

# Fixed Delivery Exit Arrangement Variation Deed

THE PERSON NAMED IN ITEM 1 OF Annexure A  
(Seller)

and

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

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## Details

### Parties

The person named in item 1 of Annexure A of the address in item 2 of Annexure A (**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 the parties to each Contract.
- B. The parties have agreed to vary each Contract on the terms and conditions set out in this deed.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed:

**Authorised Representative** means:

- (a) in respect of the Seller, any person who is:
  - (i) a director or company secretary of the Seller;
  - (ii) specified in Item 6 of the Commercial Terms; or
  - (iii) from time to time nominated as an “Authorised Representative” by the Seller by notice to the Buyer accompanied by a certified copy of the nominated person’s signature,  
  
for whom the Buyer has no notice of revocation of the person’s authority;
- (b) in respect of the Buyer, the Chair or any other official of the Clean Energy Regulator whose title contains the word “Manager” (or a person performing the functions of any such person) or any attorney or other person nominated by the Buyer as an “Authorised Representative”.

**Business Day** means any day (other than a Saturday or Sunday or any day between 26 December in a year and 1 January in the following year) on which commercial banks are open for general banking business in Sydney and the Australian Capital Territory.

**Code of Common Terms** means, in relation to a Contract, the code of common terms applicable to the Contract, in effect as agreed between the Seller and the Buyer immediately before the Effective Date.

**Commercial Terms** means, in relation to a Contract, the commercial terms of the Contract supplementing the Code of Common Terms in relation to the Contract agreed between the Seller and the Buyer (which, for the sake of good order and identification as at the date immediately before the Effective Date, are set out in the document headed “Commercial Terms” annexed to this deed under Annexure D and marked with the Contract Identifier in relation to the Contract).

**Contract** means each carbon abatement contract listed in Annexure B between the Seller and the Buyer as identified by its Contract Identifier, which was (if applicable) novated to the Seller and comprises of:

- (a) the Code of Common Terms in relation to the Contract;
- (b) the Commercial Terms in relation to the Contract;
- (c) the Delivery Terms in relation to the Contract as at the date immediately before the Effective Date; and
- (d) the Financial Terms in relation to the Contract.

**Contract Identifier** means, in relation to a Contract, the identifier listed in the second column of the table in Annexure B in relation to the Contract.

**Delivery Terms**, in relation to a Contract, has the meaning given to that term in the Code of Common Terms in relation to the Contract.

**Effective Date** means:

- (a) the date the last party to sign this deed does so; or
- (b) if executed in counterparts in accordance with clause 5.7 of this deed, the date referred to in clause 5.7(f) of this deed.

**Financial Terms** means, in relation to a Contract, the financial terms of the Contract supplementing its Code of Common Terms in relation to the Contract agreed between the Seller and the Buyer (which, for the sake of good order and identification as at the date immediately before the Effective Date, are set out in the document headed "Financial Terms" annexed to this deed under Annexure D and marked with the Contract Identifier in relation to the Contract).

**Regulatory Authority** means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Version 1 Code** means the document entitled "Carbon Abatement Contract Code of Common Terms" Version 1.0 of 11 February 2015.

**Version 2 Code** means the document entitled "Carbon Abatement Contract Code of Common Terms" Version 2.0 of 21 August 2015.

**Version 3 Code** means the document entitled "Carbon Abatement Contract Code of Common Terms" Version 3.0 of 20 August 2018.

## 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 Regulatory 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 deed, agreement or document is to that deed, 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, article, clause, schedule, exhibit, attachment, or annexure is a reference to a party, article, 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 legislation or legislative provision;
- (k) where a party is comprised of two or more persons, they are each bound jointly and severally;
- (l) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (m) this deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared; and
- (n) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.

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## **2. Variation of Contract**

### **2.1 Applicable Commercial Terms, Delivery Terms and Financial Terms**

With effect on and from the Effective Date, the Commercial Terms, the Delivery Terms and the Financial Terms in relation to each Contract are agreed by the parties to be the commercial terms, delivery terms and financial terms set out in the document headed “Commercial Terms”, “Delivery Terms” and “Financial Terms” respectively which are annexed to this deed under Annexure D and each marked with the Contract Identifier in relation to that Contract.

## 2.2 Amendment of definitions in clause 1.1.1

2.2.1. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, insert new definitions before the definition of “Agreed Quantity” as follows:

**ACCU** has the meaning given to that term in section 5 of the CFI Act.

**ACCU Spot Price** means, in respect of a day:

- a. the last closing spot price for generic ACCUs for that day that is displayed on the CORE Markets website (as of 14 November 2025, the URL for this website was <https://coremarkets.co>), including as displayed on that website following login using a subscription; or
- b. where for that day the relevant price is not obtainable pursuant to paragraph a.—the average spot price for generic ACCUs for that day that is displayed on the Reputex website (as of 14 November 2025, the URL for this website is <https://www.reputex.com>), including as displayed on that website following login using a subscription; or
- c. where for that day the relevant price is not obtainable pursuant to paragraphs a. and b.—the last closing spot price for generic ACCUs for that day that is displayed on the website of such other entity which publishes the spot price of generic ACCUs that is reasonably nominated by the Buyer.

2.2.2. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, delete the definition of “Buyer’s Market Damages” and replace it with the following:

**Buyer’s Market Damages** means the sum of:

- a. i. if Buyer’s Market Damages is to be calculated for the purpose of clause 9.3 (*Delivery Failure*), that amount which is the positive difference (if any) of:
  - A. the amount the Buyer would pay for the purchase of a quantity of Kyoto ACCUs equal to the Default Quantity, where the price of each such Kyoto ACCU is:
    1. the average of the ACCU Spot Price for the Scheduled Delivery Date in relation to the Default Quantity and for each of the six (6) Business Days immediately succeeding that date; or
    2. (where for any day specified in sub-paragraph a.i.A.1 the ACCU Spot Price is not obtainable), the market value of Kyoto ACCUs on the Scheduled Delivery Date in relation to the Default Quantity, having regard to the circumstances in which Buyer’s Market Damages is being calculated, as determined by a valuer appointed by the Buyer, which valuer will act as an independent expert and whose determination of a price will be binding upon the parties, less
  - B. the Unit Price multiplied by the Default Quantity;

but if the amount of that positive difference calculated as above would exceed:

- C. if the Seller has not satisfied the Minimum Delivery Requirement on or before the Scheduled Delivery Date relating to the Default Quantity—the amount which is the Unit Price multiplied by the Default Quantity, then the amount determined for this paragraph a.i. will be the Unit Price multiplied by the Default Quantity;

- D. if the Seller has satisfied the Minimum Delivery Requirement on or before the Scheduled Delivery Date relating to the Default Quantity—the amount which is forty per cent (40%) of the Unit Price multiplied by the Default Quantity, then the amount determined for this paragraph a.i. will be forty per cent (40%) of the Unit Price multiplied by the Default Quantity;
  - ii. if Buyer's Market Damages is to be calculated for any other purpose, that amount which is the positive difference (if any) of:
    - A. the amount the Buyer would pay for the purchase of a quantity of Kyoto ACCUs equal to the Default Quantity, where the price of each such Kyoto ACCU is:
      - 1. the average of the ACCU Spot Price for the last Scheduled Delivery Date before the Buyer issued the notice of termination pursuant to clause 9.5.1 and for each of the six (6) Business Days immediately succeeding that date; or
      - 2. (where for any day specified in sub-paragraph a.ii.A.1 the ACCU Spot Price is not obtainable), the market value of Kyoto ACCUs on the last Scheduled Delivery Date before the Buyer issued the notice of termination pursuant to clause 9.5.1, having regard to the circumstances in which Buyer's Market Damages is being calculated, as determined by a valuer appointed by the Buyer, which valuer will act as an independent expert and whose determination of a price will be binding upon the parties, less
    - B. the Unit Price multiplied by the Default Quantity;
- but if the amount of that positive difference calculated as above would exceed:
- C. if the Seller has not satisfied the Minimum Delivery Requirement on or before the Scheduled Delivery Date relating to the Default Quantity—the amount which is the Unit Price multiplied by the Default Quantity, then the amount determined for this paragraph a.ii. will be the Unit Price multiplied by the Default Quantity;
  - D. if the Seller has satisfied the Minimum Delivery Requirement on or before the Scheduled Delivery Date relating to the Default Quantity—the amount which is forty per cent (40%) of the Unit Price multiplied by the Default Quantity, then the amount determined for this paragraph a.ii. will be forty per cent (40%) of the Unit Price multiplied by the Default Quantity; and
- b. the amount of such reasonable costs and expenses which the Buyer incurs or would incur in relation to the ascertainment of the amount under paragraph a. and any alternate purchase of the Default Quantity (including broker fees, commissions, valuer fees and legal fees, but excluding the price or cost of the Kyoto ACCUs themselves).

2.2.3. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, insert immediately after the definition of "Contract Units":

**CORE Markets** means Renewable Energy Hub Pty Ltd ACN 626 342 863 trading as CORE Markets or its successor that assumes its activity of generally publishing or providing to subscribers a closing spot price for generic ACCUs.

2.2.4. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract for which the Code of Common Terms is the Version 1 Code, delete the definition of "Delivery Schedule" and replace it with the following:

**Delivery Schedule** means the schedule for Delivery agreed between the parties, as set out in Item 3 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 9.4.2;
- c. the revised Delivery Schedule agreed between the parties pursuant to clause 2.1 of the deed that inserted this version of the definition of Delivery Schedule in the Code of Common Terms in relation to the Contract; and
- d. any other agreement between the parties effectuated by written notice.

2.2.5. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract for which the Code of Common Terms is the Version 2 Code or Version 3 Code, delete the definition of “Delivery Schedule” and replace it with the following:

**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 9.4.2;
- c. the revised Delivery Schedule agreed between the parties pursuant to clause 2.1 of the deed that inserted this version of the definition of Delivery Schedule in the Code of Common Terms in relation to the Contract; and
- d. any other agreement between the parties effectuated by written notice.

2.2.6. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, delete the definition of “Delivery Shortfall” and replace it with the following:

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

2.2.7. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, insert immediately after the definition of “Event of Default”:

**Exit** means the settlement of the Buyer’s claim for Buyer’s Market Damages in respect of a Delivery Failure that occurs or is likely to occur.

**Exit and Schedule Information** means any information in respect of an Exit and in respect of the Delivery Schedule, including any negotiations relating to that Exit or the Delivery Schedule and the fact of occurrence of any such negotiations.

2.2.8. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, delete the definition of “Expiry Date” and replace it with the following:

**Expiry Date** means the day which is the final Scheduled Delivery Date.

- 2.2.9. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, insert immediately after the definition of “Kyoto Australian carbon credit unit”:

**Minimum Delivery Requirement** means Delivery by the Seller, on or after 1 January 2025, of an amount of Kyoto ACCUs equal to at least 25% of the Outstanding Agreed Quantity.

- 2.2.10. With effect on and from the Effective Date, delete the definition of “Negotiation Period” in clause 1.1.1 of the Code of Common Terms in relation to each Contract.

- 2.2.11. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, delete the definition of “Payment Due Date” and insert after the definition of “Non-Defaulting Party”:

**Outstanding Agreed Quantity** means the number specified in the third column of Attachment A.

**Payment Due Date** means, in respect of a Delivery:

- a. where a Delivery Shortfall has occurred in relation to that Delivery, the day which is at the end of twenty (20) Business Days after the later of:
  - i. the date on which the Buyer receives an invoice in respect of that Delivery in accordance with clause 4.3 (*Invoice*); and
  - ii. the date on which the Buyer becomes entitled to receive Buyer’s Market Damages pursuant to clause 9.3.4; and
- b. where no Delivery Shortfall has occurred in relation to that Delivery, the day which is at the end of twenty (20) Business Days after the later of:
  - i. the date on which the Buyer receives an invoice in respect of that Delivery in accordance with clause 4.3 (*Invoice*); and
  - ii. the date on which that Delivery occurs in accordance with clause 4.1 (*Delivery of the Periodic Quantity*).

- 2.2.12. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract, insert immediately after the definition of “Relevant Authority”:

**RepuTex** means Reputex (AU) Pty Ltd ABN 47 140 705 497 or its successor that assumes its activity of generally publishing or providing to subscribers an average spot price for generic ACCUs.

- 2.2.13. With effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to each Contract:

- a. if the Code of Common Terms in relation to the Contract is the Version 2 Code, delete the definition “LEADR & IAMA or if the Code of Common Terms in relation to the Contract is the Version 3 Code, delete the definition “Resolution Institute”;
- b. if applicable to the Contract, delete the definition of “Australian Disputes Centre” in the Code of Common Terms in relation to the Contract; and
- c. insert after the definition of “Required Authorisations”:

**Resolution Institute** means Resolution Institute , ACN 008 651 232, Suite 1902, Level 19, Tower A, Zenith Centre, 821–843 Pacific Highway, Chatswood NSW 2067 (phone: +61 2 9251 3366, e-mail: infoaus@resolution.institute), howsoever named or described from time to time, and includes any body that is its successor.

- 2.2.14. With effect on and from the Effective Date, delete the definition of “Seller’s Market Damages” in clause 1.1.1 of the Code of Common Terms in relation to each Contract and replace it with the following:

**Seller’s Market Damages** means the sum of:

- a. that amount which is the positive difference (if any) of:
  - i. the Unit Price multiplied by the Default Quantity; less
  - ii. the amount the Seller would receive for the sale of a quantity of Kyoto ACCUs equal to the Default Quantity, where the price of such Kyoto ACCU is:
    - A. the average of the ACCU Spot Price for the last Scheduled Delivery Date that precedes the date on which Seller’s Market Damages is calculated and for each of the six (6) Business Days immediately succeeding that date; or
    - B. (where for any day specified in sub-paragraph a.ii.A the ACCU Spot Price is not obtainable), the market value of Kyoto ACCUs on the last Scheduled Delivery Date that precedes the date on which Seller’s Market Damages is calculated, having regard to the circumstances in which Seller’s Market Damages is being calculated, as determined by a valuer appointed by the Chair of the Resolution Institute, or the Chair’s designated representative, at the request of the Seller, which valuer will act as an independent expert and whose determination of a price will be binding upon the parties; and
- b. the amount of such reasonable costs and expenses which the Seller incurs or would incur in relation to the ascertainment of the amount under paragraph a. and the alternate sale of the Default Quantity (including broker fees, commissions, valuer fees and legal fees, but excluding the price or cost of the Kyoto ACCUs themselves).

- 2.2.15. With effect on and from the Effective Date, delete the definition of “Undelivered Carry-Over Amount” in clause 1.1.1 of the Code of Common Terms in relation to each Contract.

- 2.2.16. If the Code of Common Terms for a Contract is the Version 1 Code, with effect on and from the Effective Date, in clause 1.1.1 of the Code of Common Terms in relation to that Contract, insert a new definition after the definition of “Unit Price” as follows:

**Unit Price Information** means the Unit Price, and includes any information that indicates that the Unit Price is above a certain or identifiable price, or is below a certain or identifiable price, or is between two certain or identifiable prices.

## **2.3 Amendment of clause 1.2.1.e**

- 2.3.1. With effect on and from the Effective Date, delete the words of clause 1.2.1.e of the Code of Common Terms in relation to each Contract and replace it with the following:

“a reference to an article, clause, paragraph or attachment is a reference to an article, clause, paragraph or attachment to or of this Code of Common Terms;”

## **2.4 Amendment of article 6 (Interest on overdue amounts)**

- 2.4.1. With effect on and from the Effective Date, insert a new clause 6.1.4 in the Code of Common Terms in relation to each Contract as follows:

6.1.4. For the avoidance of doubt, a party required to make payment to another under the Contract as referred to in clause 6.1.1 includes the Seller in relation to their liability to pay Buyer's Market Damages to the Buyer.

2.4.2. With effect on and from the Effective Date, insert a new clause 6.2.2 in the Code of Common Terms in relation to each Contract as follows:

6.2.2. For the avoidance of doubt, a liability under the Contract as referred to in clause 6.2.1 includes the Seller's liability to pay Buyer's Market Damages to the Buyer.

## **2.5 Amendment of clause 9.3 (Delivery Failure)**

2.5.1. With effect on and from the Effective Date, delete clause 9.3 of the Code of Common Terms in relation to each Contract and replace it with the following:

### **9.3. Delivery Failure**

9.3.1. Except to the extent that the Seller is relieved from complying with a relevant obligation under clause 9.4 (Force Majeure), then if a Delivery Failure occurs or the Seller becomes aware that it is likely to occur, the following clauses will apply.

9.3.2. The Seller must give notice to the Buyer as soon as it is aware that a Delivery Failure has occurred or is likely to occur. The notice must set out in reasonable detail:

- a. the amount of the actual or anticipated Delivery Shortfall (if any) in respect of the Scheduled Delivery Date to which the Delivery Failure relates;
- b. the reason for the Delivery Failure and the steps being taken by the Seller to address the Delivery Failure;
- c. the anticipated duration of the Delivery Failure; and
- d. whether the Seller proposes a revision to be made to the Delivery Schedule.

9.3.3. a. Notwithstanding article 13, if the Seller has satisfied the Minimum Delivery Requirement and the Seller elects to offer an Exit, the Seller must provide, through the Clean Energy Regulator's website, the notice referred to in clause 9.3.2 in the form set out in Attachment B (Fixed Delivery Exit Application), unless the Buyer consents by prior written notice to another form.

- b. The Seller acknowledges and agrees that the Fixed Delivery Exit Application is an offer only and the Buyer is not obliged to accept the offer.

9.3.4. Upon occurrence of a Delivery Failure, the Buyer will be entitled to receive Buyer's Market Damages in respect of any Delivery Shortfall that occurs in respect of the Scheduled Delivery Date to which the Delivery Failure relates.

9.3.5. If the Buyer has become entitled to receive Buyer's Market Damages in respect of any Delivery Shortfall under clause 9.3.4, the Buyer may calculate or arrange the calculation of the amount of the Buyer's Market Damages and notify the amount to the Seller.

- 9.3.6. The Seller must pay the amount of the Buyer's Market Damages notified by the Buyer under clause 9.3.5 within twenty (20) Business Days of receiving the notice from the Buyer.

## **2.6 Insertion of article 11 (Confidential information)**

- 2.6.1. With effect on and from the Effective Date, delete clause 11.1 of the Code of Common Terms in relation to each Contract and replace it with the following:

### **11.1. Confidentiality obligation**

- 11.1.1. Each party undertakes, for itself and on behalf of its affiliates, not to disclose to any person any Unit Price Information and any Exit and Schedule Information, unless such disclosure is:

- a. to a director, office holder, officer, employee, contractor, agent or adviser of the party whose function requires them to have that information;
- b. of information which is lawfully in the public domain otherwise than by breach of this article 11;
- c. required to be disclosed in proceedings before any court or tribunal arising out of, or in connection with, the Contract;
- d. required, authorised or permitted to be disclosed:
  - i. under any law;
  - ii. by any stock exchange on which a party to the Contract or its affiliates are listed; or
  - iii. under clause 11.2 of this Contract;
- e. made by the Seller to a person to whom it may wish to novate its rights and obligations under the Contract in accordance with the Contract, provided that the Seller requires that person to acknowledge and comply with confidentiality obligations at least as stringent as those contained in the Contract; or
- f. made by the Seller with the consent of the Buyer (such consent not to be unreasonably withheld or delayed) and is made in a manner consistent with that consent, provided that while giving its consent, the Buyer may require the Seller to require the person to whom the disclosure is to be made to acknowledge and comply with confidentiality obligations at least as stringent as those contained in the Contract.

- 2.6.2. With effect on and from the Effective Date, insert the following new clause 11.2 after clause 11.1 of the Code of Common Terms in relation to each Contract:

### **11.2. Publication of information**

- 11.2.1. The Seller acknowledges and agrees that the Clean Energy Regulator may publish on its website:

- a. that the Seller has entered into the deed titled 'Fixed Delivery Exit Arrangement Variation Deed' in relation to the Contract;
- b. the total volume of Kyoto ACCUs deliverable by the Seller under the Contract in respect of which the Seller has paid to the Buyer the 'nominated exit payment' under a 'Fixed Delivery Exit Application'.

## **2.7 Amendment of article 12 (Dispute resolution)**

- 2.7.1. If clause 12.1.1.d of the Code of Common Terms in relation to a Contract contains the words “and recommend some form of non-binding resolution”, with effect on and from the Effective Date, delete those words.
- 2.7.2. If the Code of Common Terms for a Contract is the Version 2 Code or the Version 3 Code, with effect on and from the Effective Date, replace the words “Australian Disputes Centre”, “LEADR” or “LEADR & IAMA” (as applicable to the Code of Common Terms) wherever they appear in the Code of Common Terms in relation to that Contract with the words “Resolution Institute”.
- 2.7.3. With effect on and from the Effective Date, delete clause 12.4 of the Code of Common Terms in relation to each Contract and replace it with the following:

### **12.4. Exemption**

- 12.4.1. This article 12 does not apply to:
- a. action by the Buyer under or purportedly under clause 9.2 (*Events of Default with respect to the Seller*), clause 9.3 (*Delivery Failure*) or clause 9.6.2;
  - b. action by either party under or purportedly under clause 9.1 (*Events of Default with respect to any party*); or
  - c. legal proceedings by either party seeking urgent interlocutory relief.

## **2.8 Amendment of article 13 (Notices)**

- 2.8.1. With effect on and from the Effective Date, delete clause 13.1.2.c or, as the case may be, clause 13.1.3.c of the Code of Common Terms in relation to each Contract.
- 2.8.2. If clause 13.3.1.c of the Code of Common Terms in relation to a Contract contains the words “by facsimile transmission or”, with effect on and from the Effective Date delete those words.
- 2.8.3. If the Code of Common Terms for a Contract is the Version 1 Code, with effect on and from the Effective Date, insert the following new clause 13.3 of the Code of Common Terms in relation to that Contract:

### **13.3. Agreement by notice**

- 13.3.1. Where, under clauses 1.1.1 (for the purposes of the definition of “Conditions Precedent Expiry Date” and “Delivery Schedule”), 4.1.2, 9.4.2, 9.5.1.d and 12.1.1.d, the parties may, or are to, agree something, that agreement may be effectuated by notice.

- 2.8.4. If the Code of Common Terms for a Contract is the Version 2 Code, with effect on and from the Effective Date, delete clause 13.4.1 of the Code of Common Terms in relation to that Contract and replace it with the following:

Where, under clauses 1.1.1 (for the purposes of the definition of “Conditions Precedent Expiry Date” and “Delivery Schedule”), 4.1.2, 9.4.2, 9.5.1.d and 12.1.1.d, the parties may, or are to, agree something, that agreement may be effectuated by notice.

- 2.8.5. If the Code of Common Terms for a Contract is the Version 3 Code, with effect on and from the Effective Date, delete clause 13.4.1 of the Code of Common Terms in relation to that Contract and replace it with the following:

Where, under clauses 1.1.1 (for the purposes of the definition of “Conditions Precedent Expiry Date” and “Delivery Schedule”), 4.1.2, 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.

## **2.9 Insertion of attachments**

- 2.9.1. With effect on and from the Effective Date, insert at the end of the Code of Common Terms in relation to each Contract the new attachments:
- a. the document headed “Attachment A – Exit Arrangement Terms” and marked with the Contract Identifier for that Contract; and
  - b. the document headed “Attachment B – Fixed Delivery Exit Application”,
- that is annexed to this deed under Annexure C.

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## **3. Warranties**

### **3.1 Authority and capacity**

Each of the Seller and the Buyer warrants to each other 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) it has entered into this deed after a full review of its terms and conditions and the terms and conditions of each Contract, has a full understanding of those terms and conditions and of their risks, and is capable of assuming those risks;
- (e) this deed constitutes (or will when executed constitute) valid legal and binding obligations of that party in accordance with its terms;
- (f) 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 Regulatory 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.

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## 4. Notices

### 4.1 Format, addressing and delivery

4.1.1. All certificates, consents, approvals, waivers and other communications in connection with this deed must be by notice under this deed.

4.1.2. A notice under this deed is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Seller to the Buyer* – given by the Seller or an Authorised Representative of the Seller and addressed (and marked for attention) as specified in clause 4.2 or as otherwise notified by the Buyer; or
- b. *if given by the Buyer to the Seller* – given by the Buyer or an Authorised Representative of the Buyer and addressed (and marked for attention) as specified in the row titled 'Address and Addressee for notices from the Buyer to the Seller' in the Commercial Terms in relation to the relevant Contract or as otherwise notified by the Seller.

4.1.3. A notice is to be:

- a. signed by the person giving the notice and delivered by hand;
- b. signed by the person giving the notice and sent by pre-paid post;
- c. stated to be signed by the person giving the notice and transmitted by electronic mail.

### 4.2 Address and addressee for notices from the Seller to the Buyer

4.2.1. A notice under this deed given by the Seller to the Buyer must be addressed and sent to:

Address: Clean Energy Regulator

GPO Box 621

Canberra ACT 2601

Australia

Attention: Carbon Abatement Contracts

Email: [ERFContracts@cer.gov.au](mailto:ERFContracts@cer.gov.au)

### 4.3 When effective

4.3.1. A notice is deemed to be effected:

- a. *if delivered by hand* – upon delivery to the relevant address;
- b. *if sent by post* – on the Business Day after the end of five (5) days after the date on which it is sent by post;

- c. *if transmitted electronically* – upon actual receipt by the addressee’s or electronic mailbox.

4.3.2. A notice received after 5 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

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## **5. General**

### **5.1 Entire agreement**

This deed and each Contract constitute the entire agreement of the parties as to its subject matter, and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it.

### **5.2 Amendments**

No amendment to this deed has any force unless it is in writing and signed by all of the parties to this deed.

### **5.3 Assignment**

A party may not assign or purport to assign this deed or any right under this deed without the prior written consent of each other party, which consent may not be unreasonably withheld.

### **5.4 No merger**

The covenants, conditions, provisions and warranties contained in this deed do not merge or terminate upon completion of the transactions contemplated in this deed but to the extent that they have not been fulfilled and satisfied or are capable of having effect, remain in full force and effect.

### **5.5 No waiver**

- (a) The failure of a party at any time to require full or partial performance of any provision of this deed does not affect in any way the full right of that party to require that performance subsequently.
- (a) The waiver by any party of a breach of a provision of this deed is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.
- (b) Any waiver of a breach of this deed must be in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

### **5.6 Further assurances**

Each party must do all things and execute all further documents necessary to give full effect to this deed and refrain from doing anything that might hinder the performance of this deed.

### **5.7 Counterparts**

- (a) This deed may be executed in any number of counterparts but is not effective until each party has executed and delivered at least one counterpart.
- (b) All counterparts together constitute one deed.

- (c) A party may execute this deed by signing any counterpart.
- (d) If executed in counterparts, this deed is binding on the parties only on the exchange of counterparts executed by all parties.
- (e) A copy of an original executed counterpart sent by email:
  - (i) must be treated as an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.
- (f) Where this deed is executed and delivered in counterpart, its date is taken to be the date on which the last of the parties to do so executes and delivers a counterpart.

## 5.8 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.

## 5.9 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.

## 5.10 Goods and Services Tax (GST)

If GST is payable in relation to a supply made under or in connection with this deed then, 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 time as other consideration is to be provided for that supply, subject to the Supplier first providing a valid tax invoice to the Recipient in respect of that supply. Terms used in this clause 5.5 have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) unless the context suggests otherwise.

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## 6. 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 article 6.

**EXECUTED** as a deed.

# Signing pages

## BUYER

**EXECUTED AS A DEED** 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, )

in the presence of: )

..... )  
Signature of witness )

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

..... )  
Date )

..... )  
Signature of delegate of accountable authority )

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

..... )  
Date )

## SELLER

**SIGNED, SEALED AND DELIVERED** by )  
**[insert full name],** )

in the presence of: )

..... )  
Signature of witness )

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

..... )  
Date )

..... )  
Signature of Seller )

..... )  
Name of Seller (block letters) )

..... )  
Date )



## Annexure A – Seller details

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| No. | Item                    | Details  |
|-----|-------------------------|--|
| 1.  | <b>Seller</b>           | [insert person or entity name]<br>[insert ABN (if applicable)] |
| 2.  | <b>Seller addresses</b> | a. Attention:  |
|     |                         | b. Address:  |
|     |                         | c. Email:  |

## Annexure B – Contract details

---

| No. | Contract Identifier |
|-----|---------------------|
| 1.  | [insert]            |
| 2.  |                     |

**Annexure C – Attachments to the Code of Common Terms for each Contract**

**Attachment A – Exit Arrangement Terms**

|  |                                    |
|--|------------------------------------|
| <b>Carbon Abatement Contract</b>   |                                    |
| Exit Arrangement Terms<br>Contract Identifier: <input type="text" value="Insert"/> |                                    |
| <b>1.</b>  | <b>Outstanding Agreed Quantity</b> |

**Attachment B – Fixed Delivery Exit Application**

Next follows the Fixed Delivery Exit Application

# Fixed Delivery Exit Application

Form Submission Id:

## Part 1. Before you start

### ERFC-001 Before you start

#### A1. Purpose of this notice

The purpose of this notice is for the Seller(s) nominated in Part 2 of this notice (or an authorised representative of those Seller(s) acting on their behalf) who is/are party to the fixed delivery carbon abatement contract (as varied by a Fixed Delivery Exit Arrangement Variation Deed) specified in Part 2 below (the **nominated contract**) to:

1. give notice under clause 9.3.2 of the nominated contract to the Clean Energy Regulator (as Buyer under the nominated contract) that the Kyoto ACCUs identified at Part 2 below (the **nominated Kyoto ACCUs**), which are due under the nominated contract to be delivered by the Scheduled Delivery Date specified in that Part (the **nominated delivery milestone date**), will not be delivered; and
2. propose that, despite the terms of the nominated contract, the Buyer accept the Seller(s)' offer of compensation for the damages (the **exit payment**) that would arise from the nominated Kyoto ACCUs not being delivered by the Seller(s) by the nominated delivery milestone date; and
3. acknowledge that where the Seller has satisfied the **Minimum Delivery Requirement** as added into the nominated contract by the **Fixed Delivery Exit Arrangement Variation Deed**, the nominated contract allows for an exit payment that, pursuant to the **Fixed Delivery Exit Arrangement Variation Deed**, is reduced by 60%.

This notice forms the first step of a three-step process (the **three-step settlement process**) to settle on an expedited basis under the fixed delivery exit arrangement, the Clean Energy Regulator's claim for the exit payment that would arise from the nominated Kyoto ACCUs not being delivered by the Seller(s) by the nominated delivery milestone date.

The three-step settlement process is as follows:

- **Step 1:** Submit the Fixed Delivery Exit Application relating to the nominated Kyoto ACCUs.
- **Step 2:** If the offer is assessed as eligible, the Clean Energy Regulator will provide conditional approval and an invoice for the payment of the nominated exit payment specified in Part 3 below (the **exit payment invoice**).
- **Step 3:** Payment of the exit payment invoice is made in full before or on the nominated delivery milestone date.

A notice using an application form like this one must be submitted per nominated contract and nominated delivery milestone date.

The information provided in this notice will inform the Clean Energy Regulator's assessment of the Seller(s)' offer to settle. The Clean Energy Regulator may contact you if further information is required.

Unless the context otherwise indicates, capitalised terms used in this notice have meanings given to them in the Code of Common Terms for the nominated contract.

References in this notice to specific clauses of the nominated contract are references to those clauses in the Code of Common Terms for the nominated contract.

## **A2. Fixed delivery exit arrangement**

Under the exit arrangement announced on 3 December 2025, if a Seller under a fixed delivery carbon abatement contract has agreed to the Fixed Delivery Exit Arrangement Variation Deed, they may apply to use a streamlined approach to settle the Clean Energy Regulator's claim for the exit payment that would arise from the non-delivery of any Kyoto ACCUs that are deliverable under their contracts on nominated Scheduled Delivery Dates.

This notice, when completed and lodged by or on behalf of the Seller(s), sets out an offer to settle the Buyer's claim for the exit payment that would arise from the nominated Kyoto ACCUs not being delivered by the Seller(s) by the nominated delivery milestone date.

In assessing whether or not to accept the Seller(s)' offer set out in this notice, the Buyer will consider the following eligibility requirements:

- Whether the Seller(s) have entered and agreed to a Fixed Delivery Exit Arrangement Variation Deed in relation to the nominated contract before submitting this notice.
- Whether the Buyer considers the Seller(s) providing this notice as compliant with their obligations under each of their carbon abatement contracts with the Buyer.
  - Note: For avoidance of doubt, merely providing this notice would not make the Seller(s) compliant under the nominated contract if the Buyer does not conditionally accept the offer set out in this notice or if the Seller(s) does/do not satisfy the conditions set out in that conditional acceptance.
- Whether the Seller(s) are in good standing with the Clean Energy Regulator as explained on the [Clean Energy Regulator's website](#).
- Whether the benefit sharing framework, as it applies to the anticipated non-delivery notified in this notice, has been satisfied.
  - Note: For avoidance of doubt, other than the compensation offered through this notice the Clean Energy Regulator will not participate in or receive any benefits accruing to the Seller(s) from the nominated Kyoto ACCUs not being delivered by the nominated delivery milestone date.

Nothing in this notice obliges the Clean Energy Regulator to accept the Seller(s)' offer set out in this notice.

### What happens after you submit this notice

If the Buyer accepts the offer to settle set out in this notice, the Seller(s) will be sent an eligibility confirmation pack by the Buyer, which will include the following:

- a conditional approval by the Buyer which will set out the conditions which, if satisfied by the Seller(s), will settle the claim for the exit payment that the Buyer would have otherwise had against the Seller(s) under the nominated contract for non-delivery of the nominated Kyoto ACCUs by the nominated delivery milestone date; and
- the exit payment invoice.

The Clean Energy Regulator's acceptance of the offer made by the Seller(s) through this notice would be conditional upon full payment of the amount of the nominated exit payment specified in Part 3 below being made by the due date and in accordance with payment instructions given in the invoice.

The sending of the eligibility confirmation pack will form the second step of the three-step settlement process.

The third step of the three-step settlement process is payment in full before or on the nominated delivery milestone date by the Seller(s) of the exit payment invoice according to the payment instructions given in the invoice.

Completion of the third step will also give rise to the Seller(s) and the Buyer releasing each other from obligations that would otherwise arise under the nominated contract as a consequence of the Seller(s) not delivering the nominated Kyoto ACCUs by the nominated milestone delivery date.

### Important information to note before making this application

Under the nominated contract, if the Seller has not met the Minimum Delivery Requirement the market value (as determined under paragraph a.i.A of the definition of "Buyer's Market Damages" in clause 1.1.1) that the Seller(s) are liable to pay to the Buyer under clause 9.3 where delivery of Kyoto ACCUs has not occurred by the due date (referred to in the nominated contract as the Default Quantity) is capped as the amount equal to the Unit Price multiplied by the Default Quantity. This cap comes into operation when the market value of Kyoto ACCUs is more than double the Unit Price. For reference, please see paragraph a.i of the definition of "Buyer's Market Damages" in clause 1.1.1 of the nominated contract. As the exit arrangement is intended to allow satisfaction on a streamlined basis of the claims arising as the result of the nominated Kyoto ACCUs not being delivered by the nominated delivery milestone date, it is the Seller(s)' responsibility to satisfy themselves, before making this application, that the market value of the nominated Kyoto ACCUs is more than double the Unit Price.



Under the nominated contract, if the Seller has met the Minimum Delivery Requirement the market value (as determined under paragraph a.ii.A of the definition of “Buyer’s Market Damages” in clause 1.1.1) that the Seller(s) are liable to pay to the Buyer against under clause 9.3 where delivery of Kyoto ACCUs has not occurred by the due date (referred to in the nominated contract as the Default Quantity) is capped as the amount equal to 140% of the Unit Price multiplied by the Default Quantity. For reference, please see paragraph a.ii of the definition of “Buyer’s Market Damages” in clause 1.1.1 of the nominated contract. As the exit arrangement is intended to allow satisfaction on a streamlined basis of the claims arising as the result of the nominated Kyoto ACCUs not being delivered by the nominated delivery milestone date, it is the Seller(s)’ responsibility to satisfy themselves, before making this application, that the market value of the nominated Kyoto ACCUs is more than 140% of the Unit Price.

### Additional information

Click [here](#) to view further information and details on the fixed delivery exit arrangement.

Click [here](#) to view our Privacy statement and information about Protection of Information and Disclosure of Information.

## Part 2. Contract and delivery milestone details

### ERFC-001 Contract and delivery milestone details

Seller(s) must have entered and agreed to a Fixed Delivery Exit Arrangement Variation Deed in relation to the nominated contract before submitting this notice.

Please select the fixed delivery carbon abatement contract in relation to which this notice applies and the Scheduled Delivery Date in relation to which the Seller(s) are giving this notice to the Buyer of anticipated non-delivery under clause 9.3.2 of the nominated contract and as an offer to exit under clause 9.3.3 of the nominated contract. One notice must be submitted per fixed delivery carbon abatement contract and Scheduled Delivery Date.

If you wish to participate in the exit arrangement in relation to another Scheduled Delivery Date under the same fixed delivery carbon abatement contract or a Scheduled Delivery Date under a different fixed delivery carbon abatement contract, please provide a separate notice.

### Carbon abatement contract and scheduled delivery date

#### Carbon abatement contract and Scheduled Delivery Date

Select from the drop-down list below the fixed delivery carbon abatement contract and



Scheduled Delivery Date in respect of which you wish to apply to participate in the exit arrangement. The contract must be an active fixed delivery carbon abatement contract.

Select an active fixed delivery carbon abatement contract (the nominated contract)

Select the Scheduled Delivery Date (the nominated delivery milestone date)

Unit price under the nominated contract  
Unit price under the nominated contract

Nominated number of Kyoto ACCUs that are deliverable under the nominated contract by the nominated delivery milestone date but will not be delivered by the Seller(s) by that date (the nominated Kyoto ACCUs)

**Nominated number of Kyoto ACCUs that are deliverable under the nominated contract by the nominated delivery milestone date but will not be delivered by the Seller(s) by that date (the nominated Kyoto ACCUs)**

Seller(s) of the nominated contract  
Seller(s) of the nominated contract

**Minimum Delivery Requirement**

The nominated contract allows for an exit fee that is reduced by 60% from the original payment obligation where the Seller(s) have met the Minimum Delivery Requirement.

**Outstanding Agreed Quantity under nominated contract:**

Number of Kyoto ACCUs Delivered on or after 1 January 2025 until the date of this notice:

Have the Seller(s) delivered the number of Kyoto ACCUs required to meet the Minimum Delivery Requirement

### Part 3. Exit payment and payment requirements

#### Exit payment details

The exit payment for the nominated contract and nominated delivery milestone date (the **nominated exit payment**) is calculated below. The exit fee represents the compensation for the damages that would arise for the Buyer from the nominated Kyoto ACCUs not being delivered by the Seller(s) by the nominated delivery milestone date, calculated as the “Buyer’s Market Damages” in clause 1.1.1 of the nominated contract. In the case of the Seller meeting the Minimum Delivery Requirement, the exit fee amount is lower than the compensation for the Buyer as the Buyer has agreed that “Buyer’s Market Damages” can be calculated with a 60% discount.

If the Seller(s) have satisfied the Minimum Delivery Requirement under the nominated contract, the nominated exit payment is equal to 40% of the Unit Price shown in Part 2 multiplied by the nominated Kyoto ACCUs shown in that Part. This calculation can be completed as 0.40 multiplied by the Unit Price multiplied by the nominated Kyoto ACCUs.

If the Seller(s) have not satisfied the Minimum Delivery Requirement under the nominated contract, the nominated exit payment is equal to the Unit Price shown in Part 2 multiplied by the nominated Kyoto ACCUs shown in that Part.

**Amount of nominated exit payment for the nominated contract and the nominated delivery milestone date:**

### Part 4. Benefit sharing framework

#### Benefit sharing framework

The benefit sharing framework, as it applies to the anticipated non-delivery notified in this notice, must be satisfied prior to submitting this application. Please refer to the benefit sharing framework on the [Clean Energy Regulator’s website](#) for the requirements and [declaration form](#).

All applicants must provide a signed declaration and, if applicable, supporting evidence of an agreement on sharing of the benefit arising from the anticipated non-delivery notified in this notice.

### Acknowledgement of delivery, exit fee and payment requirements

By ticking the box(es) below, I understand that:

- The Seller(s) have entered and agreed to a Fixed Delivery Exit Arrangement Variation Deed.
- Applicable only to Seller(s) claiming a nominated exit payment equal to 40% of the Unit Price multiplied by the nominated Kyoto ACCUs, the Seller(s) have met the Minimum Delivery Requirement under the nominated contract before submitting this notice.
- or the Seller(s) has not met the minimum delivery requirement under the permanent exit arrangement and has notified the regulator of the delivery failure. The regulator has instructed the Seller to submit this form to settle the outstanding amount.
- I have uploaded a completed declaration form to the Clean Energy Regulator related to this notice.
- I confirm that I have uploaded evidence to the Clean Energy Regulator in support of the declaration (where applicable).

Select file(s) to upload

## Part 5. Terms of proposed offer to settle – declaration and acknowledgement

### Declaration

By submitting this notice, the Seller(s) offer to settle the claim for the exit payment that would arise for the Buyer under the nominated contract from the Seller(s)' delivery of the nominated Kyoto ACCUs not occurring by the nominated delivery milestone date on the following terms:

#### Proposed settlement and release

1. The Buyer accepts the Seller(s)' notice that the Seller(s) intend to not deliver the nominated Kyoto ACCUs to the Buyer by the nominated delivery milestone date and the Seller(s) do not propose a revision to be made to the Delivery Schedule. The Buyer accepts that this notice is a compliant notice given by the Seller(s) to the Buyer in respect of the nominated Kyoto ACCUs under clauses 9.3.2 and 9.3.3 of the nominated contract.



**2.** The Buyer accepts that in relation only to the Seller(s)' delivery of the nominated Kyoto ACCUs under the nominated contract not occurring on the nominated delivery milestone date, for the purposes of clauses 9.3.4, 9.3.5 and 9.3.6 of the nominated contract and the definition of "Buyer's Market Damages" in clause 1.1.1 of the nominated contract the parties agree and acknowledge that notwithstanding the terms of the nominated contract:

**2. a.** the Buyer is entitled to receive, and the Seller(s) are liable to pay, the nominated exit payment on or before the nominated delivery milestone date; and

**2. b.** clauses 9.3.4, 9.3.5 and 9.3.6 and the definitions of "Buyer's Market Damages" in clause 1.1.1 of the nominated contract are taken to be varied *mutatis mutandis* to give effect to the terms of this paragraph 2.

**3.** Nothing in this Part should be taken to affect the parties' obligations under the nominated contract except in relation to the delivery of the nominated Kyoto ACCUs by the nominated delivery milestone date.

**4.** If the Seller(s) are claiming a nominated exit payment equal to the Unit Price multiplied by the nominated Kyoto ACCUs, the Seller(s) have satisfied themselves that the market value of the nominated Kyoto ACCUs is more than double the Unit Price.

**5.** If the Seller(s) are claiming a nominated exit payment equal to 40% of the Unit Price multiplied by the nominated Kyoto ACCUs, the Seller(s) confirm that they have met the Minimum Delivery Requirement and have satisfied themselves that the market value of the nominated Kyoto ACCUs is more than 140% of the Unit Price.

**6.** The releases provided by the Buyer in relation to the claim for exit payment that would arise from the Seller(s) delivery of the nominated Kyoto ACCUs not occurring by the nominated delivery milestone date, will be conditional upon payment in full by the nominated delivery milestone date by the Seller(s) of the nominated exit payment set out in Part 3 above according to the payment instructions given in the exit payment invoice included in the eligibility confirmation pack sent to the Seller(s) in response to this notice.

**7.** If the abovementioned conditions are not satisfied after the eligibility confirmation pack is sent to the Seller(s) in response to this notice, the existing contractual obligations under the nominated contract will apply as though this notice had not been given by the Seller(s) and any conditional approval to this notice given by the Buyer had been withdrawn by it.

**8.** The Seller(s) and the Buyer agree that the nominated exit payment set out in Part 3 above is, or is lower than, a genuine pre-estimate of losses suffered as a result of the nominated Kyoto ACCUs not being delivered by the Seller(s) by the nominated milestone delivery date and is not a penalty.

**9.** The Seller(s) agree that following receipt of the nominated exit payment by the Buyer if there are, under the nominated contract, (i) no Scheduled Delivery Dates following the nominated delivery milestone date, (ii) no Advanced Payment Scheduled Delivery Dates following the nominated delivery milestone date, and (iii) no outstanding amounts payable by the Seller(s) to the Buyer, the nominated contract will terminate upon notification given by the

Buyer to the Seller(s).

#### Payment or delivery under the nominated contract

**10.** Should the Seller(s) wish to deliver Kyoto ACCUs to the Buyer towards the nominated delivery milestone date and receive payment against that delivery under the terms of the nominated contract, the Seller(s) will be able to do so until the third step described above has been completed. In the event of any delivery of Kyoto ACCUs made by the Seller(s) to the Buyer towards and by the nominated delivery milestone date, this offer and any conditional approval given by the Buyer to the offer set out in this notice will be deemed to be void. In that event, the nominated contract will continue as if this offer had not been made. If the notice is void at any point, the Seller may, before the Scheduled Delivery Date, submit a new notice in relation to any outstanding volume remaining to be delivered on the Scheduled Delivery Date.

#### Refunds

**11.** If the abovementioned conditions are not satisfied after the eligibility confirmation pack is sent to the Seller(s) in response to this notice, the Clean Energy Regulator will refund any amounts paid by the Seller(s) against the nominated exit payment into the bank account nominated in the Commercial Terms of the nominated contract (the **nominated bank account**). This requirement will apply regardless of the bank account used to transfer funds to the Clean Energy Regulator.

**12.** Refunds to the nominated bank account will also be made by the Buyer in the following circumstances:

**12. a.** Any amount is received by the Buyer from the Seller(s) against the nominated exit payment before the Buyer sends the eligibility confirmation pack to the Seller(s) in response to this notice. In this case, the amount received by the Buyer will be refunded.

**12. b.** An amount greater than amount of the nominated exit payment is received by the Buyer. In this case, the excess amount received by the Buyer will be refunded.

**12. c.** Any amount is received by the Buyer from the Seller(s) against the nominated exit payment after the nominated milestone delivery date. In this case, the amount received by the Buyer will be refunded.

**12. d.** Any amount is received by the Buyer from the Seller(s) against the nominated exit payment after this offer is voided. In this case, the amount received by the Buyer will be refunded.

**13.** Any conditional approval given by the Buyer in response to this notice will be treated as having been withdrawn by the Buyer if any of the following occur before each of the conditions of the conditional approval have been satisfied:

**13. a.** Any of the Seller(s) under the nominated contract changes.

**13. b.** The nominated bank account changes.



13. c. The relevant parties covered by the benefit sharing framework change.

**Acknowledgement and Declaration**

By ticking this box, the Seller(s) acknowledge and declares that they have read and understood the terms and conditions of the exit arrangement above.

## Part 6. Review and submit

### Review and submit

By submitting this notice, the authorised representative / Seller(s) of the nominated contract declares that they have the legal capacity and authority to submit this notice on behalf of each Seller under the nominated contract, and declares and acknowledges, for and on behalf of each such Seller, that:

- Seller(s) have entered into a Fixed Delivery Exit Arrangement Variation Deed in relation to the nominated contract before submitting this notice.
- As applicable only to Seller(s) that are claiming a nominated exit payment equal to 40% of the Unit Price multiplied by the nominated Kyoto ACCUs, the Seller has met the Minimum Delivery Requirements under the nominated contract.
- all information provided in this notice is, having made all reasonable enquiries, complete, true and correct and not misleading by inclusion or omission; and
- the provision of false or misleading information is a serious offence and carries penalties under the Criminal Code and may have consequences under the *Carbon Credits (Carbon Farming Initiative) Act 2011* and other laws; and
- any of the information provided in this notice may be copied, recorded, used or disclosed by the Clean Energy Regulator for the purpose of assessing and making a decision on the nominated contract, auditing compliance, enforcement of relevant laws and regulations and for related purposes subject to the requirements of relevant laws, in particular the *Privacy Act 1988* and Part 3 of the *Clean Energy Regulator Act 2011*.

## **Annexure D – Commercial Terms, Delivery Terms and Financial Terms for each Contract**

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Next follow the Commercial Terms, Delivery Terms and Financial Terms for each Contract