



Australian Government

Department of Climate Change, Energy,  
the Environment and Water

# Capacity Investment Scheme Agreement – Draft Term Sheet (South Australia-Victoria Tender)

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For Public Consultation

September 2023



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The Commonwealth of Australia, as represented by the Department of Climate Change, Energy, the Environment and Water, has produced this publication to provide high-level and initial guidance on the proposed Capacity Investment Scheme Agreement (CISA) for the South Australian and Victorian Tender (SA-VIC). The CISA is presently under development and the information contained in this publication is subject to change. This publication does not indicate commitment by the Australian Government to a particular course of action in relation to the CISA or otherwise.

Any transaction implemented under the CISA will have its own terms set out in relevant disclosure and process documents. The reader should make their own inquiries of all relevant information and take necessary legal and other professional advice, before taking any action.



**Australian Government**

**Department of Climate Change, Energy,  
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## Draft Term Sheet – Capacity Investment Scheme Agreement (CISA)

### 1 Introduction

- 1.1 This Term Sheet is a draft issued for feedback and market engagement purposes only. It is not an offer by the Commonwealth to enter into a CISA with any entity which receives a copy of the Term Sheet and does not impose any legal commitment on the Commonwealth. It is not intended to create legal rights for any party or to form a legally binding relationship, obligation or commitment by or involving the Commonwealth. Recipients of this Term Sheet should not rely on its contents as the sole basis for making any financial, investment or business decisions. The Commonwealth reserves the right to withdraw or amend this Term Sheet at any time.
- 1.2 Capitalised items in this Terms Sheet have the meaning set out in Schedule 2 below.

### 2 Proposed Index

| Item | Title     | Detail  |      |      |             |  |  |  |
|------|-----------|---|------|------|-------------|--|--|--|
| 1    | Parties   | [Private sector party] [Operator] <i>[Drafting note: This may be a special purpose vehicle or another entity/vehicle of substance]</i><br>The Commonwealth of Australia represented by the Department of Climate Change, Energy, the Environment and Water (Commonwealth)   |      |      |             |  |  |  |
| 2    | Term      | <p>2.1 The term commences on Commencement Date and ends on the Expiry Date (<b>Term</b>).</p> <p>2.2 The Term is divided into the Construction Period and the Support Period.</p> <p>2.3 The Support Period shall commence on the Commercial Operation Date (<b>COD</b>) and be limited to a duration of fifteen (15) years, if COD occurs on or before the Final Support Commencement Date. If the COD occurs after the Final Support Commencement Date, the duration of the Support Period will reduce by the number of days that occur after the Final Support Commencement Date but prior to the COD. The Final Support Commencement Date is not subject to adjustment as a result of Force Majeure Events.</p> <p><i>[Drafting Note: see definition of Final Expiry Date. The objective of this mechanism is to allow for the support to reduce where projects commission some period after the Final Support Commencement Date. ]</i></p> |      |      |             |  |  |  |
| 3    | Key dates | <table border="1"> <thead> <tr> <th>Name</th> <th>Date</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>   | Name | Date | Description |  |  |  |
| Name | Date      | Description   |      |      |             |  |  |  |
|      |           |   |      |      |             |  |  |  |



|   |                                 |  |   |
|---|---------------------------------|--|---|
|   | CP Target Date                  | [Bid variable]   | The target date for completion of Conditions Precedent set during the tender process (as may be extended pursuant to the terms of the CISA).  |
|   | CP Sunset Date                  | [Bid variable]   | The date which is 12 months after the initial CP Target Date (as may be extended pursuant to the terms of the CISA).  |
|   | Commencement Date               | [Bid variable]   | The date on which the last of the Conditions Precedent have been satisfied or waived.   |
|   | Notice to Proceed Date          | [Bid variable]   | The date on which the Notice to Proceed is issued under the relevant Construction Contracts. <b>[Drafting Note: This does not include an early works contract.]</b>                               |
|   | Registration Date               | [Bid variable]   | The date on which the Facility will undergo hold point testing and achieve registration with the network operator. For NEM connected projects, this would be achieving R1 Registration with AEMO. |
|   | Commercial Operation Date (COD) | [Bid variable]   | The date on which the Facility achieves Commercial Operation as outlined in item 7 of this table.   |
|   | COD (Target)                    | [Bid variable]   | The date by which the Operator is required to have ensured that all Milestone Events up to COD have been achieved (as may be extended pursuant to the terms of the CISA).                         |
|   | COD (Sunset)                    | [Bid variable]   | The date which is 12 months after the COD (Target) (as may be extended pursuant to the terms of the CISA).  |
|   | Final Support Commencement Date | [Bid variable]   | The date 12 months after the initial COD (Target Date). This date is not subject to extension.  |
| 4 | Conditions precedent (CPs)      | <b>[Drafting note: the regime set out in item 4 and item 5 of this table provides for pre-financial close activities to be identified as conditions precedent to this agreement (under item 4) and for milestones occurring between Financial Close and Commercial Operation being treated</b> |   |



*as Milestone Events (under item 5). The rationale for this approach is that it enables the Commonwealth to better monitor the progress of projects both prior to and Financial Close.]*

4.1 The Operator must use reasonable endeavours to satisfy:

- (a) each CP by relevant date specified next to that CP in the CISA; and
- (b) all of the CPs by the CP Target Date,

and in each case must notify the Commonwealth within 5 Business Days of doing so. The Operator must provide with that notice objective evidence which demonstrates that the relevant CP has been satisfied.

4.2 If at any time, the Operator or the Commonwealth reasonably believes that the Operator is likely to fail to satisfy:

- (a) any CP by the relevant date specified next to that CP in the CISA; or
- (b) all of the CPs by the CP Target Date,

the Operator must submit a cure plan to the Commonwealth which identifies an extended date by which it will satisfy the relevant CP or all of the CPs (as applicable) and which demonstrates, to the Commonwealth's reasonable satisfaction, that the Operator will satisfy that relevant CP by the proposed extended date and all other outstanding CPs by no later than the CP Sunset Date. The Commonwealth may approve that cure plan (in its absolute discretion). If the Operator fails to provide the cure plan, the Commonwealth is not reasonably satisfied (amongst other things) that the cure plan demonstrates this or the Operator fails to comply with the approved cure plan if it is approved by the Commonwealth, the Commonwealth may terminate the CISA.

4.3 The Operator must satisfy all CPs by the CP Sunset Date. If at any time, the Operator or the Commonwealth reasonably believes that the Operator likely to fail to satisfy all CPs by the CP Sunset Date (and in the case of the Commonwealth, the Commonwealth has notified the Operator of that belief), the Operator must submit a cure plan to the Commonwealth which identifies an extended date by which it will satisfy all of the CPs and which demonstrates, to the Commonwealth's reasonable satisfaction, that the Operator will satisfy those CPs by the proposed extended CP Sunset Date. The Commonwealth may approve that cure plan (in its absolute discretion) and if the Operator fails to submit a cure plan or to comply with that approved cure plan, the Commonwealth may terminate the CISA.

4.4 If the Operator fails to satisfy all CPs by the CP Sunset Date (and the Commonwealth does not otherwise waived the requirement to satisfy the relevant CP which has not been satisfied by that date), the CISA will automatically terminate on the day after the CP Sunset Date without the Commonwealth having to take any further action.



- 4.5 The CP Target Date and CP Sunset Date will be extended by the direct effects of any Force Majeure Event pursuant to item 21 and 22.
- 4.6 The Operator must provide quarterly reports to the Commonwealth during the CP Period regarding its progress against achieving the CPs. The Operator must promptly notify the Commonwealth if the Operator reasonably expects that it may not satisfy a CP by the relevant date specified next to that CP in the CISA and the Operator must provide with that notice a reasonable level of supporting details related to that failure.
- 4.7 Example CPs include:
- (a) the Operator providing the Performance Security to the Commonwealth (see item 33);
  - (b) FIRB approval (either unconditional, or subject to conditions satisfactory to the Commonwealth) or evidence that FIRB approval is not required (to the reasonable satisfaction of the Commonwealth);
  - (c) that Financial Close (if funded by external debt) or Commercial Close (if funded by equity) in respect of the Project has occurred; and **[Drafting note: to the extent that a Project is corporate financed or equity funded, the CPs will need to include evidence that key project documents have been entered and are binding amongst other things]**
  - (d) the Operator submitting a certified copy of the executed Transaction Documents (which include equity, debt and project documents related to the Project) to the Commonwealth; and
  - (e) the Operator provides to the Commonwealth a legal opinion for the benefit of the Commonwealth from an external law firm in relation to the corporate power, due execution and enforceability for each party which enters into the document with the Commonwealth (including the CISA) in a form and substance satisfactory to the Commonwealth. **[Drafting note: this CP will not be included in the CISA where the Operator is a corporation incorporated in Australia which executes the relevant document pursuant to section 127 of the Corporations Act 2001 (Cth) and the relevant document is governed by a law of a State or Territory of Australia]**

A date will be bid by the Operator regarding when each of the above are to be achieved.

**[Drafting note: Proponents will be asked to identify any other CPs which should be required to be satisfied prior to the Commencement Date for consideration by the Commonwealth. The Commonwealth reserves the right to add CPs after reviewing tender responses and a proponent's potential equity funding and debt financing arrangements and transaction structure.]**

|   |                          |     |                    |
|---|--------------------------|-----|--------------------|
| 5 | Milestones and reporting | 5.1 | The Operator must: |
|---|--------------------------|-----|--------------------|



- (a) use reasonable endeavours to achieve each Milestone Event on or before its Milestone Date (Scheduled) and Commercial Operation of the Facility on or before the COD (Target);
  - (b) achieve Commercial Operation on or before the COD (Sunset).
- 5.2 Subject to item 5.3, the Commonwealth may terminate the CISA by notice if the Operator fails to achieve Commercial Operation on or before the COD (Sunset).
- 5.3 If Commercial Operation has not been achieved on or before the COD (Target), the Commonwealth may in its absolute discretion request the Operator to provide a cure plan which demonstrates when the Operator will achieve Commercial Operation for the Commonwealth’s approval. If the Commonwealth approves that cure plan, the Operator must comply with the cure plan and provide monthly reports to the Commonwealth regarding its progress against the cure plan. The Commonwealth may terminate the CISA if the Operator fails to submit the requested cure plan, fails to achieve Commercial Operation by the COD (Sunset), as updated in any approved cure plan, or fails to comply with any approved cure plan.
- 5.4 The Operator must provide quarterly reports during the Construction Period regarding its progress against achieving each Milestone Event and must promptly notify the Commonwealth if the Operator reasonably expects that it may not achieve a Milestone Event by its Milestone Date (Scheduled) and that notice must provide reasonable supporting details related to that failure.
- 5.5 The Operator must notify the Commonwealth when it has achieved a Milestone Event and the date on which it was achieved and with that notice the Operator must provide evidence from an independent source (e.g. certified engineer) acceptable to the Commonwealth which demonstrates that such Milestone Event has been achieved. For the purposes of these reporting requirements, the Commonwealth may accept reports prepared for and accepted by the Operator’s external debt financiers. The Operator must ensure that the entity providing that independent evidence has agreed to permit the Commonwealth to rely on that evidence and is liable to the Commonwealth for the contents of that evidence.
- 5.6 Proposed Milestone Events include:

| Milestone Event                        | Milestone Date (Scheduled) |
|--|----------------------------|
| Notice to Proceed                      | Notice to Proceed Date     |
| [insert others - <i>Bid variable</i> ] | [ <i>Bid variable</i> ]    |
| Registration with AEMO                 | Registration Date          |





|   |   |  |                |
|---|---|--|----------------|
|   |   | Commercial Operation   | [Bid variable] |
|   |   | [Drafting note: Proponents will be requested to identify such other Milestone Events which demonstrate progress of the Project during the Construction Period and the Milestone Date (Scheduled) by which the relevant Milestone Event must be achieved.]  |                |
|   |   | [Drafting note: Each Proponents must identify additional Milestone Events (approximately 6 in total across the Construction Period and provide dates against the proposed Milestone Events in its bid)]  |                |
| 6 | Construction obligations                                  | <p>On and from the commencement of the Construction Period, the Operator must diligently progress the work and design, construct, commission, test and complete the facility:</p> <ul style="list-style-type: none"> <li>(a) in compliance with all laws, including health and safety, approvals, good industry practice, social licence commitments and plans;</li> <li>(b) in accordance with the Operator’s project documents; and</li> <li>(c) so the completed Facility is fit for its intended purpose and capable of meeting the Operator’s obligations under the CISA during the Support Period.</li> </ul> <p>The Operator must prepare and provide a copy of its testing and commissioning plan for the Facility to the Commonwealth within 60 Business Days prior to the date when testing and/or commissioning of the Facility is scheduled to commence.</p>   |                |
| 7 | Commercial Operation and Pre-Commercial Operation Revenue | <p>7.1 To achieve Commercial Operation, the Operator must:</p> <ul style="list-style-type: none"> <li>(a) achieve practical completion of the Facility as certified by the Operator and accepted by the Commonwealth (acting reasonably);</li> <li>(b) pass all tests and submit and receive approval from the Commonwealth for its annual maintenance plan setting out a five-year forecast of planned maintenance activities for the Facility;</li> <li>(c) have obtained and maintained all required approvals including registrations under the NER for the capacity of the Facility installed and commissioned at Commercial Operations for no less than the Maximum Capacity;</li> <li>(d) achieve the Performance Guarantees (other than the Availability Guarantee);</li> <li>(e) meet all social licence commitments, to the extent they apply to the Construction Period;</li> <li>(f) have procured that the Facility is connected to and importing and exporting to the grid;</li> </ul> |                |



|   |  |   |
|---|--|---|
|   |  | (g) obtain any necessary registrations under the NEL/NER; and   |
|   |  | (h) have provided the Commonwealth with a copy of its Trading Protocol.   |
|   | 7.2                                    | Where the Operator generates Net Operational Revenue (as defined in Schedule 1) from the Facility on or prior to the COD, the Operator will be required to pay the Quarterly Revenue Sharing Amount (as defined in Schedule 1) in relation to that Net Operational Revenue to the Commonwealth as if that Net Operational Revenue had been generated during the Support Period.<br><b>[Drafting note: drafting will be developed to address this concept in the CISA.]</b>  |
| 8 | Delay and extensions                   | <p>8.1 The Operator will be entitled to an extension of the CP Target Date, the CP Sunset Date, the COD (Target) and the COD (Sunset) to the extent that the critical path of the Project is directly delayed by a Force Majeure Event, provided the preconditions and express requirements for Force Majeure relief have been satisfied. It will be a precondition to any extension of time that the Operator submits a notice of claim for that extension within 5 Business Days after it becomes aware of the relevant delay in achieving the Commencement Date or Commercial Operation (as applicable) and submits within a further 10 Business Days a notice providing further details of that claim sufficient to enable the Commonwealth to determine whether the Operator is entitled to an extension. Any Milestone Dates (Scheduled) that are affected by the relevant delay will also be adjusted by a period commensurate to any extension granted by the Commonwealth in relation to the CP Target Date, CP Sunset Date, COD (Target) and COD (Sunset) (as applicable).</p> <p>8.2 The Operator is not be entitled to an extension of time pursuant to item 8.1 where the extension of time regarding that CP Target Date, the CP Sunset Date, the COD (Target) and the COD (Sunset) (as applicable) exceeds in aggregate with any other extension granted under the CISA to that relevant concept, [18 months] (other than in the case of a Connection Force Majeure Event which will not be subject to a cap).</p> <p>8.3 The Commonwealth may, at any time, in its absolute and unfettered discretion and whether or not for any reason stated in the CISA, grant an extension of the CP Target Date, the CP Sunset Date, the COD (Target) and COD (Sunset) and any other Milestone Date (Scheduled).</p> |
| 9 | Operation and maintenance requirements | <p>9.1 Throughout the Support Period, the Operator must:</p> <p>(a) ensure that the Facility is operated, maintained and repaired in accordance with good industry practice, applicable laws, approvals, technical specifications and any relevant equipment supplier requirements;</p> <p>(b) operate, maintain and repair the Facility as a reasonable and prudent operator, in accordance with the Operator’s project documents and so that the Facility meets the Performance Guarantees;</p>   |



- (c) not change the Facility other than in accordance with item 14 below;
  - (d) use reasonable endeavours to operate, maintain and repair the Facility so as to optimise amount of energy, timing of generation and export to correspond with peak periods and to maximise green products;
  - (e) operate the Facility to dispatch electricity in good faith in accordance with market signals;
  - (f) ensure that the Facility is registered with AEMO and take such other steps as may be required to ensure that it is able to be operated in accordance with the CISA; and
  - (g) provide operational data to the Commonwealth in accordance with the reporting schedule set out in the CISA.
- 9.2 The Operator must provide the Commonwealth with its Trading Protocol for the information of the Commonwealth on or before Commercial Operation. Immediately after the end of each Support Year, the Operator must provide an annual report for that Support Year outlining whether it operated the Facility in accordance with the Trading Protocol and providing a revised Trading Protocol for the subsequent Support Year (to the extent that there is to be any change to the Trading Protocol).
- 9.3 The Operator must submit an annual maintenance plan, setting out a five-year forecast of planned maintenance activities for the Facility, to the Commonwealth for review and approval on or before Commercial Operations is achieved. The Operator must use reasonable endeavours to perform planned maintenance arising from or in connection with the Facility in a way that complies with the approved annual maintenance plan and mitigates impact of planned maintenance on the Facility's operations. The Operator must submit further annual maintenance plans on the anniversary of the COD for review and approval by the Commonwealth. Nothing prevents emergency maintenance being carried out as necessary at any time.
- 9.4 The Operator must:
- (a) use reasonable endeavours not to schedule any planned maintenance or outage for the Facility during the Peak Period, being the period of peak demand identified by AEMO in the most recent Electricity Statement of Opportunities report (**ESOO**) or unless otherwise agreed by the parties (acting reasonably); and
  - (c) otherwise report quarterly to the Commonwealth on the timing and duration of any planned maintenance or outages, or unplanned outages, reduced capacity (including because of Input Resource availability) and maintenance for the Facility. Where there have been unplanned outages, the report must identify the reasons for those outages and the remediation actions being undertaken by or on behalf the Operator to prevent future unplanned outages, reduced capacity or unplanned maintenance.



- 9.5 The Operator must use reasonable endeavours to minimise the amount of any payments payable by the Commonwealth pursuant to Schedule 1.
- 9.6 The Operator must not enter into:
- (a) any offtake contract or any arrangement regarding Permitted Costs unless the arrangement is on arm's length terms; and
  - (b) any arrangement with a related entity unless it has demonstrated to the Commonwealth's reasonable satisfaction that the arrangement is on arm's length terms.

**10** Performance Guarantees

- 10.1 The Operator must ensure that the Facility:
- (a) successfully passes the Performance Guarantees (other than the Availability Guarantee) immediately prior to Commercial Operation; and
  - (b) is capable of meeting (and is operated and maintained to meet) the Performance Guarantees at all times during the Support Period.
- 10.2 The Operator must ensure that the Availability of the Facility during each Support Year meets or exceeds the Availability Guarantee applicable to that Support Year. The Operator's performance in respect of the Availability Guarantee will be measured at the end of each quarterly period.
- 10.3 Revalidation tests to verify performance must be conducted annually for each other Performance Guarantee. The Commonwealth may be present or represented at any revalidation tests. Testing times will be determined on a mutually cooperative basis and failing agreement, at the time determined by the Commonwealth (acting reasonably).
- 10.4 The Performance Guarantees will include:
- (a) the Availability of the Facility during the Support Year will exceed the Availability Guarantee for that Support Year;
  - (b) the Facility materially conforms to the Project Characteristics; and
  - (c) the Facility is registered with AEMO in central dispatch in a manner consistent with the Project Characteristics.

*[Drafting note: proponents will be asked to include a proposed set of 'Project Characteristics' as part of their bid for the Commonwealth's consideration. For example, the Project Characteristics may include features such as the Import Capacity (MW), Storage Capacity (MWh), Guaranteed Discharge Rate for a Discharge Day in a Quarter/Year in MWh (amongst other things). In addition to a set of Project Characteristics, proponents will be asked to propose performance tests to demonstrate compliance with the Performance Guarantees as part of their bid.]*



10.5 If the Operator’s performance in respect of any Performance Guarantee is below the relevant guaranteed level (either on an annual revalidation test or during quarterly monitoring of its availability performance), the Operator must investigate the cause of the non-compliance and provide to the Commonwealth for approval a cure plan and comply with that cure plan. If the Operator fails to comply with a cure plan or its performance in respect of any Performance Guarantee is below the relevant guaranteed level in any two (2) consecutive annual revalidation tests or any two (2) consecutive Support Years for Availability, the Commonwealth may terminate the CISA.

|    |                |  |
|----|----------------|--|
| 11 | LOR Event      | <p>(a) Subject to item 11(c), if an LOR3 Event occurs within 2 hours of a Forecast LOR Event during the Support Period (a <b>Performance Event</b>), the Operator must Bid at least 50% of the Maximum Capacity during the LOR Period.</p> <p>(b) If, at any time (other than under item 11(a)), AEMO declares an LOR3 Event, the Operator must use reasonable endeavours to Bid the Maximum Capacity for each Trading Interval in the LOR Period for that LOR3 Event.</p> <p>(c) If the Operator is required to Bid the Project pursuant to this item 11, it must do so until the earlier of:</p> <ul style="list-style-type: none"><li>(i) the Project being dispatched for a quantity of electricity equal to 50% of the Maximum Capacity for a cumulative duration of the Minimum Hours (which is to be bid and be not less than 4 hours);</li><li>(ii) the completion or cancellation of the Performance Event,</li></ul> <p>except that if the period for which it is required to Bid is less than the Minimum Hours, it will be taken to have complied with this item 11 if it has Bid at least 50% of the Maximum Capacity for each of the Trading Intervals in that period.</p> |
| 12 | Authorisations | The Operator must obtain, maintain and comply with all authorisations required for it to comply with its obligations at law and under the CISA, including authorisations required for the design, construction, operation and maintenance of the Facility.   |
| 13 | Insurance      | <p>13.1 The Operator must obtain and maintain at its own cost:</p> <ul style="list-style-type: none"><li>(a) contract works insurance during the Construction Period for the full reinstatement or replacement value of the Facility (including coverage for material and equipment in transit);</li><li>(b) industrial special risks insurance for each Support Year during the Support Period reflecting a combined limit of no less than the full replacement or reinstatement value of the Facility, plus amounts sufficient to cover costs of demolition and removal of debris, professional fees and an amount to cover additional costs and expenses to expedite the commencement and completion of the repair, replacement or reinstatement of the Facility;</li></ul>   |



|           |                             |   |
|-----------|-----------------------------|---|
|           |                             | <ul style="list-style-type: none"><li>(c) public and product liability throughout the Term for a minimum of [\$50 million] for each and every occurrence and unlimited in the aggregate during the relevant period of insurance; and</li><li>(d) other insurances required by law throughout the Term including workers' compensation and motor vehicle liability insurance.</li></ul> <p>13.2 Insurances issued on a claims made basis must be kept in place until the date which is seven years after the end of the Term.</p> <p>13.3 The insurances must be obtained from insurers with a minimum credit rating of A- or A3 (or an equivalent rating approved by the Commonwealth).</p> <p>13.4 The Operator must provide the Commonwealth with proof of insurances within 10 Business Days after a receipt of a request from the Commonwealth to do so. The Commonwealth may procure insurances if the Operator fails to do so and reclaim the costs from the Operator.</p>  |
| <b>14</b> | Alterations to the Facility | <p>The Operator must not make any alteration, expansion or change to the Facility without the Commonwealth's written consent, such consent not to be unreasonably withheld or delayed and matters where the Commonwealth must provide such consent are where the alteration, expansion or change will not:</p> <ul style="list-style-type: none"><li>(a) materially or adversely impact:<ul style="list-style-type: none"><li>(i) the Commonwealth's rights and obligations regarding the CISA including its financial obligations and any arrangement it has entered with a third party;</li><li>(ii) the long-term financial interests of electricity customers in the Relevant Jurisdiction; or</li><li>(iii) the Operator's performance of its social licence commitments; or</li></ul></li><li>(b) result in the Facility:<ul style="list-style-type: none"><li>(i) no longer being capable of dispatching at its Maximum Capacity for the duration specified in the Project Characteristics or complying with the Project Characteristics; or</li><li>(ii) reducing the Maximum Capacity.</li></ul></li></ul> |
| <b>15</b> | Social Licence              | <p>15.1 During the Term, the Operator must comply with its social licence commitments set out in the CISA.</p> <p>15.2 The Operator will be required to report quarterly on its progress satisfying the social licence commitments and the Commonwealth may audit the Operator's performance of the social licence commitments.</p>   |



15.3 If the Operator fails to comply with its social licence commitments, it must provide a cure plan for approval of the Commonwealth.

15.4 The Commonwealth will have a right to terminate the CISA if the Operator fails to submit and obtain approval for a cure plan or to comply with that approved cure plan.

**[Drafting note: Proponents are requested to bid their proposed social licence commitments. The Commonwealth is considering its approach to social licence.]**

16 Knowledge sharing

16.1 The Operator will be required to comply with a knowledge sharing plan set out in a schedule to the CISA.

16.2 The Operator must, acting reasonably and in good faith, categorise the Knowledge Sharing Deliverables identified in the knowledge sharing plan which it provides to the Commonwealth pursuant to item 16 as follows:

- (a) public information: information that may be shared freely within the Commonwealth, with industry participants and with the public in general; or
- (b) confidential information: information that may only be shared in accordance with the confidentiality obligations to be set out in the CISA.

16.3 The Commonwealth may disclose information received pursuant to item 16 that is marked by the Operator as ‘confidential information’ to the public on an aggregated and anonymised basis.

17 Payment and repayment mechanism

17.1 The Operator will provide the Commonwealth with the information required to calculate payments for each Quarter which occurs during the Support Period. No quarterly calculation will be undertaken for the fourth Quarter in a Support Year. Instead, the Commonwealth will calculate the Annual Reconciliation Payment which will identify a ‘true-up’ payment to reconcile the quarterly payments to an annual performance period.

17.2 Quarterly and annual payments will be made as per the calculations in Schedule 1.

17.3 The combined LOR3 Rebate and Availability Rebate (each as defined in Schedule 1) may be up to and equal to the support payments, in a given period, but no more.

**[Drafting note: by default the Commonwealth expects projects to operate in all markets. Proponents should comment on any markets which are not relevant to their bids]**

18 Billing and Payment

Standard provisions for an agreement of this type



|    |                              |  |
|----|------------------------------|--|
| 19 | Taxes                        | The Operator is responsible for all taxes, duties and/or, levies (other than GST) imposed on it arising from or in connection with the CISA, any payments under the CISA or the Project.   |
| 20 | GST                          | All amounts payable under the agreement are exclusive of GST.  |
| 21 | Project Force Majeure Events | <p>A “<b>Project Force Majeure Event</b>” is an event or combination of events which are beyond control of the party making the claim, could not have been prevented or avoided through the relevant party exercising reasonable care, complying with its obligations under the CISA or acting in accordance with good industry practice, did not arise through the relevant party's fault, were not foreseeable or foreseen at the date of the CISA and causes the Facility to be unable to [generate or export] energy or the relevant party to be otherwise unable to comply with its obligations under the CISA.</p> <p>Project Force Majeure Events exclude each of the following:</p> <ul style="list-style-type: none"><li>(a) Connection risk, including a Connection Force Majeure Event;</li><li>(b) Financing and funding risk – lack of funds, financial hardship or the inability of the Operator to obtain financing or insurance or to achieve a satisfactory rate of return;</li><li>(c) Operational risk - malfunction, temporary unavailability, breakdown or failure of equipment, property or assets (except where such malfunction, unavailability, breakdown or failure is caused by any event or circumstance that, if such event or circumstance had happened to a party to the CISA, would have been a Project Force Majeure Event under the CISA);</li><li>(d) epidemics or pandemics including Covid-19;</li><li>(e) wet or inclement weather other than extreme storms, hurricanes, cyclones, tornados, tsunamis, ice and ice storms, hail, dust storms and typhoons;</li><li>(f) Strikes - strikes, industrial disputes or other industrial actions or disruption that only affect the party claiming the force majeure;</li><li>(g) shortage or delay in delivery of materials, consumables, equipment or utilities or a failure to hold a sufficient stock of spares</li><li>(h) failure by any person (other than the other party to the CISA) to perform an obligation, except where such failure is caused by any event or circumstance that, if such event or circumstance had happened to a party to the CISA, would have been a Project Force Majeure Event under the CISA;</li><li>(i) delay in obtaining any authorisation required to be held by a party to perform its obligations under the CISA or at law;</li><li>(j) any absence, failure, lack or excess of any Input Resource, at the site of the Facility; and</li></ul> |





(k) any Change in Law or Market Disruption Event.

The Operator will be temporarily relieved of the affected obligations and granted an extension of time to any relevant target date to the extent that a Project Force Majeure Event prevents it from performing its obligations under the CISA. The Operator must use and continue to use reasonable endeavours to mitigate the effects of the Project Force Majeure Event. A precondition to a claim for Project Force Majeure Event relief or extensions of time is that the Operator must submit its claim within 5 Business Days after the Operator becomes aware of the event.

If a Project Force Majeure Event impacts at least 50% of the Maximum Capacity (in MW) and/or 50% of the storage capacity (in MWh) for a period of three consecutive Operating Years during the Term, the Commonwealth may terminate the CISA. The Commonwealth is relieved of its obligation to provide support under the CISA during the period of any suspension for Force Majeure.

*[Drafting note: the Commonwealth welcomes feedback on its proposed approach to force majeure relief including relief from payment, including any impacts on the proposed financing arrangements of potential proponents.]*

22

Connection Force  
Majeure

A “**Connection Force Majeure Event**” occurs if the Facility is ready to be energised and there is a delay in the commissioning of the Facility in accordance with the NER to a level that would allow the Operator to export a volume of electricity equal to or exceeding the Maximum Capacity and the delay is beyond the reasonable control of the Operator, the Operator could not have prevented or avoided through the Operator exercising reasonable care, complying with its obligations under the CISA and acting in accordance with good electricity industry practice; and the delay solely relates to connection of the Facility to the network but not to the construction, operation or maintenance of the Facility.

The Operator will be temporarily relieved of the affected obligations and granted an extension of time to any relevant date to the extent that a Connection Force Majeure Event has a direct impact on the Operator's critical path and prevents it from performing its obligations under the CISA. The Operator must use and continue to use reasonable endeavours to mitigate the effects of the Connection Force Majeure Event. A precondition to a claim for Connection Force Majeure Event relief or extensions of time is that the Operator must submit its notice of claim for that relief and/or extension within 5 Business Days after the Operator becomes aware of the event and submits within a further 10 Business Days a notice providing further details of that claims sufficient to enable the Commonwealth to determine whether the Operator is entitled to that relief or extension.

The Connection Force Majeure Event regime operates to the extent of the delay caused by Connection Force Majeure Event, distinguishing it from the Force Majeure regime which has a cumulative total period of 18 months before activation of Commonwealth’s termination rights.



|    |                         |   |
|----|-------------------------|---|
| 23 | Reinstatement           | The Operator must repair or reinstate the Facility to ensure that it complies with or exceeds with the Project Characteristics, in the event that it is lost, damaged or destroyed. The Operator must apply the proceeds of any insurance payment received in respect of any loss, damage or destruction to the Facility to the repair or reinstatement of the Facility.  |
| 24 | Change in Law           | <p>24.1 Where a Change in Law affects the Project and the Operator wishes to make a claim, the Operator must give notice of that claim to the Commonwealth. The Operator must use reasonable endeavours to mitigate the effect of any Change in Law on the Facility. If the Change in Law has a cost impact on the Project in excess of [\$500,000], the Commonwealth must [pay 50%] of any excess costs above that threshold to the Operator.</p> <p>24.2 If:</p> <ul style="list-style-type: none"><li>(a) a term used in the CISA has the meaning given to it in the NER; and</li><li>(b) the term in the NER is subsequently renamed or replaced with another term of similar effect,</li></ul> <p>then the new term will be used in place of the term which was renamed or replaced and this will not be a Change in Law.</p> <p>24.3 If there is a change to the NER or the Reserve Level Declaration Guidelines affecting the description, categorisation or thresholds of low reserve or LORs, then the Commonwealth may, acting reasonably, notify the Operator which low reserve descriptions, categorisations or thresholds apply for the purposes of the definition of LOR3 Event and this will not be a Change in Law.</p> |
| 25 | Market disruption event | <p>25.1 Each of the following events is a “<b>Market Disruption Event</b>”:</p> <ul style="list-style-type: none"><li>(a) a failure of or delay by AEMO in announcing or publishing the spot price at the Reference Node;</li><li>(b) a temporary or permanent discontinuance of the spot price being announced or published at the Reference Node, or a material change in the method by which the spot price is calculated;</li><li>(c) a change in the location of the applicable regional reference node, the abolishment of the applicable regional reference node or a change in the boundaries or number of regional reference nodes; and</li><li>(d) the temporary or permanent discontinuance of the NEM.</li></ul> <p>A Market Disruption Event does not include a change in the market floor price or market price cap; or the setting of an administered dispatch price during administered price periods.</p> <p>25.2 If at any time there is a Market Disruption Event, the parties must consider and, negotiate in good faith any adjustment to the revenue floors and ceilings (calculated in accordance with Schedule 1) and any other amendments to the CISA which will preserve:</p>                                 |



|    |                           |   |
|----|---------------------------|---|
|    |                           | (a) the intended operation and effect of the CISA; and<br>(b) the relative commercial and legal position of the parties at the Signing Date,<br>or, if that is not possible, to achieve an equitable allocation of risk between the parties in relation to the Market Disruption Event.   |
| 26 | Default and Major Default | The Commonwealth may at any time give notice to the Operator of any breach of the CISA. Where a breach has occurred, some of those breaches will oblige the Operator to submit a cure plan and others will entitle the Commonwealth to terminate.   |
| 27 | Termination               | The Commonwealth may terminate for convenience or for a prolonged Force Majeure Event. <b><i>[Drafting note: the Commonwealth is seeking input on its proposed approach for the period of time before it may terminate for prolonged Force Majeure Events]</i></b><br>The Commonwealth may terminate for default including in the event of:<br>(a) insolvency of the Operator;<br>(b) non-payment by the Operator;<br>(c) unremedied (or unremittable) material breach by the Operator;<br>(d) where a non-material breach has been notified to the Operator and the Operator has not provided or complied with a cure plan;<br>or<br>(e) where the CISA otherwise provides a right for the Commonwealth to do so (for example, due to prolonged failure to achieve the Performance Guarantees – see item 10).                    |
| 28 | Payments on Termination   | 28.1 Where the CISA is terminated for convenience by the Commonwealth [or for a Commonwealth default], the Commonwealth must pay the Operator an amount determined from a table to be attached to the CISA which identifies the amount to be paid if the termination occurs in predefined periods or through another mechanism to be determined.<br>28.2 Where the CISA is terminated for Operator default, the Operator must pay the Commonwealth an amount calculated by reference to the aggregate of:<br>(a) a dollar amount per MW bid by the Operator multiplied by the Maximum Capacity of the Facility; and<br>(b) the greater of 90% of the net historical payments which the Operator received and zero.<br>28.3 Where the CISA is terminated for a prolonged Force Majeure Event, no termination payment will be made. |



*[Drafting note: the Commonwealth welcomes feedback on its proposed approach to the termination payment arrangements regarding prolonged force majeure events, including any impacts on the proposed financing arrangements of potential proponents.]*

|    |                    |   |
|----|--------------------|---|
| 29 | Assignment         | <p>(a) The Operator must not assign, dispose of or otherwise transfer the Operator’s interest in the agreement or undergo a change in control without the Commonwealth’s written consent.</p> <p>(b) Prior to the Commencement Date, the Commonwealth will provide its consent at its absolute discretion.</p> <p>(c) On and from the Commencement Date, the Commonwealth must not unreasonably withhold or delay consent where the assignee or transferee satisfies a number of criteria including that the assignee or transferee has the commercial, financial and technical capability to comply with the Operator's obligations under the CISA or to constructed, operate and maintain the Facility.</p> <p>(d) The Commonwealth must not assign, dispose of or otherwise transfer the Commonwealth’s interest in the CISA agreement without the Operator’s prior written consent other than where the Commonwealth assigns, disposes or otherwise transfer to another entity which has the support of the Commonwealth.</p>   |
| 30 | Risk and Liability | <p>Neither party is liable to the other party under the CISA, at law or otherwise for any kind of indirect or consequential loss or damage nor for any loss of profit, loss of revenue, loss of use, loss of production, business interruption or any other kind of financial or economic loss.</p> <p>The Operator’s liability under the CISA will be limited to an amount which will be specified in the CISA.</p> <p>The Commonwealth’s liability under the CISA will be limited to an amount which is to be specified in the CISA.</p> <p>Nothing in the above provisions limits or otherwise affects:</p> <ul style="list-style-type: none"><li>a. any obligation of the Operator under any payment deduction regime set out in the payment mechanism or any express payment obligation of the Operator;</li><li>b. any express payment obligation of the Commonwealth;</li><li>c. the Operator’s liability under its indemnities including for third party claims and IP infringement;</li><li>d. either party’s liability for wilful breach of the CISA, fraud, wilful misconduct or unlawful act or omission;</li><li>e. either party’s liability for property damage, personal injury or illness or death; and</li><li>f. either party’s liability to the extent that insurance proceeds are or should have been payable in respect of the relevant event.</li></ul> <p>The Operator indemnifies the Commonwealth for third party claims, personal injury, death, IP breaches and breach of the agreement.</p> |



|    |  |  |
|----|--|--|
| 31 | Representations and Warranties by the Operator | The Operator gives market standard representations and warranties to the Commonwealth including as to the accuracy of all information provided as part of the tender.  |
| 32 | Initial Security                               | <p>The Operator must procure and provide the Initial Security within 5 Business Days after the Signing Date. The Operator must procure a replacement Initial Security where the issuer of the Initial Security ceases to hold an Acceptable Credit Rating.</p> <p>The Commonwealth will be able to draw on the Initial Security where the CISA is terminated pursuant to item 4 (Conditions Precedent).</p> <p><b>[Drafting note: the Initial Security will be required for the duration of the CP Period to reflect re-tendering costs that may be incurred due to failure to achieve the CPs.]</b></p> |
| 33 | Performance Security                           | <p>The Operator must procure and provide the Performance Security as part of the CP process set out in the CISA.</p> <p>The Operator must procure a replacement Performance Security where the issuer of the Performance Security ceases to hold an Acceptable Credit Rating.</p> <p>The Commonwealth may draw upon the Performance Security if the Commonwealth believes it is entitled to be paid an amount arising from or in connection with the CISA by the Operator.</p>   |
| 34 | Subcontracting                                 | The CISA will include provisions which require the Operator to identify certain key subcontractors and the Operator must ensure that those key subcontractors undertake the specified work or services specified.  |
| 35 | Dispute Resolution                             | The dispute resolution process will include reference to senior officers, references to an independent expert where expressly provided or to expedited arbitration. Mechanism for joining disputes across the various CISA which are signed will be included in the dispute resolution process.  |
| 36 | Governing Law                                  | The CISA will be governed by and construed in accordance with the laws of the Relevant Jurisdiction.   |
| 37 | Relevant Commonwealth Policies                 | The Commonwealth is in the process of determining which of its policies will apply to the Scheme. When that process has concluded, details of those policies will be included in the CISA.   |



## Schedule 1 – Payment Schedule

### 1. Definitions

In the CISA, unless the context otherwise requires:

**Annual Reconciliation Payment** has the meaning given in section 8.1.

**Annual Revenue Ceiling** means [*bid variable*] (expressed in \$/MWpa) and indexed by CPI multiplied by the Maximum Capacity.

**Annual Revenue Ceiling (Adjusted)** means the Annual Revenue Ceiling multiplied by the Supported Proportion.

**Annual Revenue Floor** means [*bid variable*] (expressed in \$/MWpa) and indexed by CPI multiplied by the Maximum Capacity.

**Annual Revenue Floor (Adjusted)** means the Annual Revenue Floor multiplied by the Supported Proportion.

**Availability Rebate** has the meaning given in clause 6.1.

**Availability Rebate Percentage** has the meaning given in clause 6.2.

**Supported Capacity** means, in relation to the Facility, [insert] MW.

**Supported Proportion** means the Supported Capacity divided by the Maximum Capacity.

**Deemed Availability Period** has the meaning given in section 6.3(b).

**Energy** means electricity exported to the Network by the Facility as measured at the Metering Point.

**Equivalent Availability Threshold** means 97%.

**Equivalent Availability Factor** has the meaning given in section 6.3.

**Financial Year** means each 12 Month period commencing on 1 July and ending on 30 June.

**LOR3 Rebate** has the meaning given in section 7.1.

**LOR3 Rebate Percentage** has the meaning given in section 7.2.

**LOR3 Requirement Shortfall** has the meaning given in section 7.3.

**LOR3 Events (Energy Required)** has the meaning given in section 7.4.

**LOR3 Events (Energy Supplied)** has the meaning given in section 7.5.

**Metering Point** means [insert]. [Drafting note: to be inserted after relevant proposals from proponents are received]

**Month** means a calendar month.

**Net Annual Payment** has the meaning given in 8.2.

**Net Operational Revenue** means, for a period, the Operational Revenue for that period less the Permitted Costs for that period.

**Operational Revenue** means, in respect of a period, the revenue to which the Operator is entitled on an accruals basis in that period (without double counting), including amounts to which the Operator is entitled in that period: [Drafting note: the definition of Operational Revenue will be tested as part of any consultation to ensure it captures all revenue attributed to the Facility/Project]

- (a) from the sale of electricity, hedges, capacity products or green products;
- (b) from the supply of ancillary services, network support services or system services;
- (c) under an offtake contract;



(d) from AEMO (in its capacity as a regulator) in respect of the Project,  
but excluding:

- (e) amounts which the Commonwealth is obliged to pay to the Operator under the CISA;
- (f) liquidated damages to which the Operator is entitled under a Construction Contract or a contract for the operation and/or maintenance of the Facility (except to the extent those liquidated damages compensate for loss or revenue and/or profit); and
- (g) amounts to which the Operator is entitled under or in connection with an insurance policy (other than an insurance policy which compensates for loss of revenue and/or profit).

**Permitted Costs** means, in respect of a period, the following costs and expenses incurred by the Operator on an accruals basis in respect of the Project in that period (without double counting) but only to the extent that they are reasonable:

- [(a) the costs in relation to the import of electricity from the network, including any costs incurred on arm's length terms on account of green products required by law (or required to avoid a shortfall charge imposed by law) to be acquired or surrendered in respect of such electricity;
- (b) the costs incurred by the Project in respect of any ancillary services, network support services or system services;
- (c) any other amounts incurred by the Operator under the NER;
- (d) any payments under any offtake contract, provided that an offtake contract will not qualify under this paragraph (d) if the counterparty to the offtake contract is a related entity of the Operator and the Operator has not demonstrated to the Commonwealth's reasonable satisfaction that the arrangement is on arm's length terms; and
- (e) any other costs and expenses the Operator and the Commonwealth agree are Permitted Costs,

but excluding:

- (f) operating costs (other than those listed in paragraph (a) and (b) above), maintenance costs and other capital costs;
- (g) any income, capital gains, stamp, payroll, land, council or transaction duty, tax or charge, or any taxes or charges analogous to such taxes or charges;
- (h) any fines or penalties (including fines or penalties under the NER); and
- (i) any interest, margin, guarantee or letter of credit fees, line fees, commitment fees, establishment fees, underwriting fees, discount, rent under finance leases or hire purchase or other one-off or recurrent payments in the nature of the foregoing (including gross-ups and recurrent increased cost/reduced yield indemnity payments) payable by the Operator in relation to any debt financing for the Project.]

**Quarter** means each 3 Month period commencing on a Quarterly Date, save that:

- (a) the first Quarter of the Support Period will be the period from the first day of the Support Period until the day before the first Quarterly Date during the Support Period; and
- (b) the last Quarter of the Support Period will be the period from the last Quarterly Date during the Support Period to the Expiry Date unless the CISA is terminated earlier, in which case the last Quarter will be the period from the last Quarterly Date immediately preceding the termination to the Expiry Date.

**Quarterly Date** means every 1 January, 1 April, 1 July and 1 October.

**Quarterly Revenue Ceiling** means the Annual Revenue Ceiling (Adjusted) divided by four.



**Quarterly Revenue Floor** means the Annual Revenue Floor (Adjusted) divided by four.

**Quarterly Revenue Sharing Amount** has the meaning given in section 5.

**Quarterly Support Amount** has the meaning given in section 4.

**Revenue Ceiling Sharing Percentage** means [75]%.

**Revenue Floor Support Percentage** means [75]%.

**Support Year** means:

- (a) for the first Support Year, the period commencing on the first day of the Support Period until the next 30 June;
- (b) subject to paragraph (c), each subsequent 12 Month period during the Support Period commencing on 1 July and ending on 30 June; and
- (c) for the final Support Year, the period from the end of the last full Support Year (as identified in paragraph (b) of this definition) to the Expiry Date unless the CISA is terminated earlier, in which case the last Support Year will be the period from the end of the last full Support Year (as identified in paragraph (b) of this definition) immediately preceding the termination to the Expiry Date.

## 2. Support Payments

- (a) In respect of each Support Year during the Support Period, the Commonwealth agrees to pay to the Operator in accordance with the terms of the CISA any positive:
  - (i) Net Quarterly Payment; and
  - (ii) Annual Reconciliation Payment.
- (b) The Operator agrees to pay to the Commonwealth in accordance with the terms of the CISA the absolute value of any negative:
  - (i) Net Quarterly Payment; and
  - (ii) Annual Reconciliation Payment.

## 3. Net Quarterly Payment

### 3.1 Net Quarterly Payment Calculation

The Net Quarterly Payment for each of the first, second and third Quarters of a Support Year during the Support Period is calculated as follows:

$$B_q = D_q - E_q - F_q - G_q$$

Where:

$B_q$  = the Net Quarterly Payment for the relevant Quarter;

$D_q$  = the Quarterly Support Amount for the relevant Quarter, calculated in accordance with section 4;

$E_q$  = the Quarterly Revenue Sharing Amount for the Quarter, calculated in accordance with section 5;

$F_q$  = the Availability Rebate for the Quarter, calculated in accordance with section 6; and

$G_q$  = the LOR3 Rebate for the Quarter, calculated in accordance with section 7.

### 3.2 Prorata calculation





Where any of paragraphs (a) and (b) of the definition of Quarter apply, the Quarterly Revenue Floor and Quarterly Revenue Ceiling will be adjusted proportionally, having regard to the number of days in the relevant partial quarter as a percentage of the total number of days in the full calendar quarter.

3.3 No claim

The Operator will not be entitled to make any Claim in connection with the Net Quarterly Payment in respect of the fourth Quarter in any Support Year.

4. Calculation of Quarterly Support Amount

The **Quarterly Support Amount** for each Quarter during the Support Period is calculated as follows:

$$D_q = (H_q - I_q) \times J$$

Where:

$D_q$  = the Quarterly Support Amount for the relevant Quarter;

$H_q$  = the Quarterly Revenue Floor;

$I_q$  = the Net Operational Revenue; and

$J$  = the Revenue Floor Support Percentage,

each for the relevant Quarter provided that if the Quarterly Support Amount is less than zero, then it will be deemed to be zero.

5. Calculation of Quarterly Revenue Sharing Amount

The **Quarterly Revenue Sharing Amount** for each Quarter during the Support Period is calculated as follows:

$$E_q = (I_q - M_q) \times N$$

Where:

$E_q$  = the Quarterly Revenue Sharing Amount for the relevant Quarter;

$I_q$  = the Net Operational Revenue for the relevant Quarter;

$M_q$  = the Quarterly Revenue Ceiling; and

$N$  = the Revenue Ceiling Sharing Percentage,

each for the relevant Quarter provided that if the Quarterly Revenue Sharing Amount is less than zero, then it will be deemed to be zero.

6. Availability Rebate

6.1 Calculation of Availability Rebate

The **Availability Rebate** for each Quarter or any Support Year (as applicable) during the Support Period is calculated as follows:

$$F = P \times Q$$

Where:

$F$  = Availability Rebate for the relevant Quarter or Support Year (as applicable);

$P$  = the Availability Rebate Percentage for the relevant Quarter or Support Year (as applicable); and

$Q$  = either the Quarterly Support Amount or the Annual Support Amount (if calculating the Availability Rebate for a Quarter or Support Year respectively).



## 6.2 Calculation of Availability Rebate Percentage

The **Availability Rebate Percentage** for each Quarter or Support Year (as applicable) during the Support Period is calculated as follows:

$$P = EAT - EAF$$

Where:

**P** = the Availability Rebate Percentage for the relevant Quarter or Support Year (as applicable) (expressed as a percentage);

**EAT** = the Equivalent Availability Threshold (expressed as percentage; and

**EAF** = the Equivalent Availability Factor of the Facility for the relevant Quarter or Support Year (as applicable) (expressed as a percentage),

provided that:

- (a) if the Availability Rebate Percentage for the relevant Quarter or Support Year (as applicable) is less than 0%, the Availability Rebate Percentage for that Quarter or Support Year (as applicable) will be deemed to be 0%; and
- (b) if the EAF (expressed as a percentage) for the relevant Quarter or Support Year (as applicable) is less than 10%, the Availability Rebate Percentage for that Quarter or Support Year (as applicable) will be deemed to be 100%.

## 6.3 Calculation of Equivalent Availability Factor

(a) Subject to section 6.3(b), the Equivalent Availability Factor of [the Facility] for a Quarter or Support Year (as applicable) is calculated in accordance with the [first] formula set out in paragraph 8.11 of IEEE 726-2006, provided that:

- (i) a reference to “generation” is taken to be a reference to “export capability”; and
- (ii) a reference to “generating unit” is taken to be the Facility.

**[Drafting note: the Equivalent Availability Factor is expressed as a number (eg. 90) and not a percentage (eg, 95%)]**

- (b) If the export capability is reduced during a period of time as a direct result of a direction or instruction given by AEMO (in its capacity as a regulator) under the NER that:
- (i) relates to the condition of the transmission network; and
  - (ii) was not issued as a response to or as a result of any act or omission of the Operator or the Operator’s officers, employees, subcontractors, invitees or agents,

**(Deemed Availability Period)**, that period of time will be disregarded for the purpose of calculating the Equivalent Availability Factor for the Project.

## 7. LOR3 Rebate

### 7.1 Calculation of the LOR3 Rebate

The **LOR3 Rebate** for each Quarter or Support Year (as applicable) during the Support Period is calculated as follows:

$$G = T \times U$$

Where:

**G** = the LOR3 Rebate for the relevant Quarter or Support Year (as applicable) (in AUD);



**T** = either the Quarterly Support Amount or the Annual Support Amount (if calculating for the relevant Quarter or Support Year respectively); and

**U** = the LOR3 Rebate Percentage for the relevant Quarter or Support Year (as applicable) (expressed as a percentage).

#### 7.2 Calculation of the LOR3 Rebate Percentage

The **LOR3 Rebate Percentage** for each Quarter or Support Year (as applicable) during the Support Period is calculated as follows:

$$U = [50\%] \times V$$

Where:

**U** = the LOR3 Rebate Percentage for the relevant Quarter or Support Year (as applicable); and

**V** = the LOR3 Requirement Shortfall for the relevant Quarter or Support Year (as applicable).

#### 7.3 Calculation of the LOR3 Requirement Shortfall

The **LOR3 Requirement Shortfall** for each Quarter or Support Year (as applicable) during the Support Period is calculated as follows:

$$V = (W - X) / W$$

Where:

**V** = the LOR3 Requirement Shortfall for each Quarter or Support Year (as applicable);

**W** = the aggregate of LOR3 Events (Energy Required) during the relevant Quarter or Support Year (as applicable); and

**X** = the aggregate of LOR3 Events (Energy Supplied) during the relevant Quarter or Support Year (as applicable),

provided that if the Y is greater or equal to W, the LOR3 Rebate Percentage is deemed to be zero.

#### 7.4 Calculation of the LOR3 Events (Energy Required)

The **LOR3 Events (Energy Required)** during a Quarter or Support Year (as applicable) for the Support Period is calculated as follows:

$$W = [50\%] \times Y \times Z$$

Where:

**W** = the aggregate of the LOR3 Events (Energy Required) during the relevant Quarter or Support Year (as applicable) (expressed in MWhs)

**L** = the aggregate of the LOR3 Periods for the LOR3 Events which occurred during the relevant Quarter or Support Year (as applicable) (expressed in hours to the second decimal place).

**Z** = Supported Capacity

#### 7.5 Calculation of LOR3 Events (Energy Supplied)

The LOR3 Events (Energy Supplied) during a Quarter or Support Year (as applicable) for the Support Period is the aggregate amount of Energy exported by the Facility during a LOR3 Event which occurs during that relevant Quarter or Support Year (as applicable) (expressed in MWh).

#### 7.6 LOR3 Events at the End of a Quarter or Support Year

Where a LOR3 Event commences in one Quarter or Support Year (as applicable) and ends in the subsequent Quarter or Support Year (as applicable), only that part of the LOR3 Event and its



consequences which occur in that Quarter or Support Year (as applicable) will be taken into account in that Quarter or Support Year (as applicable). Additional drafting will be included in the CISA to address this issue.

8. Annual Reconciliation Payment

8.1 Annual Reconciliation Payment Calculation

The **Annual Reconciliation Payment** for each Support Year during the Support Period is calculated as follows:

$$A_{SY} = B_{SY} - \sum B_q$$

Where:

$A_{SY}$  = the Annual Reconciliation Payment for the relevant Support Year;

$B_{SY}$  = the Net Annual Payment for the relevant Support Year; and

$\sum B_q$  = the aggregate of the Net Quarterly Payments to which the Operator is entitled for the first three Quarters of the relevant Support Year less the aggregate of the Net Quarterly Payments to which the Commonwealth is entitled for the first three Quarters of the relevant Support Year.

8.2 Prorata calculation

Where any of paragraphs (a) and (c) of the definition of Support Year apply, the Annual Revenue Floor and Annual Revenue Ceiling will be adjusted proportionally, having regard to the number of days in the relevant partial quarter as a percentage of the total number of days in the full calendar quarter.

9. Calculation of Net Annual Payment

The Net Annual Payment for each Support Year during the Support Period is calculated as follows:

$$B_{SY} = D_{SY} - E_{SY} - F_{SY} - G_{SY}$$

Where:

$D_{SY}$  = the Annual Support Amount for the relevant Support Year;

$E_{SY}$  = the Annual Revenue Sharing Amount for the relevant Support Year;

$F_{SY}$  = the Availability Rebate for the relevant Support Year; and

$G_{SY}$  = the LOR3 Rebate for the relevant Support Year.

10. Calculation of Annual Support Amount

The **Annual Support Amount** for each Year during the Support Period is calculated as follows:

$$D_{SY} = (H_{SY} - I_{SY}) \times J$$

Where:

$D_{SY}$  = the Annual Support Amount;

$H_{SY}$  = the Annual Revenue Floor (Adjusted);

$I_{SY}$  = the Net Operational Revenue; and

$J$  = the Revenue Floor Support Percentage,

each for the relevant Support Year provided that if the Annual Support Amount is less than zero, then it will be deemed to be zero.



11. Calculation of Annual Revenue Sharing Amount

The **Annual Revenue Sharing Amount** for each Support Year during the Support Period is calculated as follows:

$$E_{SY} = (I_{SY} + D_{SY} - M_{SY}) * N$$

Where:

$I_{SY}$  = the Net Operational Revenue;

$D_{SY}$  = the Annual Support Amount for the relevant Support Year;

$M_{SY}$  = the Annual Revenue Ceiling; and

$N$  = the Revenue Ceiling Sharing Percentage,

each for the relevant Support Year provided that, if the Annual Revenue Sharing Amount is less than zero then it will be deemed to be zero.



## Schedule 2 – Glossary

| Term                            | Definition   |
|---------------------------------|--|
| <b>Acceptable Credit Rating</b> | means, in respect of an entity, the rating assigned by a ratings agency to the unsecured, senior long term debt or deposit obligations of the entity (unsupported by third party credit enhancement) of at least:<br><br>(a) A– by S&P Global; or<br><br>(b) A3 by Moody's,<br><br>or an equivalent rating approved by the Commonwealth.   |
| <b>Bid</b>                      | a 'dispatch bid' (as defined in the NEL) made in accordance with this agreement and the NEL in respect of the Project.   |
| <b>Change in Law</b>            | the imposition of, change in, change in the application or official interpretation of or repeal of a Law:<br><br>(a) related to a derogation from the NEL or NEL at a State level; or<br><br>(b) which expressly or exclusively applies to the Project, its assets or the Project area or to the Operator but only in its capacity as the person contracting with the Commonwealth to implement the Project,<br><br>but which expressly excludes Market Disruption Events and any change in the NEL or NEL which as at the date of the tender is the subject of a final determination of the Australian Energy Market Commission or the Energy Security Board. |
| <b>COD</b>                      | has the meaning given in item 3.   |
| <b>COD (Sunset)</b>             | has the meaning given in item 3.   |
| <b>COD (Target)</b>             | has the meaning given in item 3.   |
| <b>Commencement Date</b>        | has the meaning given in item 3.   |
| <b>Commercial Close</b>         | when the last CP to be satisfied, has been satisfied, as set out in a notice given by the Commonwealth to the Operator.  |
| <b>Commercial Operation</b>     | has the meaning given in item 7.   |



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| <b>Connection Force Majeure Event</b>  | has the meaning identified in item 22.   |
| <b>Connection Point</b>                | the “connection point” (as defined in the NER) for the Facility.   |
| <b>Construction Contract</b>           | the contract between the Operator and its subcontractor which when performed will result in the completion of the design, construction, commissioning and testing of the Facility to enable it to comply with the Performance Guarantees.  |
| <b>Construction Period</b>             | the period commencing on the Commencement Date and continues up to and ends on the COD.  |
| <b>CP</b>                              | the conditions precedent set out in item 4.  |
| <b>CP Period</b>                       | the period commencing on the Signing Date and ending on the earlier of the CP Sunset Date and the Commencement Date.   |
| <b>CP Sunset Date</b>                  | has the meaning given in item 3.   |
| <b>CP Target Date</b>                  | has the meaning given in item 3.   |
| <b>Expiry Date</b>                     | the Final Expiry Date unless this CISA terminated earlier, in which case the CISA will expire on the date of such earlier termination.   |
| <b>Facility</b>                        | [ <i>bid variable</i> ]  |
| <b>Final Expiry Date</b>               | the date which is the fifteenth anniversary after the earlier of the day after COD and the Final Support Commencement Date (unadjusted for Force Majeure Events).  |
| <b>Final Support Commencement Date</b> | has the meaning given in item 3.   |
| <b>Financial Close</b>                 | <p>the Operator has secured the external debt financing that is required to develop and construct the Facility and all conditions precedent to the relevant agreements evidencing that external debt financing and for the first draw down of that debt financing have been satisfied or waived and the financing of the first drawdown is made available to the Operator and includes when:</p> <p>(a) the Operator has secured the equity and/or external debt financing that is required to fund the whole of the design, construction, commissioning and testing of the Project; and</p> |



|                                      |  |
|--------------------------------------|--|
|                                      | (b) the Operator issues an unconditional and irrevocable Notice to Proceed for the full scope of work under the Construction Contract for the Project.   |
| <b>Force Majeure Event</b>           | a Project Force Majeure Event and a Connection Force Majeure Event or one of them as the case may be.  |
| <b>Initial Security</b>              | a letter of credit or bank guarantee:<br>(a) with a face value of not less than [#]; <i>[Drafting note: Amount to be confirmed]</i><br>(b) issued by an Australian branch of an authorised deposit taking institution with an Acceptable Credit Rating;<br>(c) which can be drawn in Melbourne; and<br>(d) which is otherwise in a form reasonably satisfactory to the Commonwealth. |
| <b>Input Resource</b>                | the matter or material required to generate electricity, including (without limitation), wind, energy of the sun and biomass.  |
| <b>Knowledge Sharing Deliverable</b> | the deliverables specified in the knowledge sharing plan, as set out in a schedule to the CISA.  |
| <b>LOR3 Event</b>                    | means AEMO has declared that ‘LOR Load Shedding’ is occurring in the Relevant Jurisdiction region of the NEM as a result of a shortfall of available capacity reserves (an actual LOR3) in accordance with the Reserve Level Declaration Guidelines and the NER.   |
| <b>LOR Period</b>                    | in respect of an LOR3 Event, the period of that event.   |
| <b>Market Disruption</b>             | has the meaning given in item 25.  |
| <b>Maximum Capacity</b>              | <i>[bid variable]</i>  |
| <b>Milestone Event</b>               | see item 3 and for the avoidance of doubt, Commercial Operation will be a Milestone Event.   |
| <b>Milestone Date (Scheduled)</b>    | the date by which a relevant Milestone Event must be achieved.   |
| <b>Notice to Proceed</b>             | the unconditional and irrevocable notice issued by the Operator to proceed for the full scope of work under the Construction Contract which are capable of delivering the Project Characteristics.   |
| <b>Notice to Proceed Date</b>        | has the meaning given in item 3.   |





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| Performance Guarantee       | has the meaning identified in item 10.4  |
| Performance Security        | means a letter of credit or bank guarantee:<br>(a) with a face value of not less than the [#]; <i>[Drafting note: Amount to be confirmed]</i><br>(b) issued by an Australian branch of an authorised deposit taking institution with an Acceptable Credit Rating;<br>(c) which can be drawn in Melbourne; and<br>(d) which is otherwise in a form reasonably satisfactory to the Commonwealth. |
| Permitted Cost              | has the meaning given in Schedule 1.   |
| Project                     | <i>[bid variable]</i>  |
| Project Characteristics     | a description of the proposed characteristics of the Facility. <i>[Drafting note: proponents will be asked to bid these characteristics as part of its tender response. See item 10 for further information.]</i>  |
| Project Force Majeure Event | has the meaning identified in item 21.   |
| Registration Date           | has the meaning given in item 3.   |
| Relevant Jurisdiction       | the State or Territory in which the Facility is to be located.   |
| Signing Date                | the date on which the last party signs the CISA.   |
| Support Period              | commences on the day after the last day of the Construction Period and ends on the Expiry Date.  |
| Trading Protocol            | means a protocol setting out in reasonable detail the processes and strategy which the Operator uses to generate revenue directly or indirectly from the Facility and/or the Project.  |