

Advance Payment Addendum (Carbon Abatement Contract CAC[*insert CAC number*])

[*Insert Seller's name*]
Seller

THE COMMONWEALTH OF AUSTRALIA, as represented by the **CLEAN ENERGY REGULATOR** (a Commonwealth entity established by the *Clean Energy Regulator Act 2011* (Cth))
Buyer

Advance Payment Addendum (Carbon Abatement Contract CAC[insert CAC number])

Details

Date

Parties [insert Seller's name] ABN [insert Seller's ABN] of [insert Seller's address]
(Seller)

The Commonwealth of Australia, as represented by the **Clean Energy Regulator**
(a Commonwealth entity established by the *Clean Energy Regulator Act 2011* (Cth)),
ABN 72 321 984 210 of GPO Box 621, Canberra ACT 2601, Australia (**Buyer**)

Background

- A. The Seller and the Buyer are parties to the Contract.
- B. The Seller wishes to be paid the AP Amount in respect of an APTS for the AP Prepaid Quantity of Contract Units in respect of the APTS in advance of delivering them to the Buyer.
- C. To provide for such advance payment and their respective rights and obligations in relation to it, the Seller and the Buyer wish to vary the Contract on and subject to the terms and conditions of this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Advance Payment Terms Schedule or **APTS** has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

Agreed Quantity has the meaning given to it in clause 1.1.1 of the Code of Common Terms in relation to the Contract.

AP Amount has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

AP Date has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

AP Prepaid Quantity has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

AP Request Expiry Date has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

AP Termination Date has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

Authorised Representative has the meaning given to it in clause 1.1.1 of the Code of Common Terms in relation to the Contract.

Balance Number means, in respect of an APTS, the number, if any, obtained through the following formula:

$$\frac{\text{Maximum AP Amount in respect of the APTS} - \text{AP Amount in respect of the APTS}}{\text{Unit Price}}$$

Code of Common Terms means the document entitled “Carbon Abatement Contract Code of Common Terms” (Version [xx].0 of [insert date]) agreed between the Seller and the Buyer before the date of this deed (which, for the sake of good order and identification as at the date immediately before the date of this deed, is annexed to this deed as Annexure A).

Commercial Terms means the commercial terms of the Contract supplementing the Code of Common Terms agreed between the Seller and the Buyer (which, for the sake of good order and identification as at the date immediately before the date of this deed, are annexed to this deed as Annexure B).

Contract means the carbon abatement contract in relation to the Project having the Contract Date of [insert date] and Buyer allocated contract number CAC[insert CAC number], between the Seller and the Buyer comprising:

- (a) the Code of Common Terms;
- (b) the Commercial Terms;
- (c) the Delivery Terms; and
- (d) the Financial Terms.

Contract Units has the meaning given to it in clause 1.1.1 of the Code of Common Terms.

Delivery Terms means the delivery terms of the Contract supplementing the Code of Common Terms agreed between the Seller and the Buyer (which, for the sake of good order and identification as at the date of this deed, are annexed to this deed as Annexure C).

Effective Date means the date of this deed.

Financial Terms means financial terms of the Contract supplementing the Code of Common Terms agreed between the Seller and the Buyer (which, for the sake of good order and identification as at the date immediately before the date of this deed, are annexed to this deed as Annexure D).

GST has the meaning given in the GST Act.

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

Maximum AP Amount has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

Periodic Quantity has the meaning given to it in clause 1.1.1 of the Code of Common Terms in relation to the Contract.

Project means the offsets project named [insert Project name] which has been allocated the identification number [insert CER project number] by the Buyer.

Recipient has the meaning given to it in clause 4.3(a) of this deed.

Relevant Authority has the meaning given to it in clause 1.1.1 of the Code of Common Terms.

Restored Number means, in respect of an APTS, the number obtained by dividing the Maximum AP Amount in respect of the APTS by the Unit Price.

Scheduled Delivery Date has the meaning given to it in clause 1.1.1 of the Code of Common Terms in relation to the Contract.

Supplier has the meaning given to it in clause 4.3(a) of this deed.

Unit Price has the meaning given to it in clause 1.1.1 of the Code of Common Terms in relation to the Contract.

Valid AP Notice has the meaning given to it in clause 5A.1.1 of the Code of Common Terms in relation to the Contract.

1.2 Interpretation

In this deed, headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any gender includes all genders;
- (c) the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (d) 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;
- (e) a reference to a person includes an individual, the estate of an individual, a corporation, an incorporated or unincorporated association or parties in a joint venture, a partnership, a state, a government, a Relevant Authority and a trust;
- (f) 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 any substituted or additional trustee;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time, except where that occurs in contravention of this deed;
- (h) a reference to this deed is a reference to this deed as varied, novated, ratified or replaced from time to time;
- (i) 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 deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) a reference to any law, legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instruments issued under, that law, legislation or legislative provision;
- (k) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (l) where a party to this deed is comprised of two or more persons, they are each bound jointly and severally; and
- (m) this deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2. Amendments to the Contract

2.1 Amendment of definitions

With effect on and from the Effective Date, the definitions of ‘Contract’, ‘Delivery’, ‘Delivery Schedule’ and ‘Force Majeure’ in clause 1.1.1 of the Code of Common Terms will, in relation to the Contract, be replaced by the following:

“**Contract** means Carbon Abatement Contract entered into by the parties upon the terms and conditions set out in this Code of Common Terms as supplemented by the Commercial Terms, the Delivery Terms, the Financial Terms and each Advance Payment Terms Schedule agreed between the parties.”

“**Delivery** means the transfer to the Buyer’s ANREU Account of Contract Units in accordance with clauses 4.1 (*Delivery of the Periodic Quantity*) or 5A.6 (*Delivery of the AP Periodic Quantity*), and **Deliver** will be construed accordingly.”

“**Delivery Schedule** means the schedule for Delivery agreed between the parties, as set out in Item 2 of the Delivery Terms, as varied by the later of:

- a. any revised Delivery Schedule that may be agreed between the parties pursuant to clause 4.1.2;
- b. any Revised Delivery Schedule that may be agreed between the parties pursuant to clause 9.3.3.b;
- c. any revised Delivery Schedule that may be notified by the Seller to the Buyer in accordance with clauses 9.3.3.c.ii or 9.3.3.d.ii;
- d. any revised Delivery Schedule that becomes applicable as a result of the operation of clause 9.3.4;
- e. any revised Delivery Schedule that may be agreed between the parties pursuant to clause 9.4.2;
- f. any changes to the Agreed Quantity and the Periodic Quantity in respect of one or more Scheduled Delivery Dates that come into effect pursuant to clause 2.3(a) of the Advance Payment Addendum; and
- g. any changes to the Agreed Quantity and the Periodic Quantity in respect of the last Scheduled Delivery Date that come into effect pursuant to clause 2.3(b) of the Advance Payment Addendum.”

“**Force Majeure** means the occurrence of any event or circumstance beyond the control of a party and its contractors and agents that could not, after using all reasonable efforts, be overcome and which, but for clause 9.4 (*Force Majeure*), results in or causes the failure of that party to perform its obligations under the Contract (where that party is the Seller, its obligation under the Contract to Deliver Periodic Quantities of Contract Units on the relevant Scheduled Delivery Dates will be reckoned, only for the purposes of this definition, to be an obligation to Deliver Periodic Quantities of Kyoto ACCUs issued in respect of the Project on the relevant Scheduled Delivery Dates), provided that such party did not play a substantial role in bringing about the event or circumstance, and provided further that the reference to “Project” in this definition will not include any Project added to the Commercial Terms through an APTS. For the avoidance of doubt, lack of funds will not constitute a Force Majeure.”

2.2 [Project change]

With effect on and from the date on which an APTS is agreed between the parties, the project(s) shown in Item 2 of the Commercial Terms will be replaced by the projects shown in Item 9 of the APTS.

2.3 Amendment of the Delivery Schedule and Agreed Quantity

- (a) With effect on and from the date on which an APTS is agreed between the parties, the table in Item 2 of the Delivery Terms will be replaced by the table set out in Item 10 of that APTS and the Agreed Quantity will be varied as shown in that table.
- (b) Notwithstanding anything to the contrary contained in sub-clause (a) and the Contract:

- (i) on the AP Date in respect of an APTS each of the Agreed Quantity and the Periodic Quantity in respect of the last Scheduled Delivery Date will be increased by the Balance Number in respect of the APTS, if any;
 - (ii) if on or by the AP Request Expiry Date in respect of an APTS the Seller has not given to the Buyer a Valid AP Notice in respect of the APTS and the AP Termination Date has not occurred, then on the day immediately after the AP Request Expiry Date each of the Agreed Quantity and the Periodic Quantity in respect of the last Scheduled Delivery Date will be increased by the Restored Number in respect of the APTS;
 - (iii) if the AP Termination Date occurs before an AP Date in respect of an APTS, each of the Agreed Quantity and the Periodic Quantity in respect of the last Scheduled Delivery Date will be deemed to have been increased, on the day immediately before the AP Termination Date, by the Restored Number in respect of the APTS.
- (c) If there has been an increase to the Agreed Quantity and the Periodic Quantity in respect of the last Scheduled Delivery Date by:
- (i) the Balance Number in respect of an APTS pursuant to clause 2.2(b)(i); or
 - (ii) the Restored Number in respect of an APTS pursuant to clauses 2.2(b)(ii) or 2.3(b)(iii),

then on the same date on which the increase occurs, and notwithstanding anything to the contrary contained in the Contract:

- (iii) the AP Prepaid Quantity in respect of the APTS will correspondingly decrease by the Balance Number or the Restored Number in respect of the APTS, as relevant; and
- (iv) in the inverse order of the AP Scheduled Delivery Dates in respect of the APTS, the AP Periodic Quantity in respect of each of those AP Scheduled Delivery Dates will correspondingly decrease until the total of all such decreases is equal to the Balance Number or the Restored Number in respect of the APTS, as relevant.

2.4 Agreement to Advance Payment Terms Schedule

With effect on and from the Effective Date, the parties agree to the Advance Payment Terms Schedule set out in Annexure E to this deed.

2.5 Insertion of new article 5A

With effect on and from the Effective Date, the following new article 5A will be inserted in the Code of Common Terms after article 5 in relation to the Contract:

5A. Advance payment terms and conditions

5A.1. Definitions

5A.1.1. In this Code of Common Terms:

Advance Payment Addendum means the deed entered into between the Seller and the Buyer inserting this article 5A in this Code of Common Terms in relation to the Contract.

Advance Payment Terms Schedule or **APTS** means any document setting out the advance payment terms of the Contract supplementing this Code of Common Terms that is agreed between the parties from time to time.

AP Amount means, in respect of an APTS, the amount of advance payment set out in Item 1 of the APTS.

AP Date means, in respect of an APTS, the date on which the AP Amount in respect of the APTS is paid by the Buyer to the Seller.

AP Delivery Completion Date means, in respect of an APTS, the date specified in Item 2 of the APTS.

AP Delivery Failure means, in respect of an APTS, the failure, for any reason whatsoever, of the Seller to have Delivered to the Buyer by any AP Scheduled Delivery Date in respect of the APTS the AP Periodic Quantity of Contract Units due for Delivery by that date.

AP Delivery Schedule means, in respect of an APTS, the schedule for Delivery of the AP Periodic Quantities of Contract Units relating to the AP Scheduled Delivery Dates in respect of the APTS agreed between the parties, as set out in Item 3 of the APTS, as varied by the later of:

- a. any revised AP Delivery Schedule in respect of the APTS that may be agreed between the parties pursuant to clause 5A.6.2; and
- b. any Revised AP Delivery Schedule in respect of the APTS that may be agreed between the parties pursuant to clause 5A.9.3.b.

AP Delivery Shortfall means, in respect of an AP Scheduled Delivery Date in respect of an APTS, the amount of the AP Periodic Quantity of Contract Units which is due to be Delivered to the Buyer by that date but is not Delivered by that date because of an AP Delivery Failure in respect of the APTS.

AP Delivery Shortfall Amount means, in respect of an AP Scheduled Delivery Date in respect of an APTS, the AP Delivery Shortfall in respect of that date multiplied by the Unit Price.

AP Expiry Date means, in respect of an APTS, the earlier of:

- a. the AP Delivery Completion Date in respect of the APTS; and
- b. the Business Day immediately before the AP Termination Date.

AP Negotiation Period means, in respect of an APTS, a period running for twenty (20) Business Days or, if the AP Expiry Date in respect of the APTS occurs before that period of twenty (20) Business Days expires, a period running up to the Business Day immediately before that AP Expiry Date.

AP Periodic Quantity means, in respect of an AP Scheduled Delivery Date, the number of Contract Units that is set out adjacent to that AP Scheduled Delivery Date in the AP Delivery Schedule in respect of the relevant APTS, which is due for Delivery on that date.

AP Prepaid Quantity means, in respect of an APTS, the total quantity of Kyoto ACCUs specified in Item 3 of the APTS.

AP Request Expiry Date means, in respect of an APTS, the date specified in Item 4 of the APTS, or such other date that may be agreed between the parties.

AP Scheduled Delivery Date means, in respect of an APTS, each of the dates specified as such in the AP Delivery Schedule in respect of the APTS; provided that if the AP Termination Date occurs, then with effect on and from the AP Expiry Date in respect of the APTS each of the dates specified as AP Scheduled Delivery Date in the AP Delivery Schedule will be deemed to have been replaced by the AP Expiry Date.

AP Termination Date means the earlier of:

- a. the Termination Date; and

- b. the date on which the Contract terminates pursuant to clause 2.1.4.

Maximum AP Amount means, in respect of an APTS, the amount set out in Item 5 of the APTS.

Valid AP Notice means, in respect of an APTS, an advance payment notice in respect of the APTS given by the Seller to the Buyer that satisfies the requirements of clause 5A.3.1.

5A.2. Sale and purchase of the AP Prepaid Quantity of Contract Units

5A.2.1. The Buyer and Seller may agree an Advance Payment Terms Schedule in relation to the Contract from time to time.

5A.2.2. The Seller agrees to sell and the Buyer agrees to purchase the AP Prepaid Quantity of Contract Units in respect of each APTS at the Unit Price in accordance with the terms and conditions of this Code of Common Terms.

5A.2.3. The parties agree that:

- a. the Buyer will pay for the AP Prepaid Quantity of Contract Units in respect of each APTS in advance of Delivery by paying the AP Amount in respect of the relevant APTS to the Seller; and
- b. the Seller will Deliver the AP Prepaid Quantity of Contract Units in respect of each APTS to the Buyer,

in accordance with the terms and conditions of this Code of Common Terms.

5A.3. Advance payment notice

5A.3.1. To request advance payment for the AP Prepaid Quantity of Contract Units in respect of an APTS, the Seller must give the Buyer an advance payment notice in respect of the APTS that satisfies the following requirements:

- a. it is in the form set out in Annexure F to the Advance Payment Addendum, duly completed and executed by an Authorised Representative of the Seller;
- b. it is received by the Buyer on or by the AP Request Expiry Date in respect of the APTS;
- c. the amount of the advance payment it requests is an amount in dollars and cents which is equal to the AP Amount in respect of the APTS;
- d. attached to it are the following documents, duly completed and executed by an Authorised Representative of the Seller:
 - i. an invoice for the advance payment requested, quoting the APTS identification number (if any) issued by the Buyer to the Seller for the APTS; and
 - ii. any documents referred to in Item 6 to the APTS; and
- e. it complies with the requirements of clauses 5A.3.2.

5A.3.2. The Seller may only give one Valid AP Notice to the Buyer under this Code of Common Terms in respect of each APTS, therefore only the first advance payment notice in respect of the APTS given to the Buyer which satisfies the requirements of clause 5A.3.1 will be a Valid AP Notice in respect of the APTS.

5A.4. **Payment**

5A.4.1. The Buyer must pay the AP Amount in respect of an APTS to the Seller within twenty (20) Business Days of receiving a Valid AP Notice in respect of the APTS.

5A.4.2. Payment of the AP Amount in respect of an APTS by the Buyer must be made by electronic transfer in immediately available funds to an account in a bank in Australia as specified in Item 5 of the Commercial Terms.

5A.5. **Purchase of the AP Prepaid Quantity of Contract Units**

5A.5.1. The AP Prepaid Quantity of Contract Units in respect of an APTS will be deemed to have been purchased by the Buyer on the AP Date in respect of the APTS.

5A.5.2. The Buyer will accept Delivery of the AP Periodic Quantity of Contract Units in respect of an APTS when so tendered, provided that such tender is in accordance with the terms of the Contract.

5A.6. **Delivery of the AP Periodic Quantity**

5A.6.1. Provided that on the relevant AP Scheduled Delivery Date in respect of an APTS transfers of Kyoto ACCUs are capable of being made through ANREU to the Buyer's ANREU Account, on each AP Scheduled Delivery Date in respect of the APTS, the Seller must Deliver to the Buyer the AP Periodic Quantity of Contract Units relating to that AP Scheduled Delivery Date directly from the Seller's ANREU Account to the Buyer's ANREU Account.

5A.6.2. If on any AP Scheduled Delivery Date in respect of an APTS (**Affected AP Scheduled Delivery Date**) transfers of Kyoto ACCUs are for any reason beyond the control of the Seller and its contractors and agents not capable of being made through ANREU to the Buyer's ANREU Account, both parties will, acting in good faith, use reasonable endeavours as soon as reasonably practicable after the Affected AP Scheduled Delivery Date to agree on a revised AP Delivery Schedule in respect of the APTS in which the Affected AP Scheduled Delivery Date is replaced with a new and earliest possible AP Scheduled Delivery Date in respect of the APTS with the same quantity of Contract Units as was unable to be Delivered on the Affected AP Scheduled Delivery Date. Upon agreement of the revised AP Delivery Schedule in respect of the APTS, both parties must resume full performance of their obligations in accordance with the revised AP Delivery Schedule.

5A.6.3. The Seller may Deliver all or part of the AP Periodic Quantity relating to an AP Scheduled Delivery Date in respect of an APTS in advance on another day.

For the avoidance of doubt, the Buyer will be obliged to accept any advance Delivery of Contract Units made by the Seller in accordance with this clause 5A.6.3.

5A.7. **Seller's additional representations and warranties and their accuracy**

5A.7.1. The Seller makes the following representations and warranties on the AP Date in respect of an APTS:

- a. all information that has been furnished in writing by or on behalf of the Seller to the Buyer pursuant to or in connection with the Advance Payment Addendum (whether before or after the Advance Payment Addendum is entered into by the parties) is, as of the date it was furnished to the Buyer, true, accurate and complete in every material respect; and

- b. all information furnished in each document provided under clause 5A.3.1.d in relation to the advance payment requested in respect of the APTS is, as of the date the document was furnished to the Buyer, true, accurate and complete in every material respect.
- 5A.7.2. On the AP Date in respect of an APTS, the Seller makes the representations and warranties set out in Item 7 of the APTS.
- 5A.7.3. The Seller represents and warrants that each representation and warranty given by it set out or referred to in clauses 5A.7.1 and 5A.7.2, is true, accurate, complete and not misleading at the relevant AP Date and will remain so until the Seller is fully discharged of its obligations under the Contract.
- 5A.7.4. The Seller agrees that each representation and warranty as set out or referred to in clauses 5A.7.1 and 5A.7.2 must be construed independently and the meaning given to any one such representation and warranty must not be restricted by reference to any other representation and warranty.
- 5A.8. **Seller's acknowledgements and consents**
- 5A.8.1. On the AP Date in respect of an APTS, the Seller acknowledges and consents to the matters set out in Item 8 of the APTS.
- 5A.9. **AP Delivery Failure**
- 5A.9.1. If the Buyer has fulfilled its obligations under clause 5A.4 (*Payment*) and an AP Delivery Failure in respect of an APTS occurs or the Seller becomes aware that it is likely to occur, the following clauses will apply.
- 5A.9.2. The Seller must give notice to the Buyer as soon as it is aware that an AP Delivery Failure in respect of an APTS has occurred or is likely to occur. The notice must set out in reasonable detail:
 - a. the amount of the actual or anticipated AP Delivery Shortfall (if any) in respect of the AP Scheduled Delivery Date to which the AP Delivery Failure relates;
 - b. the reason for the AP Delivery Failure and the steps being taken by the Seller to address the AP Delivery Failure;
 - c. the anticipated duration of the AP Delivery Failure; and
 - d. whether the Seller proposes a revision be made to the AP Delivery Schedule in respect of the APTS.
- 5A.9.3.
 - a. This clause 5A.9.3 applies where an actual or anticipated AP Delivery Failure in respect of the APTS is not in respect of an AP Scheduled Delivery Date in respect of the APTS falling on the AP Expiry Date in respect of the APTS.
 - b. During the AP Negotiation Period in respect of an APTS commencing on the Business Day immediately after the receipt of the notice referred to in clause 5A.9.2, or if the Seller fails to give that notice then during the AP Negotiation Period in respect of the APTS commencing on the Business Day immediately after occurrence of the AP Delivery Failure in respect of the APTS, both parties will, acting in good faith, make reasonable endeavours to agree to replace the AP Delivery Schedule in respect of the APTS with a revised AP Delivery Schedule in respect of the APTS with replacement AP Scheduled Delivery Dates and/or revised AP Periodic Quantities to take account of the AP Delivery Failure (**Revised AP Delivery Schedule**), but on no account will (i) the AP Expiry Date in

respect of the APTS be extended; or (ii) an AP Scheduled Delivery Date in respect of the APTS be postponed to a date after the AP Expiry Date in respect of the APTS. Upon agreement of the Revised AP Delivery Schedule, both parties must resume full performance of their obligations in accordance with the Revised AP Delivery Schedule.

- c. If during the AP Negotiation Period in respect of an APTS commencing on the Business Day immediately after receipt of the notice referred to in clause 5A.9.2 a Revised AP Delivery Schedule is not agreed between the parties and an AP Delivery Failure in respect of the APTS occurs or has occurred, then on the later of the day after the end of the AP Negotiation Period in respect of the APTS or the day on which the AP Delivery Failure occurs, if there is an AP Delivery Shortfall in respect of the AP Scheduled Delivery Date to which the AP Delivery Failure relates, the Buyer will be entitled to receive the AP Delivery Shortfall Amount in respect of the AP Scheduled Delivery Date.
 - d. If the Seller fails to give the notice referred to in clause 5A.9.2 and during the AP Negotiation Period in respect of an APTS commencing on the Business Day immediately after the occurrence of the AP Delivery Failure in respect of the APTS a Revised AP Delivery Schedule is not agreed between the parties, then on the day after the end of the AP Negotiation Period if there is an AP Delivery Shortfall in respect of the AP Scheduled Delivery Date to which the AP Delivery Failure relates, the Buyer will be entitled to receive the AP Delivery Shortfall Amount in respect of the AP Scheduled Delivery Date.
- 5A.9.4. a. This clause 5A.9.4 applies where an actual or anticipated AP Delivery Failure in respect of an APTS is in respect of an AP Scheduled Delivery Date in respect of the APTS falling on the AP Expiry Date in respect of the APTS.
- b. Upon the occurrence of the AP Delivery Failure the Buyer will be entitled to receive the AP Delivery Shortfall Amount in respect of the AP Scheduled Delivery Date.
- 5A.9.5. If the Buyer has become entitled to receive AP Delivery Shortfall Amount in respect of an AP Scheduled Delivery Date in respect of an APTS under clauses 5A.9.3 or 5A.9.4, the Seller must pay the AP Delivery Shortfall Amount within twenty (20) Business Days of receiving a demand from the Buyer for payment of the AP Delivery Shortfall Amount.
- 5A.10. **Preservation of rights and obligations following the AP Termination Date**
- 5A.10.1. Notwithstanding anything to the contrary contained in this Code of Common Terms and notwithstanding the occurrence of the AP Termination Date:
- a. clauses 5A.1, 5A.5, 5A.6, 5A.7, 5A.8 and 5A.9 survive the termination of the Contract; and
 - b. the Contract is deemed to survive and continue for and to enable the observance, performance and enforcement of all rights and obligations under this article 5A, regardless of whether such rights and obligations arise before or after the AP Termination Date.
- 5A.10.2. Clauses 1.5.1, 2.1.4, 9.6.3 and 9.6.5 are subject to clause 5A.10.1.

2.6 Amendment of clause 13.4

With effect on and from the Effective Date, the wording in clause 13.4.1 in the Code of Common Terms will be replaced by the following in relation to the Contract:

“For avoidance of doubt, where, under clauses 1.1.1 (for the purposes of the definition of “Conditions Precedent Expiry Date”), 4.1.2, 5A.2.1, 5A.6.2, 5A.9.3.b, 9.3.3b, 9.4.2, 9.5.1.e and 12.1.1.d, the parties may, or are to, agree something, that agreement may be effectuated by notice.”

3. Warranties

3.1 Authority and capacity

The Seller warrants to the Buyer as at the date of execution of this deed that:

- (a) if it is a company or a body corporate, it is a company or body corporate properly incorporated and validly existing under the laws of Australia;
- (b) it has the legal right and full corporate power and capacity to:
 - (i) execute and deliver this deed; and
 - (ii) perform its obligations under this deed,and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;
- (c) it is entering into this deed as principal (and not as agent or in any other capacity);
- (d) this deed constitutes (or will when executed constitute) valid legal and binding obligations of that party in accordance with its terms;
- (e) the execution, delivery and performance of this deed by that party does not and will not result in a breach of or constitute a default under:
 - (i) any agreement to which it is party;
 - (ii) any provision of its constitution, if any; or
 - (iii) any law or regulation or any order or judgment of any court or Relevant Authority to which it is a party or by which it is bound.

3.2 Reliance

The parties acknowledge that in entering into this deed they have each relied on the warranties in clause 3.1.

4. GST

4.1 Interpretation

The parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the GST Act; and
- (b) 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 4.

4.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed 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.

4.3 GST payable

If GST is payable in relation to a supply made under or in connection with this deed then:

- (a) any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient no later than 7 days after the day on which any consideration is to be first provided for that supply.

4.4 Variation

If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 4.3 so that:

- (a) a further amount of GST is payable in relation to the supply; or
- (b) a refund or credit of GST is obtained in relation to the supply,

then the Supplier must 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 paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 4.3.

5. Notices and other communications

5.1 Application of Code of Common Terms provisions

Clauses 13.1, 13.2 and 13.3 of the Code of Common Terms will apply for the purposes of this deed as if there were set out here in full and as if all references to Contract therein were references to this deed.

6. General

6.1 Amendments

This deed may only be varied by a deed executed by or on behalf of each party.

6.2 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

6.3 Exchange and delivery

Exchange and delivery of this deed or any other documents pursuant to this deed by electronic means shall be deemed to be, and shall have the same legal effect as, executed by an original signature and delivery in person.

6.4 Costs

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

6.5 Further acts and documents

Each party must promptly do, and procure that its employees and agents 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 deed.

6.6 Stamp duties

The Seller:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and
- (b) must pay to each other party on demand the amount of any loss, cost, damage, expense or other liability suffered or incurred by that party including all legal and other professional expenses on a solicitor-client basis arising out of or in connection with any failure to comply with clause 6.6(a).

7. Governing law and jurisdiction

This deed is governed by the law of the Australian Capital Territory. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that territory 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 deed and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 7.

EXECUTED as a deed.

Advance Payment Addendum (Carbon Abatement Contract
CAC[insert CAC number])

Signing pages

Buyer

EXECUTED for and on behalf of the)
Commonwealth of Australia by a)
delegate of the accountable authority of)
the Clean Energy Regulator by)
authority of section 23(1) of the *Public*)
Governance Performance and)
Accountability Act 2013 (Cth) read with)
section 110 of that Act)

on: _____)
(insert date of execution))

in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....
Signature of delegate of accountable
authority

.....
Name of delegate (block letters)

Seller

[insert execution block]