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

1. Definitions and interpretation

1.1 Definitions

In this deed:

Authorised Officer means:

- (a) in respect of the Seller, any person who is:
 - (i) if the Seller is a company or other body corporate, a director or company secretary of the Seller;
 - (ii) if the Seller is an individual, the Seller; or
 - (iii) from time to time nominated as an "Authorised Officer" for the purposes of this deed by the Seller by notice to the Buyer accompanied by a certified copy of the nominated person's signature;
- (b) in respect of the Buyer, the Chair or any 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 Officer" for the purposes of this deed.

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, as amended (if applicable) pursuant to the Variation Deed in relation to the Contract and 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.

Variation Deed means, in in relation to a Contract, the variation deed referred to in the third column in the table in Annexure B and in the row corresponding to the Contract Identifier in relation to the Contract.

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;
- (I) 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.

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
- 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:
 - 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:
 - 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 (subject to any amendments made to it by the Variation Deed, if applicable), 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;
- 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 (subject to any amendments made to it by the Variation Deed, if applicable), 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;
- 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:
 - 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.

2.7 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.

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.

4. Notices and other communications

4.1 Form – all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by an Authorised Officer of the sender and marked for attention as identified in clause 4.4 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

4.2 Form – communications sent by email

Communications in connection with this deed sent by email need not be marked for attention in the way stated in clause 4.1. However, the email must state the first and last name of the sender.

Communications in connection with this deed sent by email are taken to be signed by the named sender.

4.3 Delivery

Communications in connection with this deed must be:

- (a) left at the address of the intended recipient set out in clause 4.4;
- (b) sent by prepaid ordinary post (airmail, if appropriate) to the address of the intended recipient set out in clause 4.4; or
- (c) sent by email to the email address of the intended recipient set out in clause 4.4.

However, if the intended recipient has notified a changed address, then communications in connection with this deed must be sent to that address.

4.4 Addresses and addressees

Communications in connection with this deed to:

- (a) the Seller must be sent as set out in item 2 of Annexure A.
- (b) the Buyer must be sent as follows:

Address: Clean Energy Regulator

GPO Box 621

Canberra ACT 2601

Australia

Attention: Carbon Abatement Contracts

Email: CER-ERFContracts@cer.gov.au

4.5 When effective

Communications in connection with this deed take effect from the time they are received or taken to be received under clause 4.6 (whichever happens first) unless a later time is specified.

4.6 When taken to be received

Communications in connection with this deed are taken to be received:

- (a) if sent by post 6 Business Days after posting (or 7 Business Days after posting if sent from one country to another);
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

4.7 Receipt outside business hours

Despite clauses 4.5 and 4.6, if communications in connection with this deed are received or taken to be received under clause 4.6 after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

4.8 Reliance on communications

Any communication in connection with this deed sent in accordance with this clause 4 can be relied on by the recipient if the recipient reasonably believes the communication is genuine and if it bears what appears to be the signature (original or scanned) of an Authorised Officer of the sender (without the need for further enquiry or confirmation). Each party must take reasonable care to ensure that no forged, false or unauthorised communications are sent to another party.

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.
- (b) 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.
- (c) 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.

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

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 <i>Public Governance Performance and Accountability Act 2013</i> (Cth) read with section 110 of that Act,	
in the presence of:	Signature of delegate of accountable authority)
Signature of witness))) Name of delegate (block letters))
Name of witness (block letters)))) Date))
Date	
SELLER	
SIGNED, SEALED AND DELIVERED by [insert full name],	
in the presence of:	
Signature of witness))) Signature of Seller)
Name of witness (block letters)))) Name of Seller (block letters))
Date)))) Date

company name] [insert ACN] in accordance with s 127 of the Corporations Act 2001 (Cth) by:)))))
Signature of director)) Signature of director/secretary)
Name of director (block letters)))) Name of director/secretary (block letters)))
Date) Date

Annexure A – Seller details

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

Annexure B – Contract details

No.	Contract Identifier	Variation Deed
1.	[insert]	[insert]
2.		

Attachment A – Exit Arrangement Terms

Carbon Abatement Contract Exit Arrangement Terms Contract Identifier: [Insert] 1. Outstanding Agreed Quantity

Attachment B – Fixed Delivery Exit Application

Next follows the Fixed Delivery Exit Application

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

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