Australian Government
Clean Energy Regulator

CARBON ABATEMENT CONTRACT

Option to Deliver Code of Common Terms

Version 2.0 of 12 January 2023

Clean Energy Regulator, a Commonwealth entity established by the *Clean Energy Regulator Act 2011* (Cth), on behalf of the **Commonwealth of Australia**, ABN 72 321 984 210

AND

Each person identified as a Seller in Item 1 of the Commercial Terms

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CARBON ABATEMENT CONTRACT

Option to Deliver Code of Common Terms

Parties

The Contract is made between:

CLEAN ENERGY REGULATOR, a Commonwealth entity established by the *Clean Energy Regulator Act 2011* (Cth), on behalf of the **COMMONWEALTH OF AUSTRALIA**, ABN 72 321 984 210 (**Buyer**)

AND

Each person identified as a Seller in Item 1 of the Commercial Terms (collectively, **Seller**)

Recitals

A. The Buyer conducted a Carbon Abatement Purchasing Process on the date specified in Item 2 of the Financial Terms in accordance with the CFI Act for purchasing, on behalf of the Commonwealth, Kyoto ACCUs.

B. The Seller participated in the Carbon Abatement Purchasing Process in relation to the Project and offered to enter into an agreement for the right to sell Contract Units (up to the Agreed Quantity) to the Buyer at the Unit Price upon the terms and conditions set out in this Option to Deliver Code of Common Terms as supplemented by the Commercial Terms, the Delivery Terms and the Financial Terms proposed by the Seller.

C. The Seller's offer at the Carbon Abatement Purchasing Process was determined successful and accepted by the Buyer, as confirmed in the written confirmation of acceptance and agreed Commercial Terms, Delivery Terms and Financial Terms sent by the Buyer to the Seller in relation to the offer.

D. The parties agree that the Seller has the right to sell to the Buyer Contract Units up to the Agreed Quantity at the Unit Price, and that the Buyer will be obliged to purchase from the Seller at the Unit Price Contract Units Delivered up to the Agreed Quantity, upon the terms and conditions set out in this Option to Deliver Code of Common Terms as supplemented by the Commercial Terms, the Delivery Terms and the Financial Terms agreed between the parties (***Contract***).

Operative Provisions

1. Definitions and interpretation; Term

1.1. Definitions

1.1.1. In this Option to Deliver Code of Common Terms:

Agreed Quantity means the total quantity of Contract Units specified in Item 2 of the Delivery Terms.

Applicable Laws means all legislation and all legally binding interpretations, judgments, injunctions, writs and orders of any governmental authority, court or tribunal applicable to the relevant party, including administrative, environmental and zoning laws.

Australian National Registry of Emissions Units or ***ANREU*** means the register with that name continued in existence under section 9 of the *Australian National Registry of Emissions Units Act 2011* (Cth).

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 4 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.

Buyer's ANREU Account means the account in ANREU with the number AU-2650 and the name "Commonwealth Emissions Reduction Fund Delivery Account", or such other account designated by the Buyer in accordance with clause 5.3.2, to which Contract Units are to be Delivered.

CFI Act means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

Carbon Abatement, in the context of clause 3.1.8, has the same meaning it has in section 5 of the CFI Act.

Carbon Abatement Contract has the same meaning it has in section 5 of the CFI Act.

Carbon Abatement Purchasing Process has the same meaning it has in section 5 of the CFI Act.

Clean Energy Regulator means the Buyer.

Commercial Terms means the commercial terms of the Contract supplementing this Option to Deliver Code of Common Terms that are agreed between the parties.

Contract means the Carbon Abatement Contract entered into by the parties upon the terms and conditions set out in this Option to Deliver Code of Common Terms as supplemented by the Commercial Terms, the Delivery Terms and the Financial Terms agreed between the parties.

Contract Date means the date of the Contract, as specified in Item 3 of the Financial Terms.

Contract Units means Kyoto ACCUs issued in respect of the Project.

Covered Emissions has the same meaning it has in section 22XI of the NGER Act.

Default Quantity means, for the purposes of calculating Seller's Market Damages under clause 9.6.2, the number being equal to the aggregate of the Periodic Quantities in respect of each Scheduled Delivery Date following the Termination Date (if any).

Default Rate means:

a. following the resolution of a Dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith where it is determined that one party owes a payment to the other party, an annual rate equal to the RBA Cash Rate applicable from time to time plus one per cent (1%), with accrued interest to which this paragraph a. applies to be compounded monthly at the end of each calendar month from (and including) the date when the amount would have been paid or not paid (as applicable) if the Dispute, overpayment or underpayment had not occurred to (but excluding) the date payment is made;

b. in any other circumstances where one party fails to pay an amount due to the other party by the due date of payment, an annual rate equal to the RBA Cash Rate applicable from time to time plus four per cent (4%), with accrued interest to which this paragraph b. applies to be compounded monthly at the end of each calendar month from (and including) the due date of payment to (but excluding) the date payment is made.

Defaulting Party means the party in respect of which an Event of Default has occurred.

Delivery means the transfer to the Buyer's ANREU Account of Contract Units in accordance with clause 4.1 (*Delivery*), and ***Deliver*** will be construed accordingly.

Delivery Failure has the meaning given to it by the Code of Common Terms of the relevant Fixed Delivery Contract.

Delivery Period means the period specified in Item 1 of the Delivery Terms, commencing from the Contract Date.

Delivery Schedule means the schedule for Delivery agreed between the parties, as set out in Item 2 of the Delivery Terms, or the later of any revised delivery schedule that may be agreed between the parties.

Delivery Terms means the delivery terms of the Contract supplementing this Option to Deliver Code of Common Terms that are agreed between the parties.

Designated Large Facility has the same meaning it has in section 22XJ of the NGER Act.

Dispute means any suit, action, proceedings, controversy, claim or dispute arising under, out of or in connection with the Contract between the parties (including a dispute regarding the existence, validity, interpretation or termination of the Contract).

Eligible Offsets Project has the same meaning it has in section 5 of the CFI Act.

Event of Default means each of the events referred to in clause 9.1 (*Events of Default with respect to any party*) and clause 9.2 (*Events of Default with respect to the Seller*).

Exercised Option Quantity means, in respect of a Scheduled Delivery Date, the total quantity of Contract Units that has been Delivered by the Seller under clause 3.1.2 by the end of that Scheduled Delivery Date in exercise of its option with respect to that Scheduled Delivery Date.

Expiry Date means the day which is at the end of the Delivery Period.

FM Affected Party means the party affected by a Force Majeure.

Financial Terms means the financial terms of the Contract supplementing this Option to Deliver Code of Common Terms that are agreed between the parties.

Fixed Delivery Contract means a Carbon Abatement Contract:

a. to which the Seller is party as a seller;

b. in the commercial terms of which the Project is named as a 'Project'; and

c. under which the Seller is obligated (regardless of whether that obligation is owed by the Seller solely or jointly and severally with other persons) to sell and deliver an agreed quantity of Kyoto ACCUs to the Clean Energy Regulator by agreed dates for an agreed price per Kyoto ACCU.

Force Majeure means the occurrence of any event or circumstance beyond the control of a party and its contractors and agents that could not, after using all reasonable efforts, be overcome and which, but for clause 9.4 (*Force Majeure*), results in or causes the inability of that party to exercise its rights or failure of that party to perform its obligations under the Contract, provided that such party did not play a substantial role in bringing about the event or circumstance.

Greenhouse Gas has the same meaning it has in section 5 of the CFI Act.

GST has the meaning given in the GST Act.

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

Kyoto Australian carbon credit unit or ***Kyoto ACCU*** has the same meaning it has in section 5 of the CFI Act.

Legislative Rule means a legislative rule made under section 308 of the CFI Act.

NGER Act means the *National Greenhouse and Energy Reporting Act 2007* (Cth).

Non-Defaulting Party means the party that is not the Defaulting Party.

Operation, in relation to a designated large facility, has the same meaning it has in section 7 of the NGER Act.

Option Non-Exercise Intention means, in relation to a Scheduled Delivery Date, the anticipation of the Seller that it is unlikely that it will exercise its option to sell to the Buyer all of the Periodic Quantity by the Scheduled Delivery Date.

Option Suspension Event occurs when, and continues so long as, the following conditions are satisfied:

a. the right of the Seller to exercise the Seller's option to sell Contract Units to the Buyer (and the Buyer's related obligation to buy Contract Units from the Seller) under this Contract is suspended under clause 3.1.4; and

b. a period of 540 days (or such other number of days that may be agreed between the parties) has passed since the suspension first occurred.

Option to Deliver Code of Common Terms means this Option to Deliver Code of Common Terms.

Payment Due Date means, in respect of a Delivery, the day which is at the end of twenty (20) Business Days after the later of:

a. the date on which the Buyer receives an invoice in respect of that Delivery in accordance with clause 4.3 (*Invoice)*; and

b. the date on which that Delivery occurs in accordance with clause 4.1 (*Delivery*).

Periodic Quantity means, in respect of a Scheduled Delivery Date, the number of Contract Units that is set out adjacent to that Scheduled Delivery Date in the Delivery Schedule.

Project means the project named in Item 2 of the Commercial Terms, which is, at the date specified in Item 2 of the Financial Terms, an Eligible Offsets Project.

RBA Cash Rate means, on any day, the rate most recently published by the Reserve Bank of Australia as its "Cash Rate Target".

Relevant Authority means the government of the Commonwealth of Australia, or of a State or a Territory of Australia, or any local authority in Australia, or a minister, government department, statutory corporation or entity of the Commonwealth of Australia, or of a State or Territory of Australia, or a judicial entity in Australia.

Reporting Period has the same meaning it has in section 5 of the CFI Act.

Required Authorisations means, in relation to doing of any act or the entering into of any transaction or document, all consents, registrations, approvals, authorities, licences or permits of any Relevant Authority which are required in order that the act may lawfully be done or the transaction or document lawfully entered into and performed.

Resolution Institute means Resolution Institute, ACN 008 651 232, Level 1 & 2, 13-15 Bridge Street, Sydney NSW 2000 (phone: 02 9251 3733, e-mail: infoaus@resolution.institute), howsoever named or described from time to time, and includes any body that is its successor, and further includes any person or body that is agreed between the parties to be its alternate.

Revocation Event occurs when, and continues so long as, the following conditions are satisfied:

a. the Clean Energy Regulator has revoked the declaration made under section 27 of the CFI Act in relation to the Project (**revocation decision**), regardless of whether:

    i. the revocation decision was originally made at the application of the project proponent for the Project or at the Clean Energy Regulator's own instance pursuant to section 32 of the Carbon Credits (Carbon Farming Initiative) Rule 2015;

    ii. the revocation decision was originally made by the Clean Energy Regulator or a delegate of the Regulator;

    iii. the revocation decision was made on remittal of the original decision for further consideration to the decision-maker by order of a court or tribunal; or

    iv. the revocation decision has been varied by order of a court or tribunal, where such variation does not affect the eventual revocation of the declaration made under section 27 of the CFI Act in relation to the Project;

b. the revocation decision is not subject to a pending application for review or appeal by a court or tribunal; and

c. a period of 365 days has passed since the revocation decision.

Scheduled Delivery Date means a date specified as such in the Delivery Schedule, or such later date in lieu of that date that may be agreed between the parties subject to clause 8.5.3.

Seller's ANREU Account means an account of the Seller in ANREU, from which Contract Units are to be Delivered.

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. calculated through the numeric average of bid quotes obtained by the Seller from three separate independent third party dealers in Kyoto ACCUs for spot purchase of such quantity of Kyoto ACCUs; or

B. (where on the date on which Seller's Market Damages is calculated a price is not obtainable by the application of sub-paragraph a.ii.A), the market value of Kyoto ACCUs on that date, having regard to the circumstances in which Seller's Market Damages is being calculated, as determined by a valuer appointed by the Chief Executive Officer of the Resolution Institute, or the designated representative of the Chief Executive Officer of the Resolution Institute, 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).

Termination Date means the date the Contract is terminated in accordance with clause 9.5 (*Termination rights*).

Unexercised Option Quantity means, in respect of a Scheduled Delivery Date, the Periodic Quantity relating to the Scheduled Delivery Date less any Exercised Option Quantity relating to the Scheduled Delivery Date.

Unit Price means the price per Contract Unit, as specified in Item 1 of the Financial Terms.

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.

1.2. **Interpretation**

1.2.1. In this Option to Deliver Code of Common Terms, unless the context indicates a contrary intention:

a. words importing a gender include any other gender;

b. words in the singular include the plural and words in the plural include the singular;

c. headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;

d. words importing a person include a partnership and a body whether corporate or otherwise;

e. a reference to an article, clause or paragraph is a reference to an article, clause or paragraph of this Option to Deliver Code of Common Terms;

f. a reference to a party is a reference to a party to the Contract;

g. a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

h. a reference to any document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time;

i. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision, and, if the legislation is a statute, includes all delegated legislation made under it;

j. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

k. if any conflict arises between the terms and conditions contained in this Option to Deliver Code of Common Terms and the Commercial Terms, the Delivery Terms or the Financial Terms, the Commercial Terms, the Delivery Terms or, as applicable, the Financial Terms prevail;

l. where a party to the Contract is comprised of two or more persons, they are each bound jointly and severally;

m. a reference to the Commercial Terms, the Delivery Terms or the Financial Terms includes that document as amended or replaced from time to time by agreement in writing between the parties;

n. a reference to writing is a reference to any representation of words, figures or symbols;

o. a reference to a sum of money is to that sum of money in Australian dollars;

p. a reference to any thing (including an amount) is a reference to the whole and each part of it;

q. references to time are to local time in Canberra; and

r. the word "includes" in any form is not a word of limitation.

1.3. **Construction of Contract**

1.3.1. Except for those matters warranted by clause 8.3.1.e, the Contract records the entire agreement between the parties in relation to its subject matter and supersedes all previous written or oral agreements, understandings and negotiations on the subject matter.

1.3.2. As far as possible all provisions of the Contract will be construed so as not to be void or otherwise unenforceable.

1.3.3. If anything in the Contract is void or otherwise unenforceable then it will be severed and the rest of the Contract remains in force.

1.3.4. A provision of the Contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. **General rules about performance**

1.4.1. Unless otherwise specified, whenever anything is to be done under the Contract:

a. by or not later than a Business Day, or any period is to run to a Business Day, such thing must be done by, or such period is to run to, 5 pm on that Business Day;

b. from or not earlier than a Business Day, or any period is to run from a Business Day, such thing must be done, or such period is to run, from 9 am on that Business Day;

c. on a Business Day, it is to be treated as having been done on the next following Business Day if it is done after 5 pm on that Business Day;

d. by or not later than a day, or any period is to run to a day, such thing must be done, or such period is to run, up to the end of that day; and

e. from or not earlier than a day, or any period is to run from a day, such thing must be done, or such period is to run, from the start of that day.

1.4.2. If an amount becomes payable under the Contract on a day which is not a Business Day, it will be payable on the next following Business Day.

1.5. **Term**

1.5.1. The Contract will commence on the Contract Date and terminate on the Termination Date, unless extended by mutual written agreement between the parties.

2. Sale and purchase agreement

2.1. **Right to sell and obligation to purchase Contract Units up to the Agreed Quantity**

2.1.1. The parties agree that the Seller has the right to sell to the Buyer Contract Units up to the Agreed Quantity at the Unit Price, and that the Buyer will be obliged to purchase from the Seller at the Unit Price Contract Units that are Delivered by the Seller up to the Agreed Quantity, upon the terms and conditions of the Contract.

3. Seller's option

3.1. **Option to Deliver Contract Units**

3.1.1. Subject to the other clauses of this article 3 and to articles 4 and 5, the parties agree that the Seller has the option, with respect to each Scheduled Delivery Date, to sell to the Buyer at the Unit Price a quantity of Contract Units up to the Periodic Quantity relating to that Scheduled Delivery Date, and that the Buyer will be obliged to purchase the Delivered quantity of such Periodic Quantity at the Unit Price.

3.1.2. Subject to clauses 3.1.3, 3.1.4 and 3.1.8, the Seller may exercise its option with respect to a Scheduled Delivery Date by Delivering, in accordance with clause 4.1.1, on or, in accordance with clause 4.1.3, before the Scheduled Delivery Date a quantity of Contract Units up to the Periodic Quantity relating to that Scheduled Delivery Date.

3.1.3. The aggregate quantity of Contract Units that may be Delivered by the Seller in exercise of its option with respect to a Scheduled Delivery Date, whether in accordance with clause 4.1.1 or in accordance with clause 4.1.3, or both, must not exceed the Periodic Quantity relating to that Scheduled Delivery Date.

3.1.4. The right of the Seller to exercise the Seller's option to sell Contract Units to the Buyer (and the Buyer's related obligation to buy Contract Units from the Seller) under this Contract will be suspended during such time that a Delivery Failure is outstanding under any Fixed Delivery Contract.

3.1.5. For the purposes of clause 3.1.4, a Delivery Failure is taken to be outstanding under a Fixed Delivery Contract from (and including) the time:

a. a Delivery Failure occurs under the terms of that Fixed Delivery Contract; or

b. the seller under that Fixed Delivery Contract gives notice to the buyer under that contract that the Delivery Failure is likely to occur,

to (but excluding) the time the parties to that Fixed Delivery Contract agree to replace the delivery schedule under that contract with a Revised Delivery Schedule (as defined in clause 9.3.3.b of the Code of Common Terms of that Fixed Delivery Contract). For the avoidance of doubt, nothing in this Contract obligates a party to a Fixed Delivery Contract to agree to replace the delivery schedule under that contract with a Revised Delivery Schedule.

3.1.6. If any Unexercised Option Quantity relating to a Scheduled Delivery Date remains undelivered under the Contract at the end of the Scheduled Delivery Date, the Seller's option to sell and the Buyer's obligation to purchase such Unexercised Option Quantity will lapse.

3.1.7. For the avoidance of doubt, if the Seller's option to sell and the Buyer's obligation to purchase any Unexercised Option Quantity relating to a Scheduled Delivery Date lapses in accordance with clause 3.1.6, the Seller's option with respect to a future Scheduled Delivery Date (if any) and the Buyer's obligation in relation to such future Scheduled Delivery Date will continue in accordance with the terms of the Contract unless varied by written agreement of both of the parties.

3.1.8. The right of the Seller to exercise the Seller's option to sell Contract Units to the Buyer (and the Buyer's related obligation to buy Contract Units from the Seller) under the Contract will be suspended in the event that:

a. a Legislative Rule is made from the commencement of which the Buyer is prevented from entering into a Carbon Abatement Contract (otherwise than by way of novation) if any of the Kyoto ACCUs to be purchased under the Carbon Abatement Contract were issued, or at the time of purchase would have been issued, in respect of an Eligible Offsets Project of a kind specified in the Legislative Rule; and

b. the Project is an emissions avoidance offsets project (as that term is defined in section 5 of the CFI Act); and

c. following the commencement of the Legislative Rule referred to in clause 3.1.8.a, the Buyer, acting in its sole and absolute discretion, gives a suspension notice to the Seller stating that the Project is an Eligible Offsets Project of a kind specified in the Legislative Rule.

3.1.9. A suspension under clause 3.1.8 will commence upon the date that the notice referred to in clause 3.1.8.c is issued by the Buyer and will remain in place unless and until the Buyer, acting in its sole and absolute discretion, withdraws that suspension notice by further written notice.

4. Obligations of the Seller

4.1. Delivery

4.1.1. Subject to clauses 3.1.3, 3.1.4 and 3.1.8, on each Scheduled Delivery Date, the Seller may sell to the Buyer and make Delivery of a quantity of Contract Units up to the Periodic Quantity relating to that Scheduled Delivery Date directly from the Seller's ANREU Account to the Buyer's ANREU Account.

4.1.2. If on any Scheduled Delivery Date (**Affected Scheduled Delivery Date**) transfers of Contract Units are for any reason beyond the control of the Seller and its contractors and agents not capable of being made through ANREU to the Buyer's ANREU Account, the Seller may notify the Buyer as soon as possible of such event, and following the Buyer's receipt of such notice both parties will, acting in good faith, use reasonable endeavours to agree on a revised Delivery Schedule in which the Affected Scheduled Delivery Date is replaced with a new and earliest possible Scheduled Delivery Date falling after the Affected Scheduled Delivery Date and with the same quantity of Contract Units as was unable to be Delivered on the Affected Scheduled Delivery Date.

4.1.3. Subject to clauses 3.1.3, 3.1.4 and 3.1.8, the Seller may Deliver all or part of the Periodic Quantity relating to a Scheduled Delivery Date in advance on another day falling within the same financial year (which will be reckoned for the purposes of this clause 4.1 as a period starting from 1 July in any year and ending on 30 June in the next year) in which that Scheduled Delivery Date falls.

For the avoidance of doubt, subject to clauses 3.1.3, 3.1.4 and 3.1.8, the Buyer will be obliged to accept any advance Delivery of Contract Units made by the Seller in accordance with this clause 4.1.3.

4.1.4. The Seller may Deliver all or part of the Periodic Quantity relating to a Scheduled Delivery Date in advance on another date falling within a financial year that is earlier to the financial year in which that Scheduled Delivery Date falls, if:

a. the Seller gives the Buyer advance notice of the Seller's proposal to Deliver in advance;

b. the notice sets out:

i. the Periodic Quantity for which the Seller proposes to Deliver in advance and its Scheduled Delivery Date;

ii. the amount of Contract Units in that Periodic Quantity which the Seller proposes to Deliver in advance; and

iii. a date in the earlier financial year on which the Seller proposes to make the advance Delivery, which date must not be less than twenty (20) Business Days after the date on which the notice is given; and

c. the Buyer notifies the Seller of the Buyer's acceptance of that proposal before the Seller attempts to make the advance Delivery.

For the avoidance of doubt, the Buyer has no obligation to accept advance Delivery in an earlier financial year of an amount of Contract Units in any Periodic Quantity relating to a Scheduled Delivery Date falling in a later financial year unless the Buyer notifies acceptance of an advance Delivery proposal in accordance with this clause 4.1.4 and the Seller Delivers Contract Units to the Seller in accordance with such accepted proposal.

4.1.5. As soon as reasonably practicable after accepting an advance Delivery of Contract Units under clause 4.1.4 comprising all or part of the Periodic Quantity relating to a Scheduled Delivery Date, the Buyer will provide to the Seller a revised Delivery Schedule incorporating relevant adjustments to the Periodic Quantity that will replace the current Delivery Schedule.

4.1.6. Delivery under the Contract is deemed to occur when the Contract Units are received in the Buyer's ANREU Account from the Seller's ANREU Account, free of encumbrances or defect in title.

4.2. **Maintenance of the Seller's ANREU Account**

4.2.1. The Seller must ensure that it has and maintains an ANREU account as the Seller's ANREU Account in order to give effect to the transactions contemplated by the Contract.

4.3. **Invoice**

4.3.1. The Seller must send to the Buyer an invoice in relation to each Delivery setting out:

a. the account number of the Seller's ANREU Account from which that Delivery has been or will be made;

b. the Scheduled Delivery Date to which that Delivery pertains;

c. the number of Contract Units Delivered;

d. the amount payable in respect of that Delivery, which must be equal to the amount the Buyer is required to pay under article 5 for that Delivery; and

e. the contract identification number (if any) issued by the Buyer to the Seller for the Contract.

5. Obligations of the Buyer

5.1. Purchase of the Contract Units

5.1.1. The Buyer will be obliged to accept Delivery of the Periodic Quantity of Contract Units when so tendered, provided that such tender is in accordance with the terms of the Contract.

5.2. Payment

5.2.1. The Buyer must purchase and promptly pay for the number of Contract Units which are Delivered in accordance with clause 4.1 (*Delivery*) no later than the Payment Due Date corresponding to that Delivery.

5.2.2. Payment by the Buyer must be by electronic transfer in immediately available funds to an account in a bank in Australia as specified in Item 3 of the Commercial Terms or as notified by the Seller to the Buyer at least three (3) Business Days prior to a Payment Due Date.

5.3. Maintenance of the Buyer's ANREU Account

5.3.1. The Buyer must ensure that it has and maintains an ANREU account as the Buyer's ANREU Account in order to give effect to the transactions contemplated by the Contract.

5.3.2. The Buyer may from time to time designate an account in ANREU to be the Buyer's ANREU Account for receiving Delivery of Contract Units by notifying the Seller through ANREU of the account designated for that purpose.

5.3.3. Article 13 does not apply to notices under clause 5.3.2.

6. Interest on overdue amounts

6.1. Overdue interest

6.1.1. A party required to make payment to another under the Contract must pay interest on demand on any amount due and payable by that party under the Contract but remaining unpaid.

6.1.2. Interest under clause 6.1.1 accrues on each unpaid amount from and including the due date for payment to the date of actual payment at the Default Rate.

6.1.3. Interest under clause 6.1.1:

a. accrues from day to day; and

b. is calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and a 365 day year.

6.2. Interest following judgment

6.2.1. If a liability under the Contract becomes merged in a judgment, the party required to make the payment must, as an independent obligation, pay interest on the amount of

that liability to the party to which payment is due. That interest will accrue from (and including) the date the amount becomes due up to (but excluding) the date the amount is paid, both before and after judgment, at the rate which is the higher of:

a. the rate payable under the judgment; and

b. the Default Rate.

6.3. **Set-off**

6.3.1. If:

a. an amount (the **First Amount**) is owing to a party by the other party; and

b. an amount (the **Second Amount**) is owing by the party under the Contract to the other party,

the party to whom the First Amount is owing may deduct the whole or a part of the First Amount from the whole or a part of the Second Amount.

6.3.2. To avoid doubt, for the purposes of clause 6.3.1 an amount may be owing to, or by, a party even if it is not yet due for payment.

6.4. **Article survives termination**

6.4.1. This article 6 survives termination of the Contract.

7. Costs

7.1. **Responsibility for costs**

7.1.1. The Seller will pay all costs, fees, deductions and charges relating to:

a. its participation in the Carbon Abatement Purchasing Process referred to in the recitals to this Option to Deliver Code of Common Terms;

b. the Project;

c. the issuance or procurement of Contract Units to be Delivered under the Contract; and

d. the creation and maintenance of its own ANREU accounts for the performance of the Contract.

7.1.2. Each party will bear its own costs and expenses in connection with the preparation, negotiation and entering into or execution of the Contract.

8. Representations, warranties and undertakings

8.1. **Mutual undertakings**

8.1.1. Each party undertakes to the other that during the term of the Contract and so long as either party has or may have any obligation under the Contract, it will:

a. keep the other party informed of all changes of addresses and other contact details as required under the Contract, recognising that any failure to inform the other party will not relieve the first party from any of its obligations under the Contract;

b. make all reasonable efforts to inform the other party of any event or circumstance of which it is aware which may impact on the ability of such party to perform any of its obligations under the Contract;

c. on and from the Contract Date, maintain in full force and effect all Required Authorisations that are required to be obtained by it to enter into, deliver and perform its obligations under the Contract and any document relating to the Contract to which it is a party and will use all reasonable efforts to obtain any such Required Authorisations that may become necessary in the future; and

d. comply in all material respects with all Applicable Laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Contract.

8.2. **Mutual representations and warranties**

8.2.1. Each party makes the following representations and warranties to the other party upon entry into the Contract:

a. it has the power to enter into or execute the Contract and any other document relating to the Contract to which it is a party, to deliver any such other document and to perform its obligations under the Contract and any such other document, and has taken all necessary action to authorise such entry, execution, delivery and performance;

b. the entry into, and observance and performance of its obligations under, the Contract and any document relating to the Contract to which it is a party do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents (where the Seller is not a natural person) or any contract to which it is a party or by which any of its assets are bound or affected, or any Applicable Law;

c. its obligations under the Contract and any document relating to the Contract to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application;

d. no Event of Default, or event that with notice or lapse of time or both would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under the Contract; and

e. it has consulted with its own legal advisers to the extent that it has deemed necessary, and it has made its own decision to enter into the Contract based upon its own judgment and upon any advice from such advisers as it has deemed

necessary and not upon any view expressed by the other party or any of its affiliates or agents.

8.3. **Seller's representations and warranties**

8.3.1. The Seller makes the following representations and warranties on the Contract Date and on each date on which it makes a Delivery of the Contract Units:

a. it is entering into the Contract and any document relating to the Contract to which it is a party as principal (and not as agent or in any other capacity);

b. it has obtained or will by the Contract Date have obtained all Required Authorisations to enter into, deliver and perform its obligations under the Contract and any document relating to the Contract to which it is a party and all such Required Authorisations are or from the Contract Date will be in full force and effect and without condition or any conditions have been or by the Contract Date will be fulfilled;

c. at the time of each Delivery, the Buyer will receive good title to the Contract Units free of any mortgage, charge, pledge, lien or other security or ownership interest in favour of any person;

d. it has entered into the Contract after a full review of its terms and conditions, has a full understanding of those terms and conditions and of their risks, and is capable of assuming those risks;

e. all information that has been furnished in writing by or on behalf of the Seller to the Buyer and is identified as being subject to or in connection with the Project or the Contract, including information pursuant to or in connection with the Carbon Abatement Purchasing Process conducted by the Buyer on the date specified in Item 2 of the Financial Terms is, as of the date it was furnished to the Buyer, true, accurate and complete in every material respect; and

f. all Kyoto ACCUs purported to be Delivered by the Seller to the Buyer under the Contract will be Contract Units.

8.4. **Accuracy and interpretation of representations and warranties**

8.4.1. Each Party represents and warrants that each representation and warranty, given by it as set out in this article 8 is true, accurate, complete and not misleading at the Contract Date and will remain so during the term of the Contract and until the relevant party is fully discharged of its obligations under the Contract.

8.4.2. The parties agree that each representation and warranty set out in this article 8 must be construed independently and the meaning given to any one such representation and warranty must not be restricted by reference to any other representation and warranty.

8.5. **Acknowledgments**

8.5.1. Neither party nor any of its affiliates or agents are acting as a fiduciary for the other party.

8.5.2. The parties mutually agree and acknowledge that each party is entering into the Contract on the faith and basis of the other party's representations and warranties and is relying on the bona fides, accuracy and completeness of such representations and warranties.

8.5.3. The parties mutually agree and acknowledge that notwithstanding anything contained in the definition of "Scheduled Delivery Date" in clause 1.1.1 or otherwise in the Contract:

a. the Expiry Date will not be extended; and

b. a Scheduled Delivery Date will not be postponed to a date after the Expiry Date.

8.5.4. The parties mutually agree and acknowledge that notwithstanding anything contained in the Contract, the Agreed Quantity will not be increased or reduced.

9. Termination and Force Majeure

9.1. Events of Default with respect to any party

9.1.1. The occurrence at any time with respect to a party of any of the following events in this clause 9.1.1 will be an Event of Default with respect to such party:

a. **Non-payment.** The party fails to pay any amount when due under the Contract, and that failure is not remedied within twenty (20) Business Days of the Non-Defaulting Party giving the Defaulting Party notice of that failure.

b. **Representation or warranty.** Any representation or warranty made, or deemed to have been made, by the party in the Contract proves to have been recklessly, wilfully or intentionally false or materially misleading at the time it was made or was deemed to have been made.

9.2. Events of Default with respect to the Seller

9.2.1. The occurrence at any time with respect to the Seller of any of the following events in this clause 9.2.1 will be an Event of Default with respect to the Seller:

a. **Insolvency.** The Seller:

i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);

ii. makes a general assignment, arrangement, composition or other arrangement with or for the benefit of its creditors;

iii. becomes insolvent or is unable to pay its debts generally as they fall due, or fails generally to pay, or admits in writing its inability generally to pay, its debts as they become due;

iv. institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or

petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not withdrawn, dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation of that proceeding or petition;

v. has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

vi. seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;

vii. has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within thirty (30) days of that event; or

viii. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to above.

9.3. **Option Non-Exercise Intention**

9.3.1. Except to the extent that a party is relieved from complying with a relevant obligation under clause 9.4 (*Force Majeure*) or a relevant right of a party is suspended under that clause, then if the Seller develops an Option Non-Exercise Intention in relation to a Scheduled Delivery Date, the following clause will apply.

9.3.2. The Seller must give notice to the Buyer as soon as it develops an Option Non-Exercise Intention in relation to any Scheduled Delivery Date. The notice must set out in reasonable detail:

a. the amount of the anticipated Delivery shortfall in respect of the Scheduled Delivery Date to which the Option Non-Exercise Intention relates; and

b. the reason for the Option Non-Exercise Intention.

9.4. **Force Majeure**

9.4.1. Upon the occurrence of a Force Majeure, the FM Affected Party must notify the other party in writing of the commencement of the Force Majeure, providing in reasonable detail, to the extent available to the FM Affected Party:

a. details of the event or circumstance causing the Force Majeure;

b. the steps being taken by the FM Affected Party to remove or mitigate the effects of the Force Majeure; and

c. a non-binding estimate of the extent and the expected duration of its inability to perform its rights or obligations due to Force Majeure.

9.4.2. The rights and obligations of both parties with respect to the rights or obligations affected by the Force Majeure will be suspended for the period (***Force Majeure Period***) that the Force Majeure results in or causes the inability or failure of the FM Affected Party to exercise its rights or perform its obligations.

9.4.3. During the Force Majeure Period, the FM Affected Party must use all reasonable endeavours to overcome the Force Majeure. Upon the Force Majeure being overcome or it ceasing to subsist, both parties will, as soon as reasonably practicable thereafter, resume their rights and obligations under this Contract (including, for the avoidance of doubt, any suspended obligations). Where the Force Majeure has prevented Deliveries of Contract Units occurring on any Scheduled Delivery Date, the parties will, acting in good faith, make reasonable endeavours to agree a revised Delivery Schedule with replacement Scheduled Delivery Dates and/or revised Periodic Quantities to take account of the delay occasioned by the Force Majeure.

9.4.4. Where a Force Majeure Period continues for a period of 365 days or beyond the Expiry Date, either party may, by notice to the other party, terminate the Contract.

9.4.5. If the Contract is terminated in accordance with clause 9.4.4, the parties' rights and obligations under the Contract (except those specified to survive termination) will be lapsed, released and discharged and no Force Majeure termination payment will be made between the parties; provided that any amounts accrued but unpaid at the Termination Date will survive the termination of the Contract.

9.5. **Termination rights**

9.5.1. The Contract will terminate:

a. immediately upon notice given at any time by the Non-Defaulting Party, following the occurrence of an Event of Default under clauses 9.1.1 or 9.2.1.a.i, with respect to the other party;

b. subject to law, immediately upon notice given at any time by the Non-Defaulting Party, following the occurrence of an Event of Default under clause 9.2.1.a.ii, with respect to the other party;

c. subject to law, immediately upon notice given at any time by the Non-Defaulting Party, where an Event of Default under clauses 9.2.1.a.iii, 9.2.1.a.iv, 9.2.1.a.v, 9.2.1.a.vi, 9.2.1.a.vii, or 9.2.1.a.viii has occurred and is subsisting for thirty (30) days or more, and the Defaulting Party's obligations under the Contract have not been novated to a creditworthy and capable third party pursuant to and in accordance with clause 14.3 within 30 days of the occurrence of that Event of Default;

d. immediately upon notice by either party in accordance with clause 9.4.4 following a Force Majeure;

e. immediately upon notice by either party following mutual agreement that the Contract will terminate;

f. without any notice being required, upon payment of all sums owing between the parties under the Contract after the passing of the final Scheduled Delivery Date;

g. (unless the Contract is terminated earlier by mutual agreement in accordance with clause 9.5.1.e above) immediately upon notice (**termination notice**) by either party after the passing of twenty (20) Business Days following notice of the occurrence of a Revocation Event being given by either party, provided that the Revocation Event is continuing when termination notice is given under this clause 9.5.1.g;

h. (unless the Contract is terminated earlier by mutual agreement in accordance with clause 9.5.1.e above) immediately upon notice (**termination notice**) by the Buyer after the passing of twenty (20) Business Days following notice of the occurrence of an Option Suspension Event being given by the Buyer, provided that the Option Suspension Event is continuing when termination notice is given under this clause 9.5.1.h;

i. (unless the Contract is terminated earlier by mutual agreement in accordance with clause 9.5.1.e above) if the right of the Seller to exercise the Seller's option to sell Contract Units to the Buyer (and the Buyer's related obligation to buy Contract Units from the Seller) has remained suspended for a period of at least 90 consecutive days following a suspension notice referred to in clause 3.1.8.c having been given by the Buyer—immediately upon a further notice given by the Buyer terminating the Contract.

9.6. **Consequences of termination**

9.6.1. Upon the termination of the Contract, except as provided in this clause 9.6 or specified in the Contract, each party's rights and obligations under the Contract will be released and discharged in full except for rights and obligations accruing prior to the Termination Date.

9.6.2. If the Contract is terminated by the Seller in accordance with clause 9.5.1.a following the occurrence of an Event of Default under clause 9.1.1.a with respect to the Buyer, the Buyer must pay Seller's Market Damages to the Seller, as calculated or arranged to be calculated by the Seller and notified by it to the Buyer, and such payment must be made by the Buyer within twenty (20) Business Days of receiving that notice.

9.6.3. Except as provided in clause 9.6.2, if the Contract is terminated in accordance with clause 9.5.1, no termination payment will be payable by either party.

9.6.4. The termination payments payable under this clause 9.6 are the parties' reasonable pre-estimate of losses suffered and are not a penalty. Except as otherwise provided in the Contract, no other amounts (except for interest at the Default Rate on late payments) will be payable by either party in the event of termination.

9.6.5. For the avoidance of doubt, if at the Termination Date any amount is owing between the parties but unpaid, that amount must be paid by the relevant party.

10. Liability

10.1. Liability

10.1.1. To the extent permissible by law, the Buyer will not have any liability whatsoever in relation to the Project, the Seller or the carrying out of the Project by the Seller, including any liability in relation to injury or death to persons or damage to real or personal property caused, directly or indirectly, by the actions, omissions or negligence of the Seller or any circumstance arising from the Project or the generation or issuance of Kyoto ACCUs.

10.1.2. Nothing in clause 10.1.1 or otherwise in the Contract will exclude or in any way limit a party's liability for:

a. fraud;

b. death or personal injury caused by its negligence;

c. any damages caused intentionally by the party (not being damages for or in relation to an act or matter in relation to which section 297 of the CFI Act confers an immunity on the Buyer); or

d. any liability to the extent the same may not be excluded or limited as a matter of law.

10.2. Article survives termination

10.2.1. This article 10 survives termination of this Contract.

11. Confidential information

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, 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; or

ii. by any stock exchange on which a party to the Contract or its affiliates are listed;

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.

12. Dispute resolution

12.1. Procedure for dispute resolution

12.1.1. Each party must deal with a Dispute arising under the Contract in the following manner:

a. the party claiming that there is a Dispute will give the other party a notice setting out the nature of the Dispute;

b. within ten (10) Business Days from service of the notice under clause 12.1.1.a:

i. each party will nominate a representative not having any prior involvement in the Dispute and with the authority to settle the Dispute; and

ii. the party receiving the notice under clause 12.1.1.a may provide a notice to the other party setting out its position in relation to the Dispute;

c. the representatives will try to settle the Dispute by direct negotiation between them;

d. failing settlement by direct negotiation between the parties within twenty (20) Business Days from service of the notice under clause 12.1.1.a, the parties may agree to refer the Dispute to an independent third person with power to mediate and recommend some form of non-binding resolution; and

e. the parties will co-operate fully with any process instigated under clause 12.1.1.d in order to achieve a speedy resolution.

12.1.2. After both parties have complied with this clause 12.1, if a resolution is not reached within forty (40) Business Days from service of the notice under clause 12.1.1.a, either party may commence legal proceedings.

12.1.3. In the event that the parties cannot identify and agree an independent third person, an independent third person will be appointed by the Chief Executive Officer of the Resolution Institute, or the designated representative of the Chief Executive Officer of the Resolution Institute.

12.2. Costs

12.2.1. Each party will bear its own costs of complying with this article 12, and the parties will bear equally the costs of engaging any third person under clauses 12.1.1.d or 12.1.3.

12.3. **Continued performance**

12.3.1. Despite the existence of a Dispute, each party agrees to promptly transfer the amounts not in dispute to the other party.

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*);

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.

13. Notices

13.1. **Format, addressing and delivery**

13.1.1. All certificates, consents, approvals, waivers and other communications in connection with the Contract must be by notice under the Contract.

13.1.2. A notice under the Contract 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 13.2 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 Item 5 of the Commercial Terms or as otherwise notified by the Seller.

13.1.3. 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. signed by the person giving the notice and transmitted electronically by facsimile transmission; or

d. stated to be signed by the person giving the notice and transmitted by electronic mail.

13.2. **Address and addressee for notices from the Seller to the Buyer**

13.2.1. A notice under the Contract given by the Seller to the Buyer must be addressed to:

"Emissions Reduction Fund Contracts",

and sent to:

a. erf-contracts@cleanenergyregulator.gov.au; or

b. Clean Energy Regulator
GPO Box 621
Canberra ACT 2601
Australia

13.3. **When effective**

13.3.1. 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 facsimile machine or electronic mailbox.

13.3.2. 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.

13.4. **Agreement by notice**

13.4.1. For avoidance of doubt, where, under clauses 1.1.1, 4.1.2, 9.4.3, 9.5.1.e and 12.1.1.d, the parties may, or are to, agree something, that agreement may be effectuated by notice.

14. Contract management

14.1. **Variation**

14.1.1. A variation or amendment of the Contract is binding only if agreed to in writing by both the parties.

14.2. **Waiver**

14.2.1. A failure or delay by a party to exercise any right or remedy it holds under the Contract or at law does not operate as a waiver of that right.

14.2.2. A single or partial exercise or waiver by a party of any right or remedy it holds under the Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

14.3. **Assignment**

14.3.1. Neither party may novate or transfer its obligations, or assign its rights, under the Contract without the other party's prior written approval, except that:

a. the Seller may assign or charge its rights under the Contract by way of mortgage or charge to an authorised deposit-taking institution under the *Banking Act 1959* (Cth); and

b. the Buyer may novate or transfer its obligations or assign its rights to another agency or entity acting on behalf of the Commonwealth of Australia.

14.3.2. Any novation or transfer of obligations under the Contract must be effectuated by the execution of a novation agreement.

14.3.3. Any purported assignment, transfer or novation that is not in compliance with this clause 14.3 will be void.

14.3.4. Each party undertakes to assist the other party to effect any assignment, transfer or novation of its obligations which is permitted by this clause 14.3 including by executing any agreement to effect such novation or transfer.

14.4. **Rights are cumulative**

14.4.1. The rights, powers and remedies of each party under the Contract are cumulative and not exclusive of any rights, powers or remedies which may exist at law.

15. Policy and law

15.1. **Freedom of Information Act**

15.1.1. The *Freedom of Information Act 1982* (Cth) (**FOI Act**) gives members of the public rights of access to official documents of the Commonwealth Government and its agencies. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Commonwealth Government, limited only by considerations for the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by Buyer and public authorities.

15.1.2. The Seller must cooperate with the Buyer in relation to any requests under the FOI Act for documents relating to the Contract

15.2. **Applicable law**

15.2.1. The Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

15.2.2. The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

16. General provisions

16.1. **Relationship of parties**

16.1.1. A party is not by virtue of the Contract an officer, employee, partner or agent of the other party, nor does a party have any power or authority to bind or represent the other party.

16.1.2. A party must:

a. not misrepresent its relationship with the other party; and

b. not engage in any misleading or deceptive conduct in relation to the Contract.

16.2. **Survival**

16.2.1. Unless the contrary intention appears, the expiration or early termination of the Contract will not affect the continued operation of any provision relating to:

a. confidentiality;

b. privacy;

c. an indemnity,

or any other provision which expressly or by implication from its nature is intended to continue.

16.3. **GST**

16.3.1. The parties agree that:

a. except where the context suggests otherwise, terms used in this clause 16.3 have the meanings given to those terms by the GST Act;

b. any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16.3; and

c. any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.

16.3.2. All amounts referred to in the Contract are exclusive of any applicable GST which is or may become chargeable in respect of the supply or supplies for which such sums form the whole or part of the consideration for GST purposes, and any such GST will be payable in addition to any such other consideration in accordance with the provisions set out below.

16.3.3. The recipient of a taxable supply under the Contract will, subject to receipt of an appropriate tax invoice in respect of such supply or supplies stating inter alia the amount of GST payable under the GST Act thereon (the **GST Amount**), pay to the person making the taxable supply, on the date when the consideration for the taxable supply is to be paid or otherwise transferred, a sum equal to the GST Amount.

16.3.4. If the GST payable in relation to a supply made under or in connection with the Contract varies from the additional amount paid by the recipient under clause 16.3.3 then the supplier of the taxable supply will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the recipient. Any ruling, advice, document or other information received by the recipient from the Australian Taxation Office in relation to any supply made under the Contract will be conclusive as to the GST Amount payable in relation to that supply. Any payment, credit or refund under this clause 16.3.4 is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3.3.