

Green Products Purchase Agreement

Transport for NSW (ABN 18 804 239 602)

TfNSW

**FS NSW Project No 1 AT Pty Ltd (ACN 621 215 969) as trustee for the
FS NSW Project No 1 Asset Trust**

Project Owner

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Green Products Purchase Agreement

Date 11 December 2017

Parties **Transport for NSW (ABN 18 804 239 602)** a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 18 Lee Street, Chippendale New South Wales 2008 (**TfNSW**)

FS NSW Project No 1 AT Pty Ltd (ACN 621 215 969) as trustee for the FS NSW Project No 1 Asset Trust of Level 3, 16 Spring Street, Sydney NSW 2000, Australia (**Project Owner**)

Background

1. The SMNW project is subject to a condition of approval that TfNSW will, where feasible and reasonable, fully offset carbon emissions generated by the operation of the SMNW. TfNSW has taken a decision to satisfy this condition of approval by purchasing Complying LGCs sourced from a new renewable energy generating plant in New South Wales.
2. For that purpose, TfNSW undertakes to purchase from the Project Owner and the Project Owner agrees to sell to TfNSW the Annual LGC Volume each Contract Year on the terms of this Agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Account Manager has the meaning given in clause 10.2(a).

ACICA means the Australian Centre for International Commercial Arbitration.

Accredited Power Station has the meaning given in the RET Legislation.

Affected Party has the meaning given in clause 13.1.

AEMO means the Australian Energy Market Operator.

Agreement Term has the meaning given in clause 3.1.

Alternative Complying LGCs means LGCs which have not been created in respect of electricity generated by the Generating Plant.

Alternative Complying LGC Cap means ██████ of the Annual LGC Volume.

Annual LGC Volume has the meaning given in item 1 of Schedule 1, reduced in respect of the relevant Contract Year:

- (a) on a pro rata basis in accordance with clause 13.3(c) to take into account the impact of any Force Majeure Event; and
- (b) in accordance with clause 6(f).

Associate has the meaning given in sections 11 and 15 of the Corporations Act.

Audit Amount has the meaning given in clause 7.2(b)(iv).

Authorised Officer means:

- (a) in respect of the Project Owner, a director or secretary, or any other person appointed by a director or secretary of the Project Owner, to act as an Authorised Officer for the purposes of this Agreement; and
- (b) in respect of TfNSW, means Executive Director, Commercial Risk or such other person as is designated by this Executive Director to act as an Authorised Officer for the purposes of this Agreement.

Authority means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or
- (b) any other person having a right to impose a requirement, or whose consent is required, under or with respect to any part of the activities of TfNSW or the Project Owner.

Bank Bill means a bill of exchange (as defined in the *Bills of Exchange Act 1909 (Cth)*) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business..

Bank Bill Rate means, in respect of a period, the rate, expressed as a yield per cent per annum (rounded up, if necessary, to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30 am, then the Bank Bill Rate will be the bid rate reasonably specified by the non-defaulting party, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

Business Day means any day in New South Wales other than a Saturday, Sunday or public holiday or any day on which banks are not open for business generally in New South Wales.

Calculation Period has the meaning given in the Electricity Hedge.

Carbon Tax means a Commonwealth statutory scheme for the management of greenhouse gas emissions or concentrations which requires the owners or operators of electricity generation facilities (with or without other entities) to hold, acquit or surrender units, permits, credits, offsets, allowances or other rights in relation to those greenhouse gas emissions and concentrations; and the units, permits, credits, offsets, allowances or other rights to be held, acquitted or surrendered are issued under or recognised by the scheme, or any tax, charge or levy imposed by the Commonwealth as part of a scheme for the management of those greenhouse gas emissions or concentrations on the owners or operators of electricity generation facilities on greenhouse gases emitted by those facilities.

CER means the Clean Energy Regulator.

Change in Law has the meaning given in clause 14.1.

Change in Renewable Scheme means:

- (a) the RET Scheme ceases or is amended so that LGCs cannot be produced by the Generating Plant and/or sold by the Project Owner to TfNSW in accordance with this Agreement; or
- (b) a new Green Products Scheme is introduced which enables the creation of Other Green Products in respect of electricity generated by the Generating Plant.

Commercially Sensitive Information means any information in relation to the amounts payable under this Agreement.

Community Abatement means, in respect of a failure to deliver on a requirement in a Community Benefits Plan or Community Engagement Plan in a Contract Year, [REDACTED] per Contract Year (in aggregate across both plans).

Community Benefits Plan means the community benefits plan set out in Table 1 of Schedule 2.

Community Engagement Plan means the community engagement plan set out in Table 2 of Schedule 2.

Complying LGCs are LGCs created by the Generating Plant and, to the extent permitted by clause 8.4, includes Alternative Complying LGCs.

Contract Year means a 12 month period commencing on 1 January, except that the first Contract Year will commence on the LGC Start Date and will end on 31 December in that calendar year and the last Contract Year will end on the last day of the Agreement Term.

Control in relation to a party or an entity (as defined in section 9 of the Corporations Act), has the meaning given in section 50AA of the Corporations Act, and "**Controlled**" has a corresponding meaning.

Corporations Act means the *Corporations Act 2001* (Cth).

Created Quarterly LGC Volume means the LGCs created in the relevant Quarter in respect of electricity generated by the Generating Plant multiplied by the Required Proportion.

Default Rate has the meaning given in item 2 of Schedule 1.

Due Date has the meaning given in clause 9.2(a).

Electricity Hedge means the contract for difference between the parties entered into on the same date as this Agreement.

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, easement or any other security arrangement or any other arrangement having the same effect.

ESC means an energy savings certificate issued under the NSW Energy Savings Scheme.

Extension Term has the meaning given in clause 3.2(a).

Financial Close means the satisfaction of all conditions to the first drawdown of funds under any funding agreement entered into by the Project Owner in relation to the Generating Plant.

Force Majeure Event has the meaning given in clause 13.1.

Force Majeure Extension Date means the earlier of:

- (a) [REDACTED]; and
- (b) if the Project Owner suffers a Force Majeure Event in relation to the construction and commissioning of the Generating Plant, and notifies TfNSW of that event, prior to [REDACTED], the date which equates to [REDACTED] plus the length of that Force Majeure Event.

Form of Invoice has the meaning given in clause 9(b).

FS NSW Project No 1 Holding Trust means the trust known as the FS NSW Project No 1 Holding Trust established by the trust deed for the FS NSW Project No 1 Holding Trust signed by the Holding Trustee dated on or around 26 September 2017.

Generating Plant has the meaning given in item 3 of Schedule 1 (unless otherwise agreed between the parties).

Generating Plant Construction Default has the meaning given in clause 5.4(e).

Green Products Scheme means the framework which regulates how a type of Other Green Product can be used, including without limitation any legislation, rules, regulations, guidelines, code of practice or industry practice in respect of that type of Other Green Product.

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

Holding Trustee means the trustee of the FS NSW Project No 1 Holding Trust, which as at the date of this Agreement is FS NSW Project No. 1 HT Pty Ltd ACN 621 214 588.

Hold Co means First Solar Singapore Hold Co Pte. Ltd. (Co. Reg. NO. 201713850R).

Immediate Holding Company means, as at the date of this Agreement, First Solar FE Holdings Pte Ltd (Co. Reg. NO. 200700550Z).

Insolvency Event means (subject to clause 19.1(d)):

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) anything analogous to anything referred to in paragraph (a) or (b) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (d) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Law means, in relation to New South Wales or the Commonwealth of Australia:

- (a) any act of parliament; and
- (b) any subordinate legislation, rules, regulations or by-laws.

LGC means a large-scale generation certificate under the RET Legislation.

LGC Price means the \$/LGC price set out at item 4 of Schedule 1.

LGC Start Date means the later of:

- (a) [REDACTED]; and
- (b) if the Project Owner suffers a Force Majeure Event in relation to the construction and commissioning of the Generating Plant, and notifies TfNSW of that event, prior to [REDACTED], the Force Majeure Extension Date,

or such other date as the parties agree.

Maximum Quarterly LGC Volume means [REDACTED] of the Annual LGC Volume.

Month means a calendar month.

National Electricity Law means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996 (SA)*.

National Electricity Rules means the National Electricity Rules made under the National Electricity Law.

NEM means the National Electricity Market.

Nominated REC Account has the meaning given in clause 8.1(a).

Notional Quantity means, in respect of a Calculation Period, the amount (in MWh) allocated to that Calculation Period set out in the attachment to the conformation which forms part of the Electricity Hedge.

NSW Government Instrumentality means TfNSW or any NSW government department, agency, regulator or State of NSW-owned corporation or entity.

Other Green Product means any certificate, credit, right or benefit created in any manner under a law following a Change in Renewable Scheme and which serves as a quantitative or qualitative indicator of the environmental benefit of electricity being generated by the Generating Plant (and, for the avoidance of doubt, does not include LGCs, STCs or ESCs).

Prohibited Change in Control means:

- (a) in respect of TfNSW, any change in the ultimate ownership of TfNSW which results in TfNSW not being 100% owned by the State of NSW other than in circumstances where the Project Owner has first given its consent to that change (such consent not to be unreasonably withheld); and
- (b) in respect of the Project Owner:
 - (i) if the Project Owner or the Holding Trustee comes under the Control of a person (acting alone or together with its Associates) who did not Control that entity on the date of this Agreement;
 - (ii) if a person (acting alone or together with its Associates) who was in Control of the Project Owner or the Holding Trustee on the date of this Agreement stops having Control of the Project Owner or the Holding Trustee (whichever is relevant);
 - (iii) if the Project Owner ceases to be the Trustee or the Holding Trustee ceases to be trustee of the FS NSW Project No 1 Holding Trust;
 - (iv) if a person who was a Unitholder on the date of this Agreement ceases to be a Unitholder;
 - (v) if a person becomes a Unitholder who was not a Unitholder on the date of this Agreement;
 - (vi) if a Unitholder or the Hold Co comes under the Control of a person (acting alone or together with its Associates) who did not Control the Unitholder or the Hold Co (as the case may be) on the date of this Agreement; or
 - (vii) if a person (acting alone or together with its Associates) who was in Control of a Unitholder or the Hold Co on the date of this Agreement stops having Control of the Unitholder or the Hold Co (as the case may be),

other than:

- (viii) as a result of a transfer or issue of any securities of First Solar Inc listed on any recognised stock or securities exchange; or
- (ix) in circumstances where TfNSW has first given its consent to that change (such consent not to be unreasonably withheld),

and, for the avoidance of doubt, any action taken in accordance with clause 21.7 will not constitute a "Prohibited Change in Control". As at the date of this Agreement:

- (x) all the shares in the Project Owner are held by the Holding Trustee;
- (xi) all the shares in the Holding Trustee are held by the Immediate Holding Company;
- (xii) all the shares in the Immediate Holding Company are held by Hold Co; and
- (xiii) all the shares in Hold Co are owned by First Solar Inc (*State of Delaware File Number 3658676*).

Project Owner Default has the meaning given at clause 16.3.

Project Owner FM Event has the meaning given in clause 13.3(c).

Public Disclosure Obligations has the meaning given in clause 21.16(a).

Quarterly Invoice has the meaning given in clause 9(a).

Quarter means any of the following periods:

- (a) 1 July to 30 September;
- (b) 1 October to 31 December;
- (c) 1 January to 31 March;
- (d) 1 April to 30 June;
- (e) the period from the date the Agreement is executed by both parties until the start of a period listed above; or
- (f) the period from the end of a period listed above until the termination or expiry of this Agreement.

RET Legislation means the *Renewable Energy (Electricity) Act 2000* (Cth) and any regulations made under that Act.

RET Scheme means the legislative and regulatory framework for creating, trading and surrendering LGCs.

Replacement Period has the meaning given in clause 5.4(e)(i).

Required Proportion means ██████████ LGCs divided by the forecast expected LGC creation in respect of electricity generated by the Generating Plant for the relevant Contract Year (such forecast to be consistent with the forecast issued in accordance with clause 8.5(a)).

Sale Term means the period from the LGC Start Date to the end of the Agreement Term.

SMNW means the rapid transit rail link connecting Rouse Hill to Chatswood via Castle Hill and Epping which, as at the date of this Agreement, is known as Sydney Metro Northwest.

STC has the same meaning as a small-scale technology certificate under the RET Legislation.

Substitute Plant has the meaning given in clause 8.6(d)(i).

Target Date has the meaning given in item 5 of the Details in Schedule 1.

Technical Dispute means a dispute or difference concerning any of clauses 4 (Commencement of LGC purchase on LGC Start Date) 6 (Delivery of, and amount payable for, LGCs under this Agreement), 7 (Adjustments), 8.4 (Alternative Complying LGCs) or 9 (Invoicing and payment).

Terrorist Act has the meaning given in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Agreement.

TfNSW Default has the meaning given in clause 16.1.

Transfer has the meaning given in clause 8.1(a).

Transport Administration Act means the *Transport Administration Act 1988* (NSW).

Trust means the trust known as the FS NSW Project No 1 Asset Trust established by the Trust Deed.

Trust Deed means the trust deed for the FS NSW Project No 1 Asset Trust signed by the Trustee dated on or around 26 September 2017.

Trust Fund means the assets of, and funds available to, the Trust.

Trustee means the trustee of the Trust.

Unitholder means a person registered (including any persons jointly registered) as the holder of a unit in:

- (a) the Trust; or
- (b) the FS NSW Project No 1 Holding Trust (which, at the date of this Agreement, is the Immediate Holding Company).

1.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.

2. Condition Precedent

Except for this clause 2 and clauses 1 (Definition & interpretation), 15 (Dispute Resolution), 16 (Termination), 18 (Notices), 21.1 (Governing law), 21.7 (Assignment) and 21.15 (Confidentiality), this Agreement has no effect unless and until the Electricity Hedge has been entered into by both parties.

3. Term and extensions of Term

3.1 Term

This Agreement commences on the date it is executed by both parties, and [REDACTED] unless extended in accordance with clause 3.2 (in which case the Extension Term becomes part of the Agreement Term) or terminated earlier in accordance with this Agreement (Agreement Term).

3.2 Extension Terms

- (a) TfNSW has an option to renew this Agreement for up to 4 further terms of 6 Months each (each an **Extension Term**).
- (b) To exercise the option to renew, TfNSW must give the Project Owner notice no later than 12 Months prior to the expiry of the current Agreement Term.
- (c) If TfNSW exercises the option to renew referred to in clause 3.2(a), the terms of this Agreement will be the same during the Extension Term (except that the number of Extension Terms referred to in clause 3.2(a) will be reduced by the number of times the option to renew has been exercised).

4. Commencement of LGC purchase on LGC Start Date

During the Sale Term TfNSW agrees to buy, and the Project Owner agrees to sell, Complying LGCs in the amount of the Annual LGC Volume for each Contract Year under this Agreement (with the Annual LGC Volume being adjusted pro rata, based on a year of 365 days, where the Contract Year runs for less than 12 Months).

5. Readiness of Generating Plant

5.1 Generating Plant readiness

- (a) If the Generating Plant is not ready to commence producing LGCs by the LGC Start Date, the Project Owner must nonetheless commence selling Complying LGCs under this Agreement from that date.
- (b) In the circumstances described in clause 5.1(a), the provisions of clause 8.4 apply in relation to the Complying LGCs being sold.

5.2 Construction and Commissioning of Generating Plant

- (a) The Project Owner must:
 - (i) procure the development and construction of the Generating Plant; and
 - (ii) use best endeavours to procure the completion and commissioning of the Generating Plant by the Target Date.
- (b) The Project Owner must comply with the requirements of Schedule 3 in relation to the construction, commissioning and operation of the Generating Plant.

5.3 Accredited Power Station

The Project Owner must procure that the Generating Plant is accredited under the RET Legislation as an Accredited Power Station by no later than the LGC Start Date.

5.4 Termination rights if Generating Plant late

- (a) The Project Owner must give Quarterly updates to TfNSW of the Generating Plant's progress towards Financial Close and commencement of operation, including in relation to each of the milestones identified in item 2 of Schedule 3.
- (b) The Project Owner must notify TfNSW as soon as practicable after Financial Close has occurred in relation to the Generating Plant.
- (c) If the Generating Plant has not reached Financial Close by the later of:
 - (i) the date which is [REDACTED] after the date of this Agreement; or
 - (ii) such later date (not being later than the date which is [REDACTED] after the date of this Agreement) as has been agreed by TfNSW (if any) in circumstances where the Project Owner can demonstrate that the LGC Start Date will be achieved (and TfNSW's agreement cannot be unreasonably withheld where the Project Owner can demonstrate a credible path to having the Generating Plant commissioned by the LGC Start Date, including relevant progress against each of the milestones identified in item 2 of Schedule 3),

TfNSW has a right to terminate this Agreement with immediate effect by notice to the Project Owner.

- (d) TfNSW's right to terminate the Agreement under clause 5.4(c) is a no-fault termination and is not subject to the procedure set out in clause 16.
- (e) Following Financial Close, if the Generating Plant is not operational by [REDACTED] (unless affected by a Force Majeure Event, in which case this date is extended by the period of the Force Majeure Event, but not beyond [REDACTED]), (**Generating Plant Construction Default**) TfNSW has, subject to clause 5.5, a right to terminate the Agreement provided:
 - (i) it has first given the Project Owner 20 Business Days' notice (with the period between the giving of the notice and the expiry of that period being referred to as the **Replacement Period**) of its intention to terminate; and
 - (ii) the Replacement Period expires without the parties agreeing on a new renewable energy generation project in New South Wales to replace the Generating Plant.
- (f) TfNSW's right to terminate the Agreement under clause 5.4(e) is not a no-fault termination, and is governed by clause 16.

5.5 Replacement Generating Plant

In the event of a Generating Plant Construction Default, the Project Owner may, during the Replacement Period, find a new renewable energy generation project in New South Wales to replace the Generating Plant, which new project requires consent from TfNSW (and, as a minimum requirement, this new project must not have commenced construction prior to the date of this Agreement). Prices under, and all other provisions of, the Agreement would not change in this scenario.

6. Delivery of, and amount payable for, LGCs under this Agreement

- (a) Subject to clauses 6(b) - 6(d), the Project Owner may Transfer Complying LGCs (up to the Annual LGC Volume) at any time during the course of a Contract Year.
- (b) Subject to clause 6(c), the minimum number of Complying LGCs which the Project Owner must Transfer in respect of any Quarter (other than the Quarter ending in December) is the Created Quarterly LGC Volume.
- (c) The maximum number of Complying LGCs which the Project Owner may Transfer in respect of any Quarter (other than the Quarter ending in December) is the Maximum Quarterly LGC Volume. In respect of the final Quarter of a Contract Year, the Project Owner must transfer that number of Complying LGCs required to make up the Annual LGC Volume (taking into account the number of Complying LGCs which have been Transferred in respect of the first 3 Quarters of that Contract Year.).
- (d) By no later than 14 February following the relevant Contract Year, the Project Owner must have Transferred that number of Complying LGCs which comprises the Annual LGC Volume for the relevant Contract Year.
- (e) The amount to be paid for an LGC is the LGC Price.
- (f) The Annual LGC Volume for a Contract Year may be reduced, at the Project Owner's election, by an amount equal to the Notional Quantity for any Calculation Period in respect of which the Project Owner has elected not to generate electricity under clause 3 of the Electricity Hedge. The Project Owner must notify TfNSW of any reduction of the Annual LGC Volume under this clause 6(f) as soon as reasonably practicable.

7. Adjustments

7.1 Need for annual adjustment

Following the end of each Contract Year, the Project Owner must determine whether there is a need to make an adjustment to the amounts billed under clause 9 to reflect a Community Abatement.

7.2 Community Abatement adjustment

- (a) Within 28 days after the end of a Contract Year, the Project Owner must provide a report to TfNSW outlining whether the requirements of the Community Benefits Plan and the Community Engagement Plan have been met for that Contract Year.
- (b) If:
 - (i) the Project Owner's report under clause 7.2(a); or
 - (ii) any audit by an independent auditor commissioned by TfNSW of the Project Owner's report,

identifies that the requirements of the Community Benefits Plan and/or the Community Engagement Plan have not been materially met for that Contract Year, then TfNSW within 30 days of becoming aware of the requirement(s) not being met must notify the Project Owner whether TfNSW requires the amounts payable under this Agreement for that Contract Year to be adjusted by:

- (iii) the Community Abatement; and/or
 - (iv) the amount charged by the independent auditor for the report referred to in clause 7.2(b)(ii), which must not exceed [REDACTED] per annum (**Audit Amount**).
- (c) If the Project Owner receives a notice from TfNSW under clause 7.2(b) requiring the Project Owner to pay a Community Abatement and/or the Audit Amount, the Project Owner must, subject to clause 9.6, adjust the next Quarterly Invoice to reflect that Community Abatement and/or Audit Amount (as relevant).
- (d) The Project Owner must promptly provide to TfNSW or its independent auditor any information reasonably requested by TfNSW or its independent auditor for the purposes of clause 7.2(b).

8. Creation and transfer of Complying LGCs

8.1 Transfer or surrender of Complying LGCs

- (a) The Project Owner must transfer Complying LGCs sold under this Agreement to a RET Registry account nominated by TfNSW (**Nominated REC Account**) or otherwise deal with the Complying LGCs sold under this Agreement as directed by TfNSW from time to time, which directions may include:
- (i) transferring LGCs from the Nominated REC Account (where the Project Owner has user rights in relation to that account) and surrendering them on behalf of TfNSW to the CER;
 - (ii) transferring LGCs from the Nominated REC Account (where the Project Owner has user rights in relation to that account) to a third party; or
 - (iii) liaising with the Project Owner to hold some or all of the Complying LGCs sold under this Agreement on trust for TfNSW,
- in each case at the cost of the Project Owner (including in relation to any fees payable under the RET Legislation in relation to any of these actions). Any such transfer of, or dealing in, the Complying LGCs sold under this Agreement is referred to as a **Transfer**.
- (b) By the 14th day of the Month following the end of the Quarter the Project Owner must:
- (i) provide TfNSW with such evidence as TfNSW reasonably requires of the Complying LGCs Transferred during that Quarter; and
 - (ii) advise TfNSW of the balance of the LGCs in the Nominated REC Account.

8.2 Title to LGCs

Title to the LGCs sold under this Agreement passes from the Project Owner to TfNSW on the date when payment is made under clause 9.

8.3 LGCs in excess of Annual LGC Volume

Nothing in this Agreement precludes TfNSW from purchasing LGCs in excess of the Annual LGC Volume either from the Project Owner or a third party.

8.4 Alternative Complying LGCs

- (a) The Project Owner must sell all LGCs generated by the Generating Plant each Contract Year up to the Annual LGC Volume to TfNSW, but is not prohibited from entering into an agreement to sell any LGCs in excess of the Annual LGC Volume in a Contract Year to a third party.
- (b) If for any Contract Year the total volume of LGCs generated by the Generating Plant falls short of the Annual LGC Volume (or the Project Owner has not banked sufficient Complying LGCs generated in respect of the Generating Plant which were not required to meet the Annual LGC Volume in previous Contract Years), the Project Owner may sell and Transfer Alternative Complying LGCs (up to the Alternative Complying LGC Cap) to TfNSW within 28 days of the end of that Contract Year.
- (c) The Project Owner must provide TfNSW with evidence of the energy source, generator and vintage of Alternative Complying LGCs Transferred in a Contract Year no later than the time the Quarterly Invoice is issued for the last Quarter of the relevant Contract Year.
- (d) The Project Owner must promptly provide to TfNSW any information reasonably requested by TfNSW to enable TfNSW to satisfy itself of the provenance and quality of any Alternative Complying LGCs Transferred in accordance with clause 8.4(b).

8.5 Annual LGC production and shortfall forecasts

The Project Owner must issue to TfNSW by the end of each Contract Year forecasts of:

- (a) expected LGC creation by the Generating Plant for the next Contract Year; and
- (b) any expected shortfall in LGC production by the Generating Plant for the next Contract Year which may require the Project Owner to source Alternative Complying LGCs to meet the Annual LGC Volume in that Contract Year (and, if so, information as to how the Project Owner proposes to source those Alternative Complying LGCs).

8.6 Alternative Green Products

If a Change in Renewable Scheme occurs during the Agreement Term, then:

- (a) if the Change in Renewable Scheme results in both LGCs and Other Green Products being able to be created in respect of the same quantity of electricity generated by the Generating Plant, TfNSW at its discretion may, by notice to the Project Owner, nominate that it wishes to receive both that Other Green Product(s) and the LGCs. As soon as practicable following receipt of such a nomination, the Project Owner must supply both the Other Green Product(s) and the LGCs to TfNSW in substitution for the Project Owner's obligation to provide Complying LGCs under this Agreement;
- (b) if the Change in Renewable Scheme results in both LGCs and Other Green Products being able to be created in respect of the same quantity of electricity generated by the Generating Plant, TfNSW at its discretion may, by notice to the Project Owner, nominate that it wishes to receive a type of Other Green Product rather than LGCs. As soon as practicable following receipt of such a nomination, the Project Owner must supply that Other Green Product(s) to TfNSW in

substitution for the Project Owner's obligation to provide Complying LGCs under this Agreement;

- (c) if the Change in Renewable Scheme results in a type of Other Green Product, but not LGCs, being able to be created in respect of the same quantity of electricity generated by the Generating Plant, then the Project Owner must supply that other type of Green Product to TfNSW in substitution for the Project Owner's obligation to provide LGCs; or
- (d) if the Change in Renewable Scheme results in neither LGCs nor any Other Green Product being able to be created in respect of the same quantity of electricity generated by the Generating Plant, the Project Owner must:
 - (i) continue to ensure that ████████ MWh of electricity per Contract Year is being generated and dispatched by the Generating Plant (or, if for any reason the generation of the Generating Plant for a Contract Year is less than ████████ MWh, up to ████████ of that amount may be generated and dispatched by another renewable generating plant in Australia (**Substitute Plant**)) and provide such information as TfNSW requests (acting reasonably) to show that all such electricity is attributable solely to TfNSW's rights under this Agreement (that is, that no third party is able to claim that its arrangements have resulted in that electricity being generated and dispatched); and
 - (ii) in substitution for the Project Owner's obligation to sell LGCs, do all things reasonably required of it by TfNSW to transform, certify or realise the full benefit of any green or renewable marketing benefit which could be created from or attributed to ████████ MWh of electricity per Contract Year being generated by the Generating Plant (or, where permitted by clause 8.6(d)(i)), the Substitute Plant).

The Project Owner's compliance with this clause 8.6(d) will constitute full compliance by the Project Owner with its obligations under this Agreement to supply Complying LGCs.

8.7 Substitute obligations in relation to Other Green Products

- (a) The Project Owner's obligations under clause 8.6:
 - (i) are in substitution for the Project Owner's obligation to supply the Complying LGCs and only apply in respect of ████████ MWh of electricity produced by the Generating Plant (or, where permitted, the Substitute Plant) that would otherwise be utilised to produce Complying LGCs for the purpose of supplying the Annual LGC Volume; and
 - (ii) only apply to the extent that the Project Owner, using reasonable endeavours is able to supply the Other Green Products or, to the extent that green or renewable marketing benefits are not Other Green Products, those green or renewable marketing benefits.
- (b) Subject to clause 8.7(c), where Other Green Products, or green or renewable marketing benefits that are not Other Green Products, are being supplied under this Agreement, all provisions of this Agreement referring to LGCs are to be read with the necessary changes to reflect that supply.
- (c) The parties acknowledge that the LGC Price has been agreed on the basis that one LGC can be created for every one MWh of electricity sent out by the Generating Plant. Where a scenario contemplated under clause 8.6 occurs, the parties agree that the amount payable by TfNSW under this Agreement will be calculated by reference to each LGC that the Project Owner would have been entitled to create and register with respect to the electricity generated by the Generating Plant under the RET Legislation in force as at the date of this Agreement had the Change in Renewable Scheme not occurred.

- (d) For the avoidance of doubt, if a Change in Renewable Scheme occurs that results in a scenario contemplated under clause 8.6, this Agreement will not be regarded as frustrated, the Project Owner will not be regarded as having breached or failed to comply with any of its obligations under this Agreement and neither party may withhold payment or terminate the Agreement on account of the Change in Renewable Scheme.

8.8 Certification, marketing and verification

- (a) The Project Owner is not required to procure that the Generating Plant is GreenPower® certified unless so directed by TfNSW. The Project Owner must promptly comply with such a direction from TfNSW, provided that TfNSW pays for all costs associated with that certification.
- (b) All costs associated with marketing and verification services that may be required by TfNSW during the Sale Term (e.g. GreenPower Connect) must be borne by TfNSW.

9. Invoicing and payment

- (a) The Project Owner must prepare an invoice in respect of each Quarter during the Sale Term to be issued to TfNSW as soon as practicably possible following the end of that Quarter covering the Community Abatement (if any) and the total amount of the LGC Price for the amount of Complying LGCs (or Other Green Products or green or renewable marketing benefits that are not Other Green Products supplied pursuant to clauses 8.6 and 8.7) Transferred in that Quarter (**Quarterly Invoice**).
- (b) TfNSW may, by giving one month's notice, prescribe a form of invoice to be used for the Quarterly Invoice (**Form of Invoice**).

9.2 Due date for payment

- (a) Subject to clauses 9.2(b), 9.2(c) and 9.6, the due date for payment of a Quarterly Invoice is 30 Business Days after the date of that Quarterly Invoice (**Due Date**).
- (b) If the Due Date is not a Business Day, then payment must be made no later than the Business Day immediately following the Due Date.
- (c) If a Quarterly Invoice is not set out in the correct Form of Invoice (if any), then the Due Date is 45 days after the date that Quarterly Invoice has been issued in the Form of Invoice if requested by TfNSW.

9.3 Set-off rights

TfNSW may set-off amounts it owes the Project Owner under this Agreement against any amounts owed to it by the Project Owner under the Electricity Hedge which are due and payable as at the Due Date.

9.4 Form of payment

- (a) Any payments must be in Australian dollars and must be credited by the appropriate Due Date by electronic transfer to the bank accounts (as designated by the payee in accordance with clause 9.4(c)) without any discount associated with the transfer of moneys and at the expense of the payer, except that any expenses charged by the payee's bank with respect to such payments must be borne by the payee.
- (b) TfNSW and the Project Owner may agree to make payment by cheque or other means rather than by way of electronic transfer.

- (c) The bank account is to be nominated by the payee by way of notice (signed by an Authorised Officer of the payee) to the payer. That nomination is to remain in effect unless changed by notice signed by an Authorised Officer of the payee.

9.5 Interest on late payment

If a party fails to make payment to the other of any amount due under this Agreement by the Due Date which is not the subject of a genuine dispute (or has not been validly set-off in accordance with clause 9.3), then interest is to accrue on the unpaid amount calculated at an annual rate of the Default Rate (compounded monthly) from the day immediately following the Due Date until the date that payment is made.

9.6 Payment dispute

- (a) When any amount included within a Quarterly Invoice is the subject of a genuine dispute, TfNSW or the Project Owner (as the case may be) must immediately notify the other party of the amount in dispute and the reasons for the dispute.
- (b) The balance of the Quarterly Invoice not in dispute must be paid by the Due Date.
- (c) If, after settlement of the dispute, any amount is agreed or determined to be payable by one party to the other party, then that amount is to be included in the next Quarterly Invoice to be rendered (as a credit or debit, as relevant), together with interest calculated daily at the Default Rate (compounded monthly) from the day immediately following the Due Date when that amount, in the absence of a dispute, would have been payable to the date when the amount is paid.

9.7 Audit rights

- (a) TfNSW has the right, at its own cost and by notice to the Project Owner, to nominate independent public accountants acceptable to the Project Owner, such acceptance not to be unreasonably withheld or delayed. These accountants must be permitted by the Project Owner at reasonable hours to examine the books, records and charts of the Project Owner only to the extent necessary to verify the accuracy of any statement as to the amounts payable under this Agreement to the extent TfNSW cannot verify such accuracy through the prudent exercise of its own internal controls.
- (b) The Project Owner must retain its books, records and charts for a period of 3 years from the end of the Contract Year to which they refer, except that if such books, records or charts are related to any matter which is in dispute between the parties, then those books, records or charts must be preserved until that dispute is settled.

9.8 Adjustment of errors

- (a) If for any reason the Project Owner has overcharged TfNSW, the Project Owner must inform TfNSW as soon as practicable after becoming aware of the overcharging. If TfNSW has already paid the overcharged amount, the Project Owner must repay the amount together with interest calculated daily at the Default Rate (compounded monthly) from the original date payment was made until the date of the refund. Repayment is to be in accordance with TfNSW's reasonable instructions or, if TfNSW does not give reasonable instructions, by crediting the overcharged amount together with the applicable interest on the next Quarterly Invoice.
- (b) Where the Project Owner has undercharged or not charged TfNSW, the Project Owner may recover from TfNSW the full amount undercharged or not charged provided that:
 - (i) no interest is payable by TfNSW in relation to the amount undercharged or not charged;

- (ii) the Project Owner cannot recover any amounts in respect of a period which is more than 6 months prior to the date the Project Owner notifies TfNSW of the undercharging or failure to charge;
 - (iii) TfNSW is given at least as long as the period over which the undercharging or failure to charge occurred to pay the relevant amount, and that amount is to be presented as a debit on a future Quarterly Invoice rather than a re-issue of the relevant Quarterly Invoice(s) in which the error occurred; and
 - (iv) the debit/credit on the future Quarterly Invoice is accompanied by an explanation of the circumstances surrounding the debit/credit
- (c) If an error in the amount shown in any Quarterly Invoice is found by TfNSW, or an accountant appointed pursuant to clause 9.7, a notice of claim in respect of that error can only be given to the Project Owner within 3 years of the date of the Quarterly Invoice which is the subject of the error.
 - (d) Either party may raise a dispute in relation to an adjustment included on a Quarterly Invoice in accordance with this clause 9.8.

10. Project Owner Obligations

10.1 Project Owner and Generating Plant registrations and authorisations

The Project Owner must ensure that, at all times during the Sale Term:

- (a) the Generating Plant is registered with AEMO as a generator in the NEM; and
- (b) the Generating Plant is accredited with the CER as an Accredited Power Station.

10.2 Account Management

- (a) The Project Owner must appoint an experienced person as the primary person with whom TfNSW is to interact in relation to this Agreement (**Account Manager**). This person may change over time, but there must be an Account Manager at all times during the Agreement Term.
- (b) The Project Owner must promptly provide to TfNSW the Account Manager's name, title and contact details (including email contact details) following the Account Manager's appointment or replacement.
- (c) The Project Owner must procure that:
 - (i) the Account Manager serve as the Project Owner's principal point of contact with TfNSW in relation to the overall administration of this Agreement, including in relation to information requests, feedback and complaints; and
 - (ii) the Account Manager meet with TfNSW's delegates at least once a Month (or less frequently if so agreed) to discuss the Project Owner's performance of its obligations under the Agreement and any other issues that arise in relation to the Agreement.

11. Warranties and undertakings

11.1 General TfNSW representations and warranties

TfNSW represents and warrants for the benefit of the Project Owner that:

- (a) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this Agreement (or will have them in full force and effect at the time the obligation is to be performed);
- (c) this Agreement constitutes valid and legally binding obligations on it in accordance with its terms; and
- (d) the execution, delivery and performance of this Agreement does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

11.2 General Project Owner representations and warranties

The Project Owner represents and warrants for the benefit of TfNSW that:

- (a) it is duly incorporated and registered under the Corporations Act and remains in existence;
- (b) it owns and operates (or, prior to commissioning of the Generating Plant, will own and operate) the Generating Plant;
- (c) the execution, delivery and performance of this Agreement does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (d) it has taken all corporate and other action required to enter into this Agreement and to authorise the execution and delivery of this Agreement and the satisfaction of its obligations under it;
- (e) this Agreement constitutes valid and legally binding obligations on it in accordance with its terms;
- (f) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (g) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this Agreement.

11.3 LGC representations and warranties by the Project Owner

The Project Owner represents and warrants to TfNSW that:

- (a) the Project Owner has title, free from any Encumbrances, to all LGCs and Other Green Products which it transfers to TfNSW, the CER or any other person (as relevant) under this Agreement;
- (b) each LGC (and, to the extent relevant, any Other Green Product) is validly created in accordance with the RET legislation (or, in relation to Other Green Products, legislation which permits the Other Green Product to be created)..

11.4 Trust and Trust Deed representations and warranties

The Project Owner represents and warrants for the benefit of TfNSW that:

- (a) the Trust has been validly created and is in existence and is solely constituted by the Trust Deed (a true and complete copy of which has been provided to TfNSW before the date of this Agreement);
- (b) the Trust Deed is not void, voidable or otherwise unenforceable and it complies with all applicable laws;
- (c) the Project Owner has the legal right and full power and capacity to:
 - (i) enter into and perform this Agreement;
 - (ii) perform its obligations under this Agreement and each transaction effected by or made under this Agreement; and
 - (iii) carry on its business as now conducted or contemplated and to own its assets (including any asset purported to be charged or mortgaged by it), and that there is no restriction on or conditions of its doing so,

in its capacity as Trustee and has obtained all necessary authorisations and consents under the Trust Deed and taken all other actions necessary to enable it to do so;
- (d) the Trust has not been terminated, nor has any event for the vesting of the Trust Fund occurred and, other than in respect of the rule against perpetuities, a date has not been declared under the Trust Deed as the date on which the Trust will be vested or come to an end;
- (e) no property of the Trust has been re-settled or set aside or transferred to any other trust, other than a transfer which is in the ordinary course of business and complies with the Trust Deed;
- (f) all stamp duty properly payable on the Trust Deed has been paid; and
- (g) as far as the Trustee is aware no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the Trust or on the trusteeship of the Trustee of the Trust.

11.5 The Trustee

The Project Owner represents and warrants for the benefit of TfNSW that:

- (a) it has been validly appointed as trustee of the Trust and is the sole trustee of the Trust;

it has valid rights of indemnity against the Trust Fund for all liabilities incurred by it in its capacity as Trustee and in connection with this Agreement, which rights are not limited in anyway (by set-off or otherwise) and are available for satisfaction of all liabilities and other obligations incurred by the Trustee under this Agreement;
- (b) it has complied with its obligations and duties under the Trust Deed and at law in respect of the Trust and is not in breach of its obligations under the Trust Deed and, so far as the Project Owner is aware, no allegation has been made that it has breached those obligations.

11.6 Breach or default under Trust Deed

The Project Owner represents and warrants for the benefit of TfNSW that the execution, delivery and performance of this Agreement by the Trustee does not and will not result in a breach of or constitute a default under the Trust Deed.

11.7 Repetition of representations and warranties

Each party represents and warrants to the other party that in respect of the representations and warranties given by the party as contained in this clause 11:

- (a) are true and correct as at the date of this Agreement; and
- (b) will remain true and correct (and be deemed to be repeated) for the duration of the term of this Agreement with reference to the facts and circumstances then subsisting.

11.8 Reliance

Each party acknowledges that the other party has entered into this Agreement in reliance on the representations and warranties given by the other party in this clause 11.

12. Project Owner to maintain and procure insurance

- (a) The Project Owner must effect and maintain the following insurances at all times during the Agreement Term:
 - (i) workers compensation insurance as required by the *Workers Compensation Act 1987* (NSW);
 - (ii) public liability insurance of not less than [REDACTED] per claim, which must note TfNSW as an interested party on the relevant policy; and
 - (iii) product liability insurance of not less than [REDACTED] per claim and in an annual aggregate, which must note TfNSW as an interested party on the relevant policy.
- (b) The Project Owner must promptly provide to TfNSW such documentation as TfNSW requests from time to time, acting reasonably, to verify the Project Owner is complying with its obligations under this clause 12.

13. Force Majeure

13.1 Affected by a Force Majeure Event

A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under this Agreement caused by an event beyond the Affected Party's reasonable control including, without limitation:

- (a) an industrial dispute which affects the operations of the Affected Party including third party industrial disputes which affect the operations of the Project Owner (other than an industrial dispute which only affects the operations of the Generating Plant);
- (b) fire, explosion, flood, storm, tempest, lightning, cyclone, hurricane, mudslide, landslide, earthquake and drought (where such drought is declared as a state of emergency);
- (c) a Terrorist Act;
- (d) war (declared or undeclared), armed conflict, riot or civil commotions;
- (e) chemical or biological contamination, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (f) any event which causes loss or damage to the SMNW;

- (g) any blockade or embargo, other than a blockade or embargo which only affects the Project Owner; and
- (h) an order of an Authority, including directions of AEMO issued to the Project Owner under the NER,

which are referred to in this Agreement as a **Force Majeure Event**.

13.2 Notification

- (a) As soon as practicable after a party becomes aware that its ability to perform its obligations under this Agreement has been, or is likely to be, adversely impacted by a Force Majeure Event, that Affected Party must give notice to the other party of that fact.
- (b) Within 10 Business Days of giving the notice under clause 13.2(a), the Affected Party must give full particulars of the Force Majeure Event to the other party including (to the extent practicable):
 - (i) details of the obligations which have been affected by the Force Majeure Event; and
 - (ii) details of the steps the Affected Party has taken to mitigate the effects of the relevant Force Majeure Event.

13.3 Consequences of Force Majeure Events

- (a) The performance of the Affected Party's obligations under this Agreement is suspended for the period of delay caused by the Force Majeure Event.
- (b) The Affected Party must use all reasonable endeavours to prevent the occurrence of, and to mitigate and overcome the effects of, the Force Majeure Event.
- (c) If the Affected Party is the Project Owner (**Project Owner FM Event**), the Annual LGC Volume in the Contract Year in which the Project Owner FM Event occurs is reduced by the Notional Quantity for the relevant Calculation Periods affected by the Force Majeure Event (reduced pro rata where some, but not all, of the Generating Plant was affected by the Force Majeure Event).
- (d) In the next Quarterly Invoice issued after the Project Owner FM Event ceases, the Project Owner must include the calculations related to the adjustment in Annual LGC Volume and apply the adjusted quantity for the remainder of the Contract Year.

13.4 Termination for Force Majeure Event

- (a) If the period of suspension under clause 13.3(a) exceeds [REDACTED], then the non-Affected Party may terminate this Agreement at the expiration of not less than 20 Business Days' notice to the other party.
- (b) If a party terminates this Agreement under clause 13.4:
 - (i) each party is released from its obligation to further perform the Agreement but retains the rights it had against the other party in respect of any past breach; and
 - (ii) all money previously paid under this Agreement for which no goods, services or other consideration has been provided must be refunded within 5 Business Days after termination.

14. Change in Law

14.1 Definition of Change in Law

A "Change in Law" occurs if, after the date of this Agreement, there occurs:

- (a) the introduction of, or change in, any Law (including any Change in Renewable Scheme), or the change in the interpretation of any Law; or
- (b) the introduction of, or the change in, any tax,

which has the effect of increasing or reducing the Project Owner's costs in connection with the generation of electricity at the Generating Plant or the creation and sale of LGCs to TfNSW under this Agreement, but excluding

any tax which has general application (such as income tax, GST, payroll tax or fringe benefits tax), rather than a tax which applies specifically to the generation, supply or sale of electricity, LGCs or Other Green Products.

14.2 Mitigation

The Project Owner will use all reasonable endeavours to mitigate the costs which could otherwise be passed-through under clause 14.

14.3 Share equally in the upside and downside of a Change in Law

- (a) Subject to clauses 14.4 and 14.6, if:
 - (i) the Project Owner notifies TfNSW that a Change in Law has occurred during the Agreement Term which has the effect of increasing; or
 - (ii) either party notifies the other that a Change in Law has occurred during the Agreement Term which they believe, acting reasonably has the effect of reducing,

the Project Owner's costs in connection with the generation of electricity at the Generating Plant or the creation and sale of LGCs to TfNSW under this Agreement, the parties agree to review and amend this Agreement (or to agree a one-off payment) with a view to ensuring that any such increased or reduced costs are shared equally by the parties (except that any reduced costs resulting from the introduction of a Carbon Tax are to be passed through in their entirety to TfNSW).

- (b) If the parties have not agreed to the necessary changes (or, if relevant, payment) required by clause 14.3(a) on or before the fifth Business Day following the notice provided by a party in accordance with clause 14.3(a) then TfNSW, acting reasonably, impartially and in good faith, may determine the matter.
- (c) If the Project Owner disagrees with TfNSW's determination under clause 14.3(b), the Project Owner may refer the matter for expert determination in accordance with clause 15.3.

14.4 Evidence of impact on costs

On request by TfNSW, the Project Owner must promptly provide TfNSW with sufficient evidence for TfNSW to form a view as to whether, and by how much, a Change in Law has increased or reduced the Project Owner's costs in connection with the generation of electricity at the Generating Plant or the creation and sale of LGCs to TfNSW under this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. Dispute Resolution

15.1 Notice of Dispute

Where any dispute in relation to this Agreement arises, either party may serve a notice in writing on the other party specifying:

- (a) the dispute;
- (b) particulars of the dispute; and
- (c) the position which the party believes is correct.

(Notice of Dispute).

15.2 Negotiation

- (a) Where a Notice of Dispute is given under clause 15.1, each party's Authorised Officers must meet and negotiate with a view to resolving the dispute.
- (b) If the dispute is not resolved within 20 Business Days of the date of service of the Notice of Dispute, whether or not a meeting under clause 15.2(a) has occurred, then either party may:
 - (i) if the dispute is solely a Technical Dispute, refer the dispute to expert determination by written notice to the other party in accordance with Rule A1.2 of the Resolution Institute's Expert Determination Rules 2016; or

- (ii) if the dispute is not solely a Technical Dispute, refer the dispute to arbitration by written notice to the other party and ACICA in accordance with Rule 5 of the ACICA Arbitration Rules (**Notice of Arbitration**).

15.3 Expert determination

- (a) Any dispute which is referred to expert determination in accordance with clause 15.2(b)(i) will be conducted in accordance with the Resolution Institute's Expert Determination Rules 2016 as modified by Schedule 4 to this Agreement.
- (b) Either party may refer a dispute which has been referred to expert determination in accordance with this clause, to arbitration by serving a Notice of Arbitration within 7 days of:
 - (i) the date of the expert's determination; or
 - (ii) the date by which the expert was required to determine the dispute under Rule 10.1 of the Resolution Institute's Expert Determination Rules 2016 (as modified).
- (c) Any determination of the expert will be final and binding, unless a Notice of Arbitration is given pursuant to clause 15.2(b)(ii) in which case the determination will be binding upon the Parties until it is overturned, reversed, varied or otherwise changed by an award of an arbitrator. Any such arbitration, and any arbitration award, will be on a de novo basis.

15.4 Arbitration

Any dispute that is referred to arbitration must be determined in accordance with the ACICA Arbitration Rules. The seat of arbitration will be Sydney, Australia. The language of the arbitration will be English.

15.5 Urgent relief

Nothing in this clause 15 prevents either party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction.

15.6 Continuance of obligations

Despite the existence of a dispute between the parties to this Agreement, the parties must continue to comply with and perform their obligations under this Agreement.

15.7 Survival of termination

This clause 15 survives termination of this Agreement.

16. Termination

16.1 TfNSW Default

A "TfNSW Default" occurs:

- (a) if TfNSW does not pay to the Project Owner any amount (other than an amount which is the subject of a dispute) payable under the Agreement on the day that amount falls due, and TfNSW does not make such payment within 20 Business Days of notice from the Project Owner;
- (b) if TfNSW does not perform when due any of its other obligations under the Agreement and that failure to perform:

- (i) if capable of remedy, is not remedied within 28 days of notice from the Project Owner; or
 - (ii) where that breach is not capable of remedy, TfNSW does not demonstrate to the reasonable satisfaction of the Project Owner that steps have been taken to prevent a reoccurrence of that failure to perform; or
- (c) if a Prohibited Change in Control occurs in respect of TfNSW.

16.2 Consequences of TfNSW Default

The Project Owner may, at any time while a TfNSW Default exists, terminate the Agreement on 10 Business Days' notice.

16.3 Project Owner Default

A "Project Owner Default" occurs:

- (a) if the Project Owner does not pay to TfNSW any amount (other than an amount which is the subject of a dispute) payable under the Agreement on the day that amount falls due, and the Project Owner does not make such payment within 10 Business Days of notice from TfNSW;
- (b) if the Project Owner is expelled or suspended from the NEM or suffers loss or suspension of its AEMO generator registration or its accreditation under the RET Legislation;
- (c) the Project Owner does not perform when due any of its other obligations under the Agreement and that failure to perform:
 - (i) if capable of remedy, is not remedied within 28 days of notice from TfNSW; or
 - (ii) where that breach is not capable of remedy, the Project Owner does not demonstrate to the reasonable satisfaction of TfNSW that steps have been taken to prevent a reoccurrence of that failure to perform;
- (d) subject to clause 5.5, if there is a Generating Plant Construction Default;
- (e) an Insolvency Event occurs in relation to the Project Owner; or
- (f) if a Prohibited Change in Control occurs in respect of the Project Owner.

16.4 Consequences of Project Owner Default

TfNSW may, at any time while a Project Owner Default exists, terminate the Agreement on 10 Business Days' notice.

16.5 Other termination events

- (a) For the avoidance of doubt, clauses 5.4(c) (Termination rights if Generating Plant late) and 13.4 (Consequences of Force Majeure) also contain termination rights which are in addition to (and are not to be read as subject to) the termination rights described in clauses 16.2 and 16.4.
- (b) If the Electricity Hedge terminates for any reason whatsoever, this Agreement will terminate with immediate effect.

16.6 Effect of termination

Termination of this Agreement under any clause does not affect rights or obligations which may have accrued prior to termination. The following clauses survive termination of this Agreement: clause 1 (Definitions and interpretation), clause 15 (Dispute Resolution), this clause 16.6, clause 17 (Subsequent RFPs and Piggybacking), clause 18 (Notices) and clause 20 (General).

17. Subsequent RFPs and Piggybacking

17.1 Data for subsequent RFPs

The Project Owner must provide TfNSW with all data of the Project Owner relating to the sale of LGCs under this Agreement, including the dispatch profile of the Generating Plant. The Project Owner consents to TfNSW using this data in future expressions of interest or requests for proposal (or similar) for LGCs being purchased by TfNSW for SMNW and similar projects except where precluded from providing that consent for reasons of confidentiality owed to third parties (provided such confidentiality restrictions have been notified in writing to TfNSW prior to the date of this Agreement).

17.2 Piggybacking

If a public sector service agency (as defined in the *Public Sector Employment and Management Act 2002* (NSW)) requests the Project Owner to provide goods or services to it similar to the goods or services the subject of this Agreement then the Project Owner may agree to enter into negotiations for a separate agreement and terms with that agency.

18. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time);

TfNSW

Name: Transport for New South Wales, a New South Wales Government Agency
 Address: Level 43
 680 George Street
 Sydney NSW 2000
 Fax: (02) 8265 6470
 For the attention of: Bernard Stute, Acting/Executive Director, Commercial & Risk, Sydney Metro

Project Owner

Name: FS NSW Project No 1 AT Pty Ltd (ACN 621 215 969) as trustee for the FS NSW Project No 1 Asset Trust
 Address: [REDACTED] Sydney NSW 2000
 Email: [REDACTED]
 For the attention of: [REDACTED]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 18(b); and

- (e) is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
- (f) (in the case of email) the first to occur of:
- (i) receipt by the sender of an electronic acknowledgement from the recipient's information system showing confirmation of delivery to the recipient's email address; and
 - (ii) four hours after the time sent (as recorded on the information system from which the sender sent the email) unless the party sending the email receives an automated message that the email has not been delivered; and
 - (iii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

19. Financing

19.1 Encumbrance

- (a) The Project Owner may create any Encumbrance over any or all of its rights, interests or obligations under, pursuant to or associated with this Agreement or the Generating Plant in favour of the Project Owner's financiers without the prior written consent of TfNSW.
- (b) TfNSW acknowledges and agrees that the Project Owner's financiers may, in exercising their powers under any Encumbrance created pursuant to clause 19.1(a), assign, novate, transfer or otherwise deal with this Agreement or any right under it with the prior written consent of TfNSW, provided that TfNSW must not unreasonably withhold or delay its consent if the proposed assignee or transferee:
- (i) will acquire all of the Generating Plant;
 - (ii) is solvent;
 - (iii) has sufficient creditworthiness, expertise and resources available to it (whether itself or by way of acceptable support by its parent company or from other sources) to be capable of performing the material obligations imposed on the Project Owner under this Agreement; and
 - (iv) enters into any deed or written instrument in favour of TfNSW (on terms satisfactory to TfNSW acting reasonably) for the purposes of assuming the obligations imposed on the Project Owner under, and agreeing to be bound by the terms of, this Agreement.
- (c) TfNSW acknowledges and agrees that the Project Owner's financiers may in exercising their powers under any Encumbrance created over the shares in the Project Owner in connection with the financing of the Generating Plant pursuant to clause 19.1(a) transfer or otherwise dispose of, or procure the transfer or other disposal of, all or any of the shares in the Project Owner to the purchaser with the

prior written consent of TfNSW, provided that TfNSW must not unreasonably withhold or delay its consent if the proposed purchaser:

- (i) is solvent; and
 - (ii) has sufficient creditworthiness, expertise and resources available to it (whether itself or by way of acceptable support by its parent company or from other sources) to be capable of performing the material obligations imposed on the Project Owner under this Agreement.
- (d) TfNSW acknowledges and agrees that the exercise of any power by the Project Owner's financiers under any Encumbrance does not constitute an Insolvency Event for the purposes of this Agreement.

19.2 Tripartite deed

TfNSW must, if required by the Project Owner and its financiers, enter into a tripartite deed with the Project Owner and its financiers on terms which are acceptable to TfNSW (acting reasonably). TfNSW acknowledges that the terms of the tripartite deed which forms Schedule 5 are acceptable to TfNSW.

20. Trustee limitation of liability

20.1 Capacity

- (a) Notwithstanding any other provision of this Agreement the Project Owner enters into this Agreement in its capacity as Trustee and in no other capacity.
- (b) TfNSW acknowledges that the Project Owner incurs obligations and liabilities under or in respect of this Agreement solely in its capacity as Trustee and agrees that (to the maximum extent permitted by law) the Project Owner will cease to have any obligations or liabilities under this Agreement if the Project Owner ceases for any reason to be Trustee.

20.2 Limitation of liability

The recourse of any party to the Project Owner in respect of any obligation or liability of the Project Owner under or in respect of this Agreement is limited to the Project Owner's ability to be indemnified from the assets of the Trust and no party may:

- (a) claim from or commence proceedings against the Project Owner in respect of any obligation or liability in any capacity other than as Trustee;
- (b) enforce or seek to enforce any judgment in respect of any obligation or liability against any property of the Project Owner other than property held by the Project Owner as Trustee;
- (c) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Project Owner on the basis of an obligation or liability in any capacity of the Project Owner other than as Trustee, or prove in any liquidation, administration or arrangement of or affecting the Project Owner in any capacity of the Project Owner other than as Trustee; or
- (d) in respect of an obligation or liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Project Owner, other than property which is held by it in its capacity as Trustee.

21. General

21.1 Governing law

This Agreement is governed by and must be construed according to the law applying in New South Wales.

21.2 Jurisdiction

Each party, subject to clause 15, irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 21.2(a).

21.3 Amendments

This Agreement may only be varied in writing executed by or on behalf of each party.

21.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

21.5 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Agreement.

21.6 Consents

A consent required under this Agreement from a party may not be unreasonably withheld, unless this Agreement expressly provides otherwise.

21.7 Assignment

- (a) Subject to clauses 19.1(a) and 21.7(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without obtaining the prior written consent of the other party, which can be granted or withheld at the other party's absolute discretion.
- (b) TfNSW will not require the consent of any party to assign, novate or otherwise transfer any of its rights or obligations under this Agreement if such assignment, novation or transfer:

- (i) occurs as a result of a corporate restructure of TfNSW or a direction of the Minister acting under the Transport Administration Act;
- (ii) is to another NSW Government Instrumentality with similar or greater experience to that of TfNSW in undertaking projects similar to the SMNW; or
- (iii) is to a private subsidiary corporation (as defined in section 55D of the Transport Administration Act) of TfNSW or another NSW Government Instrumentality.

21.8 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

21.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Agreement.

21.10 Expenses

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

21.11 Stamp duties

The Project Owner:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Agreement, the performance of this Agreement and each transaction effected by or made under this Agreement;
- (b) indemnifies TfNSW against any liability arising from failure to comply with clause 21.11(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 21.11.

21.12 Entire Agreement

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

21.13 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.

- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this Agreement.

21.14 Indirect or consequential loss

- (a) Subject to clause 21.14(b), neither party is liable to the other party under this Agreement at law or otherwise for any kind of indirect or consequential loss or damage nor for any loss of profit, loss of revenue, loss of use, loss of production, business interruption or any other kind of financial or economic loss. For the avoidance of doubt, payment for LGCs under this Agreement is not to be characterised as indirect or consequential loss or damage.
- (b) Where this Agreement is terminated under clauses 16.1 or 16.3 (or if terminated under clause 16.5(b) because the Electricity Hedge has been terminated as a result of a party's default under that agreement), the non-defaulting party is entitled to recover under this Agreement (subject to that party having used reasonable endeavours to mitigate its loss):
 - (i) if the non-defaulting party is the Project Owner, the amount of the LGC payments from the defaulting party that would otherwise be payable under this Agreement (less any amounts that the Project Owner receives from third parties for LGCs produced by the Generating Plant for the balance of the Sale Term (had the Agreement not been terminated)); and
 - (ii) if the non-defaulting party is TfNSW, that number of Complying LGCs (or such alternative LGCs as are acceptable to TfNSW, acting reasonably) from the defaulting party that would otherwise be deliverable under this Agreement.

21.15 Confidentiality

- (a) Subject to clause 21.15(c), the Project Owner must keep confidential this Agreement, the Commercially Sensitive Information and information relating to the arrangements documented in these contracts (including all account, billing, consumption profile and other information), including any discussions concerning these arrangements
- (b) Subject to clause 21.15(c), TfNSW must keep confidential the Commercially Sensitive Information.
- (c) Neither party is obliged to keep confidential any information:
 - (i) which is in the public domain through no fault of the disclosing party; or
 - (ii) the disclosure of which is:
 - A. required by law;
 - B. required by any recognised stock exchange or a New South Wales or Commonwealth regulator;
 - C. given with the written consent of the other party;
 - D. to professional advisers who are under a duty of confidentiality;
 - E. to third parties for the purposes described in clause 17, provided those third parties are under a duty of confidentiality;

- F. given to a court in the course of proceedings to which the disclosing party is a party; or
 - G. in the case of TfNSW, required by a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose.
- (d) If TfNSW requires the Project Owner to provide a confidentiality deed in favour of a third party in respect of any of that third party's confidential information that is provided to the Project Owner, then the Project Owner must execute such a confidentiality deed in the form reasonably specified by TfNSW.

21.16 Public Disclosure Obligations

- (a) The Project Owner acknowledges and agrees that disclosures regarding the SMNW, this Agreement by TfNSW, the State or any Authority may be required:
- (i) under law, including *the Government Information (Public Access) Act 2009 (NSW)* or any similar or replacement legislation;
 - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,
- (Public Disclosure Obligations).**
- (b) The Project Owner must use all reasonable endeavours to assist TfNSW, the State or an Authority in meeting their Public Disclosure Obligations in connection with this Agreement.

21.17 GST

- (a) **(Interpretation):**
- (i) Except where the context suggests otherwise, terms used in this clause 21.17 have the meanings given to those terms by the GST Act (as amended from time to time).
 - (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 21.17.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this Agreement is 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 purpose of this clause 21.17.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** 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 will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 21.17(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Agreement:

- (i) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause 21.17), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 21.17(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 21.17(c) and clause 21.17(e)), varies from the additional amount paid by the Recipient under clause 21.17(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 21.17(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 21.17(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which 21.17(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 21.17(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 21.17(c) (or the time at which such GST Amount would have been payable in accordance with clause 21.17(c) but for the operation of clause 21.17(e)).
- (f) **(No merger):** This clause will not merge on completion or termination of this Agreement.

Signed as an agreement.

Executed by Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:


Signature of witness

Anthony A-COSTANTINI
Name of witness in full











Name of authorised delegate

John Karaboulis
AI Deputy Secretary, TSD, TfNSW

Name of authorised delegate in full





[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Schedule 1 - Key Concepts

Part 1

	Item	Details
1.	Annual LGC Volume	[REDACTED] Complying LGCs (substituted, where permitted, by Alternative Complying LGCs), as amended in accordance with clauses 4, 6(f) and 13.3(c).
2.	Default Rate	in respect of a period, a rate equivalent to 3% per annum above the Bank Bill Rate for that period
3.	Generating Plant	a solar farm to be constructed by the Project Owner located near Beryl in New South Wales comprising First Solar photovoltaic modules, mounted on a single-axis tracking system, with expected aggregate generating capacity in excess of 70 MW
4.	LGC Price	[REDACTED] LGC
5.	Target Date	[REDACTED]

Schedule 2 - Community Benefits & Engagement Plans

First Solar has developed a Community Engagement Plan and a Community Benefit Plan for the Project. Community engagement and achievable benefits are project specific and will necessarily evolve to reflect local community requirements as the project is developed and operated.

Below is a schedule of activities that the Project Owner will undertake to satisfy best-practice community engagement and benefit.

Table 1 Community Engagement - Schedule of Deliverables

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Additional activities will be undertaken based on the needs and interests of the community.

Table 2 Community Benefit - Schedule of Deliverables

Project phase	Activity	Deliverable
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
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Schedule 3 - Construction and Commissioning of Generating Plant

1. Inspection of Generating Plant

- (a) Subject to item 1(b) of this Schedule, the Project Owner must:
 - (i) allow TfNSW representatives to inspect the Generating Plant upon request during both construction and operational phases of the Generating Plant, provided reasonable notice is provided; and
 - (ii) invite TfNSW to, and permit TfNSW and its invitees to be present at, completion or commissioning of the Generating Plant.
- (b) Any TfNSW representatives or invitees must comply with the Project Owner's reasonable directions in relation to workplace health and safety when visiting the site of the Generating Plant.

2. Notification of Generating Plant milestones

The Project Owner must include information about the progress of the construction and commissioning of the Generating Plant against each of the following milestones in the Quarterly reports being given under clause 5.4(a) of the Agreement:

- (a) Site for the construction of the Generating Plant has been purchased/leased by the Project Owner.
- (b) Contracts for the supply and construction of major plant or equipment components (such as wind turbines, solar panels) for the Generating Plant have been finalised and executed.
- (c) Regulatory: planning consents, construction approvals, and licences, including completion and acceptance of any necessary environmental impact statements, have been obtained for the Generating Plant.
- (d) Finance: the financing arrangements for the Generating Plant, including any debt plans, must have been concluded and contracts executed.
- (e) Commencement of construction: construction of the Generating Plant has commenced.
- (f) Commissioning of the Generating Plant following construction.

Schedule 4 Modification to the Resolution Institute Expert Determination Rules

(Clause 2(a))

Pursuant to Rule 4(2)(b) of the Resolution Institute's Expert Determination Rules, the parties agree to modify the application of those Rules as follows:

Modifications are underlined.

1. **Rule 2 Appointment of the Expert**

1. [no modification]

2. [no modification]

3. [no modification]

4. [no modification]

4A. The parties must not withhold agreement to any conditions the Nominee wishes to impose provided those conditions are reasonable and do not conflict with clause 19 of the Agreement.

5. [no modification]

2. **RULE 5 Role of the Expert**

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Agreement, the requirements of procedural fairness, and according to law.

2. [no modification]

3. [no modification]

3A. The rules of evidence do not apply to the Process.

4. (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the Parties immediately.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under clause 4(c) above, unless the Parties agree otherwise.

5. [no modification]

4. [no modification]

3. **Rule 10 The Expert's Determination**

1. As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9 Within 105 days of the date upon which the Expert entered

on the reference pursuant to Rule 2, the Expert shall determine the Dispute between the parties and notify such determination in writing to the parties.

2. [no modification]

3. [no modification]

4. [no modification]

4. **Rule 12 Waiver of Right to Object**

Rule 12 is deleted in its entirety.

Schedule 5 Sample Tripartite Deed

Deed

Consent Deed (Green Products Purchase Agreement and Contract for Difference)

Transport for NSW (**TfNSW**)

FS NSW Project No 1 AT Pty Ltd (ACN 621 215
969) as trustee for the FS NSW Project No 1
Asset Trust (**Project Owner**)

[#] (as **Security Trustee**)

Consent Deed (Green Products Purchase Agreement and Contract for Difference)

Date ► 2017

Between the parties

TfNSW **Transport for NSW**
ABN 18 804 239 602

Project Owner FS NSW Project No 1 AT Pty Ltd (ACN 621 215 969) as trustee for
the FS NSW Project No 1 Asset Trust
ACN ACN 621 215 969

Security Trustee **[#]**
ABN [#]

Recitals

1. TfNSW and the Project Owner are parties to the Green Products Purchase Agreement and the Contract for Difference.
2. The Project Owner is obtaining financing from the Financiers in relation to the construction and operation of the Project pursuant to which the Project Owner is required to grant Security Interests over its rights under and interest in the Project pursuant to the Security in favour of the Security Trustee.
3. The parties have agreed to enter into this deed to record certain arrangements between them.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed, the parties agree as set out in the Operative part of this deed.

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Authorisation	<ol style="list-style-type: none"> any agreement, approval, notice of non-objection, notarisation, certificate, permit, authority, authorisation, consent, approval, resolution, licence, exemption, filing or registration, by or with a Government Agency; or in relation to anything which is prohibited or restricted by law if a Government Agency intervenes or acts within a specified period, the expiry of that period without intervention or action.
Authority	has the meaning given to that term in the Green Products Purchase Agreement.
Business Day	has the meaning given to that term in the Green Products Purchase Agreement.
Commercially Sensitive Information	has the meaning given to that term in the Green Products Purchase Agreement.
CFD Default	means each 'Event of Default' under and as defined in the Contract for Difference.
CFD Insolvency Event	means an event described in clause 5(a)(vii) (Bankruptcy) of the Contract for Difference.
Contract for Difference or CFD	the contract for difference dated [#] between TfNSW and the Project Owner (including an ISDA Master Agreement, the Schedule thereto and any confirmations thereunder).
Controller	has the meaning given to it in the Corporations Act, but as if 'security interest' included any Security Interest and includes a Receiver.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Default	<p>means:</p> <ol style="list-style-type: none"> a GPPA Default; CFD Default; or any other breach or default by the Project Owner of a Project Document or any other event or circumstance which entitles, or which with the giving of notice or the expiration of time would

Term	Meaning
	entitle TfNSW to terminate or rescind the Project Document or treat the Project Document as repudiated or void.
Default Notice	means any notice of a Default given by TfNSW to the Project Owner under the Project Documents.
Enforcing Party	the Security Trustee or any receiver, receiver and manager, administrator, agent or attorney or other Controller appointed under a Security or any other person claiming through or under the Security Trustee (including any person acquiring any rights upon realisation of the security under any Security).
Facility Agreement	the agreement entitled '[Syndicated Facility Agreement]' dated on or about the date of this deed between, [amongst others, the Financiers, the Project Owner and the Security Trustee].
Finance Document	a document pursuant to which a Financier provides loans or financial accommodation to the Project Owner or any other document related to the provision of such loans or financial accommodation (including fee letters and interest rate or currency hedging arrangements), including the replacement, amendment or restatement of such a document.
Financier	each person on whose behalf the Security Trustee holds the Secured Property including financiers who have provided debt financing for the construction and operation of the Project (and related activities) or hedge counterparties who have entered into interest rate or foreign exchange hedging arrangements with the Project Owner.
Government Agency	a government or any governmental agency, semi government or judicial entity or authority including any stock exchange or self-regulatory organisation established by legislation .
Green Products Purchase Agreement or GPPA	the agreement titled 'Green Products Purchase Agreement' dated [#] between TfNSW and the Project Owner.
GPPA Default	has the meaning given to "Project Owner Default" in the Green Products Purchase Agreement.
GPPA Insolvency Event	has the meaning given to "Insolvency Event" in the Green Products Purchase Agreement.
Insolvency Event	any of a: <ol style="list-style-type: none"> 1. CFD Insolvency Event; or 2. GPPA Insolvency Event.

Term	Meaning
Other Obligation Default	<p>means a default occurring under:</p> <ol style="list-style-type: none"> 1. clause 16.3(c) (Project Owner Default) of the GPPA; or 2. clause 5(a)(ii)(1) (Breach of Agreement; Repudiation of Agreement) of the CFD.
Payment Default	<p>means a default occurring under:</p> <ol style="list-style-type: none"> 1. clause 16.3(a) (Project Owner Default) of the GPPA; or 2. clause 5(a)(i) (Failure to Pay or Deliver) of the CFD,
Power	<p>any right, discretion, power, authority or remedy, whether express or implied, conferred on the Security Trustee or an Enforcing Party by a Finance Document, the Green Products Purchase Agreement, this deed or any applicable law. It includes accepting repudiation and granting waivers.</p>
PPSA	<p>the <i>Personal Property Securities Act 2009</i> (Cth).</p>
Proceeds Account	<p>the account of the Project Owner with the Security Trustee with the following account details: [#].</p>
Project	<p>the [#] solar farm.</p>
Project Document	<p>means each of the:</p> <ol style="list-style-type: none"> 1. Green Products Purchase Agreement; and 2. Contract for Difference.
Receiver	<p>a receiver or receiver and manager appointed under a Security.</p>
Secured Property	<p>the property subject to a Security.</p>
Security	<p>the [Security to be set out once the security package in finalised].</p> <p>[Note: TfNSW require that the entire security package is identified prior to signing. If further security is to be provided TfNSW's consent is required, which will not be unreasonably withheld]</p>
Security Interest	<p>an interest or power:</p> <ol style="list-style-type: none"> 1. reserved in or over an interest in any asset, including any retention of title; or 2. created or otherwise arising in or over any interest in any asset under a security agreement, bill of sale, mortgage, charge, lien, pledge, trust or power or any other agreement having similar effect,

Term	Meaning
	by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes any agreement to grant or create any of the above and includes a security interest within the meaning of section 12(1) of the PPSA.
Security Trust Deed	the deed titled '[Security Trust Deed]' dated on or about the date of this deed between, amongst others, the Project Owner and the Security Trustee, or any replacement security trust deed entered into as a result of a refinancing contemplated by clause 6.5 (<i>Refinance</i>).
SMNW	has the meaning given to that term in the Green Products Purchase Agreement.

1.2 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) an expression importing a person or an entity includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit or schedule to, this deed and a reference to this deed includes any attachment, exhibit and schedule;
- (h) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (i) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (j) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (k) a reference to a party to any document includes that party's successors and permitted assignees;

- (l) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement arrangement or understanding, whether or not in writing;
- (m) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
- (n) a reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (o) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (p) a reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 - is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) references to time are to Sydney time;
- (r) where this deed confers any power or authority on a person that power or authority may be exercised by that person acting personally or through an agent or attorney;
- (s) a reference to the Security Trustee includes a reference to any Enforcing Party; and
- (t) a reference in this deed to a Default being remedied refers to such Default being cured, remedied or otherwise arrangements are made to overcome the effects of the Default in each case.

1.3 Inclusive expressions

Specifying anything in this deed after the words 'include' or 'for example' or any similar expression does not limit what else is included unless there is express wording to the contrary.

1.4 Business Day

If the day on which the time for any thing is to be done under this deed is not a Business Day, that thing must be done on or by the preceding Business Day.

1.5 Duration

This deed continues in full force and effect until the earlier of:

- (a) the date that the Security Trustee notifies TfNSW in writing that the Secured Property has been fully and finally discharged and released in accordance with its terms (without any prejudice to any rights which accrued prior to the expiration of the term); or
- (b) the coming to the end of the Project Documents by the effluxion of time or they are terminated in accordance with their terms.

1.6 Inconsistency

If any ambiguity, inconsistency or conflict of obligations exists or arises between this deed and the Project Documents relating to matters the subject of this deed, the provisions of this deed take precedence over the Project Documents to resolve that ambiguity, inconsistency or conflict.

1.7 Security Trustee's limitation of liability

[Given the Security Trustee has not been appointed and will have specific requirements in relation to limitation of liability drafting, the relevant drafting should be inserted once the Security Trustee is appointed].

2 Consents and acknowledgments

2.1 Notice by the Project Owner

The Project Owner gives notice to TfNSW that the Project Owner has created or will create each Security Interest under the Security in favour of the Security Trustee and TfNSW expressly acknowledges that it has received this notice.

2.2 TfNSW consents

TfNSW consents to the execution of each document constituting the Security and the creation of each Security Interest under the Security.

2.3 TfNSW acknowledgement

TfNSW acknowledges and agrees that:

- (a) **(no default)** the execution and existence of the Security nor the exercise by an Enforcing Party of any Power under the Security in accordance with this deed (including acceleration or any other action to recover moneys secured by the Security or the appointment of a Controller or an administrator);
- (b) **(appointment)** the appointment of an administrator by the directors of the Project Owner as a direct result of the enforcement action taken by an Enforcing Party in accordance with this deed; or
- (c) **(enforcement)** at any time after the commencement of enforcement of the Security, the exercise by an Enforcing Party of all or any of the Powers, and/or the performance of all or any of the obligations of the Project Owner under or in relation to a Project Document as if it were the Project Owner to the exclusion of the Project Owner in each case in accordance with this deed,

will not of itself:

- (d) contravene the relevant Project Document;
- (e) constitute a Default; or
- (f) entitle TfNSW to terminate, rescind or accept repudiation of, or suspend performance of any of its obligations under the Project Documents.

An Enforcing Party will not be liable, and will not be taken to have assumed liability, for any obligations of the Project Owner under the Project Documents as a result of the entry into the Security or this deed.

2.4 TfNSW

TfNSW agrees and acknowledges that:

- (a) **(hinder enforcement)** it will not object to or otherwise unreasonably hinder or prevent the proper exercise of any right, power or remedy of an Enforcing Party under the Security, or under any law, equity or otherwise in respect of the Security; and
- (b) **(no prejudice)** the rights of the Security Trustee under this deed (including to enforce any provision of this deed) are not affected by:
 - (1) any conduct of the Project Owner;
 - (2) any failure of the Project Owner to comply with this deed or the Project Documents; or
 - (3) the giving by the Security Trustee of any discharge, amendment, variation, consent or waiver to the Project Owner.

3 Representations and warranties

3.1 The Project Owner representations and warranties

The Project Owner represents and warrants to the Security Trustee that:

- (a) **(validly incorporated)** it is a corporation registered (or taken to be registered) and validly existing under the Corporations Act;
- (b) **(power)** it has the power to enter into, deliver and perform its obligations under the Project Documents and this deed and to carry out the transactions contemplated by the Project Documents and this deed;
- (c) **(corporate authorisations)** it has taken all necessary action to authorise the execution, delivery and performance of its obligations under the Project Documents and this deed and to carry out the transactions contemplated by the Project Documents and this deed;
- (d) **(documents binding)** the Project Documents and this deed constitute its legal, valid and binding obligations, which are enforceable in accordance with their terms, subject to any necessary stamping and registration, are enforceable against it in accordance with their terms subject to laws generally affecting creditor's rights and principles of equity;
- (e) **(transactions permitted)** the execution, delivery and performance by it of the Project Documents and this deed and each transaction contemplated under the Project Documents and this deed does not and will not breach or result in a contravention of:
 - (1) any law, regulation or Authorisation;
 - (2) its constitution or other constituent documents; or
 - (3) any Security, Security Interest or document or agreement which is binding on it or its assets;
- (f) **(no notice)** it has not received notice of, and is not otherwise aware of, any Security Interest over the rights of the Project Owner under the Project Documents other than the Security; and
- (g) **(entire agreement)** there are no other agreements, documents or arrangements which amend, vary or supplement the Project Documents.

3.2 TfNSW representations and warranties

TfNSW represents and warrants to the Security Trustee that:

- (a) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed (or will have them in full force and effect at the time the obligation is to be performed);
- (c) this deed constitutes valid and legally binding obligations on it in accordance with its terms; and
- (d) the execution, delivery and performance of this deed does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

3.3 Security Trustee representations and warranties

The Security Trustee represents and warrants to TfNSW that:

- (a) it has been duly appointed in accordance with the terms of the Security Trust Deed;
- (b) it has the power and authority to enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed;
- (c) it has taken all necessary action to authorise the entry into and performance of this deed and to carry out the transactions contemplated by this deed;

- (d) the execution and performance by it of this deed will not violate any law or treaty or any authorisation, judgment, ruling or order binding on it, or its constitution or constituent documents; and
- (e) this deed and the transactions contemplated by it will constitute binding legal obligations on the part of it, enforceable in accordance with its terms.

3.4 Survival of representations and warranties

The representations and warranties given under this deed survive the execution of this deed.

3.5 Reliance

- (a) Both the Project Owner and TfNSW acknowledge that the Security Trustee has entered into this deed, the Finance Documents and the Security in reliance on the representations and warranties given under this deed.
- (b) Both the Security Trustee and the Project Owner acknowledge that TfNSW has entered into this deed in reliance on the representations and warranties given under this deed.

4 Undertakings

4.1 Notice

- (a) Subject to clause 4.1(b), TfNSW undertakes to the Security Trustee that it will give the Security Trustee a copy of any Default Notice at or around the same time and in the same manner as it gives such notice to the Project Owner.
- (b) TfNSW must use reasonable endeavours to comply with its obligations under this clause 4.1(a), but will have no liability to the Security Trustee or the Project Owner for any loss suffered or damages incurred by any other party because of a breach by TfNSW of any obligation under this clause 4.1(a).
- (c) The Security Trustee undertakes to TfNSW that it will give TfNSW any notice of default or event of default (however described) under any Finance Document at or around the same time and in the same manner it gives such notice to the Project Owner.

4.2 Disputes

- (a) TfNSW will use its reasonable endeavours to notify the Security Trustee promptly upon becoming aware of any material dispute with the Project Owner under or in relation to the Project Documents, but will have no liability to the Security Trustee or the Project Owner for any loss suffered or damages incurred by any other party because of a breach of any of the obligations under this clause 4.2(a).
- (b) If the Security Trustee wishes to attend any meetings, negotiations or arbitrations which are contemplated by clause [15 (Dispute Resolution)] of the Green Products Purchase Agreement, it must notify TfNSW and first obtain the written consent of TfNSW which may be given or withheld in TfNSW's absolute discretion.

5 Defaults and cure rights

5.1 Right to remedy

TfNSW acknowledges and agrees that:

- (a) an Enforcing Party is not obliged to enforce the Security;
- (b) an Enforcing Party may, but is not obliged to, take steps to remedy, or procure the remedy of, any Default or to prevent the occurrence of any Default. If an Enforcing Party does decide to take steps to remedy or procure the remedy of any Default prior to taking such steps it will, in accordance with clause 7.2 (Notification), inform TfNSW

in writing and confirm, in form and substance satisfactory to TfNSW, that it will assume all of the obligations of the Project Owner under both Project Documents;

- (c) in the case of a Default which solely relates to the occurrence of an Insolvency Event in relation to the Project Owner, the appointment of a Controller to the Project Owner within the time period referred to in clause 5.2(a)(2) (Termination) will remedy that Default for the duration of such appointment, provided that:
 - (1) the obligations of the Project Owner under the Project Documents and this deed continue to be performed to the satisfaction of TfNSW; and
 - (2) the Controller acts in accordance with this deed;
- (d) in the case of a Default which solely relates to a failure by the Project Owner to pay money to TfNSW, the payment or procurement of payment by the Security Trustee of the relevant amount which satisfies that payment obligation finally and in full, within the time limits referred to in clause 5.2(a)(1); and
- (e) any remedy of a Default effected by, or on behalf of, an Enforcing Party as may be necessary to overcome any detriment to the affected party caused by the relevant Default will be effective as a remedy of the relevant Default by the Project Owner.

5.2 Termination

- (a) TfNSW undertakes to the Security Trustee that it will not terminate a Project Document unless it has provided the Security Trustee with a Default Notice and any applicable cure period that is available to the Project Owner under the relevant Project Document has expired and the relevant Default has not been remedied by the expiry of that cure period and:
 - (1) in the case of a Payment Default, an Enforcing Party has not remedied that Payment Default Event within 10 days of the later of the giving of a Default Notice to the Security Trustee and the expiry of the relevant Payment Default cure period under the relevant Project Document;
 - (2) in the case of an Insolvency Event, the Security Trustee has not appointed a Controller to the Project Owner in accordance with clause 5.1(c) (Right to remedy) within 10 Business Days of receipt by the Security Trustee of the Default Notice issued by TfNSW under clause 4.1(a) in respect of that Insolvency Event;
 - (3) in the case of an Other Obligation Default, an Enforcing Party has not remedied that Default Event within 20 days of the later of the giving of a Default Notice to the Security Trustee and the expiry of the relevant Other Obligation Default cure period under the relevant Project Document; or
 - (4) in the case of any other Default, if an Enforcing Party has not remedied a Default in accordance with the terms of, and within 14 days of the later of the giving of a Default Notice to the Security Trustee and the expiry of the period of time available (if any) to the Project Owner to remedy that Default under the relevant Project Document.
- (b) If TfNSW is entitled to terminate a Project Document in accordance with clause 5.2(a) then:
 - (1) in respect of a CFD Default, TfNSW may immediately terminate the Contract for Difference in accordance with clause 6(a) (Early Termination; Close-Out Netting) of the Contract for Difference, following which the Green Products Purchase Agreement will immediately terminate in accordance with clause 16.5(b) (Other termination events) of that agreement; and
 - (2) in respect of a GPPA Default, TfNSW may terminate the Green Products Purchase Agreement in accordance with clause 16.4 (Consequences of Project Owner Default) of that agreement, following which TfNSW may immediately terminate the Contract for Difference in accordance with clause 6(b)(iv)(B) (Right to Terminate) of that agreement.

5.3 No derogation of Security Trustee's rights

Nothing in this deed in any way derogates from, limits or prejudices any rights the Security Trustee may have against the Project Owner under any Security held by it, any other contract or at law.

6 Assignment

6.1 Assignment by TfNSW

TfNSW must not deal with, sell, assign, transfer, novate or otherwise dispose of, or create or allow to exist any Security Interest over, any of its rights or obligations under this deed unless:

- (a) the Security Trustee's has provided its prior written consent (which is not to be unreasonably withheld or delayed); or
- (b) such sale, assignment, transfer, novation or other disposal is to a person that is the purchaser or receives an assignment, transfer, novation or other disposal of TfNSW's rights under the Green Products Purchase Agreement that is permitted by clause 20.7(b) (Assignment) of the Green Products Purchase Agreement and Section 7(b) of the Contract for Difference,

and provided that TfNSW procures that such purchaser, assignee, transferee or novatee (as the case may be) enters into a tripartite deed with the Project Owner and the Security Trustee on substantially the same terms as this deed.

6.2 Assignment by the Security Trustee

- (a) Both TfNSW and the Project Owner acknowledge and agree that the Security Trustee may assign or novate any of its rights or obligations under this deed to a replacement security trustee appointed under the Security Trust Deed upon notice to but without the consent of, TfNSW and the Project Owner, provided that such assignee or novatee (as the case may be) enters into a tripartite deed with TfNSW and the Project Owner on substantially the same terms as this deed.
- (b) Both TfNSW and the Project Owner will enter into any necessary documentation to give effect to clause 6.2(a), including a novation deed with any replacement security trustee appointed under the Security Trust Deed (in a form acceptable to TfNSW, the Security Trustee and the replacement security trustee).

6.3 Assignment by the Project Owner

- (a) Subject to clause 6.3(b), the Project Owner may:
 - (1) assign its rights under this deed to a person that receives an assignment of the Project Owner's rights under the Project Documents that is permitted by the Project Documents; and
 - (2) novate its rights and obligations under this deed to a person that receives a novation of the Project Owner's rights and obligations under the Project Documents that is permitted by the Project Documents.
- (b) The Project Owner must not assign its rights under this deed or novate its rights and obligations under this deed without the prior written consent of the Security Trustee.

6.4 On enforcement

- (a) In the exercise of its Powers under the Security, any Enforcing Party may only deal with, sell, assign, transfer, novate or otherwise effect a disposal of any rights and interests, or obligations, of the Project Owner under the Project Documents as permitted by clause 19.1(b) (*Encumbrance*) or 19.1(c) (*Encumbrance*) of the Green Products Purchase Agreement.
- (b) Each of TfNSW and the Project Owner will enter into any necessary documentation to give effect to clause 6.4(a), including a novation deed.

6.5 Refinance

- (a) The Project Owner or an Enforcing Party may refinance the Project from time to time, in whole or in part.
- (b) TfNSW consents and acknowledges that it will enter into a document on the same terms as this deed, in addition to or in replacement of this deed, if and to the extent necessary to confer benefits and obligations equivalent to those benefits and obligations under this deed on any new or replacement security trustee to facilitate a refinancing contemplated by this clause 6.5.

7 Enforcement

7.1 Appointment and rights of Enforcing Party

Without limiting the rights of the Security Trustee under any Security, following an event that renders a Security enforceable, but subject to this deed, including clause 5.1(a) (Right to remedy):

- (a) the Security Trustee may appoint an Enforcing Party to exercise any or all of the Project Owner's rights or perform some or all of the Project Owner's obligations under the Project Documents and in accordance with the Security; and
- (b) the Security Trustee or any Enforcing Party may take the action permitted by clause 6.4 (*On enforcement*).

7.2 Notification

Prior to enforcing or exercising any of its rights, powers or remedies under any Security, including by appointing an Enforcing Party under clause 7.1, exercising its power of sale or commencing proceedings to foreclose, the Security Trustee must notify TfNSW in writing.

7.3 Consequences of enforcement

If the Security Trustee appoints an Enforcing Party under clause 7.1 (*Appointment and rights of Enforcing Party*):

- (a) without limiting clause 5.1(b), to the extent that TfNSW consents to the Project Owner still having rights or is performing some or all of the Project Owner's obligations under the Project Documents, the Project Owner must continue to duly and punctually perform and observe its duties and obligations and may exercise its rights (subject only to the terms of this deed) under the Project Documents in accordance with its terms;
- (b) subject to the Enforcing Party and, if applicable in accordance with clause 7.3(a), the Project Owner, exercising all of The Project Owner's rights and performing all of the Project Owner's obligations under the Project Documents to the satisfaction of TfNSW, TfNSW must continue to duly and punctually perform and observe its duties and obligations and may exercise its rights (subject only to the terms of this deed) under the Project Documents in accordance with its terms; and
- (c) unless required to remedy the relevant Default in accordance with this deed, the Enforcing Party is not liable to TfNSW in respect of any events, acts or omissions which have occurred or should have occurred before the date of the appointment, or for any liability of the Project Owner in relation to the Project Documents in respect of any event, act or omission before the date of the appointment.

7.4 Assistance

TfNSW must, at the Project Owner's cost, provide reasonable co-operation and enter into any documentation reasonably requested by the Security Trustee or an Enforcing Party in form and substance acceptable to TfNSW in connection with, or to give effect to, the Security Trustee's or the Enforcing Party's exercise of its rights under clause 7.1 (*Appointment and rights of Enforcing Party*).

7.5 Rights to enforce

Nothing in this deed prevents the Security Trustee from:

- (a) giving any notices under the Facility Agreement or any Security;
- (b) demanding the payment of any money under the Facility Agreement or secured by any Security;
- (c) exercising or enforcing any powers, right or remedy afforded generally to unsecured creditors or under any agreement other than the Security; or
- (d) enforcing any of the Security,

in each case in accordance with the terms of the relevant Finance Document.

8 Payments and costs

8.1 Payments under the Project Documents

- (a) Without in any way limiting any rights or obligations TfNSW and the Project Owner may have and may exercise under the Project Documents in respect of the payment of money, including in respect of TfNSW, any rights of set-off or netting of payments, the Project Owner and the Security Trustee hereby direct TfNSW to pay and TfNSW must pay all amounts which are, or at any time become, due and payable by it to the Project Owner under the Project Documents directly into the Proceeds Account unless and until the Security Trustee otherwise directs in accordance with the Finance Documents.
- (b) TfNSW must comply with clause 8.1(a) and any direction they receive from the Security Trustee under clause 8.1(a).
- (c) Where TfNSW pays an amount due and payable to the Project Owner under the Project Documents in accordance with this clause 8.1, the amount paid will be deemed to be a payment made under and in accordance with the Project Documents and TfNSW's liability to the Project Owner under the Project Documents will therefore be reduced by the amount paid in accordance with this clause 8.

8.2 Costs and expenses

Unless otherwise agreed, TfNSW, the Project Owner and Security Trustee must each pay their own costs (including legal costs) and expenses in connection with the negotiation, execution and delivery of this deed.

9 Further Security

Any further security or assurance from the Project Owner in favour of an Enforcing Party will be deemed to be part of the Security and a Security Interest and governed by this deed.

10 General

10.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time);

TfNSW

Name: Transport for New South Wales, a New South Wales Government Agency
Address: Level 43
680 George Street
Sydney NSW 2000
Fax: (02) 8265 6470
For the attention of: Bernard Stute, Acting/Executive Director, Commercial & Risk, Sydney Metro

Project Owner

Name: FS NSW Project No 1 AT Pty Ltd (ACN 621 215 969) as trustee for the FS NSW Project No 1 Asset Trust
Address: [REDACTED]
Sydney NSW 2000
Fax: [REDACTED]
Email: [REDACTED]
For the attention of: [REDACTED]

Security Trustee

Name: *[to be inserted]*
Address: *[Insert address of the Project Owner]*
Fax: *[insert fax number of the Project Owner]*
Email: *[insert email address]*
For the attention of: *[insert person to who directed]*

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 10.1(b); and
- (e) is taken to be received by the addressee:
 - (1) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (2) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (3) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent;
- (f) (in the case of email) the first to occur of:
 - (1) receipt by the sender of an electronic acknowledgement from the recipient's information system showing confirmation of delivery to the recipient's email address; and
 - (2) four hours after the time sent (as recorded on the information system from which the sender sent the email) unless the party sending the email receives an automated message that the email has not been delivered; and
 - (3) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day .

10.2 Entire agreement

This deed constitutes the entire agreement between the parties with respect to its subject matter and supersedes all negotiations and prior agreements with respect to that subject matter.

10.3 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

10.4 Severability

If the whole or any part of a provision of this deed is or becomes void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

10.5 Variation

A variation of any term of this deed must be in writing and signed by the parties.

10.6 No waiver

No failure to exercise and no delay in exercising any right, power or remedy under this deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

10.7 Governing Law

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.
- (c) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) Each party irrevocably waives any immunity in respect of its respective obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason, including the service of notice, attachment before judgment, attachment in aid of execution or execution.

10.8 Counterparts

- (a) This deed may be executed in any number of counterparts, in which case the date of this deed will be the date on which the last counterpart is signed.
- (b) All counterparts together will be taken to constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

10.9 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of revocation of the power of attorney appointing that attorney.

10.10 Confidentiality

- (a) Subject to clause 10.10(c), the Project Owner and the Security Trustee must each keep confidential this deed, the Commercially Sensitive Information and information relating to the arrangements documented in the Project Documents (including all account, billing, consumption profile and other information), including any discussions concerning these arrangements

- (b) Subject to clause 10.10(c), TfNSW must keep confidential the Commercially Sensitive Information.
- (c) No party is obliged to keep confidential any information:
 - (1) which is in the public domain through no fault of the disclosing party; or
 - (2) the disclosure of which is:
 - (A) required by law;
 - (B) required by any recognised stock exchange or a New South Wales or Commonwealth regulator;
 - (C) given with the written consent of the other party;
 - (D) to professional advisers who are under a duty of confidentiality;
 - (E) to third parties for the purposes described in clause 17 (Subsequent RFPs and Piggybacking) of the Green Products Purchase Agreement, provided those third parties are under a duty of confidentiality;
 - (F) given to a court in the course of proceedings to which the disclosing party is a party; or
 - (G) in the case of TfNSW, required by a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose.
- (d) If TfNSW requires the Project Owner or the Security Trustee to provide a confidentiality deed in favour of a third party in respect of any of that third party's confidential information that is provided to the Project Owner or the Security Trustee, then the Project Owner or the Security Trustee (as applicable) must execute such a confidentiality deed in the form reasonably specified by TfNSW.

10.11 Public Disclosure Obligations

- (a) Each of the Project Owner and the Security Trustee acknowledge and agree that disclosures regarding the SMNW, this deed by TfNSW, the State or any Authority may be required:
 - (1) under law, including the Government Information (Public Access) Act 2009 (NSW) or any similar or replacement legislation;
 - (2) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,

(Public Disclosure Obligations).
- (b) Each of the Project Owner and the Security Trustee must use all reasonable endeavours to assist the Project Owner, the State or an Authority in meeting their Public Disclosure Obligations in connection with this deed.

Signing page

Executed as a deed

[#Execution Block]

