

# Deed of Novation

Ferguson Wind Farm Pty Ltd

ACN 608 631 321

and

BayWa r.e. Projects Australia Pty Ltd

ACN 606 343 757

and

BayWa r.e. Operation Services Pty Ltd

ACN 637 314 277

with regard to the novation of the Asset Management Agreement in relation to the Ferguson Wind Farm

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**THIS DEED OF NOVATION** is made on \_\_\_\_\_ 19 May \_\_\_\_\_ 2022

**BETWEEN:**

- (1) **BayWa r.e. Operation Services Pty Ltd** (ACN 637 314 277), a company registered under the laws of the Commonwealth of Australia and having its principal place of business at Level 1, 79-81 Coppin Street, Richmond VIC 3121, Australia (the "**Outgoing Party**");
- (2) **Ferguson Wind Farm Pty Ltd** (ACN 608 631 321), a company registered under the laws of the Commonwealth of Australia and having its principal place of business at Level 1, 79-81 Coppin Street, Richmond VIC 3121, Australia (the "**Remaining Party**"); and
- (3) **BayWa r.e. Projects Australia Pty Ltd** (ACN 606 343 757), a company registered under the laws of the Commonwealth of Australia and having its registered address at Level 1, 79-81 Coppin Street, Richmond VIC 3121, Australia (the "**Incoming Party**").

(together, the "**Parties**" and each a "**Party**").

**BACKGROUND:**

- (A) On 23 July 2021, the Remaining Party and the Outgoing Party entered into the Agreement.
- (B) The Outgoing Party and the Remaining Party wish to novate the Agreement to the Incoming Party pursuant to clause 14.1(a) of the Agreement to allow the Incoming Party to rely on the terms of the Agreement.
- (C) The Parties agree to the novation of the Agreement from the Outgoing Party to the Incoming Party and that the Incoming Party may rely on the terms of the Agreement pursuant to the terms of this Deed on and from the Effective Date.

**THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Deed, unless the contrary intention appears:

"**Agreement**" means the asset management agreement dated 23 July 2021 between the Remaining Party and the Outgoing Party for the performance of asset management and maintenance services for the Project effective from the date of the agreement, as set out in full in the Schedule.

"**Background**" means the background to this Deed of novation, as set out in this Deed.

"**Business Day**" means any day other than a Saturday, Sunday or public holiday in Melbourne (Victoria).

"**Deed**" means this Deed of Novation.

"**Effective Date**" means the date of this Deed.

"**Notice**" has the meaning given to that term in clause 6.2 (*Details for service of notices*).

"**Project**" means the Facility as set out in the Agreement.

"**Schedule**" means the schedule to this Deed.

"**Services**" has the same meaning given to that term in the Agreement.

## 1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) a reference to this Deed or another instrument includes any variation or replacement of either of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) if a period of time is specified and dates from a given Day or the Day of an actual event, it is to be calculated exclusive of that Day;
- (e) a reference to a "**Day**" is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (f) if a Day on which any act, matter or thing is to be done under this Deed is a Saturday, a Sunday or a public holiday in Melbourne (Victoria), the act, matter or thing must be done on the next Day which is not a Saturday, a Sunday or a public holiday in Melbourne (Victoria);
- (g) a reference to a schedule is a reference to the Schedule;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (i) where any word is defined within the context of any particular clause in this Deed, that word, unless it is clear from the clause in question that it has limited application only to the relevant clause, must bear the meaning ascribed to it for all purposes in terms of this Deed, notwithstanding that that word has not been defined in this clause 1 (*Definitions and Interpretation*);
- (j) words defined in this Deed have the same meanings in the schedule unless the schedule contains its own definitions of such words;
- (k) headings are for reference only and do not form part of this Deed;
- (l) the words "**including**" and "**include**" are a reference to "including, but not limited to";
- (m) words denoting individuals or persons include natural persons, companies, close corporations, partnerships, joint ventures, unincorporated associations or responsible authorities or any other corporate entity or association of persons and vice versa;
- (n) words denoting any gender include all genders;
- (o) where an obligation or liability is imposed on a Party under this Deed, that obligation or liability is not to be limited or affected by an obligation or liability imposed in another provision of this Deed unless expressly stated;
- (p) where a right or remedy is conferred on a Party under this Deed, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on that Party under this Deed or otherwise according to law;
- (q) the term "**may**" when used in the context of a power or right exercisable by a Party means that that Party can exercise that right or power in its absolute and unfettered discretion and that Party has no obligation to the other Parties to do so; and



- (r) no rule of construction applies to the disadvantage of one Party on the basis that it prepared or put forward this Deed or any part of it.

## 2. **NOVATION**

### 2.1 **Novation**

The Parties agree to novate the Agreement to substitute the Incoming Party for the Outgoing Party, on and from the Effective Date.

### 2.2 **Incoming Party's obligations**

- (a) The Incoming Party must perform the obligations of the Outgoing Party under the Agreement in favour of the Remaining Party.
- (b) The Incoming Party will be bound by the Agreement as if it was an original party to the Agreement in place of the Outgoing Party.

### 2.3 **Remaining Party's obligations**

- (a) The Remaining Party must perform its obligations under the Agreement in favour of the Incoming Party, including obligations which were incurred or which relate to events occurring before the Effective Date.
- (b) The Remaining Party will continue to be bound by the Agreement as if the Incoming Party was an original party to the Agreement in place of the Outgoing Party.

### 2.4 **Rights**

The Incoming Party is entitled to all of the rights to which the Outgoing Party was entitled in relation to the Agreement, which arise on or after the Effective Date.

### 2.5 **Remaining Party releases Outgoing Party**

The Remaining Party releases the Outgoing Party from all its obligations under the Agreement and all actions, claims and liabilities that it may have against the Outgoing Party in relation to the Agreement which arise on or after the Effective Date.

### 2.6 **Outgoing Party releases Remaining Party**

The Outgoing Party releases the Remaining Party from all its obligations under the Agreement and all actions, claims and liabilities that it may have against the Remaining Party in relation to the Agreement which arise on or after the Effective Date.

### 2.7 **Reference in Agreement**

All references to the Outgoing Party in the Agreement are to be construed as references to the Incoming Party.

### 2.8 **Representations and Warranties in relation to Agreement**

The Remaining Party represents and warrants to the Incoming Party that:

- (a) the Fees (as defined in the Agreement) in relation to the Services have been paid in full by the Remaining Party to the Outgoing Party and that no other amounts are payable by the Remaining Party to the Outgoing Party; and
- (b) the Agreement attached in the Schedule is a full and complete copy of the Agreement and no further agreements between the Remaining Party and the Outgoing Party have been made in respect of the subject matter of the Agreement.

### 3. REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant to each other that as of the Effective Date:

- (a) they are a company duly incorporated and validly existing under the law of the place of their incorporation;
- (b) they have the power to enter into and perform all obligations under this Deed and have taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;
- (c) no application or order has been made for their winding up or administration or other analogous proceedings;
- (d) no action has been taken to seize or take possession of their assets; and
- (e) there are no unsatisfied judgments against them and they are able to pay their debts as they fall due.

### 4. RELIANCE

Each Party acknowledges that the other Parties have entered into this Deed in full reliance on the representations and warranties made in the terms stated in clause 2.8 (*Representations and Warranties in relation to Agreement*) and clause 3 (*Representations and Warranties*).

### 5. RELEASE AND INDEMNITY

- 5.1 The Remaining Party must release, discharge, indemnify and keep indemnified the Outgoing Party from and against any liability incurred by the Outgoing Party as a result of any action, demand, claim or proceeding commenced against the Outgoing Party at any time by any party (including any third party) in connection with the Agreement as a result of an act or omission of the Remaining Party on or before the Effective Date.
- 5.2 The Incoming Party must release, discharge, indemnify and keep indemnified the Outgoing Party from and against any liability incurred by the Outgoing Party as a result of any action, demand, claim or proceeding commenced against the Outgoing Party at any time by any party (including any third party) in connection with the Agreement as a result of an act or omission of the Incoming Party on or after the Effective Date.

### 6. NOTICES

#### 6.1 Written Notice

Any notice under this Deed must be in writing and must be signed by the Party giving the notice or any authorised officer of that Party.

#### 6.2 Details for service of notices

Unless and until a Party provides to the other Party to this Deed notice of a different address or facsimile number, any notice, request or other communication to be given or served pursuant to this Deed (a "**Notice**") must be addressed as the case may be, as follows:

#### **Remaining Party:**

Attention: The Legal Counsel  
Email: [Legal.AUS@baywa-re.com](mailto:Legal.AUS@baywa-re.com)  
Phone: (03) 9429 5629

#### **Outgoing Party:**

Attention: The Legal Counsel

Email: [Legal.AUS@baywa-re.com](mailto:Legal.AUS@baywa-re.com)  
Phone: (03) 9429 5629

**Incoming Party:**

Attention: The Legal Counsel  
Email: [Legal.AUS@baywa-re.com](mailto:Legal.AUS@baywa-re.com)  
Phone: (03) 9429 5629

**6.3 Delivery**

Any Notice must be delivered by hand, post or sent by email to the address of the Party to which it is sent, or by such other means as may be agreed by the Parties.

**6.4 Receipt**

A Notice is deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by post, upon the expiration of 7 Business Days after the date on which it was sent; and
- (c) if transmitted by email, upon delivery.

**6.5 Change of address**

Either Party may change its address for the service of notices by giving written notice of that change to the other Party.

**7. GENERAL**

**7.1 Entire Deed**

This Deed constitutes the entire Deed between the Parties in connection with its subject matter and supersedes all previous deeds or understandings between the Parties.

**7.2 Relationship**

This Deed does not create a relationship of employment, trust, partnership, joint venture or agency between the Parties.

**7.3 Further action**

Each Party must do, at its own expense, everything reasonably necessary (including executing documents or notarising this Deed, if required) to give full effect to this Deed and the transactions contemplated by it.

**7.4 Waiver**

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right power or remedy. A full or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

**7.5 Costs and expenses**

Each Party must be responsible for its own costs and expenses of and in connection with the negotiation, preparation, execution, stamping, registration and completion of this Deed and of any document contemplated by this Deed.

#### 7.6 **Severability**

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or part of the term of this Deed continue in force.

#### 7.7 **Counterparts**

This Deed may be executed in any number of counterparts. Each counterpart constitutes an original of this Deed, all of which together constitute one instrument. A Party who has executed a counterpart of this document may exchange it with another Party by emailing a pdf (portable document format) copy of, the executed counterpart to that other Party and, if requested by that other Party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this Deed.

#### 7.8 **Governing law and jurisdiction**

This Deed will be governed by the laws as they apply in the State of Victoria, Australia and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Melbourne in the State of Victoria, Australia, as a convenient forum concerning any dispute between them.

#### 7.9 **Electronic execution**

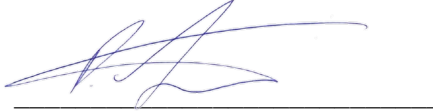
Each Party consents to this Deed being executed electronically by any method (including by signing on an electronic device, electronic signing platform or by digital signature) and existing in electronic form and agrees that electronic signature and the method used is legally valid and binding method of execution and that electronic signature is conclusive as to the identity of a Party and their intention to be bound as if signed by that Party's (or any of its duly authorised signatory's) manuscript signature.

**EXECUTED** as a deed.

**Signed, sealed and delivered** by **BayWa r.e. Projects Australia Pty Ltd** (ACN 606 343 757), in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



Name: Fleur Yaxley  
Position: Director



Name: Daniel Gaefke  
Position: Director

**EXECUTED** as a deed.

**Signed, sealed and delivered** by **Ferguson Wind Farm Pty Ltd** (ACN 608 631 321), in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



Name: Fleur Yaxley  
Position: Director



Name: Daniel Gaefke  
Position: Director

**EXECUTED** as a deed.

**Signed, sealed and delivered** by **BayWa r.e. Operation Services Pty Ltd** (ACN 637 314 277),  
in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



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Name: Nathan Everitt  
Position: Director



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Name: Daniel Gaefke  
Position: Director

**SCHEDULE  
AGREEMENT**



# Asset Management Agreement

Ferguson Wind Farm Pty Ltd (the "**Company**")

ACN 608 631 321

and

BayWa r.e. Operation Services Pty Ltd (the "**Service Provider**")

ACN 637 314 277

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**THIS AGREEMENT** is made on \_\_\_\_\_ 23 July 2021

**BETWEEN:**

- (1) **Ferguson Wind Farm Pty Ltd** (ACN 608 631 321), a company incorporated under the laws of the Commonwealth of Australia, whose principal place of business is at Level 2, 79-81 Coppin Street, Richmond VIC 3121 (the "**Company**"); and
- (2) **BayWa r.e. Operation Services Pty Ltd** (ACN 637 314 277), a company incorporated under the laws of the Commonwealth of Australia, whose principal place of business is at Level 1, 79-81 Coppin Street, Richmond VIC 3121 (the "**Service Provider**").

**BACKGROUND:**

- (A) The Company owns, operates and maintains the Facility.
- (B) The Company wishes to engage the Service Provider to provide the Services on the terms set out in this Agreement.
- (C) The Service Provider agrees to perform the Services on the terms set out in this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement unless the context otherwise requires, the following terms have the meaning set out below.

"**Additional Fee**" has the meaning given to that term in paragraph 1.3 (Additional Fee) of Schedule 2 (*Fee*).

"**Additional Services**" has the meaning given to that term in paragraph 2 (Additional Services) of Schedule 1 (*Services*).

"**AEMO**" means Australian Energy Market Operator Limited (ACN 072 010 327).

"**Affiliate**" means a company or corporation which is (i) a subsidiary or parent undertaking of that Party (including the ultimate holding company of that Party or a subsidiary of such parent or ultimate holding company); or (ii) under common control with that Party.

"**Agreement**" means this Agreement including all Schedules, Annexures and Attachments.

"**Annual Liability Cap**" has the meaning given in Clause 11.1(a) (*Limitation of liability*).

"**Authority**" means any government department, local government, council government or statutory authority or other body which has a right to impose a requirement or whose consent is required with respect to the Facility or the Services.

"**Base Fee**" has the meaning given to that term in paragraph 1.1(a) (*Base Fee*) of Schedule 2 (*Fee*).

"**BOP**" means the balance of plant constructed under the BOP Contract by the BOP Contractor.

"**BOP Contract**" means the contract for the construction of the balance of plant of the Facility entered into between the Company and the BOP Contractor dated 5 December 2019.

**"BOP Contractor"** means Consolidated Power Projects Australia Pty Ltd ABN 18 075 411 219.

**"BOP Works"** means the work to be performed by the BOP Contractor under the BOP Contractor.

**"Budget"** means the budget for the Facility developed by the Service Provider and approved by the Company regarding the estimated costs to be incurred in relation to the operation of the Facility in a given year. However, if actual costs are within 10% of budgeted costs, they are deemed to have met the budget and require no further approval.

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in the Jurisdiction.

**"Change in Law"** means:

- (a) the enactment or making of a new Law;
- (b) any amendment, repeal or change in any Law; or
- (c) the imposition of higher or new fees and charges by relevant authorities
- (d) which (with the exception of (c)) necessitates a change to the Services and:
- (e) was not in the public domain as at the Commencement Date;
- (f) was not a bill tabled in parliament prior to the Commencement Date; or
- (g) as at the Commencement Date, could not have been anticipated by a competent service provider experienced in providing services similar to the Services.

**"Change in Control"** means change in effective Control of a Party regardless of the share structure of that Party.

**"Claims"** includes any claim for a payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, this Agreement, including any direction of the Company;
- (h) arising out of, or in any way in connection with, the Services or either Party's conduct in connection with this Agreement; or
- (i) otherwise at law or in equity including by statute in tort for negligence or otherwise, including negligent misrepresentation, or for restitution.

**"COD"** has the meaning set out in Clause 2.1(a)(ii).

**"Control"** has the meaning set out in section 50AA of the *Corporations Act 2001 (Cth)*.

**"Commencement Date"** means the date of this Agreement.

**"Confidential Information"** means this Agreement and any information of a disclosing Party which concerns the business or finances of the disclosing Party and is disclosed to, or acquired by, the receiving Party and which:

- (a) is by its nature confidential;
- (b) is designated as confidential; or

(c) the receiving Party knows or ought to know is confidential,

but does not include information which:

- (j) is or becomes public knowledge other than by a breach of this Agreement;
- (k) is in the possession of the receiving Party without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the disclosing Party; or
- (l) has been independently developed or acquired by the receiving Party.

**"Consequential Loss"** means:

- (a) loss arising out of business interruption;
- (b) loss of actual or anticipated profit or revenue;
- (c) loss of use; or
- (d) indirect or consequential (as that concept is known in the second limb of the decision in *Hadley v Baxendale*), special or contingent loss or damage of any kind.

**"Contract Year"** means each period of 12 months from the Commencement Date.

**"CPI"** means the percentage increase for the preceding twelve months in the All Groups Consumer Price Index Weighted Average of Eight Capital Cities (IECC) published quarterly by the Australian Bureau of Statistics, measured by comparing the most recent September Quarter index against the previous September Quarter index.

**"Dispute"** has the meaning given to that term in Clause 15(a) (*Dispute resolution*).

**"Dispute Resolution Procedure"** means the procedure set out in Clause 15 (*Dispute resolution*) and Schedule 3 (*Dispute Resolution*).

**"DRP Representatives"** has the meaning given to that term in Clause 2(a) (*Negotiation*) of Schedule 3.

**"Facility"** means the Ferguson Wind Farm, located at 1830 Princetown Road, Princetown VIC 3269 and 1862 Princetown Road, Princetown VIC 3269.

**"Facility Approvals"** means all approvals, consents, licenses and permits of relevant Authorities required by the Company to build, own, operate and maintain the Facility, other than the Service Provider Approvals.

**"Facility Documents"** means all documents in connection with the Facility that are required by the Service Provider to enable it to perform the Services.

**"Facility IP"** means all Intellectual Property Rights in the Facility Documents.

**"Fee"** means the amount payable for the provision of the Services pursuant to Clause 4 (*Fees and payment*) as calculated in accordance with Schedule 2 (*Fee*).

**"Force Majeure Event"** means:

- (a) earthquake, lightning, cyclone, typhoon, tsunami, fire, explosion, flood, landslide, mudslide, hurricane, volcanic activity or other natural disaster;

- (b) ionising radiation or contamination by radioactivity from any nuclear waste, the combustion of nuclear fuel;
- (c) war, blockade, invasion, act of a foreign enemy, hostilities between nations (whether war be declared or not) or civil war;
- (d) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion or terrorist acts;
- (e) plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions;
- (f) embargo, confiscation, nationalisation, requisition or damage to property under the order of any government or de-facto national authority; and
- (g) state-wide or nation-wide strikes, lockouts or boycotts that affect the Facility or the Services,

but excluding financial hardship or a lack of, or an inability to use, money or available funds for any reason.

**"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider providing services of the same type under the same or similar circumstances as the Services in a manner consistent with the terms of this Agreement and the requirements of Law.

**"Grid Connection Agreements"** means the agreements between the Company and the NSP in relation to the connection of the Facility to the grid.

**"GST"** has the meaning given to that term in the GST Law.

**"GST Law"** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Initial Term"** has the meaning given to that term in Clause 2.2 (*Term*).

**"Insolvency Event"** means:

- (a) a "controller" (as defined in section 9 of the *Corporations Act 2001* (Cth)), manager, trustee, receiver, receiver and manager, administrator or similar officer is appointed in respect of a Party or any asset of a Party;
- (b) a liquidator or provisional liquidator is appointed in respect of a Party;
- (c) a Party becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable Law to be, insolvent or unable to pay its debts;
- (d) any writ of execution, garnishee order, *Mareva* injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a Party;
- (e) any application (not being an application stayed, withdrawn or dismissed within 10 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);

- (ii) winding up or de-registering a Party; or
  - (iii) proposing or implementing a scheme of arrangement;
- or
- (f) any application (not being an application stayed, withdrawn or dismissed within 10 Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
    - (i) a moratorium of debts of any Party;
    - (ii) any other assignment, composition or arrangement (formal or informal) with a Party's creditors; or
    - (iii) any similar proceeding or arrangement by which the assets of a Party are subjected conditionally or unconditionally to the control of that Party's creditors or a trustee,
- or any agreement or other arrangement of the type referred to in this paragraph (f) is ordered, declared or agreed.

**"Intellectual Property Rights"** means patents, trademarks, service marks, trade names, domain names, rights in designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights (including rights in computer software), rights in know-how and other intellectual or industrial property rights (whether registered or unregistered and including applications for the registration of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**"Insurance Policies"** means the insurance policies described in Schedule 4 (*Insurance Policies*).

**"Jurisdiction"** means the State or Territory of the Commonwealth of Australia in which the Facility is located.

**"Law"** means any law including all legislation, statutes, directives, rules, orders, decrees, injunctions, consents, agreements, by-law, subordinate legislation, regulations or similar instruments of any Authority applicable (as relevant) to the Parties, to the Facility, and/or the performance and/or the obligations of the Parties under this Agreement.

**"Mediation Notice"** has the meaning given to that term in paragraph 3(a) (*Mediation*) of Schedule 3 (*Dispute Resolution*).

**"Mediation Rules"** means the Resolution Institute Mediation Rules (2016 edition).

**"NSP"** means the distribution network service provider for the Facility.

**"Outstanding Amount"** has the meaning given to that term in Clause 4.3 (*Interest on overdue payments*).

**"Planning Permit"** means the planning permit issued by the relevant Authority in relation to the Facility.

**"Negotiation Notice"** has the meaning given to that term in paragraph 2(a) (*Negotiation*) of Schedule 3 (*Dispute Resolution*).

**"Power Purchase Agreement"** or **"PPA"** means any existing agreement entered into or to be entered into between the Company and an offtaker in respect of the sale and purchase of electrical energy and associated benefits from the Facility, together with each subsequent power purchase agreement entered into by the Company and an offtaker and exhibited to the Service Provider pursuant to Clause 3.2(b) (*Company obligations*).

**"PPS Act"** means the *Personal Property Securities Act 2009* (Cth).

**"Processing Purposes"** means the purposes of developing and providing technology services for the operation and maintenance in the energy industry.

**"Processing Results"** means the results of processing System Data for Processing Purposes, and may in particular include aggregated System Data, visualizations of System Data, statistics, conclusions, insights and/or correlations derived from System Data.

**"Project Agreements"** means the PPA, Grid Connection Agreements and the Property Agreements.

**"Property Agreements"** means the leases and licences which secure the tenure of the Facility.

**"Proportionate Liability Legislation"** means:

- (a) the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT);
- (b) Part 4 of the *Civil Liability Act 2002* (NSW);
- (c) the *Proportionate Liability Act 2005* (NT);
- (d) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (e) Part 9A of the *Civil Liability Act 2002 (Tas)* and the *Building Act 2000* (Tas);
- (f) Part IVAA of the *Wrongs Act 1958* (Vic); and
- (g) Part 1F of the *Civil Liability Act 2002* (WA).

**"Punch List"** means the list of outstanding minor works identified as "punch list" under the BOP Contract or the TSA Contract, as the case may be.

**"Receiving Party"** has the meaning given to that term in Clause 5(a) (*GST*).

**"Reimbursable Costs"** has the meaning given to that term in Clause 3.3(b) (*Power and authority of the Service Provider*).

**"Replacement Provider"** means any provider of the replacement services (being any services which are identical or substantially similar to the Services and which the Company receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the Company internally or by any third party service provider).

**"Representative"** means, as to any Party, such Party's Affiliates and the respective partners, directors, managers, members, officers, employees, contractors, sub-contractors, agents, consultants, insurers or advisors (including financial and technical advisors, legal counsel and accountants) of such Party and its Affiliates.



**"Sanctioned Party"** means a Party that the Ultimate Parent of the Service Provider cannot, by operation of law or rules of a stock exchange that it or its shareholders of any tier is subject to, contract or engage in trade with.

**"Service Provider Approvals"** has the meaning given to it in Clause 3.1(a)(*Obligations of the Parties*).

**"Service Provider Documents"** means any procedures, plans, designs, papers, computer data, printouts or other materials which the Service Provider has developed for the performance of the Services but excluding internal procedures and materials developed by the Service Provider for general application for the management of the Facility.

**"Services"** means:

- (a) the services set out in Clause 1 (Scope of Services) of Schedule 1 (Services); and
- (b) the Additional Services (if any) as agreed between the Parties in accordance with Clause 2 (Additional Services) of Schedule 1 (Services).

**"Start of Generation"** has the meaning set in out in Clause 2.1(a)(i).

**"Supplying Party"** has the meaning given to that term in Clause 5(a) (*GST*).

**"System Data"** means any information stored, generated or otherwise processed by or on behalf of the Service Provider by or in connection with the Services or otherwise in connection with this Agreement (e.g. for the remote monitoring). System Data shall in particular include (i) information on the Facility (e.g. installed capacity), (ii) business and financial information, (e.g. energy production), (iii) software usage data (e.g. used functionalities), (iv) contract parameters (e.g. response times), and (v) other related data (e.g. climate data).

**"Term"** has the meaning given to that term in Clause 2.2 (*Term*).

**"TSA Contract"** means the contract for the supply and installation of the wind turbine generators in the Facility entered into between the Company and the TSA Contractor dated 21 November 2019.

**"TSA Contractor"** means Vestas – Australian Wind Technology Pty Ltd ACN 089 653 878.

**"Ultimate Parent"** means BayWa r.e. AG.

**"WOM Contract"** means the contract for the maintenance and operation of the wind turbine generators in the Facility entered into between the Company and the WOM Contractor dated 21 November 2019.

**"WOM Contractor"** means Vestas – Australian Wind Technology Pty Ltd ACN 089 653 878.

## 1.2 Interpretation

In this Agreement (unless the context otherwise requires):

- (a) references to **"Clauses"** and **"Schedules"** refer to them of, in and to this Agreement;
- (b) a reference to **"this Agreement"** includes all Schedules, Parts and Appendices to this Agreement and is deemed to include references to this Agreement as amended, novated, supplemented, varied or replaced from time to time;

- (c) a reference to **"including"**, **"includes"** or **"include"** must be read as if it is followed by "(without limitation)";
- (d) a reference to a **"court"** is to an Australian court;
- (e) a reference to a **"Party"** is to a party to this Agreement and includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (f) where an expression is defined, any other part of speech or grammatical form of that expression has a corresponding meaning;
- (g) words in the singular include the plural and vice-versa;
- (h) words denoting any gender include all genders;
- (i) a reference to any **"Law"** includes any statutory modification or re-enactment of, or Law substituted for, and any subordinated legislation issued under, that Law;
- (j) a reference to a **"day"**, **"month"**, **"quarter"** or **"year"** is to a calendar day, a calendar month, a calendar quarter or a calendar year;
- (k) a reference to **"\$"**, **"AUD"** or **"dollar"** is to Australian currency unless otherwise expressly stated;
- (l) headings are for convenience only and do not affect interpretation of this Agreement;
- (m) no rule of construction applies to the disadvantage of a Party on this basis that the Party put forward this Agreement or any part; and
- (n) the Company must at all times act reasonably in exercising its rights and powers under this Agreement.

### 1.3 **Ambiguous and inconsistent terms**

- (a) This Agreement must be read and construed as a whole and any provision of this Agreement may qualify or affect the interpretation of any other provision of this Agreement.
- (b) If a Party becomes aware of any conflict inconsistency or discrepancy between two or more provisions of this Agreement, that Party must promptly notify the other Party and the Company may direct which provision the Parties must follow.

### 1.4 **Directions in writing**

The Company must:

- (a) if reasonably practicable and not urgent, give any notice, direction or other communication in writing; and
- (b) if not reasonably practicable or urgent, give any such notice, direction or other communication orally provided it confirms such notice, direction or other communication in writing as soon as reasonably practicable.

## 2. COMMENCEMENT AND TERM

### 2.1 The Commencement

- (a) The Service Provider's obligations to render the Services shall enter into force as follows:
  - (i) the Services under Schedule 1, Clause 1.1 (Commercial Management) and Schedule 1, Clause 1.4 (Remote Monitoring), after the Facility has commenced exporting energy to the grid ("**Start of Generation**"); and
  - (ii) all other Services after the Company has accepted the Facility from the TSA Contractor ("**COD**"). The Company shall inform the Service Provider of the scheduled COD in writing without undue delay after the COD has been scheduled.
- (b) The Parties may agree in writing that the rendering of certain parts of the Services, not covered in Clause 2.1(a)(i), shall start prior to COD or Start of Generation ("**Early Service Provision**").
- (c) The Parties note that up to the COD, the Company is not in control of the Facility and that the availability of the operating data and of certain documentation may be limited during that period. Therefore, the Parties hereby agree that the respective scope of Services may be limited correspondingly and that this circumstance shall not have any effect on the remuneration to be paid.
- (d) On and from the Commencement Date, the Company grants to the Service Provider all authority to deal with other stakeholders on its behalf reasonably required to perform the Services.

### 2.2 Term

- (a) This Agreement will come into force from and including the Commencement Date up to and including the date prior to the fifth anniversary of the Commencement Date, unless terminated earlier in accordance with this Agreement (the "**Initial Term**").
- (b) The Company may offer to extend the term of this agreement by giving the Service Provider 6 months' written notice of its intention to extend the term. The Service Provider must within 30 days of receiving the notice either accept or reject the offer to extend the term by notice in writing to the Company, failing which the Service Provider would be deemed to have accepted the offer to extend the term. Upon the acceptance or deemed acceptance of the Service Provider to extend the term, the term of this Agreement will be extended for a further period of 36 months from the expiry of the last day of the Initial Term (or Extension Period (as the case may be)), each such period being an "**Extension Period**", on the same terms as this Agreement, unless terminated earlier in accordance with this Agreement. For the avoidance of doubt, there is no limit to the number of times the process to extend the term under this clause may be initiated by the Company.
- (c) The right of either Party to terminate this Agreement in accordance with Clause 12 (*Default and Termination*) remains unaffected.

### 3. OBLIGATIONS OF THE PARTIES

#### 3.1 Service Provider obligations

The Service Provider must:

- (a) obtain and maintain all approvals, consents, licenses and permits of relevant Authorities required by it to be in its own name in order to provide the Services (the "**Service Provider Approvals**");
- (b) perform the Services:
  - (i) in accordance with all Law;
  - (ii) in accordance with Schedule 1 (*Services*);
  - (iii) in accordance with Good Industry Practice;
  - (iv) in a manner which will not cause the Company to be in breach of the Project Agreements, Facility Approval or Service Provider Approval; and
  - (v) with reasonable skill and care.
- (c) ensure it has and maintains systems and processes to ensure:
  - (i) its ongoing compliance with Law; and
  - (ii) that any breaches of Law in relation to the Facility are promptly identified and reported to the Company;
- (d) appoint a suitably qualified project manager (and, at the Service Provider's election, one or more alternates) to direct and control the overall performance of the Services by the Service Provider, and to act as contact person according to Clause 3.2(g);
- (e) provided that the Company has complied with Clause 3.2(c) (*Company obligations*), promptly notify the Company of any actual or potential breach of any Law, agreement to which the Company is party to, Planning Permit, Facility Approval, Property Agreements or Service Provider Approval;
- (f) prepare and submit a Budget to the Company for review within 15 Business Days of the Commencement Date, and annually as required to fit within the Company's budget process;
- (g) promptly make any changes to the Budget required by the Company to ensure the Budget is reasonably satisfactory to the Company throughout the year;
- (h) carry out the Services in accordance with the Budget which has been reviewed by the Company, incorporating any changes required by Clause 3.1(g);
- (i) maintain accurate records of the Services provided by it under this Agreement and provide the Company with access to inspect those records upon reasonable notice;
- (j) at its cost, obtain and maintain the Insurance Policies;
- (k) within 10 Business Days following the end of each calendar month, provide to the Company a report regarding the performance of the Services in that calendar month, except where that calendar month is the end of the calendar year, such report must address the requirements of Schedule 1 (*Services*);

- (l) within 20 Business Days following the end of the calendar year, provide to the Company a report regarding the performance of the Services in that calendar year, such report to address the requirements set out Schedule 1 (*Services*);

### 3.2 **Company obligations**

The Company must:

- (a) give the Service Provider sufficient access to the Facility to enable the Service Provider to perform the Services;
- (b) where applicable, deliver to the Service Provider a copy of each Power Purchase Agreement entered into by the Company and an offtaker as soon as reasonably practicable following execution of same;
- (c) in a timely manner but before COD, provide to the Service Provider all Property Agreements, Facility Approvals, instructions, information and copies of any agreements which are in its possession (and the Company must use reasonable endeavours to procure any such information or other agreements to the extent they are not in its possession) that are reasonably required by the Service Provider to perform the Services;
- (d) provide, at the Company's own expense, a sufficiently powerful internet connection and hardware complying with the reasonable requirements of the Service Provider and enabling the Service Provider full remote access to the Facility, in particular to all data collected there;
- (e) notify the Service Provider, in writing and at least 10 days in advance, if the Company has commissioned a third party ("**Third Party Contractor**") to provide works and/or services at the Facility. The Service Provider is entitled to refuse any such Third Party Contractor access to the Facility if:
  - (i) the Company has not provided such notification;
  - (ii) any documentation reasonably required by the Service Provider in connection with the proposed works or services to be carried out by the Third Party Contractor has not been submitted to the Service Provider;
  - (iii) the Service Provider determines (acting reasonably) that the proposed Third Party Contractor does not possess the experience and/or qualifications required to perform the works and/or services; or
  - (iv) the Service Provider otherwise reasonably objects to the identity of the proposed Third Party Contractor and/or the performance of the specified works and/or services.
- (f) ensure that any Third Party Contractors sign in and out of the Facility via the Service Provider's control center, and complete a site induction delivered by the Service Provider at a location and time specified by the Service Provider before starting any works and/or services at the Facility;
- (g) name the Service Provider as contact person towards all relevant third parties (e.g. the NSP, the owners of the land on which the Facility / Project / Plant is built, the fire brigade). The Company hereby authorises the Service Provider to request and receive information regarding the Facility / Project / Plant from third parties, e.g. the TSA Contractor/WOM Contractor and commercial management service providers, in the Company's name;

- (h) as soon as reasonably practicable, provide any additional information as is reasonably requested by the Service Provider that is required by the Service Provider to perform the Services;
- (i) pay the Service Provider the Fee, any Reimbursable Costs and any other sums due to the Service Provider under this Agreement;
- (j) procure that the Facility Approvals have been obtained and maintained (except to the extent that the maintenance of a Facility Approval forms part of the Services);

### 3.3 Power and authority of the Service Provider

- (a) The Company grants to the Service Provider all power and authority to the extent reasonably required by the Service Provider to carry out the Services, subject to any reasonable restrictions or conditions of the Company and notified to the Service Provider in writing.
- (b) The Service Provider may purchase consumables or incur other expenditure (the "**Reimbursable Costs**") as agent on behalf of the Company for the Facility provided that:
  - (i) such expenditure is incurred in good faith and is reasonably required to perform the Services in accordance with this Agreement; and
  - (ii) unless otherwise agreed in writing by the Company in advance, such expenditure has been provided for in the Budget.
- (c) The Service Provider may incur Reimbursable Costs as agent on behalf of the Company for the Facility which have not been provided for in the Budget provided that:
  - (i) Clause 3.3(b)(i) applies;
  - (ii) unless otherwise agreed in writing by the Company in advance, each individual expense is no greater than AUD 2,500; and
  - (iii) unless otherwise agreed in writing by the Company in advance, the aggregate annual unbudgeted expenditure is less than AUD 5,000.
- (d) Costs and expenses incurred by the Service Provider in travelling to the Facility to perform Services covered by the Base Fee are not Reimbursable Costs.
- (e) In exercising the powers and functions under Clauses 3.1 (*Service Provider obligations*), 3.3(a) and 3.3(b), the Service Provider must act in accordance with the Company's reasonable written instructions.

### 3.4 Acts of prevention

The Service Provider will not be liable under this Agreement for failing to comply with its obligations under this Agreement to the extent that the Service Provider cannot reasonably perform its obligations in accordance with this Agreement as a direct result of:

- (a) a failure by the Company to comply with Clause 3.2 (*Company obligations*);
- (b) the Company failing to approve (or delaying its approval for) the Service Provider to incur reasonable unbudgeted Reimbursable Costs where the Service Provider has sought to agree such expenditure with the Company; or

- (c) the Service Provider's compliance with a written instruction from the Company.

#### **4. FEES AND PAYMENT**

##### **4.1 Fee payable to Service Provider**

- (a) The Company must pay the Service Provider the Fee in consideration for the Service Provider performing the Services.
- (b) The Fee must be calculated in accordance with Schedule 2 (*Fee*) and paid in accordance with the terms of this Agreement.
- (c) If the Term is to be extended pursuant to Clause 2.2 (*Term*), the parties agree that:
  - (i) the Service Provider shall have the right to review the Fee that will apply to the Extension Period;
  - (ii) the Service Provider shall provide notice to the Company of any revised Fee no less than 7 months prior to the beginning of the Extension Period to allow the Company time to review the fee in advance of the termination deadline set out in Clause 12.4(b);
  - (iii) the Company shall either reject or accept this fee promptly to allow the Parties time to exercise their rights under Clause 12.4(b) or Schedule 3 if required.
  - (iv) the Company shall pay the Service Contractor any revised Fee determined under this Clause on and from the commencement of the Extension Period.

##### **4.2 Invoicing and payment**

- (a) On the last day of each calendar month from the Commencement Date, the Service Provider must submit to the Company a valid tax invoice that states:
  - (i) the portion of the Fee payable by the Company to the Service Provider in respect of the relevant month in arrears; and
  - (ii) subject to Clause 3.3(b) (*Power and authority of the Service Provider*), the Reimbursable Costs incurred by the Service Provider in the relevant month.
- (b) Subject to Clause 4.2(c) within 15 Business Days after the Company receives a valid tax invoice from the Service Provider, the Company must pay the Service Provider the invoiced amount.
- (c) If the Company disputes any amount shown in a valid tax invoice:
  - (i) the Company must pay the undisputed portion of the invoice amount within the time prescribed by Clause 4.2(b);
  - (ii) the Company must advise the Service Provider of the reasons for the Company disputing the amount of the invoice; and
  - (iii) liability for the disputed portion of that invoice may be determined under the Dispute Resolution Procedure.
- (d) Any disputed portion of a tax invoiced amount which is determined as being due to the Service Provider under the Dispute Resolution Procedure must be paid by

the Company within 10 Business Days of the determination of the Dispute under the Dispute Resolution Procedure plus interest calculated in accordance with Clause 4.3 (*Interest on overdue payments*).

#### 4.3 Interest on overdue payments

- (a) If any money due under this Agreement remains unpaid after the date on which the money should have been paid (the "**Outstanding Amount**"), then interest is payable on the Outstanding Amount at the rate (expressed as a percentage per annum) that is the average bid bank bill swap reference rate for 90 day bills endorsed by an Australian bank shown in the Australian Financial Review on the day on which such money was due and payable.
- (b) The interest payable on the Outstanding Amount is simple interest, capitalising monthly.

#### 5. GST

- (a) If GST is imposed on any supply made under this Agreement by one party (the "**Supplying Party**") to another party (the "**Receiving Party**") and the consideration payable or to be provided for the supply under this Agreement is not expressed to be inclusive of GST, the Receiving Party must pay, in addition to and at the same time as any GST exclusive consideration is payable or to be provided for the supply, an additional amount calculated by multiplying the value of that GST exclusive consideration (without deduction or set-off) by the prevailing GST rate.
- (b) The Receiving Party is not required to pay any amount of GST to the Supplying Party unless the Supplying Party has made demand for payment by means of a tax invoice.
- (c) If the amount of GST recovered by the Supplying Party from the Receiving Party differs from the amount of GST payable at Law by the Receiving Party regarding the supply:
  - (i) the Supplying Party must promptly issue a debit note or credit note as appropriate to the Receiving Party; and
  - (ii) an amount equal to the difference must be paid by the Supplying Party to the Receiving Party, or by the Receiving Party to the Supplying Party, as appropriate.

#### 6. CONFIDENTIALITY

- (a) Each Party will not, and will ensure that its personnel do not, without the prior written consent of the other Party, use or disclose Confidential Information other than:
  - (i) to its employees, officers, agents or Affiliates to the extent as necessary for the performance of its obligations under this Agreement;
  - (ii) to any of its potential financiers;
  - (iii) to its professional advisers, insurers, consultants, bankers or financial advisers; or



- (iv) to any actual or prospective bona fide potential purchaser, assignees, novates, transferees or mortgages under Clause 13 (*Assignment, subcontracting and change in control*),

provided that any recipient of Confidential Information is advised of the confidential nature of that information and is made subject to similar obligations of confidentiality as the disclosing party.

- (b) Any disclosure under Clause 6(a)(ii) to 6(a)(iv) may only be made for the purpose of satisfying the person to whom disclosure is made as to the value and commercial viability of, or otherwise to allow such party to properly assess, the proposed investment, loan or financial accommodation.
- (c) Either Party may disclose Confidential Information of the other Party to the extent that the Confidential Information:
  - (i) at the time of disclosure is in the public domain other than as a result of a breach of Clause 6(a);
  - (ii) is required to be disclosed for use in legal proceedings;
  - (iii) is required by Law, court order or the listing or disclosure rules of any relevant stock exchange to be disclosed (except that this does not permit disclosure under section 275(4) of the PPS Act unless section 275(7) of the PPS Act applies);
  - (iv) is necessary to obtain any Facility Approvals or Service Provider Approvals; or
  - (v) is required to be made in relation to any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.

## **2. USE OF SYSTEM DATA**

- (a) The Company hereby grants to the Service Provider free of charge the non-exclusive, worldwide, perpetual and irrevocable right to access, store, copy, use, explore, research, investigate, monitor, analyse and otherwise process the System Data for the purposes of this Agreement and for the Processing Purposes, and to fully commercially exploit the Processing Results.
- (b) The rights granted to the Service Provider shall in particular include the right of the Service Provider to use the System Data to improve its products and services, to research and develop new products and services (e.g. in the field of predictive maintenance) and to create statistics and benchmarks.
- (c) The rights granted include the right of the Service Provider to access System Data, and copy System Data to dedicated data analytics systems, and to use artificial intelligence or similar technologies to identify correlations and get new insights. For example, such insights may relate to predictive maintenance and performance improvement of the Company's assets, or to the use the Company makes of software made available under this Agreement.
- (d) The Service Provider shall be entitled to sublicense and/or transfer the rights granted to its Affiliates.
- (e) The Service Provider shall publish or make available the System Data and the Processing Results to third parties (other than Affiliates of the Service Provider)

only in anonymous form. Anonymous form means that the data is modified in such a way that it can no longer be linked with reasonable effort to the Company, a specific customer of Company or an individual natural person.

- (f) To the extent System Data is processed by the Service Provider for Processing Purposes and such System Data qualifies as personal data within the meaning of Art. 4 no. 1 GDPR, Service Provider shall process such data in pseudonymous or anonymous form only and insofar act as independent (not joint) data controller within the meaning of Art. 4 no. 7 GDPR. The Service Provider shall implement adequate technical and organizational measures to ensure the confidentiality of the processed data within the meaning of Art. 32 GDPR.
- (g) The Company hereby warrants to the Service Provider that it has the authority to grant the rights set out in this Clause (a) and that no laws and regulations and no rights of third parties or contractual obligations of the Company are infringed and that the Company has obtained any necessary consents or approvals.
- (h) The Parties hereby agree that, as between the Parties, all rights in the Processing Results shall arise in the Service Provider, respectively its Affiliate generating the Processing Result, alone and that it alone shall have all rights to use the Processing Results; Clause 8(b)(i) remains unaffected.  
  
(d) Further rights may be granted by electronic or written confirmation of a respective request from the Service Provider, e.g. allowing to forward System Data to a third party to make an offer for new operations and maintenance services.
- (i) The Parties are aware that each Party, and software used by each Party, stores data on servers or transmits data via data lines that may be hosted or operated by third parties who may, under circumstances, have access to data stored or transmitted (in particular for trouble-shooting or back-up support).

## **7. INTELLECTUAL PROPERTY**

- (a) The Company:
  - (i) grants to the Service Provider a royalty-free, non-exclusive, non-transferable, perpetual, irrevocable licence to use (including to sub-license) the Facility IP in connection with this Agreement and the Services;
  - (ii) represents and warrants to the Service Provider that it is entitled to license the Facility Documents to the Service Provider for use in performing the Services; and
  - (iii) indemnifies the Service Provider against:
    - (A) any breach of the warranties provided under Clause 7(a)(ii);
    - (B) any Claim made against the Service Provider that the Company's documents infringe any Intellectual Property Rights of a third party; and
    - (C) any Claim made against the Service Provider that the use of the Facility IP in accordance with this Agreement infringes the Intellectual Property Rights of any third party.

- (b) The Service Provider:
  - (i) grants to the Company a royalty-free, non-exclusive, non-transferable, perpetual, irrevocable licence to use (including to sub-license) the Service Provider Documents in connection with the Facility;
  - (ii) represents and warrants to the Company that it is entitled to license the Service Provider Documents; and
  - (iii) indemnifies the Company against:
    - (A) any breach of the warranties provided under Clause 7(b)(ii); and
    - (B) any Claim made against the Company that the Service Provider Documents infringe any Intellectual Property Rights of a third party.
- (c) The Parties acknowledge and agree that any Intellectual Property Rights that are developed by the Service Provider or its personnel in performing the Services belong to the Service Provider.
- (d) The Service Provider acknowledges and agrees that the licence provided under Clause 7(a) excludes any right of translation, decompilation, disassembly, adaption, reverse engineering, decryption, extraction or reduction to source code form and the Service Provider will not do or attempt to do these things with respect to the Facility IP.
- (e) The Company acknowledges and agrees that the licence provided under Clause 7(b) excludes any right of translation, decompilation, disassembly, adaption, reverse engineering, decryption, extraction or reduction to source code form and the Company will not do or attempt to do these things with respect to the Facility IP.

## **8. COMPLIANCE**

- 8.1 The Service Provider and the Company declare their firm intention to comply with all applicable Law during the term of this Agreement, as well as during the entire period in which business relations exist between them, and to actively counteract any form of corruption or unfair competition.
- 8.2 In particular, the Company confirms for itself, its shareholders, persons acting on its behalf or commissioned third parties that they will not offer, promise or grant any unlawful advantages to members of public administrations or other public officials or decision-makers in private companies or accept such unlawful advantages themselves. In particular, the Company guarantees that neither it, nor its shareholders, nor persons acting on its behalf or third parties commissioned by it, directly or indirectly through a third party, commits criminal offences against the Service Provider or a third party or assists in doing so, which are in particular subject to § 298 StGB (German Criminal Code) (agreements restricting competition in tender procedures), § 299 StGB (bribery and corruption in business dealings), § 333 StGB (granting of advantages), § 334 StGB (bribery) or to the German law on the protection of business secrets or the corresponding applicable Australian Law.
- 8.3 In addition, the Company is committed to open markets and fair competition and confirms for itself, its shareholders, persons acting on its behalf or appointed third parties that it does not enter into any unfair agreements with competitors, customers or suppliers which have the object or effect of preventing, restricting or distorting competition under the applicable antitrust laws.
- 8.4 Notwithstanding other rights of termination and withdrawal, the Service Provider is entitled to terminate this contract without notice and without further obligations or liability towards

the Company or to withdraw from it if the Company, its shareholders, persons acting on its behalf or commissioned third parties violate the provisions of this compliance clause. The Company must compensate the Service Provider for all damages which arise directly or indirectly through the termination or withdrawal. This includes, in particular, any loss of profit, legal prosecution or other defence costs.

- 8.5 The Parties will support each other in measures to prevent corruption and fair competition and, in particular, will inform each other immediately if they have knowledge or a concrete suspicion of cases of corruption or infringements of this compliance clause which are connected with this contract or its fulfilment.

## **9. FORCE MAJEURE**

### **9.1 Notice of Force Majeure Event**

If a Party (the "**Affected Party**") is prevented, hindered or delayed from performing any of its obligations under this Agreement by a Force Majeure Event that:

- (a) is beyond the reasonable control of the Affected Party;
- (b) occurred without the fault or negligence of the Affected Party or its personnel; and
- (c) could not reasonably have been prevented, avoided or overcome by the Affected Party by exercising a standard of skill, care and diligence consistent with that of a prudent, competent and experienced person in the circumstances,

then, the Affected Party must notify the other Party in writing within 5 Business Days of the occurrence of the Force Majeure Event and provide:

- (d) details of the Force Majeure Event;
- (e) an estimate of its likely duration;
- (f) the nature and extent of the obligations affected by the Force Majeure Event;
- (g) whether any part of the Services are to be suspended as a result of the Force Majeure Event and the estimated duration of such suspension; and
- (h) the steps taken to mitigate the effects of the Force Majeure Event,

(a "**Notice of Force Majeure**").

### **9.2 Mitigation and information**

- (a) The Affected Party must take reasonable steps to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement.
- (b) The Affected Party:
  - (i) must keep the other Party regularly informed of the Force Majeure Event and the continuing impact the Force Majeure Event on the Services; and
  - (ii) in the case of the Service Provider, must resume the Services as soon as reasonably practicable after the Force Majeure Event has ceased.
- (c) If the Service Provider suspends the Services in accordance with Clause 9.3 (*Suspension for Force Majeure Event*), it must make the Facility safe prior to

leaving the site to the extent it is not prevented from doing so by the Force Majeure Event.

### 9.3 Suspension for Force Majeure Event

- (a) The Service Provider may suspend any part of the Services that are affected by the Force Majeure Event.
- (b) The Company may suspend all or part of the Service Provider's obligations under this Agreement that are still capable of being performed despite the occurrence of a Force Majeure Event.

### 9.4 No default or claim

No delay or non-performance by an Affected Party caused by the occurrence of a Force Majeure Event will:

- (a) constitute a default or breach of this Agreement; and
- (b) entitle the other Party to have a Claim against the Affected Party, to the extent such delay or non-performance is caused by the occurrence of a Force Majeure Event.

### 9.5 Force Majeure Event and payment

- (a) The occurrence of a Force Majeure Event will not relieve the Company of the obligation to pay the Service Provider that portion of the Fee for any Services performed prior to the occurrence of the Force Majeure Event or continue to be performed during the Force Majeure Event.
- (b) The Company will have no liability to the Service Provider for the payment of that part of the Fee that relates to the Services that have been delayed or are unable to be performed due to the occurrence of a Force Majeure Event.
- (c) Subject to Clause 9.5(b), if the Company suspends the Service Provider's obligations under Clause 9.3(b) (*Suspension for Force Majeure Event*), the Company must continue to pay the Service Provider the Fee that relates to that portion of the Services.

### 9.6 Consequences of Force Majeure Event

- (a) For the avoidance of doubt, the Term will not be extended by the period for which either Party is affected by a Force Majeure Event.
- (b) Each Party must bear its own costs in the event of a Force Majeure Event.

## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 Company's representations and warranties

As at the date of this Agreement and on each day of the Term, the Company represents and warrants to the Service Provider that:

- (a) it is a corporation properly constituted and validly existing under the laws of the Commonwealth of Australia;
- (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement;

- (c) it has obtained all necessary consents and authorisations to enable it to enter into this Agreement and this Agreement constitutes legal, valid and binding obligations and is enforceable against the Company in accordance with its terms;
- (d) the execution, delivery and performance of this Agreement and the transactions under it do not:
  - (i) violate its constituent documents or any Law, judgment, ruling, order or decree of any court or official directive which is binding on it;
  - (ii) violate any other document or agreement to which it is a party or is binding on it or any of its assets; and
  - (iii) cause a limitation on its power or cause its powers, the powers of its directors or the powers of other officers to be exceeded;
- (e) it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform its obligations under this Agreement;
- (f) to the best of its knowledge, no litigation, arbitration, other dispute or action is threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement; and
- (g) neither it nor any of its Related Bodies Corporates is a person that is embargoed or black-listed under sanctions legislation of the Commonwealth of Australia, the Federal Republic of Germany, the European Union or the United States of America.

## 10.2 Service Provider's representations and warranties

As at the date of this Agreement and on the date of each invoice or tax invoice, the Service Provider represents and warrants to the Company that:

- (a) it is a corporation properly constituted and validly existing under the laws of the Commonwealth of Australia;
- (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has obtained all necessary consents and authorisations to enable it to enter into this Agreement and this Agreement constitutes legal, valid and binding obligations and is enforceable against the Service Provider in accordance with its terms;
- (d) the execution, delivery and performance of this Agreement and the transactions under each of them do not:
  - (i) violate its constituent documents or any Law, judgment, ruling, order or decree of any court or official directive which is binding on it;
  - (ii) violate any other document or agreement to which it is a party or is binding on it or any of its assets; and
  - (iii) cause a limitation on its power or cause its powers, the powers of its directors or the powers of other officers to be exceeded;

- (e) it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform its obligations under this Agreement;
- (f) to the best of its knowledge, no litigation, arbitration, other dispute or action is threatened against or affecting it or any of its properties, rights or assets, which could reasonably be expected to result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement; and
- (g) neither it nor any of its Related Bodies Corporate is a person that is embargoed or black-listed under sanctions legislation of the Commonwealth of Australia, the Federal Republic of Germany, the European Union or the United States of America.

## **11. LIABILITY AND INDEMNITY**

### **11.1 Limitation of liability**

- (a) Subject to Clause 11.1(b), the maximum annual liability of the Service Provider to the Company arising out of or in connection with the Services will not exceed 100 per cent of the Base Fee payable to the Service Provider in that Contract Year (the "**Annual Liability Cap**").
- (b) The Annual Liability Cap will not apply to the liability of the Service Provider arising out of or in connection with:
  - (i) gross negligence, wilful misconduct or fraud of the Service Provider;
  - (ii) liability for death, personal injury or damage to third party property;
  - (iii) liability for breach of Clause 6 (*Confidentiality*);
  - (iv) liability for breach of Clause 7 (Intellectual property); and
  - (v) liability for which insurance proceeds are recovered or recoverable.

### **11.2 Consequential Loss**

- (a) Neither Party is liable to the other Party for any Consequential Loss arising out of or in connection with this Agreement (whether based on contract, in tort (including negligence), under an indemnity, under statute or otherwise at law or in equity) or the Services.
- (b) Clause 11.2(a) does not apply to a Party's liability in respect of:
  - (i) circumstances in which liability cannot be limited or excluded by Law;
  - (ii) indemnities set out in Clause 7(a)(iii) (Intellectual property) or Clause 7(b)(iii) (Intellectual property);
  - (iii) a third party's loss under the indemnity in Clause 11.3 (*Indemnity*); and
  - (iv) the wilful misconduct, gross negligence, illegality, or fraud of the Service Provider or its personnel or the Company or its personnel.

### 11.3 Indemnity

Each Party will indemnify the other Party against any costs, expenses, loss or damage arising under, out of, or in connection with:

- (a) loss or damage to any property of any third party, real or personal; and
- (b) any Claim in respect of personal injury (which includes illness) or death of any person,

to the extent caused by or, arising out of, any negligent act or omission of, or breach of this Agreement by that Party or its personnel.

## 12. DEFAULT AND TERMINATION

### 12.1 Default

- (a) If the Service Provider is in material breach of this Agreement, the Company may issue a written notice to the Service Provider which:
  - (i) identifies the material breach; and
  - (ii) requires that the Service Provider remedy such breach by the date that is no less than 15 Business Days after the date of the notice,
  - (iii) (the "Default Notice").**
- (b) The Service Provider will remedy the material breach by the date specified in the Default Notice.

### 12.2 Termination by the Company

The Company may terminate this Agreement by written notice to the Service Provider if any one or more of the following occurs:

- (a) the Service Provider fails to remedy the material breach by the date specified in the Default Notice; or
- (b) an Insolvency Event occurs in respect of the Service Provider.

### 12.3 Termination by the Service Provider

The Service Provider may terminate this Agreement by written notice to the Company if any one or more of the following occurs:

- (a) the Company fails to give the Service Provider sufficient access to the Facility to perform the relevant Services and such access is not provided 10 Business Days after receiving a written demand from the Service Provider to provide such access;
- (b) the Company fails to pay any amount due under this Agreement and such amount remains unpaid 15 days after receiving a written demand from the Service Provider to make such payment;
- (c) an Insolvency Event occurs in respect of the Company; or
- (d) under Clause 13.3(b).



#### 12.4 Termination by other events

- (a) Either Party may terminate this Agreement if a Force Majeure Event has occurred and subsists for a continuous period of 180 days.
- (b) This Agreement automatically terminates at the expiry of the last day of the Initial Term or Extension Period, as the case may be.
- (c) Either Party may terminate this Agreement for its convenience at any time by giving one month's written notice.

#### 12.5 Consequences of Termination

- (a) On termination of this Agreement for whatever reason:
  - (i) the Service Provider will take immediate action to wind-up the Services in an orderly manner including providing all assistance reasonably requested by the Company, to ensure the transition of the Services to a Replacement Provider;
  - (ii) the Service Provider will deliver to the Company all books, records, property and information relating to the Company and/or the Services that are in the Service Provider's possession and all of the Facility Documents; and
  - (iii) the Service Provider will issue a valid tax invoice to the Company for any part of the Fee (calculated on a *pro rata* basis) which relates to the period prior to termination that has not been invoiced at the date of termination.
- (b) Where termination occurs under Clause 12.3, the Service Provider may issue a valid tax invoice for the reasonable costs, directly related to winding up the Services.
- (c) The Company will pay the valid tax invoice within 30 days of the date of receipt save where there is a bona fide dispute regarding all or part of the relevant invoice the Company will be entitled to withhold the disputed part until resolution of the dispute in which case Default Interest will be charged on any amount due.
- (d) Any termination of this Agreement will be without prejudice to any rights or liabilities of the Parties which have accrued on or before the date of termination.

#### 12.6 Expiry of the Term

- (a) Prior to the expiry of the Term, the Service Provider must provide all assistance reasonably requested by the Company, to ensure the transition of the Services to a Replacement Provider in a manner which prevents or minimises disruption to the performance, operation and maintenance of the Facility.
- (b) Any third-party costs reasonably incurred by the Service Provider which arise from a request from the Company to the Service Provider under Clause (a) above and 12.5(a)(i) will be borne by the Company.

### 13. ASSIGNMENT, SUBCONTRACTING AND CHANGE IN CONTROL

#### 13.1 Assignment

- (a) Except as provided in Clause 13.1(c), neither Party may assign, novate or otherwise transfer this Agreement without the prior written consent of the other Party, which must not be unreasonably withheld.

- (b) The Company must not withhold its consent to the assignment, novation or transfer by the Service Provider of its rights and obligations under this Agreement to an Affiliate if, in the opinion of the Company acting reasonably, that Affiliate has the technical and financial capability to perform the Services in accordance with this Agreement.
- (c) The Company may grant a security interest in this Agreement and assign, charge or pledge its benefits under this Agreement to any financing party including requiring the Service Provider to enter into a tripartite agreement on reasonable terms with a financing party.

### 13.2 **Subcontracting**

The Service Provider may sub-contract the Services provided that:

- (a) the Service Provider will remain liable to the Company for all acts, omissions or defaults of any sub-contractors as if they were the acts, omissions or defaults of the Service Provider; and
- (b) the sub-contracted party must comply with the obligations set out in Clause 3.1.

### 13.3 **Change in Control**

- (a) The parent of a Party may effect a Change in Control of that Party at any time without the consent of the other Party.
- (b) In the event that a Change in Control is effected such that the Company is effectively controlled by a Sanctioned Party, the Service Provider may terminate this Agreement immediately by written notice.

## 14. **NOTICES**

### 14.1 **Requirements**

Any notice, consent, approval or other communication under this Agreement must be:

- (a) in writing; and
- (b) delivered by hand or by prepaid, registered or certified mail or email to the address set out for the Company and the Service Provider.

### 14.2 **Company's notice details**

Unless the Company notifies the Service Provider in writing otherwise, the notice details for the Company are as follows:

FAO: Legal Counsel

Address: Level 2, 79-81 Coppin Street, Richmond VIC 3121, Australia

Email: [Legal.AUS@baywa-re.com](mailto:Legal.AUS@baywa-re.com)

### 14.3 **Service Provider's notice details**

Unless the Service Provider notifies the Company in writing otherwise, the notice details for the Service Provider are as follows:

FAO: Bree Sandley

Address: Level 1, 79-81 Coppin Street, Richmond VIC 3121, Australia

Email: [Breeana.Sandley@baywa-re.com](mailto:Breeana.Sandley@baywa-re.com)

#### 14.4 Deemed delivery

A notice is effective:

- (a) if delivered by hand, on the date it is delivered to the addressee;
- (b) if mailed to an address in the city of dispatch, on the date that falls 2 Business Days after the date of dispatch;
- (c) if mailed to a city in Australia (other than the city of dispatch), on the date that falls 5 Business Days after the date of dispatch; and
- (d) if sent by email, on the date that the electronic mail is transmitted from the sender's email address and confirmed in a delivery receipt.

#### 14.5 Email notices

- (a) The Parties agree that notices may be sent by electronic mail to the Parties' email addresses stated in this Agreement (or such changed email address as last communicated in writing by the relevant Party).
- (b) The Party sending the notice must keep electronic record of any notice sent by it by electronic mail.
- (c) Each Party agrees that notices given under Clause 12 (*Default and Termination*) may only be given by hand, by post in accordance with Clause 14.1 (*Requirements*) and Clause 14.4 (*Deemed delivery*).
- (d) Each Party must immediately notify the other if it discontinues the use of, or changes, its respective email address, or if it is unable to access its email address for a period longer than one week.
- (e) Each Party must ensure that it is able to receive notices to its email address, including by ensuring that sufficient storage capacity is available at all times.
- (f) A notice sent by electronic mail under this Agreement will be deemed to be a notice in writing signed by the person identified as the sender of the electronic mail.

### 15. DISPUTE RESOLUTION

- (a) Any dispute, difference, controversy or disagreement between the Company and the Service Provider in respect of any fact, matter or thing arising out of or in connection with this Agreement (each a "**Dispute**") must be resolved in accordance with Schedule 3 (*Dispute Resolution*).
- (b) Despite the existence of a Dispute, the Parties must continue to perform their respective obligations under this Agreement.

## **16. GENERAL**

### **16.1 Governing law and jurisdiction**

- (a) This Agreement and any non-contractual relationship in connection with this Agreement is governed by the laws as they apply in State of Victoria (Australia) (excluding the rules on conflicts of laws).
- (b) For the avoidance of doubt, the obligations of the Parties are not governed by:
  - (i) the United Nations Convention on Contracts for the International Sale of Goods (CISG); and
  - (ii) the International Commercial Terms published by the International Chamber of Commerce (INCOTERMS).
- (c) Without prejudice to, and subject to, Clause 15 (*Dispute resolution*), the Parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria (Australia) and any courts that may hear appeals from these courts regarding any proceedings under or in connection with this Agreement.

### **16.2 Nature of the relationship**

- (a) Except as is provided for under Clause 3.3 (*Power and authority of the Service Provider*), nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the Company and the Service Provider.
- (b) The Service Provider must not act outside the scope of any authority conferred on it under this Agreement.

### **16.3 Third Parties**

Except as is expressly provided for in this Agreement, this Agreement does not confer any right to enforce any of its terms on any person who is not a Party to it.

### **16.4 No reliance**

Neither Party has relied on any statement or representation made by or on behalf of the other Party which is not expressly included in this Agreement.

### **16.5 Variation**

This Agreement may only be varied, or its provisions waived, in writing by the Company and the Service Provider.

### **16.6 Waivers**

- (a) The non-exercise of, or a delay in exercising, any power or right by either Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right by a Party.
- (b) A power or right of either Party under this Agreement may only be waived in writing.

#### 16.7 **Severability**

If a provision or part of a provision of this Agreement is illegal or unenforceable in any jurisdiction such provision must be:

- (a) read down; or
- (b) if incapable of being read down, be severed from this Agreement,

and the remaining provisions of this Agreement will continue to have full force and effect.

#### 16.8 **Entire agreement**

This Agreement:

- (a) constitutes the entire agreement between the Parties in connection with its subject matter; and
- (b) supersedes all previous agreements or understandings between the Parties.

#### 16.9 **Further action**

Each Party must at its own expense do all things and execute all further documents necessary to give full effect to this Agreement.

#### 16.10 **Proportionate liability**

To the maximum extent permitted by law, the operation of the Proportionate Liability Legislation is excluded in relation to rights, obligations and liabilities arising from or in connection with this Agreement whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.

#### 16.11 **Costs and expenses**

Each Party must pay its own legal costs and expenses in the preparation, negotiation and execution of this Agreement.

#### 16.12 **Counterparts**

This Agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this Agreement, all of which together constitute one instrument. A Party who has executed a counterpart of this document may exchange it with another Party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other Party and, if requested by that other Party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this Agreement.

**EXECUTED** as an agreement

EXECUTED by **Ferguson Wind Farm Pty Ltd** (ACN 608 631 321) in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



Signature of Director

Fleur Yaxley

Name of Director



Signature of Director

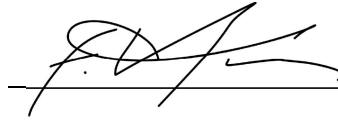
Daniel Gaefke

Name of Director

EXECUTED by **BayWa r.e. Operation Services Pty Ltd** (ACN 637 314 277) in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



\_\_\_\_\_  
Signature of Director



\_\_\_\_\_  
Signature of Director

**Nathan Everitt**  
\_\_\_\_\_

Name of Director

**Fleur Yaxley**  
\_\_\_\_\_

Name of Director

## **SCHEDULE 1 SERVICES**

### **1. SCOPE OF SERVICES**

The Service Provider will provide the following services as part of the Base Fee:

#### **1.1 Commercial Management**

- (a) settling and monitoring financials with AEMO in accordance with the National Electricity Rules and approved platforms;
- (b) verifying invoices in the context of the budget agreed by the Company and in accordance with any reasonably agreed Company payment authorisation procedure;
- (c) monitoring and assisting the Company with updating the actual vs budget performance and cash flow requirements, including revenues and costs, on a monthly basis as required by the Company;
- (d) assisting the directors of the Company with managing the day to day administration and payment obligations under operational contracts for the Facility (including maintenance and lease agreements), but excluding always the provision of any advice of a tax, technical or legal nature;
- (e) manage legal advice, assistance and correspondence that occur in the ordinary course of business in relation to the review and interpretation of agreements that relate to the Company as required;
- (f) receiving financial or payment queries from Facility stakeholders and notifying the Company's management of the same, including resolving minor administrative queries;
- (g) management of all obligations under the PPA (if applicable) including but not limited to, raising of invoices and providing information notices using metering information provided by the Company (acknowledging that the Company shall remain solely liable for the accuracy or completeness of the metering information provided);
- (h) acting on behalf of the Company to manage the creation, sale and/or transfer of Renewable Energy Certificates and in accordance with the PPA where appropriate;
- (i) assisting the Company's separately appointed tax advisors by providing all financial information required for completion of the annual corporation tax return;
- (j) support business activity statements preparation by the Company;
- (k) assisting the Company's directors in the provision of financial or payment information necessary for the Company's preparation of its annual report to its shareholders (but excluding attendance at any shareholder meeting);
- (l) assisting the Company to meet any requirement to audit its annual accounts by providing information to the Company's separately appointed auditors;
- (m) handling administrative queries in relation to insurance coverage for the Company in line with the Company's approved insurance coverage requirements, including to the extent necessary to enable the Company to make claims under the insurance contracts, and providing such information as is required to facilitate the annual renewal of insurance coverage but excluding always the provision of any advice of a tax, technical or legal nature;



- (n) collecting and storing electronic versions of key business documents which are required for the provision of the Services, provided that storage and safekeeping of the original physical versions shall be the responsibility of the Company; and

## 1.2 Operational Management

- (a) act as the Company's representative in respect of the agreements governing turbine and BOP operation and maintenance, HV switching and any other agreements reasonably related to the running of the Facility to ensure contractors are delivering the services under the terms of the agreements and resolving any shortfall in the delivery of services;
- (b) review of all tests and procedures required under the Facility Documents;
- (c) manage timing of maintenance activities and outages to minimise any disruption to the operation of the Facility and with the aim of maximising generation;
- (d) manage the interface between the WOM Contractor and the NSP minimise any disruption to the operation of the Facility caused during any periods of maintenance and repair, by ensuring the WOM Contractor and NSP coordinate their maintenance activities and outages wherever practicable; and
- (e) conduct semi-annual on-site audits of the WOM Contractor's performance in regards to turbine and BOP maintenance and carry out general asset and site condition inspections;

## 1.3 Grid

- (a) take steps to ensure compliance of the Facility's obligations under the Grid Connection Agreements including any inspection and testing required under a GPS compliance program provided by the Company, third party costs for compliance work to be borne by the Company;
- (b) liaise with the NSP and AEMO on grid connection matters; and
- (c) resolve any grid connection issues (technical or commercial) with third party costs to be borne by the Company;

## 1.4 Remote Monitoring

- (a) maintain monitoring software collating data received from the Facility and from the electricity grid operator, in order to monitor the Facility's operational status ("**Monitoring System**"). The Service Provider's scope of services comprises the integration of the Facility into the monitoring software;
- (b) at the Company's request, it shall be granted access to the monitoring software to read operating data of the Facility. The Service Provider may amend the scope and layout of such access based on the Service Provider's technical requirements. The Company shall keep credentials enabling the access confidential and shall not pass them on to any third party;
- (c) monitor the operational status of the Facility by means of the monitoring software. This shall include:
  - (i) two routine checks per day (Monday through Sunday), each of which covers (A) controlling whether data is received from the Facility, and (B) relating the electricity production to the available resource; and

- (ii) reacting to all error messages produced by the Monitoring System by notifying the WOM Contractor in accordance with the WOM Contract.
- (d) perform regular checks of or establish notification systems from the OEM SCADA and the BOP SCADA to identify, minimise and resolve any data loss or data values not in the expected range;
- (e) track the WOM Contractor's response to turbine or BOP events;
- (f) alert the Company to significant continuous or repetitive downtime of any turbine; and
- (g) perform initial incident reporting (operational faults, HSE matters, third party concerns) according to a timeline and reporting matrix discussed and agreed by the Parties, and provide a summary of the incident and any ongoing actions in monthly reports.

### 1.5 Monthly Reporting

- (a) assemble a technical monthly report for the Facility which will incorporate monthly reports from the WOM Contractor. The monthly report will include:
  - (i) project production indicators, and executive summary (with KPI review);
  - (ii) calculation of real Facility availability through alarm logs analysis and verification of the contractual availability reported by the WOM Contractor;
  - (iii) power curve analysis, tracking the power performance of the individual wind turbine generators and the Facility in its entirety in accordance with the performance guarantee tests, to the extent that can be achieved with the equipment installed at the Facility;
  - (iv) summary of scheduled and major unscheduled maintenance and grid curtailment events (including costs to rectify where costs have been obtained) in relation to all project infrastructure;
  - (v) production for the period and losses due to downtime (for the avoidance of doubt, this should include lost generation as a result of faults, turbine curtailment, underperformance, lost availability and grid outage);
  - (vi) downtime analysis and maintenance recommendations;
  - (vii) real vs. budget production and operating costs;
  - (viii) faults analysis;
  - (ix) analysis of any trends in the operational data;
  - (x) recommendation of actions to be undertaken;
  - (xi) a summary of complaints received and action being taken in response; and
  - (xii) a summary of any items identified by visual inspection (e.g. general site conditions, erosion, waste management etc.) including completion of standard checklist from any site visits during the month.

## 1.6 Annual Reporting

- (a) for each year during the term, assemble an annual technical report for the Company which will incorporate:
  - (i) executive summary of Facility performance;
  - (ii) analysis of real annual availability highlighting unavailability and verification of the annual contractual availability reported by the WOM Contractor;
  - (iii) review of the WOM Contractor's calculation of annual technical availability in line with the WOM Contract (including highlighting if an incentive payment is due to the WOM Contractor);
  - (iv) annual power curve analysis (including per wind resource sector) to the extent that can be achieved with the equipment installed at the Facility;
  - (v) summary of maintenance carried out and allocation of maintenance to scheduled and unscheduled budgets in relation to balance of plant;
  - (vi) downtime production loss analysis and recommended actions;
  - (vii) investigation of wind turbine generator alarm logs against lifetime records, document differences, enquiry on discrepancies;
  - (viii) remedial actions undertaken;
  - (ix) analysis of real vs. budget production (including providing for annual generation forecasts each year for budgeting/MTP purposes);
  - (x) recommendations to optimise operations;
  - (xi) safety audits;
  - (xii) environment audits; and
  - (xiii) asset management plan review.

## 1.7 Stakeholder Management

### *Landowners*

- (a) manage and ensure that the non-financial obligations of the Facility under the Property Agreements are met;
- (b) provide contact with the landowners as required under the Property Agreements;
- (c) manage and resolve any issues raised by landowners; and
- (d) manage the landowners leases and ensure compliance with lease conditions under the Property Agreements.

### *Regulatory Authorities*

- (a) manage relationships with Authorities and ensure that all the Facility obligations under the Facility Approvals are satisfied;

- (b) manage the preparation of all reports, including noise reports that need to be submitted to Authorities; and
- (c) manage any issues that arise in respect of all regulatory authorities, and liaise with any of the other parties involved as required to achieve resolution of issues.

*Community Liaison*

- (a) if required, represent the Company in connection with any community engagement programs that has been committed to by the Company;
- (b) update the Facility web site with information for the community as required under the Planning Permit and/or in order to keep its content accurate and current;
- (c) manage and/or pass on to the Company as applicable any requests from media organisations;
- (d) establish and maintain a 24/7 telephone service for complaints and manage any complaints made; and
- (e) provide regular information for the local community if required.

**1.8 Metering Data Management**

- (a) receive, verify and record the monthly generation data from the metering data contractor.

**1.9 Construction Contracts**

- (a) act as the Company's representative in respect of requirements that remain under the agreements governing construction of the Facility post Commencement Date;
- (b) as per Schedule 1 of the BOP Contract, conduct follow up survey of the BOP works including access tracks, hardstands and drainage at 6 months and 12 months after completion of the BOP Works; and
- (c) review and assess the completion of the BOP Contract and TSA Contract and corresponding outstanding Punch List items as required by the contracts and manage claims of any defects during the contract defect liability periods.

**1.10 Health and Safety Management**

- (a) establish and ensure compliance to
- (b) site safety management plan and emergency plans;
- (c) review the WOM Contractor's safety management plan and if deemed to meet or exceed that of the Company authorise its use
- (d) ensure that site safety and environmental audits are undertaken according to set schedules including auditing of all contractors and third party service providers to ensure implementation and adherence to site safety rules and occupational health and safety legal requirements;
- (e) report site safety statistics and incidents and keep all site safety records up to date;

- (f) maintain involvement in the investigation and reporting of all site safety incidents and liaise with all relevant parties as required;
- (g) manage interactions with Worksafe on behalf the Company; and
- (h) ensure that first aid facilities are maintained and regularly checked.

**1.11 HV Switching**

- (a) oversee records of switching services by the HV operator on the Facility.

**1.12 Warranties**

- (a) manage warranty claims under the Facility Documents;
- (b) obtain and present all relevant information required to ensure payment of warranty claims;
- (c) collect any warranty proceeds and any other amounts payable to the Company relating to a warranty claim, and remitting such proceeds and other amounts to the Company;
- (d) manage any implementation of replacement or repair activities by suppliers of equipment, goods or services the subject of the warranty claim; and
- (e) notify the Company of any warranty issues other than as contemplated above.

**2. ADDITIONAL SERVICES**

Services subject to separate negotiation and written agreement between the Parties, and which would be chargeable in addition to the above on the basis of an Additional Fee, will include but are not limited to:

- (a) extraordinary events such as a change in the administration, ownership, debt financing or management of the Company;
- (b) company directorship appointments;
- (c) preparation and circulation of agendas, to facilitate the conduct of shareholder meetings, for each member of the Company;
- (d) attendance and participation in board meetings of the Company, held in Melbourne. The Company shall give the Service Provider not less than 10 Business Days prior notice of the date of any board meeting at which the Service Provider's attendance is required;
- (e) preparation of the minutes board meetings at which the Service Provider is in attendance, in line with templates supplied by the Company;
- (f) assisting the Directors with:
  - (i) co-ordination support and provision of financial information in order to facilitate the arrangement of insurance coverage with insurance providers in Australia; and
  - (ii) the pursuit or settlement of any contractual claims or litigation;
- (g) travel and accommodation expenses relating to attendance at meetings or any other travel incurred at the request of the Company. The Company acknowledges

that the Services, with the exception of the site visits, may be provided remotely, from a location outside the Jurisdiction, and accordingly the Company is responsible for all travel and accommodation expenses which are properly and reasonably incurred in connection with the provision of the Additional Services.

## SCHEDULE 2 FEE

### 1. FEE

The "Fee" comprises the Base Fee and the Additional Fee as set out below.

#### 1.1 Base Fee

- (a) The Base Fee will be [REDACTED] (including GST) (the "Base Fee").
- (b) The Base Fee will be invoiced monthly in arrears (*pro rata* in respect of any part-month).
- (c) With regard to the beginning of the Facility's operations, the Base Fee is subject to the following provisions:
  - (i) [REDACTED]
  - (ii) [REDACTED]
- (d) in case the Parties agree on an Early Service Provision, a portion of the Base Fee as agreed between the Parties shall be payable for such Early Service Provision from the first day of the month in which the Early Service Provision has started.
- (e) The Base Fee shall be increased by [REDACTED] on the first (1st) day of January in each year.

#### 1.2 Integration Fee

- (a) The Service Provider shall receive a further one-time fixed fee for initial preparation to deliver the Services and for integrating the Facility into the Service Provider's monitoring system (Integration Fee). This remuneration shall be payable upon Start of Generation.
- (b) The Integration Fee is [REDACTED] (including GST) (the "Integration Fee")

#### 1.3 Additional Fee

- (a) If, by written agreement between the Company and Service Provider, Services provided by the Service Provider exceeds those set out in paragraph 1 (*Scope of Services*) of Schedule 1 (*Services*) or, if there is a Change in Law, then the Additional Fee will be payable by the Company to the Service Provider.
- (b) Unless the Additional Fee is agreed between the Company and the Service Provider, the Additional Fee will be calculated on a per hour basis using the following rates:
  - (i) Project Manager: AUD 220 (excluding GST)
  - (ii) Junior Asset Manager/Bookkeeper: AUD 120 (excluding GST)(the "Additional Fee").

Where rates are not listed for personnel utilised for such services, the Service Provider will advise such rates to the Company prior to the commencement of such services.

- (c) The Additional Fee will be invoiced monthly in arrears.

- (d) The rates charged for the Additional Fee shall be increased by the greater of either 2 per cent. or the CPI on the first (1st) day of January in each year.



## **SCHEDULE 3                    DISPUTE RESOLUTION**

### **1.        PROCEDURE FOR RESOLVING DISPUTES**

The Parties must take the following steps to resolve a Dispute:

- (a) negotiate the Dispute in accordance with the procedure at paragraph 2 (*Negotiation*);
- (b) if the Dispute remains unresolved (in whole or in part) following the procedure at paragraph 2 (*Negotiation*):
  - (i) the Dispute may be referred by either Party to mediation in accordance with paragraph 3 (*Mediation*); and
  - (ii) if the Dispute has been referred to mediation and paragraph 4(a) or paragraph 4(c) (*Judicial proceedings*) apply, a Party may refer the Dispute to judicial proceedings.

### **2.        NEGOTIATION**

- (a) If a Dispute arises, a Party may give written notice (a "**Negotiation Notice**") to the other Party requesting that the Dispute is to be referred for resolution to senior representatives of the Company and the Service Provider who are not involved in the day-to-day management of the Services (the "**DRP Representatives**").
- (b) The Negotiation Notice must:
  - (i) state that it is a notice under this paragraph 2 (*Negotiation*); and
  - (ii) include reasonable details of the subject matter of the Dispute.
- (c) If a Dispute is referred for resolution by negotiation to the DRP Representatives, then the DRP Representatives must meet and use reasonable endeavours to resolve the Dispute (in whole or part) within 10 Business Days of the date of the Negotiation Notice or such later date as the Parties may agree.
- (d) If the Dispute is resolved (in whole or part) by the DRP Representatives, the joint decision of the DRP Representatives must be documented and signed by each Party in a manner that is contractually binding on the Parties.

### **3.        MEDIATION**

- (a) If a Dispute has not been resolved (in whole or in part) pursuant to paragraph 2 (*Negotiation*), then, after the expiry of the period in paragraph 2(c) (*Negotiation*), either Party may give written notice (a "**Mediation Notice**") to the other Party that the Dispute is to be referred to mediation.
- (b) The Mediation Notice must:
  - (i) state that it is a notice under this paragraph 3 (*Mediation*); and
  - (ii) include reasonable details of the subject matter of the Dispute.
- (c) Within 5 Business Days of the Mediation Notice, the Company must provide the names of 3 persons from whom the facilitator is to be selected.
- (d) Any facilitator proposed by the Company pursuant to paragraph 3(c):

- (i) must be suitably qualified to assist the Parties in resolving the Dispute, having regard to the nature of the Dispute;
  - (ii) have no financial interest in the outcome of the Dispute; and
  - (iii) must be independent of the Parties.
- (e) Within 5 Business Days of the Company providing the names of 3 persons from whom the facilitator is to be selected, the Service Provider and the Company must agree on the person who will act as the facilitator.
- (f) If the Parties cannot agree the identity of the facilitator within 5 Business Days of the Company providing the names of 3 persons from whom the facilitator is to be selected, the Chair of the Resolution Institute (ACN 008 651 232, Level 2, 13-15 Bridge Street, Sydney NSW 2000; telephone: 02 9251 3366, email: infoaus@resolution.institute) or the Chair's designated representative shall appoint a person as a facilitator.
- (g) Except as is:
- (i) otherwise specified in this Agreement; or
  - (ii) agreed between the Parties,
- the Mediation Rules shall apply to the mediation.

#### **4. JUDICIAL PROCEEDINGS**

- (a) Except as is provided for in paragraph 4(a), but without prejudice to paragraph 4(c), if:
- (i) within 15 Business Days of the Notice of Mediation:
    - (A) the Parties have not agreed on the person to be appointed as facilitator; and
    - (B) the Chair of the Resolution Institute or the Chair's designated representative has not appointed a facilitator;or
  - (ii) either Party gives written notice of termination of the mediation under rule 8-1 of the Mediation Rules,
- either Party may commence judicial proceedings in relation to the Dispute.
- (b) If a Party commences proceedings relating to the Dispute other than for urgent interlocutory relief, that Party must consent to orders that the proceedings relating to the Dispute be referred to mediation, including under section 43 of the *Civil Procedure Act 2011 (Qld)* or section 26 of the *Civil Procedure Act 2005 (NSW)* or any similar state or territory legislation.
- (c) Either Party may at any time:
- (i) commence judicial proceedings for urgent interlocutory relief; and
  - (ii) commence judicial proceedings if the less than 12 weeks remain unexpired under any statutory limitation period.



## SCHEDULE 4                    INSURANCE POLICIES

### 1.        INSURANCE POLICIES

#### 1.1      Polices to be effected

- (a)      The Service Provider must effect and maintain from the Commencement Date the following insurances in respect of the Services:
  - (i)        public liability insurance (including sudden and accidental pollution liability) with a level of cover of not less than AUD 30 million for any one occurrence but in the aggregate in respect of products liability;
  - (ii)       motor vehicle third party property damage liability insurance having a limit of liability of not less than AUD 30 million for any one occurrence and covering all registered motor vehicles including motor vehicles being used as a tool of trade used by the Service Provider for or in the course of undertaking the Services;
  - (iii)      workers compensation insurance for all jurisdictions in which employees are engaged to perform the Services;
  - (iv)      professional indemnity insurance to cover the Service Provider's professional liability in connection with the provision of the Services, with a policy limit of not less than AUD 1 million for any one claim and in aggregate of all claims first made in any one period of insurance; and
  - (v)       any other insurances required to be effected by Law.
- (b)      The insurance referred to in Clause 1.1(a)(i), 1.1(a)(ii) and 1.1(a)(iii) shall be maintained until the end of the Term of this Agreement.
- (c)      The insurance referred to in Clause 1.1(a)(iv) shall be maintained until the date ending two (2) years after the termination or expiry of this Agreement ("**Run Off Period**").
- (d)      The insurance referred in Clauses 1.1(a)(i) and 1.1(a)(ii) must include the Company in its capacity as such to the extent that liability arises out of work performed on behalf of the Company by the Service Provider, and include a cross liability clause including a waiver of the insurers' rights of subrogation against the Company. The insurance referred in must include a principal's indemnity extension in favour of the Company.
- (e)      Whenever requested in writing by the Company during the term of this Agreement, and the Run Off Period, the Service Provider must provide the Company with satisfactory evidence that the insurances referred to in Clause 1.1(a) have been effected and are being maintained.
- (f)      The insurance required by clauses 1.1(a)(i), 1.1(a)(ii) and 1.1(a)(iv) will be taken out with insurers who have a minimum Standard & Poor's long term credit rating of A- (or equivalent rating with another recognised international rating agency).
- (g)      With the exception of the insurance referred to under Clause 1.1(a)(iv), the Service Provider must, as soon as practicable, inform the Company in writing of any occurrence relating to the Services that may give rise to a claim under an insurance policy referred to in Clause 1.1(a) and must keep the Company informed of subsequent developments concerning the claim.