:

- (a) a force majeure event that is entirely outside of the control of the Proponent and that it would be unreasonable to expect the Proponent to have anticipated and factored into its planning when establishing and agreeing to the timelines provided for by this Deed; or
- (b) a Change in Law made after the date of execution of this Deed.

12.14 A force majeure event for the purposes of clause 12.13(a) is an event entirely outside the control of the Proponent, including, but not limited to:

- (a) fire, storm, flood or other natural disaster;
- (b) war, whether declared or not;
- (c) riot, industrial disturbance or other civil unrest;
- (d) acts of vandalism, sabotage, or terrorism;
- (e) failure of the network or the connecting network service provider to meet their obligations to connect the generator under National Electricity Law; or
- (f) acts or omissions by the Clean Energy Regulator in relation to the creation or transfer of large-scale generation certificates.

12.15 The Proponent shall at all times keep the Territory fully informed of the occurrence of any event or change in law referred to in clause 12.13, and the extent to which (including the reasons why) it considers it will, or is likely to, delay the performance by the Proponent of its obligations under this Deed.

13 Variation

13.1 Subject to clause 13.2 this Deed can only be varied by the written agreement of the Proponent the Territory, and the Nominated Person, if any.

13.2 In accordance with the Act, this Deed cannot be varied without the approval of the Minister.

14 Term and Termination of Deed

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

Survival of clauses

14.2 The obligations in clauses 9, 10, 11, 12, 15, 16, ~~and 17~~ and 18 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.

Providing false or misleading information

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

Act to take precedence

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

16 Payment on repeal or amendment of the Act

Definitions

16.1 In this clause 16:

Independent Expert	means a firm of chartered accountants selected by the Parties in accordance with clauses 16.15 to 16.18 that meets the following criteria: <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 Wind Auction;(c) the firm has experience in valuing wind farm or other renewable energy assets; and the firm (and individuals to be utilised by the firm) are not arbitrators.
Market Value	means the market value of the assets of the Proposal (including, but not limited to, its interest in the land at the Site and the Generating System including associated plant and equipment and any connection assets) as determined in accordance with section 16.16 16.
Net Compensation Amount	means all losses, costs and expenses as calculated in accordance with clause 16.3 less any offset amounts calculated in accordance with clause 16.6, as agreed by the Parties or determined by the Independent Expert in accordance with clause 16.

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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 29 March 2035:

- (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 ~~17.17.17~~ does not limit, or affect in any way, a party's obligation to comply with its obligations under items ~~17.7.7-7.7~~ and ~~17.14.14-14~~ below (Non-disclosure of Confidential Information).

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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 ~~17.3.3~~ 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.

Format

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 ~~17.5.5~~ above "use" means to supply, reproduce, publish, perform, communicate on-line, adapt and broadcast for the following purposes:

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- (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~~^{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.

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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, financiers or professional advisers;
- (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:

<u>Covered Loss</u>	<u>means a loss, cost or expense incurred by the Proponent in its reliance on the grant of the FIT entitlement for the purposes of clause 16.3.</u>
<u>Group Member Loss</u>	<u>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.</u>
<u>Indemnity Loss</u>	<u>means any amount payable by the Proponent to another Group Member as indemnification or compensation for a Group Member Loss.</u>
<u>Excluded Loss</u>	<u>means a Group Member loss which:</u> <ul style="list-style-type: none">(a) <u>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</u>(b) <u>arises from any liability of a Group Member to another Group Member (but not including an Indemnity Loss).</u>
<u>Relevant Period</u>	<u>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.</u>

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 16.3 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, as set out in its original Proposal submitted in the Auction.
- 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 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 owned by 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 preference 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

<p>Item 1.</p>	<p>Contact Officers</p>	<p>For the Territory: <i>Name: Greg Buckman</i> <i>Position: Senior Policy Officer</i> <i>Address: 16 Challis Street, Dickson, ACT, 2602</i> <i>Email: Greg.Buckman@act.gov.au</i> <i>Telephone: (02) 6205 4435</i> <i>Facsimile: (02) 6207 3216</i></p> <p>For the Proponent:  <i>Address: Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW, 2067</i> <i>Email: </i> <i>Telephone: </i> <i>Facsimile: XXXX</i></p>
<p>Item 2.</p>	<p>Term of FIT entitlement</p>	<p>As specified in the Proponent's Grant of Feed-in Tariff Entitlement</p>
<p>Item 3.</p>	<p>Completion Date</p>	<p>As specified in Schedule 3</p>
<p>Item 4.</p>	<p>Minimum annual quantity of eligible electricity</p>	<p>54,284 MWh</p>
<p>Item 5.</p>	<p>Maximum annual quantity of eligible electricity</p>	<p>364,800 MWh</p>
<p>Item 6.</p>	<p>Amount of FIT (AUD ex GST)</p>	<p>FIT \$87.00/MWh</p>
<p>Item 7.</p>	<p>Site</p>	<p>Located in the Ararat Rural City Council area and Northern Grampians Shire Council area in the state of Victoria in accordance with Planning Permits 09/004799 and 5.2009.94.1 granted under the <i>Planning and Environment Act 1987 Victoria</i>.</p>
<p>Item 8.</p>	<p>Public Liability Insurance</p>	<p>Public liability insurance: \$20 million (in respect of each claim)</p>

Item 9.	Nominated Person	Name: RES Australia Pty Ltd ACN: 106 637 754 Address for service of copy of notices (see clauses 12.11 and 12.4): Suite 4, Level 1, 760 Pacific Highway, Chatswood, NSW 2063
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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:	80.5MW
Generating System configuration:	The generating system will consist of up to 27 certified wind turbine generators suitable for meeting the Proponent’s obligations under the Deed, and a series of transformers connected to a single point of connection to the national electricity Network.

Schedule 8– Consent to be appointed as Nominated Person

I consent to RES Australia Pty Ltd being appointed as a Nominated Person for the purposes of the Deed of Entitlement entered into on _____ between the Australian Capital Territory and Ararat Wind Farm Pty Ltd in relation to the grant of a FiT entitlement under *Electricity Feed-in (Large-scale Renewable Energy Generation) Entitlement 2015 (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 RES Australia Pty Ltd

Position:

ACN: 106 637 754

Address for service of copy of notices (see clauses 4.5 and ~~12.412-412-4~~):

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ACT
Government
Environment and Planning

DEED OF ENTITLEMENT

Coonooer Bridge Wind Farm

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

Date 27 JANUARY 2015

Parties **Australian Capital Territory**

and
**Coonooer Bridge Wind Farm Pty
Ltd**



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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**).

Coonooer Bridge Wind Farm Pty Ltd ACN 160 665 485 of Level 3, 55 Blackall Street, Barton ACT 2600 (**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 2015 (no 3)* 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 <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</i> (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 3 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 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.
Control	in relation to the Proponent includes: <ol style="list-style-type: none"> 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.
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.
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.
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.
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 that a provisional liquidator, or receiver, or receiver and manager, be appointed, and the application is not withdrawn, struck out or dismissed within 15 business days of it being made; (b) a liquidator or provisional liquidator is appointed; (c) an administrator or a controller (as defined under section 9 of the <i>Corporations Act 2001</i> (Cth)) is appointed to it or any of its assets; (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, other than the application of solvent reconstruction; or (e) anything occurs under the law of any jurisdiction that has a substantially similar effect to any of the above paragraphs of this definition.
Intended cancellation notice	means an intended cancellation notice issued pursuant to subsection 13(2) of the Act.
Milestones	means the milestones set out in Schedule 3.
Minister	means the Minister responsible for administering the Act, or his or her delegate.
MW	means one megawatt, the unit of electrical power.
MWh	means one megawatt-hour, the unit of electrical energy.
National Electricity Law	means the National Electricity Law set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> and applied as a law of the Australian Capital Territory by the <i>Electricity (National Scheme) Act 1997</i> .
National Electricity Market	means the market for wholesale trading in electricity operated by AEMO under the National Electricity Rules, or any replacement or successor market.
National Electricity Rules	means the national electricity rules established under the National Electricity Law, as amended from time to time, or any replacement or successor rules of conduct.



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

Proposal	means the proposal submitted by the Proponent in the Auction and approved by the Minister to develop, construct, finance and operate the Generating System at the Site and to supply renewable energy to a specified network and in respect of which the Proponent has been granted a FiT entitlement, or as subsequently varied with the written approval of the Territory from time to time.
Proposed Cure Plan	means a cure plan proposed by the Proponent in accordance with clause 4.1.
Specified Contractor	means any contractor named in Schedule 4.
Specified Personnel	means any person named in Schedule 4.
Site	means the site of the Generating System specified in Item 7 of Schedule 1.
Term of FiT entitlement	means the term of the Proponent's FiT entitlement as specified in the Notifiable Instrument and set out in Item 2 of Schedule 1.
Territory	means: when used in a geographical sense, the Australian Capital Territory; and when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988 (Cth)</i> .
Territory Confidential Information	means the kind of information that: <ul style="list-style-type: none"> (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: <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 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 Deed is a breach of this Deed and is a breach of a condition of the Proponent's FiT entitlement under the Act.

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

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

No requirement for Proponent to be at fault

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

Reports

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

4 Breach of this Deed

- 4.1 If the Proponent fails to meet an obligation provided for under this Deed, and clause 12.13 does not apply in respect of such failure, then the Territory may issue a written notice to the Proponent (**breach notice**) that:
- (a) specifies the obligation that the Proponent has failed to meet;
 - (b) requires the Proponent to provide a Proposed Cure Plan to the Territory within 30 Business Days of receipt by the Proponent of the breach notice, or any such longer period specified in the breach notice and
 - (c) specifies a default period of time that shall be no less than 90 Business Days.
- 4.2 The Territory and the Proponent will negotiate in good faith to agree the Cure Plan within 20 Business Days of receipt by the Territory of the Proposed Cure Plan, or any such longer period that is agreed in writing between the Parties.
- 4.3 Any Cure Plan agreed under clause 4.2 must set out, at a minimum and without limitation:
- (a) details of how the Proponent (or the Nominated Person with the written consent of the Proponent) will rectify the failure, or take such action to address the failure, as specified in the breach notice; and
 - (b) a reasonable timeframe, being no less than 30 Business Days, within which the Proponent (or the Nominated Person with the written consent of the Proponent) will address, or remedy, the relevant failure and provide a written report to the Territory setting out the steps so taken to remedy the failure.
- 4.4 If the Proponent or the Nominated Person has cured or addressed the relevant failure specified in the breach notice within the default period of time provided under clause 4.1(c), or within the timeframe specified in a Cure Plan agreed under clause 4.2, then the Territory must promptly give written notice to the Proponent (and the Nominated Person) accordingly, and the Proponent will be taken to have cured the relevant failure under this Deed.
- 4.5 A failure by the Proponent to cure or address the relevant failure in accordance with a Cure Plan agreed under clause 4.2, or if no Cure Plan is agreed within the timeframe specified in clause 4.2 then a failure by the Proponent to cure the relevant failure within the default period of time specified in the breach notice, is a breach of this Deed and a breach of a condition of the Proponent's FIT entitlement under the Act.

The Territory will give a copy of any breach notice issued to the Proponent, and any notice of cure under clause 4.4, to the Nominated Person, if any, at the address for the Nominated Person specified in Item 9 of Schedule 1, or as otherwise stipulated by written notice in accordance with clause 12.7, at the same time as issuing the notice to the Proponent.

- 4.6 For the avoidance of doubt, neither of the following events will, of itself, constitute a breach of this Deed or a breach of a condition of the Proponent's FIT entitlement:
- (a) an Insolvency Event in respect of the Proponent; or
 - (b) the enforcement by a Nominated Person or any third party of any rights under a security or other finance document that such a Nominated Person or third party has with respect to

the Proponent.

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

5 Implementation of Proposal

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

Minimum and maximum generation rates

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

Scheduling of maintenance

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

6 Specified Personnel & Specified Contractors

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

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

7 Electricity laws

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

8 Implementation of Plans

Safety, Health & Environment Plan

- 8.1 The Proponent must prepare a safety, health and environment (SH&E) plan that outlines in detail how it will comply, and ensure that the construction and operation of the Generating System will comply with every law, and every licence or other approval, made under any law that applies to the Proponent and/or the Facility with respect to their operations, including plans detailing compliance with any law, licence or other approval enacted, imposed or given after the date of the Deed of Entitlement or the Proponent's FiT entitlement comes into effect.
- 8.2 To the extent that laws, licences and approvals are not in effect on the date of the Deed of Entitlement with respect to safety, health and environmental regulation applicable to the Facility, the Proponent must prepare an SH&E Plan, that addresses the minimum SH&E requirements set out in this clause 8.
- 8.3 For the purposes of preparing any SH&E Plan, in the event of an inconsistency between a requirement under, or the Proponent's obligation to comply with:

- (a) a law, licence or approval; and
- (b) the matters set out in this clause 8;

a requirement under, and an obligation to comply with, a law, licence or approval, will take precedence to the extent of any inconsistency. If the requirements set out in clause 8.2 can reasonably be complied with concurrently with requirements under an applicable law, licence or approval, the Proponent will address the matters set out in 8.2 to the fullest reasonable extent in an SH&E Plan.

- 8.4 The Proponent must submit a draft SH&E Plan by the Milestone date set out in *Schedule 3 – Milestones* for review by the Minister.
- 8.5 If the Minister requests that the draft SH&E Plan be revised for the purposes of ensuring the Proponent's compliance with SH&E laws in the Territory (or any other jurisdiction), then the Proponent must revise the Plan in accordance with the request and submit a revised Plan to the Minister within 3 weeks from the date of receipt of the request, or such longer period as nominated in the request.
- 8.6 It is a condition of the FiT entitlement that a Proponent adhere to the SH&E Plan as reviewed by the Minister.
- 8.7 Any review by the Minister of an SH&E Plan shall not be construed as the Minister providing any representation that compliance with the Plan will result in avoidance of all health, safety and environmental risks, or that compliance with the Plan will result in compliance by the Proponent with all relevant laws and regulations. It remains the sole responsibility of the Proponent to ensure that it complies with all laws and regulations and that it take its own steps to guard against all health, safety and environmental risks.

Scope and Content of SH&E Plan Requirements

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

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

Community Engagement Plan

- 8.9 The Proponent must meet the commitments and undertake the activities in Schedule 5 in the manner specified in schedule 5, and within any timeframes specified in schedule 5, and without limiting the foregoing, must otherwise implement the Community Engagement Plan set out in its Proposal.

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, and without limiting the foregoing, must otherwise implement the ACT Investment Plan set out in its Proposal.

9 Access to documents, premises and the Site

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

10 Transfer of renewable energy certificates

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

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

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

11 Insurance and indemnity

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

12 Transfer, Surrender & Cancellation of FiT entitlement

Application of Act

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

Intended cancellation notice and Nominated Person

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

Governing law and compliance with the law

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

Notices

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

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

Force Majeure and Change of Law

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

13 Variation

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

14 Term and Termination of Deed

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

Survival of clauses

- 14.2 The obligations in clauses 9, 10, 11, 12, 15, 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-imburement or otherwise.

No employment, partnership or agency relationship

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

Severability

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

No waiver

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

Precedence of instruments

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

Providing false or misleading information

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

Act to take precedence

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

16 Payment on repeal or amendment of the Act

Definitions

16.1 In this clause 16:

Independent Expert means a firm of chartered accountants selected by the Parties in accordance with clauses 16.15 to 16.18 that meets the following criteria:

- (a) the firm is independent of each Party;
- (b) neither party has previously engaged the firm to provide services in relation to the Large-scale Wind Auction;
- (c) the firm has experience in valuing wind farm or other renewable energy assets; and

the firm (and individuals to be utilised by the firm) are not arbitrators.

Market Value means the market value of the assets of the Proposal (including, but not limited to, its interest in the land at the Site and the Generating System including associated plant and equipment and any connection assets) as determined in accordance with section 16.

Net Compensation Amount means all losses, costs and expenses as calculated in accordance with clause 16.3 less any offset amounts calculated in accordance with clause 16.6, as agreed by the Parties or determined by the Independent Expert in accordance with clause 16.

16.2 The Proponent will be entitled to be paid an amount in accordance with this clause 16 in the event that, within the period between the date of grant of the FiT entitlement and 29 March 2035:

- (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:

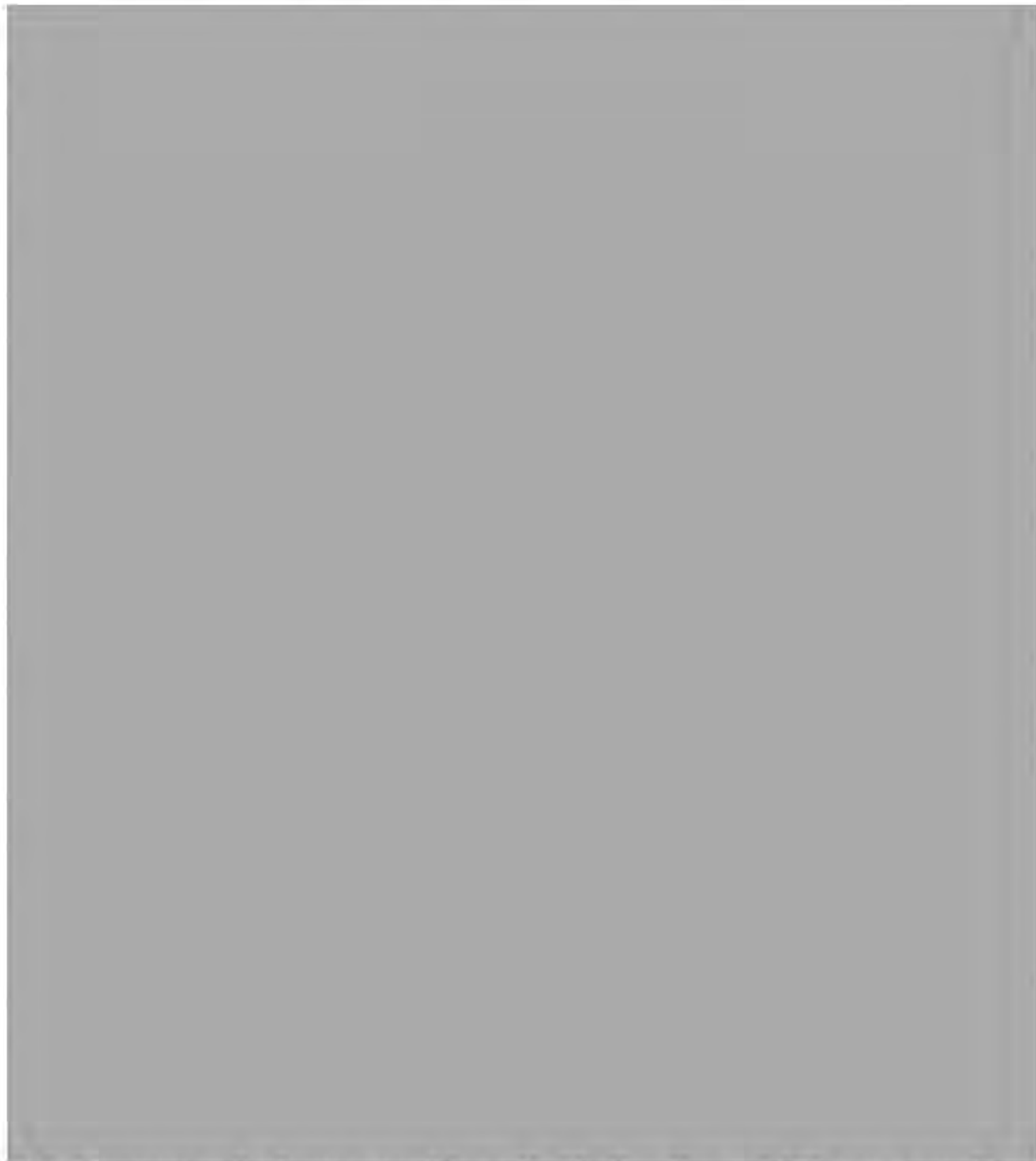
- (a) that the Proponent, acting reasonably, could have taken, or could, at the date of making a claim for compensation under this clause, take steps to mitigate;
- (b) arising from legal commitments or obligations (whether in law, equity or under statute) binding the Proponent pursuant to which the 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:



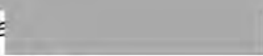
- (a) use Territory Confidential Information held in connection with this Deed, or the Act, or in relation to implementing the Proposal, only for the purposes of fulfilling its obligations under this Deed and not to disclose any of the Territory's confidential information without the prior approval of 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, financiers or professional advisers;
 - (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.

Schedule 1 – Deed Details

<p>Item 1.</p>	<p>Contact Officers</p>	<p>For the Territory: <i>Name: Greg Buckman</i> <i>Position: Senior Policy Officer</i> <i>Address: 16 Challis Street, Dickson, ACT, 2602</i> <i>Email: Greg.Buckman@act.gov.au</i> <i>Telephone: (02) 6205 4435</i> <i>Facsimile: (02) 6207 3216</i></p> <p>For the Proponent:  <i>Address: Level 3, 55 Blackall Street, Barton, ACT, 2600</i> <i>Email: </i> <i>Telephone: </i> <i>Facsimile: XXXX</i></p>
<p>Item 2.</p>	<p>Term of FiT entitlement</p>	<p>20 years from the Completion Date</p>
<p>Item 3.</p>	<p>Completion Date</p>	<p>As specified in Schedule 3</p>
<p>Item 4.</p>	<p>Minimum annual quantity of eligible electricity</p>	<p>16,345 MWh</p>
<p>Item 5.</p>	<p>Maximum annual quantity of eligible electricity</p>	<p>104,901 MWh</p>
<p>Item 6.</p>	<p>Amount of FiT (AUD ex GST)</p>	<p>FiT \$81.50/MWh</p>
<p>Item 7.</p>	<p>Site</p>	<p>Located in the Buloke Shire Council area in the state of Victoria in accordance with Planning Permit 530/13 granted under the <i>Planning and Environment Act 1987 Victoria</i>.</p>
<p>Item 8.</p>	<p>Public Liability Insurance</p>	<p>Public liability insurance: \$20 million (in respect of each claim)</p>
<p>Item 9.</p>	<p>Nominated Person</p>	<p>Name: X ACN or ABN: X Address for service of copy of notices (see clauses 12.11 and 12.4):</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:	19.4MW
Generating System configuration:	The generating system will consist of six certified wind turbine generators suitable for meeting the Proponent’s obligations under the Deed of Entitlement, and a series of transformers connected to a single point of connection to the national electricity 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 [date] between the Australian Capital Territory and [name of Proponent] in relation to the grant of a FiT entitlement under [name and number of Notifiable Instrument] 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:

Address for service of copy of notices (see clauses 4.5 and 12.4):



Execution page

DATE OF THIS Deed 27 JANUARY 2015

Executed as a Deed for and on behalf of the) 
AUSTRALIAN CAPITAL TERRITORY)
in the presence of:) Signature of Territory delegate



Signature of witness

DORTE EKELUND

Print name



Print name

Executed as a Deed by



Print name



) Signature of director/~~individual~~*

*DELETE whichever is not applicable (see note)

for and on behalf of
Coonooer Bridge Wind Farm Pty Ltd
ACN 160 665 485



Signature of director/~~secretary~~/~~witness~~*

*DELETE whichever is not applicable (see note below)



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 Planning

DEED OF ENTITLEMENT

Crookwell 2 Wind Farm

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

Date 18 August 2016

Parties Australian Capital Territory

and

Crookwell Development Pty Ltd

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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.

Crookwell Development Pty Ltd ACN 106 800 480 (**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 4)* 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 <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</i> (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 <i>Clean Energy Regulator Act 2011</i> (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: <ol style="list-style-type: none"> 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; and 5. any other means, whether direct or indirect, of dominating the decision making and financial operating policies of the Proponent.
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.
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.
Generating Unit	means a generator of electricity and all the equipment essential to its functioning as a single entity.

Insolvency Event	<p>means the occurrence of any one or more of the following events in relation to the Proponent:</p> <ul style="list-style-type: none"> (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.
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 <i>National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 (SA)</i> 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 Proponent, or its personnel, employees, agents or contractors use (including places at which any material is stored) for the purpose of implementing the Proposal.
Proponent Confidential Information	<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	means all material owned by the Proponent, or by another person prior to the Proponent entering into this Deed, and used by the Proponent for the purpose of implementing the Proposal, or complying with this Deed, including documents, information and data stored by any means.
Proponent's FiT entitlement	means the FiT entitlement granted to the Proponent under the Notifiable Instrument.

Proposal	means 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.
Proposed Cure Plan	means a cure plan proposed by the Proponent in accordance with clause 4.2.
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 <i>Australian Capital Territory (Self-Government) Act 1988</i> (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.

Communications

- 3.6 The Proponent must give the Directorate reasonable notice of any public announcements relating to the Proponent's compliance with Milestones or other obligations outlined in this Deed.

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 4.2 then a failure by the Proponent to cure the relevant failure within the default period of time specified in the breach notice, is a breach of this Deed and a breach of a condition of the Proponent's FiT entitlement under the Act.

The Territory will give a copy of any breach notice issued to the Proponent, and any notice of cure under clause 4.4, to the Nominated Person, if any, at the address for the Nominated Person specified in Item 9 of Schedule 1, or as otherwise stipulated by written notice in accordance with clause 12.7, at the same time as issuing the notice to the Proponent.

4.6 For the avoidance of doubt, neither of the following events will, of itself, constitute a breach of this Deed:

(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 FiT entitlement thereafter.

5.3 The maximum quantity of Eligible electricity, in a financial year (starting on July 1 and ending on June 30) 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 clause 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 Notwithstanding clause 6.6, 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 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 Generating System 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 Generating System, 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 takes 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 Generating System;
 - systems that the Generating System 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 Health and Safety Act 2011*, 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), 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, including the requirement to pay the Energy Storage Contribution.

9 Access to documents, premises and the Site

- 9.1 For the purpose of determining whether a Proponent is complying with, or has complied with, the Act, or for the purpose of determining whether there has been a failure to comply with, or a breach of a term or condition of this Deed, or other condition of the Proponent's FIT entitlement (monitoring purpose), an authorised employee, or authorised agent of the Territory may, upon giving 24 hours notice, enter and inspect the Site or Premises, including (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 production 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 April 2016 .
- 9.4 For the purposes of this section 9, interested person means:
- (a) any employee or officer of the Proponent; and
 - (b) any other contractor, consultant, adviser or agent of the Proponent, or other person engaged by or on behalf of the Proponent 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.

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 transfer under clause 10.1 must be made by the Proponent within 3 months of the end of the financial year in which the Eligible electricity referred to in clause 10.1 is generated.
- 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 clauses 10.1 and 10.4; 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 for the Term of FiT entitlement all insurance coverage required to be effected by it by law, and public liability insurance in an amount not less than the amount specified in Item 8 of Schedule 1, with a reputable insurer approved by the Territory.
- 11.2 The Proponent must produce evidence that it has in place the insurance required under clause 11.1 above within 14 days of a request being made by the Territory.
- 11.3 The Proponent indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Proponent in connection with the preparation, submission and implementation of the Proposal, including the operation of the Generating System 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.

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 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 12.9 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.
- 12.15 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.
- 12.16 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 Law; 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 Next-Generation Renewables Auction;
- (c) the firm has experience in valuing renewable energy assets; and
- (d) the firm (and individuals to be utilised by the firm) are not arbitrators.

Market Value

means the market value of the assets of the Proposal (including, but not limited to, its interest in the land at the Site and the Generating System including associated plant and equipment and any connection assets) as determined in accordance with section 15.1716.

Net Compensation Amount

means all losses, costs and expenses as calculated in accordance with clause 16.3 less any offset amounts calculated in accordance with clause 16.6, as agreed by the Parties or determined by the Independent Expert in accordance with clause 15.1716.

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 31 August 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 section 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 16.102 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 FIT 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 section 17 does not limit, or affect in any way, a Party's obligation to comply with its obligations under clauses 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 "Territory Privacy Principles" set out in the *Information Privacy Act 2014* (ACT) as if they were provisions of this Deed and the Proponent was a collector and record-keeper of the personal information as defined in that 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.

Schedule 1- Deed Details

Item 1.	Contact Officers	<p>For the Territory: <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</p> <p>For the Proponent:  <i>Address:</i> Suite 403, 68 York Street, Sydney, NSW 2000 <i>Email:</i>  <i>Telephone:</i> </p>
Item 2.	Term of FIT entitlement	20 years from the FIT Support Start Date
Item 3a.	Completion Date	As specified in Schedule 3
Item 3b.	FIT Support Start Date	As specified in Notifiable Instrument: 17/09/2018
Item 4.	Minimum annual quantity of eligible electricity	60,820MWh
Item 5.	Maximum annual quantity of eligible electricity	364,773 MWh
Item 6.	Amount of FIT	FIT \$90.40/MWh excluding GST (including an Energy Storage Contribution of \$3.80/MWh)
Item 7.	Site	Located 15km south-east of Crookwell and 30km north-west of Goulburn in New South Wales.
Item 8.	Public Liability Insurance	Public liability insurance: \$20 million (in respect of each claim)
Item 9.	Nominated Person	

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:	91.0MW
Generating System configuration:	The generating system will consist of 28 wind turbine generators of 3.3MW or similar arrangement subject to competitive tender, connected via a transformer to a separately metered (separate for market settlement purposes) point of connection to the interconnected national electricity system.

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 [date] between the Australian Capital Territory and Crookwell Development Pty Ltd in relation to the grant of a FiT entitlement under [name and number of Notifiable Instrument] 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 Crookwell Development Pty Ltd

Position:

ACN :

Address for service of copy of notices:

[Address]

Execution page for Deed of Entitlement

DATE OF THIS Deed 18 August 2016

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

) [Redacted]
) [Redacted]
) Signature of Territory delegate

[Redacted]

Signature of witness

.....
DORTE EKELUND
.....
Print name

[Redacted]

Print name

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

Executed as a Deed by

[Redacted]

Print name

*DELETE whichever is not applicable (see note)

for and on behalf of

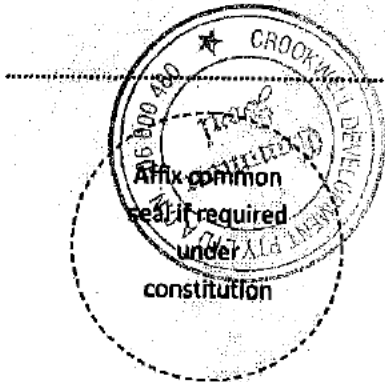
Crookwell Development Pty Ltd
ACN 106 800 480

in the presence of:

[Redacted]

Signature of director/secretary/witness*

*DELETE whichever is not applicable (see note below)



[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

Environment and Planning

DEED OF ENTITLEMENT

Hornsedale Wind Farm

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

Date

23/12/14

Parties

Australian Capital Territory

and

HWF1 Pty Ltd



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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.

HWF1 Pty Ltd, ACN 603 414 151 of Suite 4, Level 7, 60 Park Street, Sydney NSW 2000 (**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 2015 (no 1)* 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 <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</i> (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 Contractor 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 3 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 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.
Control	in relation to the Proponent includes: <ol style="list-style-type: none"> 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.
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.
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.
Generating System	means the generating system described in Schedule 2 in respect of which the Proponent has been granted a FIT entitlement.