



Power Purchase Agreement – Details

Agreement Name/No.	[insert contract name or number]
Owner	[insert name] [address] ABN [insert] Tel: [insert]
Buyer	[insert name] [address] ABN [insert] Tel: [insert]
Term (GC 3)	The initial Term is [insert] years from the First Commercial Supply Date, as may be extended in accordance with GC 3.
Price (GC 7)	The Price is set out at Schedule 2 (Price and Rates).
Commencement Date	The Commencement Date is [insert date] or [insert days] days from the date of signing this Agreement. If nothing is stated, then the Commencement Date is the date of signing this Agreement.
Owner Representative	The Owner Representative is: [insert name and details]
Buyer Representative:	The Buyer Representative is: [insert name and details]
Security (GC 16)	Security to be provided by the Owner: [insert description and value e.g. bank guarantee] Security to be provided by the Buyer: [insert description and value e.g. bank guarantee]

Address for Service of Notices	[insert name of Owner]
	Attention: [insert name]
	Address: [insert address]
	Email address: [insert address]
	[Insert name of Buyer]
	Attention: [insert name]
	Address: [insert address]
	Email address: [insert address]
Date of this Agreement	/ /

The Owner agrees to sell electricity from the Facility to the Buyer and the Buyer agrees to buy that electricity from the Owner under this Agreement.

Executed as a deed

Executed as a deed in accordance with section 127
of the *Corporations Act 2001* by **[insert name]**
(ABN **[insert ABN]**)

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Executed as a deed in accordance with section 127
of the *Corporations Act 2001* by **[insert name]**
(ABN **[insert ABN]**)

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

General conditions

1 Conditions Precedent

[Drafting note: consider whether the inclusion of Conditions Precedent is necessary in the context of the whole transaction. It may be necessary to redraft some of the Conditions Subsequent listed below as Conditions Precedent. This will depend upon the interaction of the PPA with other Contracts in the Agreement. To be discussed.]

2 Conditions Subsequent

2.1 This Agreement may be terminated by either Party under GC 2.5 if each of the following conditions (Condition Subsequent) are not satisfied or waived on or before the Condition Longstop Date:

- (a) the Owner notifies the Buyer that the ARENA Funding has been received;
- (b) [the Owner notifies the Buyer that it has entered into a Financing Agreement in respect of the development of the Facility];
- (c) the Owner notifies the Buyer that the land lease for the Site is executed and valid;
- (d) the Owner notifies the Buyer that EPC Contract is executed and valid;
- (e) the Owner notifies the Buyer that all Government Authority approvals have been obtained;
- (f) [the Owner notifies the Buyer that the Connection Agreement is executed and valid.]

[Drafting note: consider whether there are any other Conditions Subsequent that should be included before this Agreement is effective.]

- 2.2 Each Party shall use reasonable endeavours to ensure that each of the above Conditions Subsequent for which it is responsible are satisfied promptly.
- 2.3 A Condition Subsequent may only be waived by written agreement of the Parties.
- 2.4 As soon as the Owner is satisfied that each of the Conditions Subsequent has been satisfied, the Owner's Representative will issue a notice to the Buyer to that effect, and at the same time shall provide a Notice of Commencement of Supply.
- 2.5 If the Conditions Subsequent are not fulfilled by the Condition Longstop Date, or a later date agreed in writing between the Parties, either Party may terminate this Agreement by written notice to the other Party. If this Agreement is terminated under this GC 2.5, no Party will have any liability to the other Party other than its obligations under GC 23.

3 Term

- 3.1 This Agreement commences on the Commencement Date and ends on the Expiry Date unless terminated sooner in accordance with this Agreement.
- 3.2 Not later than [12 Months] before the initial Expiry Date, the Owner may issue a written notice to the Buyer stating that the Owner intends to exercise the First Option.
- 3.3 Provided that the First Option has been exercised, not later than [12 Months] before the Expiry Date as extended under the First Option, the Owner may issue a written notice to the Buyer stating that the Owner intends to exercise the Second Option.
- 3.4 When the Owner issues a written notice under GC 3.2 or GC 3.3, and the Buyer is of the view (formed in good faith) that an extension of the term of this Agreement is not in its financial interest:
 - (a) the Buyer may respond to the notice by advising in writing that it objects to the extension of the term and of the principal grounds for its objection; and
 - (b) unless those objections are able to be resolved to the mutual satisfaction of the Parties within a period of 6 months following the notice, the notice provided under GC 3.2 or GC 3.3, as the case may be, will be of no force or effect and the term of this Agreement will remain as if that notice had not been served.

[Drafting note: we have provided the Buyer with the ability to not accept the exercise of the option in certain circumstances, as it may not be commercially acceptable to the Buyer to have a contract with such a long duration. To be discussed.]

4 Facility

- 4.1 The Owner must ensure that the Facility is designed, constructed, commissioned and operated so that it:
 - (a) has a generating capacity of not less than [insert] MW; and
 - (b) is capable of transferring electricity to the Grid at the Interconnection Point as
- [Drafting note: insert requirements e.g. as three phase alternating current, at nominal frequency of 50 Hz and at a nominal voltage of 132 kV].**
- 4.2 The Owner must:
 - (a) obtain and maintain all necessary approvals to construct and operate the Facility; and
 - (b) connect the Facility to the Grid and carry out whatever works and do whatever is reasonably necessary, to establish a connection so the Owner can deliver electricity to the Buyer.

- 4.3 The Owner must provide the Buyer with a written commissioning schedule for the Facility (Commissioning Schedule) within [40 Business Days] after the Owner provides a notice under GC 2.4. The Commissioning Schedule must set out the information provided in Schedule 1 (Specification), including the target Commissioning Date and the target date for Commercial Operation. The Owner must provide the Buyer with written updates of any changes to the Commissioning Schedule.

[Drafting note: we have currently not provided any requirement for the Owner to achieve Commercial Operation or Commissioning by a certain date, or any shortfall penalties for a failure to do so – the current obligation is just to provide information.]

- 4.4 [The Owner may operate the Facility prior to the Commissioning Date to generate Early Electricity. The Owner may notify the Buyer in writing at any time after [120 Business Days] before the target date for Commercial Operation] that it wishes to supply Early Electricity, including the quantities that it anticipates supplying on a daily basis.]

[Drafting note: the appropriateness of the provision for early energy (i.e. provision for dispatch of any electricity generated prior to CO) should be discussed between parties.]

- 4.5 [If the Owner provides a notice to the Buyer under GC 4.4, the Buyer and the Owner must consult and negotiate in good faith in respect of the means to enable and facilitate the supply of Early Electricity to the Buyer, including in relation to any arrangements necessary under the Connection Agreement. Subject to any restrictions under the Connection Agreement, the Buyer must take the Early Electricity notified under GC 4.4 on the terms set out in this Agreement.]

5 Interconnection and Transmission

- 5.1 The Owner is responsible for arranging, acquiring and paying for the connection of the Facility to the Grid and the delivery of electricity to the Buyer at the Interconnection Point.
 - 5.2 The Buyer is responsible for [arranging, acquiring and paying for the Ancillary Services required to transmit through the Grid all of the electricity delivered by the Owner to the Buyer at the Interconnection Point.]
- [Drafting note: the extent of the Buyer's obligations is to be discussed. If the Buyer will not sell any of the electricity into the spot market or export onto the Grid, it should be sufficient that the Buyer's obligations are limited to having the approvals]**

etc. to transmit the electricity through the Buyer's Internal Grid.]

- 5.3 The Owner must provide the Buyer with a fully executed copy of the Connection Agreement.

[Drafting note: as per the above question, will there be any other form of access agreement or similar that the Buyer will be required to comply with?]

- 5.4 The Owner must at all times remain in material compliance with the terms of the Connection Agreement.

6 Operations and Maintenance

- 6.1 The Owner must notify the Buyer of any material changes that it intends to make to the Facility at least [20 Business Days] prior to the date on which the Owner intends to make the changes.

[Drafting note: this is only an obligation to notify, Owner to confirm]

- 6.2 If a Forced Outage occurs, the Owner will notify the Buyer of the existence, nature and expected duration of the Forced Outage as soon as practicable. The Owner will inform the Buyer of any change in the expected duration of the Forced Outage from time to time for the duration of each Forced Outage unless relieved of this obligation by the Buyer.

- 6.3 The Owner must provide the Buyer with a program and outline of the Scheduled Maintenance (in the form set out in Schedule 3 (Scheduled Maintenance)) to be conducted in respect of the Facility for the first year following the Commissioning Date prior to the expected Commissioning Date. The Owner must submit an annual program of Scheduled Maintenance prior to the commencement of each subsequent year commencing on the anniversary of the Commissioning Date.

- 6.4 The Owner must notify the Buyer of any changes to the annual program of Scheduled Maintenance as soon as is practicable.

- 6.5 Subject to Prudent Electrical Practice, the Buyer may request that the Owner defer any Scheduled Maintenance. The procedures for making such a request are outlined in Schedule 3 (Scheduled Maintenance).

[Drafting note: as part of its obligations under Schedule 4 of the Connection Agreement, the Owner is required to submit a schedule of Planned Works. These obligations will be carried out by the O&M contractor, and should both be reflected in the Scope of Services in Schedule 1 of the O&M Contract]

7 Supply

- 7.1 During the Supply Period, the Owner must supply the electricity to

the Buyer at the Interconnection Point and the Buyer must take the electricity supplied by the Owner in accordance with this clause 7.1, on the terms and conditions set out in this Agreement.

[Drafting note: we have currently not provided any minimum amount of power that must be provided. As currently drafted, given that no fixed amount of electricity is specified to be supplied or accepted by the Buyer (and no minimum or maximum amounts), the Buyer is obliged to pay for all electricity provided. If the arrangements are proposed to be on an availability basis or 'take or pay' (i.e. a fixed amount to be paid, provided the Facility is available to be dispatched, regardless of the amount of electricity the Buyer actually takes), we would need to specify a fixed charge that would be payable in each Billing Period (and the amount of electricity that the Buyer would be entitled to for this amount). Depending on the Buyer's requirements and negotiating position, such a clause may also include a 'carry over' provision if the Buyer did not take all of its allocation in a given Billing Period (subjects to the requirements of the grid). Consider too from a commercial and technical perspective the maximum that the Buyer can agree to offtake in each Billing Period and whether this will need to be referenced. To be discussed.]

- 7.2 Title to, and risk in relation to and control of the electricity supplied under this Agreement passes to the Buyer at the Interconnection Point.

- 7.3 [The Buyer and the Owner agree that in the event that the Owner commissions an expansion of the capacity of the Facility, or establishes a similar facility in areas adjacent to the Site, within [5 years] of the date of this Agreement:

- (a) the electricity supplied from the expanded capacity (**additional electricity**) must be purchased by the Buyer at the same price as applies to the purchase of electricity from the existing Facility, and adjusted in accordance with adjustments to the price of electricity supplied from the existing Facility; and
- (b) the Buyer must purchase the additional electricity in accordance with the terms of this Agreement.]

[Drafting note: as above, to be discussed in terms of the maximum quantity of electricity that the Buyer can and is prepared to purchase. Parties should consider including an option to allow the Owner to provide electricity to a Third Party in the event that the additional electricity exceeds the

maximum quantity that the Buyer is prepared to purchase (and Buyer's rights to purchase any minimum amounts other producers if Owner fails to supply).]

8 Failure to Supply

- 8.1 The Owner must notify the Buyer as soon as is reasonably practicable after becoming aware that the quality of electricity supplied to the Buyer fails to comply with the terms of this Agreement.

[Drafting note: as noted above, there is currently no minimum/maximum amount to be supplied and no penalties associated with a failure to supply. To be discussed.]

9 Purchase and Sale of Electricity

- 9.1 The Buyer must purchase any and all electricity delivered to the Buyer at the Interconnection Point in accordance with clause 7.1 at the rates set out in Schedule 2 (Rates and Prices), subject to the terms of this Agreement.

[Drafting note: to be discussed in the context of proposed take or pay arrangements, as outlined above.]

- 9.2 The Owner retains the rights to any Environmental Credits generated as a result of the operation of the Facility and may deal with those Environmental Credits as it sees fit.

[Drafting note: typically, Solar PV facilities will have the whole of their generation governed by the relevant PPA, and will generate electricity on the basis of exposure of to sunlight (which is not a directly controlled input). Therefore GC 9 is drafted so that the Buyer must purchase all electricity delivered, rather than specifically despatching the Owner (subject to a maximum offtake under GC 7.1 – refer to drafting note). This exact structure of the sale arrangements should be reflected in the O&M Contract.]

10 Testing

[Drafting note: the Parties may seek to incorporate certain testing requirements prior to commissioning as part of their obligations under this agreement. If they are included, they should be reflected in the EPC Contract accordingly.]

11 Metering

- 11.1 The Owner must at its cost procure the installation, operation and maintenance of the Metering Equipment to measure the quantity of electricity supplied and the rate at which electricity is supplied to the Buyer at the Interconnection Point under this Agreement.

- 11.2 The quantity of electricity supplied to the Buyer under this Agreement may be determined by the Owner

- using readings registered by the Metering Equipment at the Interconnection Point (**Metered Data**).
- 11.3 The Owner must test, or procure the testing of, the accuracy of the Metering Equipment with the frequency required by Prudent Electrical Practice and any applicable Laws.
- 11.4 The Parties may, without limitation, use the Metered Data for the purpose of determining whether the Owner has complied with its obligations under GC 7.1. and GC 8.1 **[Drafting note: as per the above note, to be discussed in context of proposed take or pay arrangements.]**
- 12 Billing and Payment**
- 12.1 The Buyer must pay the Owner for the quantity of electricity (in kWh) delivered by the Owner to the Buyer at the Interconnection Point in each Billing Period multiplied by the Price.
- [Drafting note: as per the above note, to be discussed in context of proposed take or pay arrangements.]**
- 12.2 All Invoices will be based on the Metered Data collected by the Metering Equipment. The Owner must procure that the Metering Equipment is read as soon as possible after the last Business Day of each Billing Period.
- 12.3 Subject to GC 17.2(a)(i), within **[5 Business Days]** after the end of each Billing Period, the Owner must provide the Buyer an Invoice for the amount due by the Owner to the Buyer for that Billing Period. The Invoice must set out:
- the amount payable for that Billing Period;
 - any outstanding amounts (if any) from any previous Billing Period and the interest payable on those amounts calculated in accordance with GC 12.5; and
 - any other information that the Parties may agree.
- 12.4 Payments invoiced under this Agreement will be due and payable within **[15 Business Days]** following the receipt of the relevant Invoice.
- 12.5 If an amount due on an Invoice is not paid on or before the due date calculated under GC 12.4, then in addition to any other rights, daily interest will be applied to the unpaid balance for each Business Day that the amount is outstanding. The interest will be calculated using the Default Interest Rate and will be added to the next Invoice.
- 12.6 If the Buyer disputes an Invoice, the Buyer must pay the Owner at least the amount not in dispute on or before the due date for payment of that Invoice calculated under GC 12.4. To resolve any billing Dispute, the Parties must use the dispute resolution procedures under

GC 19. If the billing Dispute is resolved, the Party owing an amount must pay that amount owed within **[5 Business Days]** of the date of resolution, with interest charges calculated on the amount owed from the date it was originally owing in accordance with GC 12.5.

13 Representations and Warranties

- 13.1 As at the Commencement Date, each party represents and warrants to the other party that:
- it is duly formed and validly existing under the laws of **[insert jurisdiction]**;
 - it has the power to execute this agreement and to perform its obligations under this agreement, and has taken all necessary action to authorise such execution and performance;
 - the execution and performance of this agreement does not violate, breach, conflict with or result in a contravention of any Law applicable to it in relation to this agreement, any provision of its constitutional documents, any order or judgment of any court or Authority applicable to it or any of its assets, or any contractual restriction binding on or affecting it or any of its assets; and
 - all licenses that are required of it with respect to this agreement have been obtained and are in full force and effect, and all conditions of such licenses have been complied with.

[Drafting note: consider whether there are any other Representations and Warranties that should be included in this agreement. These can be mutual, or given in respect of the project by one of the parties. If Buyer is Stat-owned, it should represent that it is contracting in its commercial capacity and waive any rights to immunity]

- 13.2 The representations and warranties given in GC 13.1:
- are continuing representations and warranties that will not merge on, and will remain in full force and effect after, the Commencement Date; and
 - are each to be treated as a separate representation and warranty in respect of each statement made, and the interpretation of any statement made is not restricted by any reference to or inference from any other statement.

14 Indemnities

- 14.1 The Buyer will be liable for and must indemnify the Owner against any liability and any loss or damage of any kind whatsoever arising out of the Buyer's acts or omissions whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise in

relation to this Agreement, except to the extent that liability or loss or damage arises out of the wrongful or negligent acts or omissions of the Owner or the Owner's officers employees and contractors or a material breach of this Agreement by the Owner.

- 14.2 The Owner will be liable for and must indemnify the Buyer against any liability and any loss or damage of any kind whatsoever arising out of our acts or omissions whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise in relation to this Agreement, except to the extent that liability or loss or damage arises out of the wrongful or negligent acts or omissions of the Buyer or the Buyer's officers, employees and contractors or a material breach of this Agreement by the Buyer.
- 14.3 Each indemnity in this Agreement is a continuing obligation separate and independent from each Party's other obligations and survives termination of this Agreement.
- 14.4 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

15 Limitation of Liability

- 15.1 Neither party will be liable to the other party in any circumstances for any Indirect Loss which the other Party suffers or incurs as a result of or in connection with any act or omission by the Party under or in connection with this Agreement.
- 15.2 Under this Agreement, Indirect Loss includes any special indirect loss or damage and any loss of profits, loss of production, loss of revenue, loss of use, loss of goodwill and loss of opportunity whatsoever, whether direct or indirect.
- 15.3 The Owner's maximum liability to the Buyer for all claims, actions, demands or proceedings, or in connection with the Owner's duties and obligations is **[Drafting note: to be discussed and inserted.]**
- 15.4 The Buyer's maximum liability to the Owner for all claims, actions, demands or proceedings, or in connection with the Buyer's duties and obligations is **[Drafting note: to be discussed and inserted.]**
- 15.5 To the maximum amount permitted by Law, the Buyer acknowledges that the Owner makes no warranties, whether express or implied, in relation to its performance of its obligations, or the supply of electricity, under this Agreement, except the warranties contained in this Agreement. This GC 15.5 will continue to apply notwithstanding termination or expiry of this Agreement.

16 Security

- 16.1 [Drafting note: provision of security by the Buyer is to be discussed – would generally only be required to**

secure take or pay obligations, noting that this may be commercially difficult to negotiate.]

16.2 [Drafting note: provision of security by the Owner is to be discussed.]

17 Default and Termination

17.1 If the Owner or the Buyer (**the Defaulting Party**) has committed a Default, the Buyer or Owner (**the Non-Defaulting Party**) may serve a notice (**Default Notice**) on the Defaulting Party specifying the nature of the Default and stating that, in the case of:

- (a) a Default which is reasonably capable of being remedied and which is a:
 - (i) Financial Default, the Defaulting Party is required to remedy the default within a period stated, not less than **[15 Business Days]** from the date of service of the Default Notice; or
 - (ii) Non-Financial Default, the Defaulting Party is required to remedy the default within a period stated which is reasonable in the circumstances but, in any case, not less than **[20 Business Days]** from the date of service of the Default Notice; or
- (b) a Default which is not reasonably capable of being remedied, the Non-Defaulting Party intends to exercise any of the powers referred to in GC 17.2 at any time after the expiration of a period stated, but not less than **[15 Business Days]** from the date of service of the Default Notice.

17.2 Where, in the circumstances outlined in GC 17.1, the period of time specified in the Default Notice has expired and the Default has not been remedied, the Non-Defaulting Party may exercise any of the following powers without prejudice to any of its other rights and remedies:

- (a) where the Non-Defaulting Party is the Owner, the Owner may at any time or times:
 - (i) revise the frequency for rendering and paying invoices by the Buyer under GC 12;
 - (ii) interrupt or limit the supply of electricity to the Buyer at the Interconnection Point;
 - (iii) cause or allow the Facility to be disconnected from the Grid; or
 - (iv) regardless of whether or not it has exercised its rights under GCs 17.2(a)(i) or 17.2(a)(ii), if the Default has a material adverse effect on the rights of the Non-Defaulting Party under this Agreement, terminate this Agreement by giving not

less than 20 Business Days' notice to the Buyer.

- (b) Where the Non-Defaulting Party is the Buyer, if the Default has a material adverse effect on the rights of the Non-Defaulting Party under this Agreement, terminate this Agreement by giving not less than 20 Business Days' notice to the Buyer.
- 17.3 On termination of this Agreement for any reason and under any provision of this Agreement, the Buyer must take such actions as are reasonably requested by the Owner so as not to disrupt the normal operation and maintenance of the Facility.
- 17.4 Subject to GC 17.5, at the end of the Term or upon termination of this Agreement, the rights and obligations of the Parties will cease other than:
- (a) the requirements to make payment of monies when due in respect of any obligation arising prior to termination;
 - (b) to meet the confidentiality provisions of GC 23; and
 - (c) any obligations under this clause 17.

[Drafting note: consider whether to include termination payment provisions (may be necessary if no other Buyer). Also consider whether there are any other clauses or obligations that should survive termination, e.g. specific rights relating to IP.]

- 17.5 If an Insolvency Event occurs with respect to a party:
- (a) That party must immediately notify the other party that the Insolvency Event has occurred; and
 - (b) The other party may terminate this Agreement at any time by giving written notice of termination to the party suffering the Insolvency Event, regardless of whether notice is given under GC 17.5(a).
- 17.6 Any expiry or termination of this Agreement does not affect any rights of the parties which may have accrued before the date of expiry or termination.

18 Notices and Agreement administration

- 18.1 Any notice, approval, consent or other communication in relation to this Agreement must be:
- (a) in writing;
 - (b) marked to the attention of the relevant Representative; and
 - (c) either:
 - (i) left at the address set out in the Details;
 - (ii) sent by prepaid ordinary post (airmail if appropriate) to the address set out in the Details; or
 - (iii) sent by facsimile to the facsimile number of the

addressee set out in the Details.

However, if the addressee has notified a change of postal address or fax number, then the communication must be to that address or number.

- 18.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 18.3 A letter or facsimile is deemed to be received:
- (a) in the case of a posted letter, on the fifth day after posting (seventh in the case of a letter sent by airmail); and
 - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
- 18.4 The Owner must keep complete and accurate Operating Records. The Owner must also keep such further records required by any Government Agency, all such records to be kept in the prescribed format and maintained for a period of not less than **[5 years]**.
- 18.5 The Owner and the Buyer must keep all books and records necessary for billing and payments in accordance with the requirements of clause 12 and allow the other Party reasonable access to those records.

19 Dispute Resolution

- 19.1 If a Dispute arises, the Parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution of the Dispute.
- 19.2 If a Dispute arises, the Dispute must be referred to the Representatives for resolution by written notice specifying that it is a notice given under this GC 19 giving full particulars of the nature and extent of the Dispute.
- 19.3 If the Dispute is not resolved within **[10 Business Days]** of a referral in accordance with GC 19.2, the Dispute must be referred to:
- (a) determination by an Expert under GC 19.4, where a Dispute relates to the application of any industry or technical standard or any rules, practices or customs of any trade or profession, or whenever the Parties agree that a point of difference between them will be resolved by an Expert; or
 - (b) resolution by a Panel under GC 19.5 for all other Disputes.
- 19.4 Where a Dispute is referred for determination by an Expert under GC 19.3(a), the following process and procedure will apply:

- (a) The Party wishing to appoint an Expert must notify the other Party in writing and give details of the matter that it proposes to be resolved by the Expert (**Expert Determination Notice**). The Parties must endeavour to agree on a single Expert (independent of the Parties and with qualifications and experience appropriate to the matter in Dispute). If within **[10 Business Days]** of receipt of the Expert Determination Notice the Parties have not agreed a single Expert to appoint, the Parties will request the President of the Institute of Engineers Australia to appoint the Expert.
- (b) The Expert will be instructed to determine the Dispute within the shortest practicable time and deliver a report setting out the Expert's opinion with respect to the matters in dispute setting out the reasons for the decision.
- (c) The Expert shall determine the procedure for the conduct of the process in order to resolve the Dispute and must provide each Party with a fair opportunity to make submissions in relation to the matter in issue.
- (d) Any process or determination of the Dispute by the Expert shall be made as an expert and not as an arbitrator. The determination of the Expert will be final and binding on the Parties without appeal so far as the Law allows and except in the case of a manifest error or where either Party has not been provided with a fair opportunity to make submissions in relation to the matter in issue as required under GC 19.4(c).
- (e) Each Party must bear its own costs of and incidental to any proceedings under this GC 19.4. The costs of the Expert will be borne and paid by the Party who gives the notice under GC 19.4(a), unless the Parties agree otherwise.
- 19.5 Where a Dispute is referred to a Panel under GC 19.3(b), the following process and procedure will apply:
- (a) Each Party must nominate a senior representative for the Panel within **[3 Business Days]** of the referral to the Panel in accordance with GC 19.3(b).
- (b) The Panel will determine its own procedures for the resolution of a Dispute. Unless otherwise agreed by the Parties, all discussions involving the Panel will be conducted on a without prejudice basis.
- (c) Decisions of the Panel may only be made by unanimous agreement of the members of the Panel.
- (d) Any decision of the Panel which is recorded in writing and signed by each member of the Panel is binding on the Parties.
- (e) Subject to GC 19.6, if the Dispute is not resolved by the Panel within **[20 Business Days]** of the referral under GC 19.3(b), either Party may commence legal proceedings.
- 19.6 Neither party may commence legal proceedings unless the parties have undertaken the processes set out in GCs 19.1 to 19.5 and those processes have failed to resolve the Dispute or one of the Parties has attempted to follow these processes and the other Party has failed to participate.
- 19.7 Nothing in this GC 19 prevents a Party seeking urgent injunctive relief or similar interim relief from a court.
- 19.8 Despite the existence of a Dispute, the Parties must continue to perform their respective obligations under this Agreement.
- 20 Force Majeure**
- 20.1 If, as a result of an Event of Force Majeure, a Party becomes unable, wholly or in part, to perform any of its obligations under this Agreement or is delayed in performing those obligations:
- (a) the affected Party must immediately give notice to the other Party setting out full details of the Event of Force Majeure and the reasons for the Event of Force Majeure preventing that Party from, or delaying that party from, performing the affected obligations under this Agreement;
- (b) the affected obligations identified in the notice referred to in GC 20.1(a), will be suspended but only so far as, and for so long as, the performance of those obligations is affected by the Event of Force Majeure; and
- (c) the affected Party must use its best endeavours to overcome or remove the effects of the Event of Force Majeure as quickly as possible and, when the affected Party is able to resume the performance of its obligations, it shall give the other Party notice to that effect.
- 20.2 Upon completion of the Event of Force Majeure, the affected Party must as soon as reasonably practicable recommence the performance of the affected obligations.
- 20.3 Parties have no entitlement to, or liability for:
- (a) any costs, losses, expenses, damages or payments during an event of Force Majeure (provided that the Buyer shall remain liable to pay for any amounts of electricity actually generated and delivered to the Buyer during the event of Force Majeure, unless it is prevented from taking such electricity due to the Event of Force Majeure); and
- (b) any delay costs in any way incurred by the affected Party due to an Event of Force Majeure.
- 20.4 An Event of Force Majeure does not relieve a Party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money, which matured prior to the occurrence of that event, in a timely manner.
- 21 Assignment and subcontracting**
- 21.1 No Party may assign, dispose of or create an interest in any of its rights and obligations under this Agreement without the prior written consent (not to be unreasonably withheld) of the other Party. A Party must not unreasonably withhold or delay its consent to a proposed assignment if the assignee is no less financially and technically capable of carrying out the assignor's obligations under this Agreement as the assignor was at the day of satisfaction of the Conditions Subsequent.
- 21.2 No Party may subcontract any of its obligations under this Agreement without the prior written consent of the other Party.
- 22 Taxes**
- 22.1 Expressions set out in italics in this GC 22 will have the same meaning as those expressions in the GST Legislation. For the purpose of this GC 22:
- (a) **'GST Amount'** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only Part of a Payment is the consideration for a taxable supply) by the appropriate rate of GST (being 10% when the GST Law commenced).
- (b) **'Payment'** means the amount of any monetary consideration (other than a GST Amount payable under this GC 22) and the GST exclusive market value of any non-monetary consideration, paid or provided by one Party to another for the supply made under or in connection with this contract and includes any amount payable by way of indemnity, reimbursement, compensation or damages.
- (c) **'Recipient'** means the entity to which a supply is made.
- (d) **'Supplier'** means the entity that makes a supply.
- 22.2 All Payments referred to in this Agreement are exclusive of GST.
- 22.3 Subject to a tax invoice being issued, if the whole or any part of any Payment is consideration for a taxable *supply*, the GST Amount in respect of the Payment must be paid to the Supplier as an additional

amount, at the same time and in the same manner as the Payment is otherwise payable or as otherwise agreed in writing.

22.4 If a Payment due under this contract is a reimbursement or indemnification by one Party of an expense, loss or liability incurred or to be incurred by the other Party, the Payment will exclude any GST forming part of the amount to be reimbursed or indemnified to the extent to which the other Party can claim an *input tax credit*. The other Party will be assumed to be entitled to a full *input tax credit* unless it can establish otherwise.

22.5 A Party's right to payment under GC 22.3 is subject to a valid tax *invoice* being delivered to the Party liable to pay for the *taxable supply*.

22.6 The Supplier must promptly create an *adjustment* note for, or apply to the Commissioner of Taxation for, a refund of, and refund to the Recipient any overpayment by the Recipient for GST.

22.7 Where the Supplier has become subject to any penalties or interest because of a late payment by the Supplier to the Australian Tax Office of any GST Amount and that late payment is a result of the failure of the Recipient to comply with the terms of this GC 22, the Recipient must pay to the Supplier an additional amount on demand equal to the amount of those penalties and interest.

23 Confidentiality

23.1 Each Party undertakes that it will not, either during the term of this Agreement or at any time thereafter (except to the extent necessary to comply with its obligations under this Agreement) disclose to any person any information of or relating to the other Party of which it has become possessed as a result of this Agreement or the negotiations preceding this Agreement including the terms of this Agreement, including all information and documentation supplied either Party or information to which either Party has access in the performance of this Agreement.

23.2 No Party is permitted to publish alone or in conjunction with any other party or organisation any information, drawing or photograph concerning this Agreement except with the written consent of the other Party.

23.3 Nothing in this Agreement prohibits disclosure of information which:

- is in the public domain otherwise than as a result of a breach of this GC 23;
- is received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of this GC 23;
- is required to be disclosed by Law or any Government

Authority having authority over a Party; or

(d) is for the purposes of obtaining legal advice.

24 Entire agreement

24.1 This Agreement constitutes the entire agreement between the Parties and sets out a full statement of the contractual rights and liabilities of the Parties in relation to the supply of electricity and no negotiations between them nor any document agreed or signed by them prior to the date of this Agreement in relation to the supply of electricity is of any effect.

25 Other matters

25.1 Any rights of a Party under this Agreement may only be waived by the Party in writing signed by a duly authorised representative of the Party giving the waiver.

25.2 This Agreement may not be varied except in writing signed by a duly authorised representative of each of the Parties.

25.3 This Agreement must not be interpreted to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party.

25.4 If any of the terms of this Agreement or the application or any such terms are held to be invalid, illegal or unenforceable by any court or administrative body having jurisdiction, all other terms of the Agreement and their application not adversely affected will remain in force and effect.

25.5 This Agreement, as amended from time to time pursuant to the terms of this Agreement, will be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

25.6 To the extent of any inconsistency between the Details and the General Conditions, then the Details will prevail.

25.7 To the extent of any inconsistency between the General Conditions and any schedules (including any documents referred to in the schedules), then the schedules will prevail.

25.8 To the extent of any inconsistency between the Details and any schedules (including any documents referred to in the schedules), then the Details will prevail.

25.9 The rights, remedies and powers of the Parties under this Agreement are in addition to any rights, remedies and powers provided by Law.

25.10 This Agreement may be signed in any number of counterparts, and all such signed counterparts, taken together, will be deemed to make up the one document.

26 Governing law

26.1 This Agreement is governed by the laws of **[insert jurisdiction]**

excluding the Vienna Convention on Agreements for the International Sale of Goods and the **[insert relevant sale of goods legislation from the appendix to this precedent]**.

26.2 The parties agree to submit to the exclusive jurisdiction of the courts of **[insert jurisdiction]**. Each party waives any right it has to object to an action being brought in those courts including by claiming that action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

27 Definitions and Interpretation

27.1 In this Agreement unless the contrary intention appears:

Act of Insolvency means in respect of a Party:

- the board of the Party passes a resolution under section 436A of the Corporations Act 2001 (Cth);
- the Party is placed into administration pursuant to Part 5.3A of the Corporations Act 2001 (Cth);
- a deed of company arrangement is entered in respect of the Party;
- an application is made to a court for the winding up of the Party;
- the Party resolves that it be wound up voluntarily;
- a winding up order is made in respect of the Party;
- a receiver or receiver and manager is appointed to any substantial assets of the Party;
- a court orders that there be a meeting of creditors or members of the Party for any purpose related to Part 5.1 of the Corporations Act 2001 (Cth);
- a mortgagee takes possession of any substantial assets of the Party; or
- the party informs the other Party or any creditor of the Party, in writing, that it is insolvent.

Agreement means this power purchase agreement between the Buyer and the Owner.

Ancillary Services means **[Drafting note: as noted above, to be discussed in the context of the Buyer's potential obligations in respect of the Grid]**.

ARENA Funding means the funding from ARENA applied for by the Owner **[Drafting note: the Owner should provide further details about the funding in terms of the program that it was applied under, relevant dates and amounts that will constitute a Condition Subsequent]**

Billing Period means a calendar month.

Business Day means a day when the banks in **[insert capital city of jurisdiction]** are open for business

excluding a Saturday, Sunday or public holiday.

Buyer's Internal Grid means [Drafting note: the requirement for inclusion of this term will depend on the final technical solution – in particular, whether there will be separate technical requirements to be met in respect of ring main, or whether these will all be addressed if the Facility itself and the operation of the facility complies with the Grid requirements. To be discussed.]

Buyer's Representative means the person specified in the Details.

Commencement Date means the date stated in the Details.

Commercial Operation has the meaning given in the EPC Agreement.

Commissioning Date means the date specified in the Notice of Commencement of Supply.

Commissioning Longstop Date means [Drafting note: insert 'drop dead' date by which Facility must be Commissioned].

Commissioning Schedule means the schedule required to be prepared by the Owner under GC 4.3, that includes the information set out at Schedule 1 (Specification).

Condition Subsequent means the conditions subsequent set out at GC 2.1.

Condition Longstop Date means [Drafting note: insert date or number of days after the Commencement Date by which Conditions Subsequent must be fulfilled]

Connection Agreement means the connection agreement between the Transmission Services Provider and the Owner under which the Owner is entitled to connect the Facility to the Grid. [Drafting note: the precise requirements of the Connection Agreement should be reflected in this definition (i.e. is the Connection Agreement for Transmission Services, Embedded Generation, or a small grid owner/operator). To be discussed.]

Default means a Financial Default or Non-Financial Default.

Default Notice has the meaning given to it under GC 17.2.

Default Interest Rate means an annual interest rate converted to a daily rate, where that annual rate is equal to the Commonwealth 10 year bond rate as at the date of the Invoice plus 200 basis points.

Defaulting Party has the meaning given to it under GC 17.1.

Direct Loss has the meaning given to it under GC 15.2.

Dispute is any part of the subject matter of any dispute between the Parties in relation to the obligations, rights or performance of those Parties under this Agreement.

Early Electricity means electricity generated by the Facility prior to the Commissioning Date.

Environmental Credits means any rights, benefits, credits or certificates of any kind and of any value that the Owner becomes entitled to under any green power or renewable energy production, licensing or accreditation program or any greenhouse gas emissions trading regime or any law relating to carbon sequestration or greenhouse gas emissions in respect of the Facility or electricity.

EPC Agreement means the contract between the Owner and the EPC contractor in respect of the engineering, construction and procurement of the Facility.

Event of Force Majeure means an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) earthquakes, flood, lightning or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (c) strikes at national level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its subcontractors or its suppliers but excluding any industrial dispute which is specific to the Site or you or the performance of this Agreement.

Expert means the expert agreed or determined under GC 19.4(a).

Expiry Date means the earlier of the date that is [21 years] after the First Commercial Supply Date and the date on which this Agreement is terminated under GC 17.

Facility means the [insert] MW solar PV electricity generation facility located at [insert site details], which consists of [insert details, eg PV panels, inverters, mounts, Generation Management System, interconnection lines, electrical substations, transformers, switchgear and protective devices, service roads and other associated

equipment and improvements necessary to produce and transmit electricity]. [Drafting note: final definition of 'Facility' is to be confirmed]

Financing Agreement means any agreement for the financing of the construction, operation and maintenance of the Facility.

Financial Default means, in respect of the Owner or the Buyer, any default in the due and punctual payment of any sum due to the Buyer or the Owner under this Agreement.

First Commercial Supply Date means the date specified in the Notice of Commencement of Supply.

First Option means the option to extend the Term for a further [10 years] from the initial Expiry Date, exercisable by the Owner under GC 3.2.

Forced Outage means the unplanned removal of the Facility or any part of the Facility from service (other than through lack of solar resource).

General Conditions means these general conditions comprising GCs 1 to 27.

Generation Management System (GMS) means [Drafting note: further description of GMS is to be provided].

Government Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Government Authority Approval means any authorisation, assessment, consent, approval, licence, lease, determination, ruling, permit, accreditation, registration, exemption, filing, variance, order, judgment, decree, publication, notice to, declaration of or with, or regulation by or with any Government Authority or under any Law.

Grid means the interconnected electricity transmission and distribution systems, generating works and associated works [that is known as the "National Electricity Market"][, and includes the Buyer's Internal Grid].

[Drafting note: the precise wording of this definition will depend upon the location of the facility.]

GST means the tax payable on Taxable Supplies under the GST Legislation.

GST Legislation means the A New Tax System (Goods and Services

Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Indirect Loss has the meaning given to it under GC 15.2.

Interconnection Point means the physical point at which the electrical interconnection is made between the Facility and the Grid, as depicted and described in Schedule 1 (Specification).

Law means any statute, ordinance, code, law, decree, circular, rule or regulation by any Government Authority.

Metered Data has the meaning given to it in GC 11.2.

Metering Equipment means the equipment that measures and records the rate at which electricity is supplied and the amount of electricity supplied at the Interconnection Point.

Month means a calendar month.

Non-Defaulting Party has the meaning given to it in GC 17.1.

Non-Financial Default means a default by the Owner or the Buyer in duly and punctually performing or observing any of the terms of this Agreement, but which is not a Financial Default.

Notice of Commencement of Supply means the notice provided under GC 2.4, in the form set out in Schedule 4 (Forms).

Operating Records means all records required to be maintained by the Owner, as set out in Schedule 1 (Specification), with respect to the Facility and the supply of electricity under this Agreement.

Panel means the panel established in accordance with GC 19.5.

Parties means the Buyer and the Owner.

Party means the Buyer or the Owner.

Price means the electricity price set out at Schedule 2 (Price and Rates)

Prudent Electrical Practice in respect of:

- (a) the Owner, means the practices, methods and acts engaged in or approved by firms or bodies corporate who exercise that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced operators engaged in the design, construction, testing, operation or maintenance of commercial solar PV electricity generating facilities in Australia under the same or similar circumstances and conditions; and

- (b) the Buyer, means the practices, methods and acts engaged in or approved by firms or bodies corporate who in the conduct of their undertaking exercise that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced operators engaged in the same type of undertaking under the same or similar circumstances or conditions.

Representative means the authorised representative nominated by each party in the Details or any other person appointed by the relevant party and notified to the other party from time to time.

Scheduled Maintenance means the maintenance activities conducted in accordance with the description and at the times set out in Schedule 3 (Scheduled Maintenance), as may be amended from time to time in accordance with this Agreement.

Scheduled Outage means a circumstance in which the Facility or any part of the Facility is not capable of producing electricity due to Scheduled Maintenance.

Second Option means the option to extend the Term for a further **[20 years]** from the Expiry Date as extended in accordance with GC 3.2, exercisable by the Owner under GC 3.3.

Owner's Representative means the person specified in the Details.

Site means the real property on which the Facility is located, and which the Owner owns, leases or has an easement, consisting of the following **[Drafting note: property references and any further description are to be inserted]**

Supply Period means the period between the First Commercial Supply Date and the Expiry Date.

Technical Code means any technical code prepared by the Transmission Services Provider in respect of the Grid under Law, as may be amended or modified from time to time.

Transmission Services means electrical transmission services provided by means of the Grid and includes the service of transporting electricity through the Grid.

Transmission Services Provider means the person who from time to time operates the Grid to provide Transmission Services, at the Commencement Date. **[Drafting note: to be confirmed]**

27.2 In this Agreement unless the contrary appears:

- (a) a reference to this Agreement or another instrument includes any

variation or replacement of either of them;

- (b) the singular includes the plural and vice versa;
- (c) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (e) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;
- (f) a reference to a GC or schedule is a reference to a GC or schedule in this Agreement; and
- (g) the words "including" and "include" are a reference to "including, but not limited to".

27.3 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

Schedule 1 Specification

[Drafting note: insert details in respect of the Facility. Information to be inserted includes:

- description of the Facility and relevant technologies, including the Generation Management System;**
- details to be included in the Commissioning Schedule;**
- requirements of the Technical Code; and,**
- map and diagram with description of the Interconnection Point]**

Schedule 2 Price and Rates

[Drafting Note: this Schedule must set out:

- the Price and how this is to be calculated; and**
- any indexation that is to be applied.]**

Schedule 3 Scheduled Maintenance

[Drafting note: this schedule should include:

- Form of program and outline of Scheduled Maintenance to be provided by Owner (GC 5); and**
- Procedures for Buyer to request Owner to alter Scheduled Maintenance (GC 5).]**

Schedule 4 Forms

[Drafting note: this schedule should include :

- **Form of Notice of Commencement of Supply]**