

Department of Planning and Environment

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# Draft Private Agreement Guideline



Guidance for State significant  
renewable energy development

November 2023



# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Draft Private Agreement Guideline

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# 1 Introduction

Australia is currently undergoing a transformation that will change the way that we generate and use energy. The NSW Government is committed to providing contemporary guidance to ensure that communities are protected and can benefit from this opportunity.

Renewable energy development, including large-scale solar and wind energy projects, is usually located or hosted on private land. This requires the applicant or developer to enter into a private agreement with the host landowner to enable the project to go ahead. These agreements are called ‘host landowner’ agreements.

Renewable energy projects can also impact land surrounding the project (referred to as ‘adjacent land’). Applicants often enter into agreements with adjacent landowners when impacts from the project may affect their land or amenity of their property and these impacts cannot be managed or mitigated in other ways. These types of private agreements are called ‘impact’ agreements.

This guideline contains general information and guidance about the role of private agreements and what issues should be considered when entering into these agreements and is aimed at assisting applicants and both host and adjacent landowners. This guideline also includes a template that can be used as a guide when preparing and negotiating private agreements.

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## 1.1 Application of the guideline

This guideline applies to all solar and wind energy generation projects (large-scale renewable energy projects or proposals) that are declared to be State significant development (SSD).

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## 1.2 Relationship to other guidelines

This guideline should be read in conjunction with other documents (where relevant), including the:

- *Large-scale Solar Energy Guideline (2022)*, and
- *Draft Wind Energy Guideline (2023)*.

The advice in this guideline will replace information on private agreements in the *Large-scale Solar Energy Guideline*.

## 2 Types of agreements

At various stages of a project's life cycle, a range of private agreements may be made between landowners and applicants for various purposes relating the development. These include:

- Licence agreements
- Option agreements
- Land purchase agreements
- Host agreements - which may include terms of a licence or lease for infrastructure on land
- Impact agreements – relating to impacts of the proposed development.

Although the planning system allows for such agreements, the consent authority does not participate in any negotiations and is not generally privy to the specifics of any agreed compensation. Notwithstanding, the department has identified a range of matters that applicants and landowners should consider when entering into any such agreements. Parties should obtain their own independent and suitably qualified legal and financial advice about their rights and obligations before entering into any such agreement.

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### 2.1 Licence agreement

A 'licence' agreement (also known as an 'access' agreement) allows the applicant, and associated parties, rights to access a landowner's property for the purposes of surveys and assessments, typically for a specified duration of time. This is usually negotiated at the initial scoping stage to enable the applicant to determine the suitability of the site and feasibility of a project.

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### 2.2 Option agreement

An option agreement provides the applicant with rights to lease some or all of a landowner's property for the purposes of construction and operation of a renewable energy project. This form of agreement allows the applicant to access the property to assess feasibility of the project site with an option to enter into a more formal lease agreement. Applicants may choose to not enter into a licence agreement and move directly to an option agreement.

Similar to an option to lease agreement, an applicant and landowner may enter into an option to buy agreement. An option to buy agreement allows the applicant to purchase the land if or when the project proceeds to a certain point, usually construction.

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### 2.3 Land purchase agreement

In some circumstances, an applicant may choose to offer to purchase the land subject to the proposed development. This may include instances where existing agricultural operations are likely to be severely impacted by the project.

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## 2.4 Host agreements – ‘host land’

A host agreement is a complex long-term agreement negotiated between a project developer and landowner that places significant obligations and responsibilities on the landowner.

Renewable energy projects usually involve one or more ‘host’ landowners willing to have project infrastructure located on their land. This agreement is like a commercial lease and should set out the terms to enable the applicant or project owner to install, operate, maintain and decommission the project infrastructure.

Landowners may also enter into agreements for land access, private transmission line easements, substations, office buildings and other items associated with a project.

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## 2.5 Impact agreements – ‘adjacent land’

Renewable energy projects may significantly impact other landowners who own land surrounding the project area (referred to as ‘adjacent land’). The applicant and affected landowners can enter into agreements to manage impacts to adjacent land (sometimes referred to as “neighbour agreements”) and any exceedances of relevant assessment criteria (such as noise criteria).

These types of agreements may be negotiated to provide for the implementation of a broader suite of measures, such as financial or other mitigation and management measures, usually to mitigate a high level of impact. For example, agreements are commonly negotiated to provide for the implementation of landscaping or screening to mitigate high visual impacts from a project.

Applicants must submit copies of all impact agreements to the department and maintain the currency of these agreements over the life of the project (for example, if the agreement term is extended or the nature of impacts covered by the agreement changes). Personal information and commercially sensitive information will be treated in confidence and will not be disclosed by the department.

# 3 Guidance

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## 3.1 General guidance

The department has prepared some general guidance for applicants and landowners to consider when negotiating agreements for renewable energy projects. This guidance does not constitute legal advice and parties should obtain independent legal advice about their rights and obligations before entering into any agreement.

As a general guide, agreements should:

- be legally enforceable
- remain in force for the duration of the impacts being managed by the agreement
- provide for the transfer of obligations to any new owner of the renewable energy infrastructure if it is subsequently sold
- provide for the transfer of any obligations to any new landowner if the subject property is subsequently sold
- clearly identify the scope of any impacts that are the subject of the agreement, whether identified impacts are subject to the implementation of agreed mitigation measures and who is responsible for carrying those out
- include considerations if the project is cancelled, materially delayed or the scope and scale of the project materially changes, particularly if the changes result in negative impacts on the landowner
- identify any limitations on how the landowner may use their land, including adjoining land, for the duration of the project (such as dust generation avoidance, grazing of stock)
- identify any compensation, costs or fees that are payable by either party in certain circumstances (such as rent, abatement of rent, contributions to works)
- providing a means of resolving disputes.

Agreements should be specifically tailored to the landowner's individual circumstances and the project. Any agreement should be fair, reasonable and written in plain English. The landowner should have access to and obtain appropriately skilled legal and financial advice before entering into any agreement. The applicant should bear all reasonable costs associated with either entering into the agreement or understanding the implications of the agreement, including the landowner's costs for independent advice.

Landowners should consider whether any proposed agreement includes a confidentiality clause. Agreements should not include perceived unfair clauses or prevent a landowner from raising concerns about breaches of a consent other than those they have agreed to accept as part of the agreement. Landowners should avoid signing confidentiality agreements unless the agreement also includes clauses to manage impacts from the development.

Other landowner agreements (such as agreements for transmission line easements (excluding major transmission easement corridors), other easement access or road access) should also be negotiated and finalised with the landowners in a fair and reasonable manner, with appropriate consultations

engaging affected landowners and neighbours in determining the final approach and routes to be taken.

Regarding the negotiation process, applicants should ensure that landowner expectations are properly managed from the outset. Applicants should be mindful of the consequences which may arise from their conduct in negotiations with landowners. They should also be mindful of the magnitude of impact on landowners associated with any changes to proposed infrastructure areas and associated neighbour compensation or host landowner offers.

Further information and general guidance for landowners regarding agreements for renewable energy projects can be found in the [NSW Farmer's Renewable Energy Landholder Guide](#) and the [Australian Energy Infrastructure Commissioner's Considerations for Landholders before entering into Commercial Agreements](#).

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## 3.2 Guidance for hosts

It is especially important for operators of the development to ensure that host landowners are properly informed of the implications of entering into host agreements and have a good understanding of the nature and scale of the predicted impacts of the project. This may include opportunities for the landowner to visit other similar operating renewable energy projects and/or to meet other host landowners.

Other considerations for discussion with the host landowner may include:

- how the project will affect any land use activities (such as agricultural practices, fire management)
- the components of the project which are the subject of the agreement such as agreed energy generation infrastructure, internal roads and other infrastructure locations (cabling, construction offices, substations, transmission lines etc)
- relevant impact predictions that may be of concern to the local community (such as visual, noise, ecological, transport, social/community, economic impacts) and identifying proposed assessment and management options
- the impacts of the project on development rights, vegetation protection and subdivision options
- the process for making changes to location and routing of project infrastructure to the landowner's property (such as access roads, cabling) and responsibilities for maintenance of such infrastructure
- the creation of any easements that may be required and the terms of agreement for accessing any easements via a landowner's property, noting easements are not addressed in the model clause template document
- provisions for ongoing monitoring (if required).

Appendix A provides a private agreement template containing model clauses that relate to host impact agreements. The template includes standard legal and financial clauses as well as guidance around the consideration of other impacts that may be relevant to host landowners. For example, certain phases of the project may have specific impacts that should be clearly identified or negotiated with the host landowner.



For the construction phase, such considerations may include:

- the proposed internal road layout for the project, having regard to the potential impacts on farming operations
- the location of other infrastructure (cabling, construction offices, substations, transmission lines etc.), including any temporary infrastructure or buildings required during construction
- on-site procedures, such as biosecurity compliance requirements for contractors.

For the rehabilitation and decommissioning phase, there is a clear expectation that the project will be decommissioned at the end of its operating life.

However, it is important for the landowner to have a clear understanding of how the project owner or operator will manage the decommissioning phase.

In relation to decommissioning, key matters for the landowner to discuss or negotiate as part of an agreement may include the following:

- scope of the decommissioning activities required (including what infrastructure will and will not be removed from the land)
- preparation of a decommissioning and rehabilitation plan and provision of the plan to the landowner
- decommissioning responsibilities of the parties
- likely decommissioning costs and financial assurances.

The owner or operator of a renewable energy development project should be responsible for decommissioning and rehabilitation, and this should be reflected in a host agreement with the landholder. This agreement may also prescribe assurances to fund decommissioning, including ongoing evidence that the applicant has the capacity to fund decommissioning activities.

Applicants and hosts can estimate the costs of decommissioning for the development using the department's decommissioning cost calculator tool.

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### 3.3 Guidance for owners of adjacent land

When entering into impact agreements, applicants must ensure the landowner is properly informed of the implications of entering into the agreement and have a good understanding of the nature and scale of the predicted impacts of the project.

In this regard, applicants should refer to the guidance and tools provided in the *Draft Wind Energy Guideline (2023)* and *Large-Scale Solar Energy Guideline (2022)* to assist in explaining the proposed scope and likely impacts of the project.

Appendix A provides a template agreement that includes model clauses for impacts on adjacent land. The template includes standard legal and financial clauses as well as guidance around the consideration of other impacts that may be relevant to landowners of adjacent land.

# Appendix A

## Model clause template

### Terms of use and disclaimer

This template is provided for use by the public including persons engaging in commercial activities.

No person or entity (including, without limitation, the State of New South Wales) associated with the development of the template makes any representation or warranty regarding its contents, or is liable for any loss or damage whatsoever that may result from the use of the template or any portion or variation thereof, or any other materials presented in conjunction with the template, or any errors or omissions in its contents.

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Users of the template must exercise their own skill and judgment in adopting or adapting any part of the template for their own use and should seek advice from a suitably qualified legal practitioner and from experts, where appropriate.

### How to use this template

The template contains a range of standard clauses that can be used when preparing agreements and more specific clauses that may be relevant to either host agreements or impact agreements for adjacent land. For ease of reference, the document is colour coded as follows:

- **Red text** identifies clauses they may be applicable for impact agreements for adjacent land
- **Green text** identifies clauses that may be applicable for host agreements
- **Blue highlight** provides explanatory notes, and
- **Yellow highlight** identifies areas of the template that need to be tailored to individual circumstances.

Dated

XXXX

## Negotiated Agreement

*[Insert Name of Renewable Energy Project]*

*[Insert name of Developer/Renewable Energy Company]* (insert ACN [ACN#])

*[Insert name of Landowner]* (insert ACN [ACN#] if landowner is a company)

### IMPORTANT NOTE:

EACH PARTY SHOULD SEEK INDEPENDENT LEGAL  
ADVICE BEFORE SIGNING ANY AGREEMENT

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This Deed of Agreement is dated

**Parties:**

Developer

[Insert Developer details: name, ACN, address]

Landowner

[Insert Landowner details: name, ACN (if applicable) address]

[**Note** If there is more than one developer or landowner, then generally, each developer and landowner will need to be named as a party to the Impact Agreement, where appropriate.]

**Recitals:**

[**Note** The Recitals should set out relevant details relating to the ownership of land and the location of proposed development. Some examples are provided below, but the Recitals should be adapted to the particular situation. Two sets of model Recitals are provided, depending on whether the Development will take place on the Landowner's land, or whether it will just be adjacent to that land.]

**Option 1: Where the Development is taking place on the Adjacent Land:**

[Note: Use this Option where the Developer is not installing equipment or infrastructure on the Land, but there may be other impacts by the Developer to the Land such as glare, wind emissions, noise and dust]

- A** The Landowner owns the Land.
- B** [The Developer owns /or operates on the Adjacent Land]
- C** The Developer [has made/proposes to make] a Development Application to the Consent Authority in respect of Development on the Adjacent Land.
- D** The Developer and the Landowner enter into this Agreement to facilitate the carrying out of the Development on the Adjacent Land, and more specifically, to address certain Impacts associated with the Development as they relate to the Adjacent Land, the Land, the Landowner and the Landowner's Invitees.
- E** The Landowner and Developer agree that this Agreement constitutes an 'impact agreement' as referred to in the NSW government's Private Agreement Guideline.

**Option 2: Where the Development is taking place on the Land:**

[Note: Use this Option where the Developer is installing infrastructure, equipment or development on the Land directly. Refer to specific obligations in relation to decommissioning and monitoring]

- F** The Landowner owns the Land.
- G** The Developer [has made/proposes to make] a Development Application to the Consent Authority in respect of Development on the [Land] / [an area including the Land].

- H** The Developer and the Landowner enter into this Agreement to facilitate the carrying out of the Development on the [Land] / [Adjacent Land and the Land], and more specifically, to address certain Impacts associated with the Development as they relate to the Adjacent Land, the Land, the Landowner and the Landowner's Invitees.
- I** The Landowner and Developer agree that this Agreement constitutes a 'host agreement' as referred to in the Large-Scale Solar Energy Guideline and the Private Agreement Guideline.

## It is agreed:

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Agreement, unless the context clearly indicates otherwise:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Activities** means any lawful activities carried out associated with the Development as approved.

**Address for Service** means the address of each party appearing in Schedule 1 or any new address notified by any party to all other parties as its new Address for Service.

**Adjacent Land** is the area of land particularised in Schedule 2 on which the Development Works will be carried out by or behalf of the Developer.

**Agreement** means this agreement between the Developer and the Landowner including the Schedules and any documents referenced in this Agreement.

**Approvals** means all necessary licences, consents, approvals and agreements (including the approval of any relevant Authority) for the Development, and includes any required approval for the construction and operation of the Development.

**Authority** means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

**Bank Bill Swap Rate** means the average bid rate for Bills having a tenor of 90 days or 3 months published by the ASX as the Bank Bill Swap Rate, or any replacement rate calculated and published by the ASX.

**Bank Guarantee** means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,



- (f) Westpac Banking Corporation, or
- (g) another financial institution approved by the Landowner,

to pay an amount or amounts of money to the Landowner on demand and containing terms and conditions reasonably acceptable to the Landowner.

**Business Day** means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

**Claim** means any action, complaint, suit, proceedings, claim or demand or any legal, administrative, governmental, arbitral or other proceedings or investigation, other than the dispute resolution process in this Agreement.

**Confidential Information** means information regarding compensation under this Agreement that:

- (a) is by its nature confidential or which a party ought reasonably to know is confidential;
- (b) is disclosed or provided in any form by any party to the other party in connection with the subject matter of this Agreement;
- (c) not including information that is in or enters the public domain through no fault of a party or made available to a party by a person not then under an obligation of confidence to the party in relation to that information.

**Commencement Date** means the date when the parties have:

- (a) signed the Agreement (whether singular or in counterparts); and
- (b) exchanged the counterparts.

**Compensation Amount** means the amount of the monetary contribution to be paid by the Developer to the Landowner relating to the Impact to the Land, in accordance with the terms of this Agreement.

**Consent Authority** has the same meaning as in the Act.

**Construction Certificate** has the same meaning as in the Act.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Dealing** means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

**Developer** means the developer specified in the 'Parties' section in this Agreement, unless otherwise specified in this Agreement.

**Development** means [insert description of the proposed development].

**Example:** the [wind energy project known as insert details of application], generally in accordance with the plan in Schedule 4 and DA [insert application number] [lodged with or determined by] the Consent Authority on [insert date].

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act, and includes any Development Consent as modified from time to time.

**Development Works** means the Works required to undertake the Development.

**Equipment** means [insert relevant details] [example: anemometers, pyranometers, pyrhemometers, radiometers, lidars, sodars, wind monitoring masts, fauna detection equipment] and such other equipment as the Developer may reasonably require in connection with the Development.

**Expert** means:

- (a) a suitably qualified and experienced professional who will carry out the assessment required in accordance with this Agreement; and
- (b) a party that has no current or future involvement with:
  - (i) the project management of;
  - (ii) design of; and/or
  - (iii) superintendency of;

the Development Works.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Impact** [*Note: Insert and adapt a model clause below, which should be amended as necessary with regards to what type of impact applies resulting from the relevant Development; whether it is a wind energy / solar energy project that relates to this Agreement, and whether the Development takes place on the Land, on the Adjacent Land, or both. Where the Development takes place on the Land, other direct impacts to the Land from the Development should be listed*]

**Option 1: Where the Development is taking place on the Adjacent Land:**

[Note: Use this Option where the Developer is not installing equipment or infrastructure on the Land, but there may be other impacts by the Developer to the Land such as glare, wind emissions, noise and dust]

**Impact** means any [noise impact, visual impact, air quality impact or blasting impact or potential impact] relating to or affecting the Land, the Landowner or the Landowner's Invitees associated with the Development on the Adjacent Land, fully particularised in Schedule 5 and may include the following matters:

- (a) exceedances of prescribed environmental limits set out in any Approvals for the Development in relation to noise and vibration;
- (b) noise relating to the operation of wind turbines and ancillary infrastructure, including both aerodynamic and mechanical noise;
- (c) vegetation clearing;
- (d) other elements relating to the operation of the Development which can be quantitatively assessed;
- (e) visual impacts relating to the visual appearance of the Development including lighting and shadow flicker impacts;

- (f) glint or glare relating to solar infrastructure;
- (g) potential health impacts relating to the Development, including perceived risks associated with electric and magnetic fields;
- (h) adverse impacts to the Land caused by decommissioning and rehabilitation of the Development on the Adjacent Land at the end of its lifespan;
- (i) disruption to radio communication services;

[Insert as appropriate].

#### Option 2: Where the Development is taking place on the Land:

[Note: Use this Option where the Developer is installing infrastructure, equipment or development on the Land directly. Refer to specific obligations in relation to decommissioning and monitoring]

**Impact** means any [noise impact, visual impact, air quality impact or blasting impact or potential impact] relating to or affecting the Land, the Landowner or the Landowner's Invitees associated with the Development [on the Land] / [on the Adjacent Land and the Land], fully particularised in Schedule 5 and may include the following matters:

- (a) exceedances of prescribed environmental limits set out in any Approvals for the Development in relation to noise and vibration;
- (b) noise relating to the operation of wind turbines and ancillary infrastructure, including both aerodynamic and mechanical noise;
- (c) vegetation clearing;
- (d) other elements relating to the operation of the Development which can be quantitatively assessed;
- (e) visual impacts relating to the visual appearance of the Development including lighting and shadow flicker impacts;
- (f) glint or glare relating to solar infrastructure;
- (g) potential health impacts relating to the Development, including perceived risks associated with electric and magnetic fields;
- (h) adverse impacts to the Land caused by decommissioning and rehabilitation of the Development on the Adjacent Land at the end of its lifespan;
- (i) disruption to radio communication services;
- (j) impacts on biosecurity in relation to the Land from entry to the Land by the Developer or its agents;
- (k) disturbance to residents or livestock from the Development;

[Insert as appropriate].

**Insolvent** means the occurrence of any of the following:

- (a) a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a party becomes unable to pay its debts as they fall due;
- (c) a party enters into any arrangement with creditors;
- (d) a party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver.

**Invitees** means any employees, agents, contractors, clients, customers, and other persons on the Land with the consent of the Landowner.

**Land** means the land described in Schedule 3 and shown on the map in Schedule 4; and includes any residence or building located on the land.

**Landowner** means the Landowner as set out in the 'Parties' section in this Agreement.

**Large-Scale Solar Energy Guideline** means the *Large-Scale Solar Energy Guideline* released by the NSW Department of Planning and Environment dated August 2022 and revised from time to time.

**Law** means Commonwealth and State legislation including regulations, by laws, and other subordinate legislation, the requirements and guidelines of any Authority, including the listing rules, with which a party is legally required to comply, and common law and equity.

**Licence** means the licence conferred in clause 8 of this Agreement.

**Licence Fee** means [insert amount].

**Material Adverse Delay** involves any significant delay during the operation of this Agreement, in relation to the following, which causes material impact to the Landowner:

- (a) the commencement or implementation of the Development Works;
- (b) compliance with the Development Consent conditions by the Developer;
- (c) completion of any decommissioning requirements in the Development Consent or in this Agreement;
- (d) any payments due by the Developer to the Landowner in accordance with this Agreement (including the Compensation Amount or the Licence Fee);
- (e) any provision of Securities in accordance with this Agreement (including a replacement security).

**Material Adverse Impact Changes** involve impacts (whether noise impact, visual impact or air quality impact), to the Land, the Landowner or the Landowner's Invitees which involves or results from:

- (a) breaches of the Development Consent requirements by the Developer; or

- (b) impact not reasonably foreseeable by the parties at the time of entering this Agreement; or
- (c) impact which significantly exceeds any of the impacts described in this Agreement, whether by reference to threshold criteria or otherwise.

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Mitigation Works** are any works proposed to be undertaken by the Developer to ameliorate the Impact to the Land, the Landowner or the Landowner's Invitees, more fully particularised in Schedule 6.

**Plans and Specifications** means the plans and specifications prepared by the Developer in accordance with clause 5.1 of this Agreement.

**Private Agreement Guideline** means the *Private Agreement Guideline for Energy Development* released by the NSW Department of Planning and Environment on or about [insert] 2023 and revised from time to time.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021* (NSW), or if applicable, the preceding Regulation and its corresponding provisions.

**Related Body Corporate** has the meaning given to it in the Corporations Act 2001 (Cth);

**Renewable Energy Guidelines** means [insert relevant guidelines applying to the development relating to the renewable energy project].

Example 1: the *NSW Large Scale Solar Energy Guideline* released by the NSW Department of Planning and Environment on or about August 2022 and revised from time to time.

Example 2: the *NSW Wind Energy Guideline for State Significant wind energy development* released by the NSW Department of Planning and Environment on or about December 2016 and revised from time to time.

**[Note the item listed above is an example, and should be amended as necessary with regard to the development application; whether it is a wind energy / solar energy project that relates to this agreement]**

**Security** means a Bank Guarantee or bond that is reasonably satisfactory to the Landowner provided in accordance with the terms of this Agreement;

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and Costs concerning them.

**Terminating Date** means the date that this Agreement terminates, being the earliest of the following events:

- (a) completion of the decommissioning of the last piece of [insert wind energy / solar energy infrastructure] relating to the Development in accordance with this Agreement (where applicable) [such a wind turbine, solar panel or other Equipment];

**[Note the items listed above are examples, and should be amended as necessary with regards to what type of development applies; whether it is a wind energy project / solar energy project that relates to this Agreement]**

- (b) the completion of the Development in accordance with the conditions of any approved Development Consent; or
- (c) this Agreement otherwise terminating in accordance with its terms;

**Work** has the same meaning as in the Act.

## 1.2 Interpretation

In this Agreement unless the context clearly indicates otherwise:

- (a) a reference to **this Agreement** or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Agreement;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Agreement;
- (f) the **schedules** and **annexures** form part of this Agreement;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Agreement;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;

- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2. Operation of Agreement**

### **2.1 Operation**

This Agreement commences on the Commencement Date and it ends on the Terminating Date.

### **2.2 Application**

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

### **2.3 Characterisation of Agreement**

The parties acknowledge and agree that this Agreement is a private agreement in accordance with the Renewable Energy Guidelines that apply to the Development and any approved Development Consents.

### **2.4 Status of Agreement**

This Agreement will remain in force until the obligations of the parties under this Agreement are completed, or this Agreement is terminated in accordance with its terms or by operation of Law.

### **2.5 Provision of Agreement to Department**

Notwithstanding any other provision of this Agreement, upon execution of this Agreement including any variation to this Agreement, the parties agree that the Developer will provide a full copy of this Agreement and any variation to this Agreement to the NSW Department of Planning and Environment.

### **2.6 Notice of Commencement of Development**

Once any substantive works have been commenced by on behalf of the Developer in accordance with any Development Consent relevant to the Development, the Developer is required to provide written notice of that commencement within a reasonable period of time to the Landowner.

### 3. Provision of Information by Developer

#### 3.1 Development Application and Consent Documents

- (a) At the times set out in this clause 3.1 the Developer must provide to the Landowner copies of the following documents:
- (i) any existing Development Consents associated with the Development;
  - (ii) any Construction Certificates associated with the Development; and
  - (iii) any Development Applications relating to the Development and any applications to modify or alter the Development,
- including for the avoidance of doubt all assessment documents accompanying those documents, any decommissioning and rehabilitation plan associated with the Development (whether draft or final), prepared in relation to any Development Application, Development Consent or Construction Certificate.
- (b) The timing for the provision of the documents above is as follows:
- (i) if the document exists before the Commencement Date, promptly after the Commencement Date; or
  - (ii) if the document arises after the Commencement Date, promptly after the document is created (whether in draft or in final).
- (c) The Developer must provide copies of any documents, including reports, provided to the Consent Authority or any certifier in compliance with:
- (i) a condition of any Development Consent which relates to the Impact to the Land or the Landowner; or
  - (ii) a condition of any Development Consent which relates to any decommissioning or rehabilitation relating to the Development.
- (d) This clause does not affect the provision of Plans and Specifications required under clause 5.1.

#### 3.2 Key information sheet to be Provided to Landowner

Promptly after the Commencement Date, the Developer must provide the Landowner with a document written in plain English which clearly describes the following matters:

**Option 1: Where the Development is taking place on the Adjacent Land:**

**[Note: Use this Option where the Developer is not installing equipment or infrastructure on the Land, but there may be other impacts by the Developer to the Land such as glare, wind emissions, noise and dust]**



- (a) the extent of the Development or proposed Development on the Adjacent Land;
- (b) the likely location of infrastructure associated with the Development, including through the provision of a map;
- (c) the details of any likely Impact resulting from the Development affecting, or potentially affecting, the Land, the Landowner and the Landowner's Invitees;
- (d) when the Development is proposed to commence following the grant of Approvals necessary to commence development;
- (e) where and when it is proposed that any Development Works relating to the Development will occur and the duration of any associated construction period;
- (f) the duration of any proposed Development;
- (g) the name, phone number and email address of a representative of the Developer who the Landowner can contact in relation to any matter arising under this Agreement.

**Option 2: Where the Development is taking place on the Land:**

**[Note: Use this Option where the Developer is installing infrastructure, equipment or development on the Land directly. Refer to specific obligations in relation to decommissioning and monitoring]**

- (a) the extent of the Development or the proposed Development on the Land;
- (b) the likely location of infrastructure associated with the Development on the Land, including through the provision of a map;
- (c) the details of any likely Impact resulting from the Development affecting, or potentially affecting, the Land, the Landowner and the Landowner's Invitees;
- (d) when the Development is proposed to commence following the grant of Approvals necessary to commence development;
- (e) where and when it is proposed that any Development Works relating to the Development will occur and the duration of any associated construction period;
- (f) the duration of any proposed Development;
- (g) routes of access and timing of access;
- (h) the types of vehicles which will access the Land;
- (i) the likely timeframes for decommissioning infrastructure associated with the Development on the Land;
- (j) the name, phone number and email address of a representative of the Developer who the Landowner can contact in relation to any matter arising under this Agreement; and
- (k) [Add as appropriate].

### 3.3 Further Amended Information to be Provided to the Landowner

If the information required to be provided in clause 3 of this Agreement is amended by the Developer from time to time for any reason, the Developer must provide those amended documents to the Landowner within a reasonable period of time from the date of any amendment.

## 4. Impact of Development

### 4.1 Land impacted by Development

**Option 1: Where the Development is not taking place on the Land:**

*[Note: Use this Option where the Developer is not installing equipment or infrastructure on the Land, but there may be other impacts by the Developer to the Land such as glare, wind emissions, noise and dust]*

- (a) The Landowner acknowledges and agrees that the Land is Impacted by the Development.

**Option 2: Where the Development is taking place on the Land:**

*[Note: Use this Option where the Developer is installing infrastructure, equipment or development on the Land directly. Refer to specific obligations in relation to decommissioning and monitoring]*

- (a) The Landowner acknowledges and agrees that the Land is Impacted by the Development which takes place on the Land.

- (b) The Impacts to the Land, the Landowner and the Landowner's Invitees are described in Schedule 5 to this Agreement.

### 4.2 Landowner's consent to Impacts

- (a) The Landowner acknowledges that the Developer will be carrying out the Development Works and the Development.
- (b) The Landowner acknowledges and agrees that the Development may cause adverse Impacts to:
- (i) the Land;
  - (ii) the Landowner; and
  - (iii) the Landowner's Invitees.
- (c) During the operation of this Agreement, the Landowner consents to the Developer undertaking Development Works and Development causing, or potentially causing, adverse Impacts to:
- (i) the Land;
  - (ii) the Landowner; and
  - (iii) the Landowner's Invitees.
- (d) The Landowner agrees that the Impacts may occur on the terms set out in this Agreement:

- (i) for the duration of this Agreement; or
- (ii) for the duration specified in Schedule 5 in relation to a specific Impact.

#### **4.3 Landowner Consent and Development Applications**

- (a) This clause 4.3 is subject to clauses 4.4 and 4.9 below.
- (b) The Landowner acknowledges and agrees that it supports and does not object to the Development.
- (c) The Landowner acknowledges that the Developer may be required to lodge one or more Development Applications for the Development.
- (d) The Landowner acknowledges and agrees that it will not make, cause to be made, support, or assist any objections (whether, written, verbal or otherwise) to any Development Applications for the Development made by or on behalf of the Developer.
- (e) The Landowner acknowledges and agrees that where reasonably required, it will provide the following documents to the Developer:
  - (i) written owners consent; or
  - (ii) any other documents reasonably required,to enable the lodgement and progression of any Development Applications for the Development or to demonstrate evidence of commitment to the Development.

#### **4.4 Landowner's Right to Participate in Planning and Regulatory Processes**

The parties acknowledge and agree that despite clause 4.3, the Landowner continues to have the right:

- (a) to correspond and communicate with the Consent Authority or any other relevant Authority in the event that the Developer does not comply with any Development Consent conditions or the conditions of any other Approvals relating to the Development Works or in the event of Material Adverse Delay;
- (b) to participate in community engagement, stakeholder consultations or any other public consultation processes relating to or in connection with the Development;
- (c) to make submissions on any Development Application relating to or in connection with the Development, including to raise concerns relating to impacts that are not the subject of any Agreement, provided such submission does not constitute an objection to the Impacts caused by the Development.

#### **4.5 Covenant not to Sue**

The parties will not bring, pursue or participate in, or cause a third party to bring, pursue or participate in, any Claim against each other in relation to this Agreement, other than a Claim for a breach of, or based on non-compliance with, this Agreement.

#### **4.6 Disclosure of Potential Impacts to Others**

The Landowner acknowledges and agrees that it will:

- (a) disclose the potential Impacts or Impacts specified in this Agreement to any occupier, tenant or Invitee on the Land (where the Invitee is undertaking works or activities on the Land affected by the potential Impact or Impacts); and
- (b) take reasonable measures to ensure that any occupier, tenant or Invitee reasonably complies with the terms of this Agreement.

**Use clause 4.7 below when the Development is taking place on the Land / the Developer will be installing infrastructure, equipment or development on the Land directly.**

#### **4.7 Other Landowner Obligations**

*Note: This clause does not preclude the Landowner from providing land access for the purpose of exploration under the Mining Act, 1992*

- (a) During the period of this Agreement the Landowner must inform the Developer if it discusses, negotiates with or enters into any agreement with a third party in relation to the investigation of the Land for any development.
- (b) Nothing in this clause 4.7 limits the rights of the Landowner to install operate or maintain wind turbines, solar panels or other electricity generating equipment for private domestic use by the Landowner.

#### **4.8 Disclosure to Consent Authority**

- (a) The Landowner acknowledges and agrees that the Developer will be required from time to time to advise the Consent Authority in writing of the terms of this Agreement.
- (b) If the Consent Authority requires the Developer to provide, in relation to the Development Consent as it applies to the Land, information about the Developer's compliance with this Agreement or with any associated Development Consent, the Developer and the Landowner agree that:
  - (i) the Developer may provide any such information, records or documents to the Consent Authority; and
  - (ii) the Developer will provide written notice to the Landowner if any such information, records or documents are provided to the Consent Authority, within a reasonable period of time of doing so.

#### **4.9 Exceptions to Landowner Consent**

- (a) Clause 4.3 only applies to Development Applications, Development Consents and Development that **do not** propose, or **do not** have Material Adverse Impact Changes to:
  - (i) the Landowner's Land; or
  - (ii) the Landowner; or
  - (iii) the Landowner's Invitees.
- (b) In the event that there are Material Adverse Impact Changes or there is Material Adverse Delay proposed or caused by a Development Application or Development Consent, then the Landowner has the right to make appropriate submissions in relation to a Development Application or Development Consent,

and object to, any such Development Application or Development Consent to the Consent Authority.

## 5. Additional Provisions Regarding Plans and Specifications for Development Works

### 5.1 Plans

The Developer must:

- (a) Prepare Plans and Specifications for the Development Works which are consistent with the indicative location and details of the Development Works shown in Schedule 4;
- (b) provide those Plans and Specifications to the Landowner as soon as reasonably practicable after the Commencement Date.

### 5.2 Works

- (a) Before commencing any Development Works the Developer must obtain any necessary Approvals.
- (b) The Developer must carry out all Development Works in accordance with the Development Consent for the Development and all other Approvals, and in accordance with all Laws.

## 6. Monitoring

### 6.1 Monitoring of Environmental Impacts

*[Note that this clause is likely to be required in circumstances which involve monitoring of impacts such as changing solar glare, noise emissions from wind turbines. It would not likely extend to a scenario where impacts are constant and do not require continuous monitoring on Land].*

- (a) For the duration of this Agreement, the Developer is responsible for the Cost of monitoring the Impact to the Land, the Landowner and the Landowner's Invitees, associated with the Development, the Development Consent and Development Works to the Land.
- (b) The Landowner acknowledges that monitoring the Impact to the Land may include the following matters:
  - (i) installing and maintaining Equipment on the Land from time to time;
  - (ii) carrying out soil and other tests and surveying the Land; and
  - (iii) entering the Land in accordance with clause 6.2 of this Agreement;
- (c) Every **six months** from the date of commencement of this Agreement or in the alternative in accordance with the timeframe requirements for periodic monitoring contained within any relevant Development Consent, the Developer must:
  - (i) monitor the Impacts of the Development relating to the Land and the Landowner utilising:

- (A) quantitative information regarding the Development's exceedance of any prescribed environmental limits associated with the Impacts of the Development set by any relevant Development Consents, a Consent Authority or the Renewable Energy Guidelines; or
  - (B) if no such quantitative information is available or if it does not apply in the circumstances, utilising an Expert, acting reasonably, with relevant experience relating to the Impact and the Development, as to what the Impacts of the Development are to the Landowner;
  - (ii) assess compliance with any relevant Development Consent conditions as they relate to the Impact, the Land and the Adjacent Land; and
  - (iii) provide a short written summary of the results to the Landowner within 10 Business Days of the completion of such results (**Report**).
- (d) The Reports served in accordance with this clause 6.1 must be in plain English.

## 6.2 Access for Monitoring

*[Note that this clause is likely to be required in circumstances which involve monitoring of impacts such as changing solar glare, noise emissions from wind turbines. It would not likely extend to a scenario where visual impacts are constant and do not require continuous monitoring on Land].*

- (a) The Developer may request to access the Land at any time during the term of this Agreement for the purposes of monitoring its compliance with any Development Consent requirements that relate specifically to:
  - (i) the Adjacent Land;
  - (ii) the Land;
  - (iii) this Agreement; or
  - (iv) the Impact.
- (b) Any such access under this Agreement confers a non-exclusive right on the Developer and its Invitees to occupy the Land on a temporary basis for the purposes of monitoring and assessment. Invitees may include works, contractors, machinery, vehicles and materials as may be necessary to exercise the rights granted by this clause of the Agreement.
- (c) This Agreement does not create and must not be taken or construed to create a tenancy, lease, rights or interest in the Land or a relationship of landlord and tenant between the Developer and Landowner.
- (d) The Developer must only use the Land to undertake compliance, monitoring and assessment in accordance with the terms of this Agreement.
- (e) The Developer must at all times ensure that the compliance, monitoring and assessment in accordance with the terms of this Agreement is undertaken in a safe, proper and efficient manner.
- (f) For the avoidance of doubt, any such access will occur based on the following conditions:

- (i) an appropriate area on the Land will be chosen for compliance, monitoring and assessment with the further consent of the Landowner, which shall not be unreasonably withheld;
  - (ii) the Developer shall only use the area for compliance, monitoring and assessment;
  - (iii) the Developer will not damage the Land or any infrastructure or fixtures on it; and
  - (iv) if the Developer or the Developer's Invitees damage the Land or any property on the Land or affixed to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.
- (g) If the Developer makes a request for access to the Land under clause 6.2(a) of this Agreement, the Landowner must either:
- (i) provide access to the Developer within a reasonable time after the request is made; or
  - (ii) if access cannot be provided to the Landowner within a reasonable time:
    - (A) provide detailed reasons to the Landowner explaining why they cannot access the Land; and
    - (B) provide a list of available Business Days for the Developer to access the Land.

## 7. Compensation

### 7.1 Monetary Compensation for Impact

- (a) The Developer must pay the Compensation Amount.

*[Note: adapt as appropriate to the nature of payment e.g. once-off payment / payment upon trigger / ongoing payment]*

- (b) The Landowner agrees that in exchange for the receipt of the Compensation Amount, the Developer may cause adverse Impacts to:
- (i) the Land;
  - (ii) the Landowner; and
  - (iii) the Landowner's Invitees,
- in accordance with the terms set out in this Agreement.

### 7.2 Provision of the Compensation Amount

- (a) The Developer must provide the Compensation Amount to the Landowner in accordance with the terms outlined in this clause 7.2 and Schedule 6.
- (b) The Developer is required to pay the Landowner the Compensation Amount during the term of this Agreement despite any Notice served by a party in accordance with this Agreement in relation to a dispute.

### 7.3 Adjustment of Compensation Amount

- (a) In the event that there are Material Adverse Impact Changes or there is Material Adverse Delay, the parties, acting reasonably, may:
  - (i) serve a Notice on the other party to this Agreement in accordance with clause 18.16, requesting that additional compensation be paid to compensate for greater Impact or any Material Adverse Impact Changes or Material Adverse Delay which are specified in Schedule 6 as an additional lump sum for payment in exchange for Material Adverse Impact Changes or Material Adverse Delay; and
  - (ii) the other party to this Agreement who receives such a Notice shall as soon as practicable, after receiving such a Notice, respond, acting reasonably.

Use clause 7.4 and 7.5 below when the Development is taking place on the Land / the Developer will be installing infrastructure, equipment or development on the Land directly.

#### 7.4 Mitigation Works to Landowner's Land

- (a) The Developer agrees to undertake the Mitigation Works to the Land set out in Schedule 6 to this Agreement.
- (b) The Developer further agrees that the obligation to undertake Mitigation Works pursuant to this Agreement is not discharged until the Landowner, acting reasonably, confirms that:
  - (i) the Mitigation Works have been completed on the Land, or in the case of development requiring a Development Consent, an independent certifier issues an occupation certificate; and
  - (ii) that the Mitigation Works are effective.
- (c) For the purposes of clause 7.4(b)(ii) of this Agreement, the Mitigation Works are effective when, within a reasonable period of time following completion of the Mitigation Works:
  - (i) the Landowner confirms in writing to the Developer, acting reasonably, that the Mitigation Works are effective; or
  - (ii) the Landowner confirms in writing to the Developer, acting reasonably, that the Mitigation Works are not effective, and provides reasons in writing substantiating this.
- (d) If the Developer and the Landowner disagree in relation to the effectiveness of the Mitigation Works in accordance with this clause 7.4, the Developer may appoint an Expert with relevant experience relating to the effectiveness of the Mitigation Works.
- (e) Following the appointment of such an expert, the Expert must provide a written report to the Developer and the Landowner within a reasonable time on the effectiveness of the Mitigation Works, and further steps required (if any) to make the Mitigation Works effective.



- (f) Any conclusions in the report received in accordance with this clause constitute a final determination of the reasonable effectiveness of the Mitigation Works for the purposes of this Agreement.
- (g) If the report provided in accordance with this clause 7.4 indicates that the Mitigation Works are not effective, and that further works are required in that report to ensure that the Mitigation Works are effective, the Developer must undertake those further works before the Developer discharges its obligations in accordance with this clause.
- (h) Where the parties have agreed to staged Mitigation Works the parties must comply with this clause at each stage of Mitigation Works at the times determined between the parties.
- (i) Clause 7.4 of this Agreement does not alter any rule of Law or equity regarding the Developer's liability for defective Work.

### 7.5 Making Good of Landowner's Property

- (a) The Developer agrees to make good any damage caused to the Land as a consequence of the Development within a reasonable period after the damage has occurred, including the removal at the end of this Agreement of any Equipment on the Land relating to monitoring, and the rehabilitation of any land to the state it was in prior to the Development being carried out.
- (b) The Developer is responsible for the payment of all Costs and expenses associated with the obligations in clause 7.4 and clause 7.5 of this Agreement.

### 7.6 Compliance

- (a) The Developer must comply with all Laws applicable to the Developer and the Development and to the exercise of the Developer's rights under this Agreement.

Use clause 8 below when the Development is taking place on the Land / the Developer will be installing infrastructure, equipment or development on the Land directly.

## 8. Licence and Decommissioning

### 8.1 Licence

- (a) The Landowner grants to the Developer a licence over the Land during the term of this Agreement to install and maintain Equipment and other property owned by the Developer on the Land and to undertake any other measures permitted in this Agreement.
- (b) The Developer must pay to the Landowner the Licence Fee during the term of this Agreement on an annual basis for the duration of this Agreement or until such time that the rights and obligations in this Agreement have been completed or have terminated, as follows:

[Insert details of commercial agreement: example, the first instalment of the Licence Fee is payable on the date which is 30 days after any substantive works relating to the Development have commenced; and each subsequent

annual instalment of the Licence Fee is payable within 30 days of each anniversary of the Commencement Date.]

- (c) The Landowner will be entitled to retain any amounts of the Licence Fee paid to it by the Developer including where the Developer has paid an annual instalment of the Licence Fee under this clause 8.1 and the term of this Agreement ends part way through the relevant year.
- (d) The Landowner grants to the Developer such ancillary rights of access over the Landowner's adjoining land (if any) as may be reasonably necessary to exercise the licence granted in this clause 8.1.
- (e) The Developer must exercise the licence granted in this clause so as to cause as little damage as possible to the Land.

## 8.2 Decommissioning *[Note this clause will only apply in the event that infrastructure is hosted on the Land.]*

- (a) By the Terminating Date or the earlier determination or completion of this Agreement, the Developer must, in accordance with the requirements of any Approvals or of any Consent Authority:
  - (i) remove any of the Developer's property, infrastructure and Equipment or objects from the Land, unless the Landowner agrees otherwise in writing; and
  - (ii) hand over the Land to the Landowner in a condition consistent with the Developer having observed its obligations under this Agreement, any Approvals, or the requirements of any Consent Authority, or where not specified, make good any damage to a standard reasonably expected for the associated use of the Land.
- (b) This clause 8.2 may apply to the removal of any of the Developer's property, infrastructure or Equipment in the following circumstances:
  - (i) where the property, infrastructure and/or Equipment may be removed or decommissioned in one event so that no further removal or decommissioning is required upon completion of the obligations in clause 8.2(a) of this Agreement; or
  - (ii) where the property, infrastructure and/or Equipment may be removed or decommissioned in multiple events over a period of time specified by the Development Consent or as otherwise specified in this Agreement, in which case the obligations in clause 8.2(a) apply to each stage of removal or decommissioning.
- (c) The Landowner must allow the Developer reasonable access to the Land to exercise its rights and comply with this clause 8.2.
- (d) If the Developer fails to comply with this clause 8.2, the Landowner may:
  - (i) perform or caused to be performed the Developer's obligations in relation to decommissioning of property, Equipment or infrastructure on the Land and do anything which the Developer should have done under this Agreement in relation to the Developer's obligations or a Development Consent. If the obligations in the Development Consent regarding decommissioning of property, Equipment or infrastructure on

the Land are in personam rights of the Developer contained in conditions, this clause does not apply in that instance and is *not* considered to be a fetter on the rights of any Consent Authority; and

- (ii) recover any Costs incurred in performing those Developer obligations:
  - (A) by calling on a Security provided in accordance with the terms of this Agreement;
  - (B) in the event that the Security does not cover the Costs incurred in performing those Developer obligations, by requesting in writing a supplementary Security which will cover all reasonable Costs incurred by the Landowner pursuant to this clause 8.2(d), which the Developer agrees to provide within 14 days of that request, and then calling on that supplementary Security without further notice to the Developer; or
  - (C) as a debt due from the Developer.
- (e) In the event that the Landowner calls on the Security in accordance with clause 8.2(d) of this Agreement:
  - (i) the Licence Fee will no longer be payable by the Developer from the date that the Security is called on and used by the Landowner; and
  - (ii) the Licence granted to the Developer on the Land will end (subject to any accrued rights or obligations of the Developer at Law or in accordance with this Agreement).

**8.3 Decommissioning Costs** [*Note this clause will only apply in the event that infrastructure is hosted on the Land.*]

- (a) The Developer is responsible for all Costs of removing any of the Developer's property, infrastructure and Equipment from the Land in accordance with this clause 8.
- (b) Where the Developer removes any of its property and Equipment on the Land, the Developer must:
  - (i) make good any damage caused by such removal at its own Cost; and
  - (ii) undertake any associated rehabilitation works;

to return the Land to a standard reasonably expected for the associated use of the Land.
- (c) The Developer must carry out the property, infrastructure and Equipment removal from the Land in accordance with the requirements and obligations contained in any and all Development Consents that relate to the Land.

**8.4 Landowner's Obligations**

During the Licence period the Landowner must not do or permit anything to be done which would interfere with or obstruct the Developer in the reasonable exercise of the Licence and rights granted in this Agreement.

## 8.5 Survival

This clause 8 survives termination or completion of this Agreement.

## 9. Indemnity and Insurance

Use clause 9.1 below when the Development is taking place on the Land / the Developer will be installing infrastructure, equipment or development on the Land directly.

### 9.1 Indemnity to Landowner

- (a) In consideration of the Landowner entering into this Agreement, the Developer must indemnify and keep indemnified the Landowner from and against:
- (i) all Claims by, or which the Landowner may incur to, any third parties, and
  - (ii) any expenses, loss, damage and Costs resulting from damage to any property or the Land of the Landowner or any loss or damage resulting from injury to or death of any person, including after the termination of this Agreement in accordance with clause 11.1,
- insofar as these are related to:
- (iii) the Developer's use of the Land or the Adjacent Land in connection with this Agreement, or
  - (iv) a breach of this Agreement or of the Development Consent by the Developer, or
  - (v) the Developer's negligence.

### 9.2 Insurance by Developer

- (a) The Developer must maintain a public liability insurance policy for at least \$20,000,000 (if not more):
- (i) during the term of this Agreement; and
  - (ii) if this Agreement is terminated in accordance with clause 11, the period in which the Developer's property, infrastructure and Equipment remains on the Land or the Adjacent Land, despite the termination of this Agreement,
- for all activities undertaken by the Developer pursuant to this Agreement for a sum specified in Schedule 6 per claim which notes the Landowner's interest in the Land (whether an estate in fee simple or another proprietary interest). The Landowner must be able to call on that public liability insurance policy as it relates to the Land, in the event that the Developer becomes Insolvent.

Use clause 9.2(b) below when the Development is taking place on the Land / the Developer will be installing infrastructure, equipment or development on the Land directly or where required for Monitoring.

- (b) The Developer must ensure that its employees, contractors, agents and invitees are at all times adequately insured (with public liability insurance for at least \$20,000,000, and any other insurance required at Law) when they are accessing the Land.

- (c) The Developer must promptly on request, produce to the Landowner a certificate of currency which evidences that the insurance required under this clause 9.2 is in place.
- (d) This clause 9 survives termination or completion of this Agreement and a parties' obligations under this clause 9 will not merge on completion or termination.

## **10. Enforcement**

### **10.1 Default**

- (a) In the event that either party to this Agreement fails to perform or fulfil an obligation under this Agreement, they may serve a Notice pursuant to clause 18.16 of this Agreement on each other giving reasonable particulars of:
  - (i) the matters of which they consider default has occurred; and
  - (ii) requiring the other party to rectify the breach within a reasonable period of time, not being less than 14 Business Days (except in the event of an emergency), including what action they consider must be undertaken to rectify the default

#### **(Default Notice).**

- (b) In determining a reasonable period of time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default raises other circumstances of urgency or emergency.
- (c) Promptly on receipt of a Default Notice, the recipient must:
  - (i) rectify the breach identified in the Default Notice within the time specified in the Default Notice; or
  - (ii) notify the other party to this Agreement that it does not agree that the breach identified in that Default Notice has occurred and refer to matter to dispute resolution under clause 16 of this Agreement.

## **11. Termination**

### **11.1 Early Termination**

- (a) The Developer may terminate this Agreement in the event that the Development Consent for the Development:
  - (i) does not become operative; or
  - (ii) is surrendered, so that the Development will no longer continue; or
  - (iii) is modified so that this Agreement is no longer required;by way of service of a Notice to the Landowner pursuant to clause 18.16 of this Agreement at the address specified in Schedule 1 with 30 days' notice.
- (b) If the Developer terminates the Agreement in accordance with this clause 11.1, no compensation is payable to the Landowner, except for:

- (i) the Costs (including Licence Fees), legal fees and other reasonable Expert or consultancy fees incurred by the Landowner to the date of termination that are payable by the Developer in accordance with the terms of this Agreement; and
- (ii) any loss or damage incurred by the Landowner to the date of termination resulting from any actions by the Developer in accordance with this Agreement. In the event of surrender or modification contemplated in this clause 11.1, this includes the Compensation Amount payable to Landowner accrued to the date of termination.

## 11.2 Extension

- (a) This Agreement may be extended with the written consent of both of the parties, acting reasonably, in the event that the term of the Development is extended through the granting of further related Development Consents.
- (b) In the event that the Agreement is extended with the written consent of both of the parties, acting reasonably, the Terminating Date of this Agreement is extended to the completion of the Development in accordance with the conditions of any further approved Development Consents from time to time.
- (c) This clause 11.2 survives the termination or completion of this Agreement.

## 12. Transfer of Obligations, Assignment and Novation

### 12.1 Developer's right to assign or novate

**[Note: this clause should not be deleted and legal advice should be sought before considering any requests to delete this clause.]**

- (a) The Developer may assign, transfer or novate of its rights or obligations under this Agreement to any party (including a related body corporate, a trust, a joint venture or a partner of the Developer or another affiliate) (**Incoming Developer**):
  - (i) by way of service of a Notice to the Landowner pursuant to clause 18.16 of this Agreement and in accordance with Schedule 1 of this Agreement:
    - (A) advising the Landowner of the incoming Developer;
    - (B) providing the relevant contact details of the Incoming Developer;
    - (C) providing documents and evidence to the Landowner's reasonable satisfaction that the Incoming Developer is capable of making the payments specified in this Agreement and that it is also capable of meeting the obligations as set out in this Agreement; and
  - (ii) by obtaining from the Landowner, an Agreement in favour of the Incoming Developer on terms reasonably required by the Incoming Developer, whereby the parties agree to be bound by the rights and obligations contained in this Agreement.
- (b) The Developer must if required by the Landowner, within a reasonable period of time, arrange a meeting between the Landowner and the representatives of the Incoming Developer prior to any such assignment, transfer or novation of rights or obligations under this clause 12.1, to address any concerns of the Landowner (acting reasonably) in relation to the Incoming Developer.

- (c) On and from the date of the transfer in accordance with this clause 12.1, the Developer is released and discharged from any ongoing obligations under this Agreement.
- (d) On and from the date of the transfer in accordance with this clause 12.1, the Incoming Developer will exercise all rights and perform all obligations under this Agreement and will be liable for all claims and demands in connection with this Agreement, including all obligations which arose prior to the transfer in accordance with this clause 12.1, which had not been fully discharged by the Developer prior to the date of the transfer.
- (e) If requested by the Developer, the Landowner agrees to promptly execute and return to the Developer a deed of novation to document a transfer of this Agreement under this clause 12.1.
- (f) The Landowner agrees that the Incoming Developer is under no obligation to substantially vary or renegotiate the terms of this Agreement with the Landowner.
- (g) The Incoming Developer must pay the Landowner's reasonable legal Costs and expenses incurred under this clause 12.1 within a reasonable period of time on receipt of an invoice from the Landowner.

## 12.2 Right to transfer Land

**[Note: This clause should not be deleted and legal advice should be sought before considering any requests to delete this clause.]**

- (a) If the Landowner intends to sell or transfer the whole or any part of the Land to another party, it must provide reasonable written notice to the Developer in accordance with the notice requirements contained in Schedule 7 to this Agreement with the relevant details completed.
- (b) The Landowner may only sell or transfer the whole or any part of the Land to a transferee (**Transferee**) if prior to the proposed sale or transfer the Landowner:
  - (i) satisfies the Developer, acting reasonably, that the proposed Transferee has sufficient resources required to perform any of the remaining obligations of the Landowner under this agreement;
  - (ii) procures the execution of an agreement by the Transferee with the Developer on terms satisfactory to the Developer, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this Agreement; and
  - (iii) satisfies the Developer, acting reasonably, that it is not in material breach of its obligations under this Agreement.
- (c) The Developer must pay the Landowner's reasonable legal Costs and expenses incurred under this clause 12.2 within a reasonable period of time on receipt of an invoice from the Landowner.
- (d) The Landowner agrees that the Developer is under no obligation to substantially vary or renegotiate the terms of this Agreement with any successors in title to the Land or with the Transferee.

- (e) This clause 12.2(c) in relation to payment of reasonable legal Costs and expenses survives termination or completion of this Agreement.

### 12.3 Release of Landowner

The Developer acknowledges and agrees that if a Landowner (**Exiting Landowner**) transfers all of its Land to a Transferee, on and from the date of the transfer and subject to the Transferee providing, to the Developer's satisfaction, evidence that it has entirely assumed ownership of the Land and that there is no material breach of obligations under this Agreement:

- (a) the Exiting Landowner will be released and discharged from the obligations arising under this Agreement except for those which accrue to the date of transfer to the new Landowner or survive completion or termination; and
- (b) the Developer will not seek to enforce the terms of this Agreement against the Exiting Landowner in the event of a breach by the new Landowner of any obligation arising under this Agreement.

### 12.4 Survival

This clause 12 survives the earlier of termination or completion of this Agreement.

### 12.5 Pre-construction Notifications

The Developer is required to notify the Landowner in writing 10 Business Days prior to the commencement of any Works relating to the Development.

## 13. Interest

### 13.1 Interest for late payment

- (a) If the Developer fails to pay any amount due to the Landowner on the due date for payment, the Developer must also pay to the Landowner interest at a rate of 2% above the Bank Bill Swap Rate.
- (b) Interest is payable on the daily balance of amounts from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Landowner.

## 14. Landowner Protections

### 14.1 Security

- (a) For the avoidance of doubt, the Security to be provided in this clause 14.1 may include the provision of multiple securities which when added together, constitute the same amount as one Security.
- (b) The Landowner may reject any Security provided by the Developer that is expressed as expiring on a certain date provided in accordance with this Agreement, in which case the Developer will be taken not to have satisfied its obligation to provide the Security under this Agreement.
- (c) The Landowner may call on a Security provided under this Agreement if:
  - (i) the Developer becomes Insolvent; or



- (ii) the Developer is required to undertake the decommissioning of infrastructure or Equipment on Land in accordance with this Agreement, and the Developer does not do so under clause 8.2;
- (d) Within 20 Business Days of the end of every period of three years after the provision of a Security provided under this clause 14.1, the Developer must provide the Landowner with one or more Securities in the amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$

Where:

**A** is the amount of the replacement Security,

**B** is the amount of the Security to be replaced,

**C** is the CPI for the quarter ending immediately before the date of the Security to be replaced,

**D** is the CPI for the quarter ending immediately before the date of the replacement Security,

provided A is greater than B. The one or more replacement Security is to include the CPI incurred during the previous three years prior to replacement of that Security.

- (e) On receipt of a replacement Security provided under this clause 14.1, the Landowner must release and return to the Developer, the Security that has been replaced within 10 Business Days.
- (f) Subject to this clause, the Landowner may call upon and apply the proceeds of the Security in any way it deems fit to ensure that the requirements in this Agreement are satisfied (particularly as they relate to the decommissioning and rehabilitation), including to remove infrastructure that has been installed on the Land by the Developer.
- (g) The provision of a Security under this clause does not relieve the Developer from any of its obligations under this Agreement.
- (h) Within 15 Business Days of the obligations in this Agreement being satisfied or in the alternative, the Terminating Date occurring, and provided that there is no breach of this Agreement by the Developer, the Landowner must (if it has not called on it) return the Security provided to the Developer. This clause may extend to the staged decommissioning of property, Equipment and infrastructure, so that if multiple Securities have been provided by the Developer for a staged Development to the Landowner to secure each stage of Development Works, those securities are released having regard to appropriate stages of decommissioning, as agreed between the parties for the life of the Development.

## 15. Confidentiality

### 15.1 Obligation

Each of the Parties must maintain in confidence all Confidential Information, subject to the exceptions outlined in this clause.

### 15.2 Exceptions to confidentiality

A party (**Recipient**) may reveal Confidential Information of another party (**Provider**):

- (a) if required by law to disclose, in which case the Recipient must immediately notify the Provider of the requirement and must take lawful steps and permit the Provider to oppose or restrict the disclosure to preserve, as far as possible, the confidentiality of the Confidential Information;
- (b) when disclosing the information to a Consent Authority;
- (c) to disclose to other regulatory authorities either the contents of this Agreement or the substantive nature of this Agreement (or any associated documents, information and records for the purposes of:
  - (i) indicating compliance with any Development Consent conditions, including where required, to advise the Consent Authority in writing of the terms of this Agreement or as required by clause 4.8;
  - (ii) lodgement of a Development Application in relation to the Development;
  - (iii) demonstrating compliance with all Laws.
- (d) if the Confidential Information is in or enters the public domain for reasons other than a breach of this Agreement; or
- (e) to its professional advisers to obtain professional advice relating to the contents of this Agreement (including legal and financial advice).

## 16. Dispute resolution

### 16.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 16.

### 16.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party in accordance with clause 18.16 of this Agreement specifying:

- (i) that a dispute has arisen;
- (ii) the nature of the dispute; and

requesting that a meeting of the authorised representative of each party be held within 5 Business Days.

### **16.3 Attempt to resolve**

On receipt of notice under clause 16.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

### **16.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 16.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program of the Law Society of NSW. The parties must request the President of the Law Society of NSW or the President's nominee to select the mediator and determine the mediator's remuneration.

### **16.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 16.2 then any party which has complied with the provisions of this clause 16.5 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

### **16.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 16.6 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 16.6 for any purpose other than in an attempt to settle the dispute.

### **16.7 No prejudice**

This clause 16 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

### **16.8 Continue to Perform Obligations**

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

## **17. GST**

### **17.1 Definitions**

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

## **17.2 Intention of the parties**

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this Agreement; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

## **17.3 Reimbursement**

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

## **17.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 17.

## **17.5 Additional Amounts for GST**

To the extent an amount of GST is payable on a supply made by a party (Supplier) under or in connection with this Agreement (the GST Amount), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Landowner as recipient of the supply, the Landowner must ensure that:

- (a) the Landowner makes payment of the GST Amount, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Landowner.

## **17.6 Non-monetary consideration**

Clause 17.5 applies to non-monetary consideration.

## **17.7 Assumptions**

The Developer acknowledges and agrees that in calculating any amounts payable under clause 17.5 the Developer must assume the Landowner is not entitled to any input tax credit.

## **17.8 No merger**

This clause does not merge on completion or termination of this Agreement.

# **18. General provisions**

## **18.1 Review and variation**

- (a) This Agreement may be reviewed or varied with the consent and agreement of all parties in the manner determined by the parties.

- (b) No variation of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) A party is not in breach of this Agreement if it does not agree to a variation of this Agreement requested by a party in, or as a consequence of, a review.

## **18.2 Entire Agreement**

This Agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

## **18.3 Further assurances**

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement.

## **18.4 Time for doing acts**

- (a) If:
  - (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this Agreement,  
  
expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

## **18.5 Governing law and jurisdiction**

- (a) The Laws applicable in New South Wales govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## **18.6 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

## **18.7 Waiver**

A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

## **18.8 Preservation of existing rights**

The expiration or termination of this Agreement does not affect any right that has accrued to a party or affect an obligation that has accrued before the expiration or Terminating Date.

### **18.9 No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, does not merge on the occurrence of that event but will remain in full force and effect.

### **18.10 Representations and warranties**

Each party warrants and represents to the other party that:

- (a) they have power or enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any Law; and
- (b) this Agreement creates legal, valid and binding obligations, enforceable against the other party in accordance with its terms; and
- (c) unless otherwise stated, it has not entered into this Agreement in the capacity of trustee of any trust.

### **18.11 Power of attorney**

If an attorney executes this Agreement on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

### **18.12 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

### **18.13 Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Agreement.

### **18.14 Expenses and stamp duty**

- (a) The Developer must pay its own and the Landowner's:
  - (i) reasonable legal Costs and disbursements;
  - (ii) reasonable expert Costs and disbursements (including Experts appointed pursuant to this Agreement), particularly to enable the Landowner to properly assess the Impacts or potential Impacts of the proposed Development to the Land;in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- (b) The Developer must pay all Taxes assessed on or in respect of this Agreement and any instrument or transaction required or contemplated by or necessary to

give effect to this Agreement (including stamp duty and registration fees, if applicable).

- (c) The Developer must pay its own and the Landowner's reasonable Costs and disbursements in connection with the release and discharge of this Agreement with respect to any part of the Land pursuant to this Agreement.
- (d) The Developer must provide the Landowner with bank cheques, or an alternative method of payment if agreed with the Landowner, in respect of the Landowner's Costs pursuant to clauses 18.14(a), 18.14(b) and 18.14(c):
  - (i) where the Landowner has provided the Developer with written notice of the sum of such Costs prior to execution, on the Commencement Date; or
  - (ii) where the Landowner has not provided the Developer with prior written notice of the sum of such Costs prior to execution, within 30 Business Days of demand by the Landowner for payment.

### 18.15 Electronic execution

- (a) Each party consents to this Agreement and any variations of this Agreement being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this Agreement or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this Agreement and any variation of it:
  - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the Agreement;
  - (ii) insertion of the person's name on to the Agreement; or
  - (iii) use of a stylus or touch finger or a touch screen to sign the Agreement, provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the Agreement;
  - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or Adobe Sign) to sign the Agreement; or
  - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this Agreement and that electronic signing of this Agreement by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this Agreement transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

### 18.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
- (i) hand delivered; or
  - (ii) sent by express post within Australia; or
  - (iii) sent by email.
- (b) A Notice is given if:
- (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
  - (ii) sent by express post within Australia, on the date that is 2 Business Days after the date of posting; or
  - (iii) sent by email:
    - (A) before 5 pm on a Business Day, on that Day;
    - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
    - (C) on a day that it is not a Business Day, on the next Business Day after it is sent,

and the sender does not receive a delivery failure notice.

### 18.17 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### 18.18 Trustee Developer

**[Note: Delete if the Developer is entering into the Agreement in its own capacity and not as trustee.]**

- (a) **[Insert Developer's Name (ACN #)] (Trustee)** enters into this Agreement in its capacity as the trustee for the **[Insert name of Trust] (Trust)** constituted by a trust deed (**Trust Deed**). The Trustee:
- (i) warrants that:
    - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
    - (B) entry into this Agreement is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this Agreement;
    - (C) it is not in breach of the Trust Deed;



- (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this Agreement;
  - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Agreement; and
  - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this Agreement and all necessary action has been taken to authorise the execution and performance of this Agreement under the Trust Deed; and
- (ii) indemnifies the Landowner, and agrees to keep the Landowner indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 18.18(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
- (i) the Trustee must procure that the replacement trustee enters into a new Agreement with the Landowner on the same terms as this Agreement;
  - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Landowner, under which the Landowner releases the Trustee from the requirement to observe and perform any future obligation under this Agreement;
  - (iii) the Trustee (as outgoing trustee) must release the Landowner, from the requirement to observe and perform any future obligation under this Agreement; and
  - (iv) the Trustee (as the outgoing trustee) must pay the reasonable Costs and expenses of the Landowner in relation to entering into a new Agreement under this clause 18.18(b).
- (c) Subject to clause 18.18(e), liability arising under or in connection with this Agreement (except under or in connection with clause 18.18 above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (d) No party to this Agreement or any person claiming through or on behalf of them will be entitled to:
- (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
  - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or

- (iii) enforce or seek to enforce any judgment in respect of a liability under this Agreement or otherwise against the Trustee in any capacity other than as Trustee of the Trust,

except under or in connection with clause 18.18 above.

- (e) Notwithstanding any other provision of this Agreement, clauses 18.18(c) and 18.18(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 18.18(e) will make the Trustee liable for any claim for an amount greater than the amount which the Landowner would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

**Execution page**

**Executed** as a deed of Agreement

[Insert execution blocks as appropriate to the parties]

**Schedule 1 Address for Service**

<b>Developer</b>	
<b>Contact:</b>	
<b>Address:</b>	
<b>Email:</b>	
<b>Landowner</b>	
<b>Contact:</b>	
<b>Address:</b>	
<b>Email:</b>	

**Schedule 2 Adjacent Land**

Adjacent Land on which Development Consent Works will be carried out by the Developer

Insert a schedule of land the subject of the Development Consent

Lot	Deposited Plan	Folio Identifier
[insert]	[insert]	[insert]

**Schedule 3 Landowner Land**

Lot	Deposited Plan	Folio Identifier
[insert]	[insert]	[insert]

## Schedule 4 Plan of the Land relating to the Development

[Insert Plan of the Land with:

- (a) deposited plan boundaries shown which depicts any landowner residences;
- (b) the proposed location of any renewable energy infrastructure where relevant, such as wind turbines or solar panels and ancillary infrastructure; and
- (c) receiver locations showing representative distances at which a range of objectives may be achieved (for example, noise objectives).]

*[Note: this clause can generally follow the requirements of the Renewable Energy Guidelines for preliminary environmental assessment, such as the production of a map detailing key landscape features, preliminary project layout, the location of dwellings and key public viewpoints and an overlay of the relevant resource; or a Baseline Input Map.]*

*[The purpose of this Schedule is for the Landowner to appreciate and understand where the location of the renewable energy project will be in proximity to their residences and land].*

**Schedule 5 Description of Impact as it Relates to Development**

**[Note: Developer should insert here a clear description of the impact in detail as it relates to the project and the subject of this Agreement].**

Identify:

- The range of impacts and the type of impacts that are predicted to be experienced at a particular location;
- The term of the impact;
- Highlight the assessment criteria that are proposed to be the subject of this Agreement.

(a) Noise Impacts

...

**[Example for noise: The noise generated by the development at the Land may exceed the criteria in the following Table:**

<b>Location</b>	<b>Land</b>	<b>Day LAeq (15min))</b>	<b>Evening (LAeq (15min))</b>	<b>Night (LAeq (15min))</b>	<b>Night (LA1 (1 min))</b>
<b>Insert Description Details</b>	<b>Insert Lot Details</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>45</b>

(b) Visual Impacts

...

**[Where relevant, insert imagery (such as photomontages) relating to the predicted visual impacts of the renewable energy project.]**

**Example: The criteria in the *Wind Energy: Noise Assessment Bulletin for State Significant Wind Energy Development December 2016* (as it may be updated from time to time) or an equivalent does not apply to the Landowner or the Land under this Agreement.]**



**Schedule 6 Monetary Compensation and Mitigation Works**

*[Note: This Schedule needs to set out negotiated fees paid in recognition of the Impacts relative to the Land; and set out whether the fees vary according to pre-approval, construction, operation and decommissioning stages].*

**1. Compensation**

(a) The Developer undertakes to provide the Compensation Amount to the Landowner in the manner set out in the table below:

Compensation	Value	Timing
Compensation Amount - Monetary compensation to offset Impact	[Insert Amount]	[INSERT]
Potential Material Adverse Impact payment	[Insert Amount]	N/A
Potential Material Adverse Delay payment	[Insert Amount]	[INSERT]

*[Note: the above payment will need to be negotiated on a case by case basis considering the particular land, the owner and the impacts, including reimbursement of materials for visual screening, hedges, insulation, solar panels, increased Costs and expenses relating to electricity generation (for example, installation of air conditioning or increased insurance premiums)].*

*[Note: this clause may need to specify the differences in premiums during construction, operation and decommissioning of a renewable energy project].*

**2. Payment of Compensation Amounts**

(a) The Developer must pay to the Landowner each Compensation Amount prior to [insert time frame].

**3. Mitigation Works**

Type of Works Proposed	Description of Land	Timing for Mitigation Works
[INSERT]	[Insert]	[INSERT]

#### 4. Insurance

- (a) The Developer undertakes to provide the following insurances in the manner set out in the table below:

Insurance	Description of Insurance	Timing for Provision of Evidence of Insurance to Landowner
[INSERT AMOUNT]	[INSERT]	[INSERT]

**[Note: fill in where required]**

## Schedule 7 Sale Notice

Attention:

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Address:

**[Insert Renewable Energy Company Developer Address]**

Pursuant to clause 12.2 of the Agreement dated **[insert]**, we hereby give you notice that we:

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intend to sell and/or transfer the Land which is the subject of this Agreement and provide you with the following details in relation to the proposed sale:

<b>Purchaser details (name and/or ABN and ACN):</b>	
<b>Purchaser's contact details:</b>	
<b>Purchaser's solicitor:</b>	
<b>Proposed settlement date of sale:</b>	
<b>Landowner's solicitor acting on sale:</b>	
<b>Date Contract was exchanged (if applicable):</b>	