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**Infigen Energy Ltd**  
ABN 39 105 051 616

**Infigen Energy Trust**  
ARSN 116 244 118

17 June 2020

## Infigen announces Recommended Takeover Offer from Iberdrola

Infigen (ASX: IFN) has today entered into a Bid Implementation Agreement (BIA) with Iberdrola Renewables Australia Pty Ltd (Iberdrola) under which Iberdrola will make an off-market takeover bid for Infigen at a price of 86 cents per stapled security in cash.

Iberdrola's takeover offer price represents a 69.8% premium to the three month volume weighted average price (VWAP) of Infigen stapled securities prior to the announcement of a takeover offer by UAC Energy Holdings Pty Ltd (UAC) on 3 June 2020 and is at a 7.5% premium to the UAC offer.

The offer from Iberdrola follows an extended period of engagement with Infigen regarding potential cooperation or a control transaction.

Iberdrola is a global energy leader, the number-one producer of wind power, and one of the world's biggest electricity utilities by market capitalisation. Iberdrola has over 55GW of installed capacity with leading market positions in Spain, the UK, the US and South America. Iberdrola is listed on all four Spanish stock exchanges and has an American Depository Receipt (ADR) that trades on the New York Stock Exchange. Iberdrola provides energy to 34 million customer billing points worldwide.

Iberdrola has informed Infigen that Iberdrola and Infigen's largest security holders TCI Funds, have entered into a pre-bid agreement under which TCI Funds has agreed to sell 20% of Infigen Stapled Securities to Iberdrola no earlier than two months after commencement of the offer subject to FIRB approval being obtained and no superior proposal emerging or earlier if TCI Funds' acceptance would result in Iberdrola having a relevant interest in more than 50% of Infigen Stapled Securities.

### 1. Infigen's Recommendation in respect of Iberdrola's offer.

The Board unanimously recommends that security holders accept the offer from Iberdrola and each Director intends to accept the offer, or procure acceptance of the offer, in respect of all Infigen securities they control, in each case in the absence of a superior proposal.

In forming its recommendation that Infigen security holders accept Iberdrola's offer in the absence of a superior proposal, the Board noted the following:

- The offer price represents an attractive premium to Infigen's undisturbed security price (i.e. as at 2 June 2020, being the last day before announcement by UAC of its offer) of:
  - 45.8% to the closing price of 59 cents per security at 2 June 2020;
  - 54.2% to the one month VWAP of 56 cents per security; and
  - 69.8% to the three month VWAP of 51 cents per security;

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- The offer price is a 7.5% premium to UAC's offer price of 80 cents per security.
  - Iberdrola's offer is less conditional overall than UAC's offer, including not being subject to the due diligence and disclosure conditions contained in the UAC offer. Infigen also notes that Iberdrola is aware of the terms of Infigen's debt facilities and has advised that if the corporate facility lenders:
    - Call for a review subsequent to the change in control occurring
    - Require repayment subsequent to the reviewthen if it is necessary, it is Iberdrola's intention to provide an unsecured loan on arm's length terms to Infigen.

Full details of the Board's recommendation will be set out in Infigen's Target's Statement.

## 2. Conditions of Iberdrola's offer.

Detailed conditions of Iberdrola's offer and terms are contained in the attached BIA. Certain key bid conditions are summarised below (Refer Schedule 1 of the BIA):

- Iberdrola's offer is conditional on:
  - approval from FIRB under the Foreign Acquisitions and Takeover Act (1975);
  - there being no material adverse change. A material adverse change is defined as an event which has, or could reasonably be expected to have, the effect of a 15% or greater reduction in Infigen's Net Tangible Assets or EBITDA to 30 June 2020, compared to 30 June 2019 or a 20% or greater reduction in reasonably expected EBITDA for FY21 or FY22, occurring before the Offer becomes unconditional;
  - Iberdrola achieving a relevant interest in more than 50% of Infigen's outstanding securities on a fully diluted basis; and
  - certain other standard conditions set out in full in the attached Bid Implementation Agreement.

Infigen has also agreed to certain exclusivity conditions with Iberdrola in the BIA, including customary 'no shop', 'no talk' provisions (subject to fiduciary exceptions), a matching right in the event of the emergence of a competing proposal and the payment of a reimbursement fee of 1% of the equity value of Infigen implied by the offer in certain circumstances. Full details are set out in the attached BIA.

## 3. UAC Energy – Reject recommendation.

Further to Infigen's ASX release of 3 June recommending investors take no action in relation to UAC's offer, Infigen's Board now unanimously recommends that investors should reject UAC's offer, which is expected to be opened shortly. Full details with respect to this recommendation will be set out in Infigen's Target's Statement in respect of the UAC offer which Infigen expects to send to security holders in the week ending 26 June 2020.

#### 4. Next Steps.

Iberdrola is expected to lodge its Bidder's Statement with ASX and ASIC shortly. Infigen intends to dispatch its Target's Statement with respect to the Iberdrola offer to security holders as soon as practical after the release of the Bidder's Statement.

#### 5. Security holder information line.

Official information will be sent to security holders shortly. If security holders have any questions, please call the security holder helpline on 1300 540 303 (within Australia) or +61 2 8022 7955 (outside Australia) between 9am and 5pm Mondays to Fridays.

#### Ends

This announcement was authorised by Len Gill, Chairman of the Board.

Infigen's legal adviser is Gilbert + Tobin and its financial advisers are Lazard Pty Limited and Goldman Sachs Australia Pty Ltd.

For further information please contact:

**Peter Campbell**

General Manager, Investor Relations

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#### About Infigen

Infigen is leading Australia to a clean future, today. Our strategy is to provide Australian businesses with firm supplies of reliable and competitively priced clean energy.

We generate renewable energy from our fleet of owned wind farms. We also source renewable energy from our portfolio of contracted assets. We manage intermittency risk with our fast start assets, enabling us to provide our customers with firm prices and firm volumes for renewable energy.

For more information, please visit: [www.infigenenergy.com](http://www.infigenenergy.com)



## **BID IMPLEMENTATION AGREEMENT**

Iberdrola Renewables Australia Pty Ltd

Infigen Energy Limited

Infigen Energy RE Limited (as responsible entity of the Infigen Energy Trust)

### **DLA Piper Australia**

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## DETAILS

**Date** 17 June 2020

### Parties

#### Bidder

Name Iberdrola Renewables Australia Pty Ltd  
ACN 628 620 815  
Address Level 21, 567 Collins Street, Melbourne VIC 3000  
Email mtoledano@iberdrola.es  
Attention Manuel Toledano Lanza

#### Target RE as responsible entity of the Target Trust

Name Infigen Energy RE Limited  
ACN 113 813 997  
Address Level 17, 56 Pitt Street, Sydney NSW 2000  
Email company.secretary@infigenenergy.com  
Attention David Richardson

#### Target Co

Name Infigen Energy Limited  
ACN 105 051 616  
Address Level 17, 56 Pitt Street, Sydney NSW 2000  
Email company.secretary@infigenenergy.com  
Attention David Richardson

## BACKGROUND

- A The Bidder is proposing to make the Takeover Bid and the Target Directors are proposing to recommend the Takeover Bid in the absence of a Superior Proposal.
- B The Parties have agreed to implement the Takeover Bid on the terms and conditions in this Agreement.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

#### Definitions

- 1.1 In this Agreement the following terms shall bear the following meanings:

**ACCC** means the Australian Competition and Consumer Commission.

**Agreed Announcement** means the announcement in the form set out in schedule 4.

**Agreed Bid Terms** means the terms and conditions in schedule 1.

**Agreement** means this agreement.

**ASIC** means the Australian Securities and Investments Commission.

**Announcement Date** means the date the Agreed Announcement is made in accordance with clause 2.4.

**ATO** means the Australian Taxation Office.

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this Agreement and the Target was the designated body.

**ASX** means ASX Limited ACN 008 624 691 and, where the context requires, the financial market that it operates.

**Bid Conditions** means the conditions to the Takeover Bid detailed in section 3 of the Agreed Bid Terms, each of which being a **Bid Condition**.

**Bidder Group** means the Bidder and its Related Bodies Corporate and **Bidder Group Member** means any one of them.

**Bidder Representations and Warranties** means the representations and warranties of the Bidder set out in Schedule 3.

**Bidder's Statement** means the bidder's statement to be prepared by the Bidder in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, Australia and Madrid and Bilbao (Spain).

**Claim** means any claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action:

- (a) based in contract (including breach of any warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or equity; or
- (d) under statute (including the *Australian Consumer Law* (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**CCA**)) or Part VI of the CCA, or like provisions in any state or territory legislation),

in any way relating to this Agreement or the transactions contemplated by it, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this Agreement.

**Competing Proposal** means any proposal, agreement, transaction or arrangement by or with any person pursuant to which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- For personal use only
- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the Target Securities;
  - (b) acquiring Control of the Target; or
  - (c) otherwise directly or indirectly:
    - (i) acquiring or merging with the Target, or having the right to so acquire or merge with the Target; or
    - (ii) acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of the business or assets of the Target,

in each case whether by way of takeover bid, scheme of arrangement, security holder-approved acquisition or resolution, de-stapling, reverse takeover bid, capital reduction, capital raising, security buy-back, sale or purchase of assets, joint venture, dual listed company and/or trust structure, synthetic merger or other transaction or arrangement.

**Confidentiality Agreement** means the confidentiality agreement dated 30 July 2019 between the Target and Iberdrola S.A..

**Control** has the meaning given in section 50AA of the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Counter Proposal** has the meaning given in clause 7.6.7.

**Disclosure Materials** means:

- (a) the documents and information contained in the data room made available by the Target to the Bidder, the index of which has been initialled for identification by, or on behalf of the Target and the Bidder, on or before the date of this Agreement; and
- (b) written responses from the Target to the Bidder to requests for further information made by the Bidder, a copy of which has been initialled for identification by, or on behalf of the Target and the Bidder, on or before the date of this Agreement.

**EBITDA** means the consolidated earnings of the Target Group, before interest, abnormals, taxes, depreciation and amortisation, calculated in accordance with the accounting policies or practices applied by the Target as at the Announcement Date.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person whether registered or unregistered, including any Security Interest.

**End Date** means the date on which the Offer Period ends.



**Exclusivity Period** means the period from (and including) the date of this Agreement until the earlier of:

- (a) the date of termination of this Agreement;
- (b) the End Date; or
- (c) the date which is 6 months after the date of this Agreement.

**Fairly Disclosed** means disclosed by the relevant party in good faith and in sufficient detail so as to enable a reasonable and sophisticated party experienced in transactions similar to the Takeover Bid and experienced in a business similar to any business conducted by the Target Group, to identify the nature and scope of the relevant fact, matter, event or circumstance.

**Fast Start Firming Assets** means the Smithfield Open Cycle Gas Turbine facility located in New South Wales, the Lake Bonney Battery Energy Storage System located in South Australia each owned by a Target Group Member, and the South Australian Gas Turbines located in South Australia to be leased by a Target Group Member, each a **Fast Start Firming Asset**.

**FATA** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**Financial Indebtedness** means any debt or other monetary liability (whether actual or contingent) in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee in respect of finance debt;
- (d) finance or capital lease;
- (e) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service for more than 90 days; or
- (f) obligation to deliver goods or provide services paid in advance by any financier, other than in the ordinary course of business.

**FIRB** means the Foreign Investment Review Board or the Treasurer of Australia (as the context requires).

**FIRB Condition** means the Bid Condition set out in section 3.2 of schedule 1.

**Forward-Looking Information** means any forecast, projection, estimate, budget, statement of intent or statement of opinion on or in relation to the future performance or prospects of the business of the Target Group, the Target Group or both or the energy market in Australia (including any information or matter of that type contained in a report prepared by a Representative of any Target Group Member).

**Incentive Arrangements Paper** means the document entitled “Proposed Treatment of Short Term and Long Term Incentive arrangements” dated 10 June 2020, provided to Iberdrola S.A. by the Target prior to the date of this Agreement.

**Insolvency Event** means in relation to a person:

- (a) the person is or becomes unable to pay its debts as and when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act, or would be presumed to be insolvent if that Act applied;
- (b) the person suspends or threatens to suspend payment of its debts generally;
- (c) the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or the making of any order, or the passing of any resolution, for the winding up, liquidation or bankruptcy of the party other than where the application or order (as the case may be) is set aside within 14 days;
- (d) the appointment of a provisional liquidator, liquidator, receiver or a receiver and manager or other insolvency official (whether under Australian law or foreign law) to the person or to the whole or a substantial part of the property or assets of the person;
- (e) the appointment of an administrator to the person;
- (f) the entry by a person into any compromise or arrangement with its creditors generally or any class of them;
- (g) the person ceases or threatens to cease to carry on substantially all of the business conducted by it at the date of this Agreement; or
- (h) in the case of a trust, the trustee's right of indemnity out of the assets of the trust is not sufficient to meet the liabilities of the trust when they fall due.

**Listing Rules** means the official listing rules of ASX.

**Material Adverse Change** means an event, matter or circumstance that occurs after the Announcement Date, or which occurs before the Announcement Date but is only announced or becomes known (in each case whether or not it becomes public) to the Bidder or the Target after the Announcement Date, which has or could reasonably be expected to have individually or when aggregated with all such events matters or circumstances the effect of:

- (a) diminishing the consolidated net assets of the Target Group by 15% or more (as compared to the Target Group's most recent audited financial statements as at the date of this Agreement);
- (b) reducing the EBITDA of the Target Group for the financial year ending 30 June 2020 by 15% or more as compared against the EBITDA of the Target Group in the financial year ended 30 June 2019; or
- (c) reducing the EBITDA of the Target Group for the financial year ending 30 June 2021 or 30 June 2022 by 20% or more as compared to what it could have reasonably expected to have been but for the occurrence of the event, matter or circumstance,

in each case other than an event, matter or circumstance:

- For personal use only
- (d) required or expressly contemplated by this Agreement or the Takeover Bid;
  - (e) Fairly Disclosed in the Disclosure Materials;
  - (f) Fairly Disclosed by the Target in an announcement made by the Target to ASX prior to the Announcement Date;
  - (g) agreed to in writing by the Bidder;
  - (h) being damage to or the destruction of any of the Wind Farms or Fast Start Firming Assets of the Target Group, where insurance is reasonably expected to respond and reinstatement will be undertaken;
  - (i) being an action of the market operator or of a network service provider which constrains the export of electricity from (and production of LGCs by) any of the Wind Farms or Fast Start Firming Assets for a period less than 30 days in order to allow network remediation work to occur; or
  - (j) resulting from changes:
    - (i) in industry, regulatory, political, market or economic conditions;
    - (ii) law or applicable government policy;
    - (iii) generally accepted accounting principles or their interpretation, affecting Australian businesses or Australian energy market participants generally.

**Minimum Acceptance Condition** means the Bid Condition in section 3.1 of schedule 1.

**Offer Period** means the period that the Offer is open for acceptance.

**Offer** has the meaning given in clause 2.1.2.

**Party** means a party to this Agreement and **Parties** means all of them.

**Permitted Encumbrances** means:

- (a) any Encumbrance where a Target Group Member is the secured party;
- (b) any Encumbrance created under this Agreement;
- (c) any Encumbrance arising in favour of a Regulatory Authority by operation of law;
- (d) any Encumbrance arising by operation of law in respect of tax;
- (e) any Encumbrance arising in connection with any retention of title arrangement arising in the ordinary course of the business;
- (f) any Encumbrance for money payable for work performed by suppliers, mechanics, workmen, repairmen, similar service providers or employees, or other like lien, in each case, arising in the ordinary course of the business;

- For personal use only
- (g) any Encumbrance arising as a consequence of any finance lease, capital lease, hire purchase arrangement or any other purchase money security interest (as that term is defined in the PPSA;
  - (h) any Encumbrance over cash deposits made in favour of landlords to secure performance under leases of a Target Group Member with that landlord where required under the terms of that lease;
  - (i) any rights of set-off arising under commercial contracts entered into by Target Group Member in the ordinary course of the business;
  - (j) any Encumbrance over an interest in, or assets of, a joint venture;
  - (k) any Encumbrance that is a security interest solely by virtue of section 12(3) of the PPSA;
  - (l) any of the following Encumbrances in respect of the business premises:
    - (i) the reservations, exceptions and conditions in the Crown grant;
    - (ii) Encumbrances that are on the titles to the business premises;
    - (iii) the property leases (including any subleases);
    - (iv) statutory rights related to services (including water supply, sewerage, drainage, electricity and telephone), whether or not registered;
    - (v) unregistered dealings; or
  - (m) any other encumbrance approved by the Bidder.

**PPSA** means *Personal Property Securities Act 2009* (Cth).

**Prescribed Occurrence** means any of the following events happens:

- (a) the Target converts all or any of the Target Securities into a larger or smaller number of securities;
- (b) a Target Group Member resolves to reduce its capital in any way, other than a reduction of capital which is only in favour of the Target Co or a wholly owned Subsidiary of the Target Co;
- (c) a Target Group Member:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act,other than where the buy-back agreement is with the Target Co or a wholly owned Subsidiary of the Target Co (only);
- (d) a Target Group Member issues shares or other securities (including interests in a trust) or grants an option over shares or other securities (including interests in a

trust), or agrees to make such an issue or grant such an option, other than to the Target Co or a wholly owned Subsidiary of the Target Co;

- (e) a Target Group Member issues, or agrees to issue, convertible notes;
- (f) a Target Group Member disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property (other than to the Target Co or a wholly owned Subsidiary of the Target Co);
- (g) a Target Group Member grants, or agrees to grant, a security interest (as defined in section 51A of the Corporations Act) in the whole, or a substantial part, of its business or property;
- (h) a Target Group Member resolves to be wound up;
- (i) a liquidator or provisional liquidator of a Target Group Member is appointed;
- (j) a court makes an order for the winding up of a Target Group Member;
- (k) an administrator of a Target Group Member, is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) a Target Group Member executes a deed of company arrangement; or
- (m) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of a Target Group Member.

**Record Date** means the date set by the Bidder pursuant to section 633(2) of the Corporations Act.

**Register** means the register of holders of Target Securities maintained by or on behalf of the Target.

**Regulatory Authority** means:

- (a) a government or governmental, semi-governmental, administrative, fiscal or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute; and
- (d) in particular, FIRB, ASX, ASIC, ACCC or ATO.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Regulatory Authority; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Regulatory Authority intervened or acted in any way within a specified period

after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Reimbursement Fee** means \$8,395,962.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Representative** means:

- (a) in relation to the Target, a Target Group Member, any director, officer or employee of any Target Group Member, and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to any Target Group Member in connection with the Takeover Bid or a Competing Proposal; and
- (b) in relation to the Bidder, a Bidder Group Member, any director, officer or employee of any Bidder Group Member and any financier, financial adviser, accounting adviser, auditor, legal adviser, or technical or other expert adviser or consultant to any Bidder Group Member in connection with the Takeover Bid.

**Security Interest** has the meaning given in section 12 of the PPSA.

**Specified Contracts** means each contract which the Target and the Bidder agree in writing is a Specified Contract for the purposes of this definition.

**Subsidiary** has the meaning given in Division 6 of Part 1.2 of the Corporations Act.

**Superior Proposal** means a publicly announced, bona fide Competing Proposal that the Target Board reasonably determines in good faith (after having received advice from its external legal advisors who are reputable and experienced in advising on this area and, if appropriate, financial advisors):

- (a) is reasonably capable of being valued and completed in a timely manner, taking into account all aspects of the Competing Proposal and the person making it; including without limitation, having regard to legal, financial and regulatory matters and conditions precedent reasonably capable of being satisfied; and
- (b) may if completed substantially in accordance with its terms, be more favourable to Target Securityholders as a whole than the Takeover Bid, taking into account all the terms and conditions of the Competing Proposal.

**Takeover Bid** has the meaning given in clause 2.1.1.

**Target** means Target Trust and Target Co, or Target Co and Target RE as responsible entity for the Target Trust, as the context requires.

**Target Board** means the boards of directors of each of Target Co and Target RE.

**Target Budget** means the Target's budget for the financial year ending 30 June 2021 which will be provided to the Bidder once approved by the Target Board and in any event by no later than 31 August 2020.

**Target Co** means Infigen Energy Limited ACN 105 051 616.

**Target Director** means a director of Target Co or a director of Target RE.

**Target Group** means the Target Trust, Target Co and its Subsidiaries (including Target RE acting in its capacity as responsible entity of the Target Trust) and **Target Group Member** means any one of them.

**Target Performance Rights** means performance rights issued by Target Co prior to the date of this Agreement.

**Target RE** means Infigen Energy RE Limited ACN 113 813 997.

**Target Representations and Warranties** means the representations and warranties of Target set out in Schedule 2.

**Target Securities** means a Target Share stapled to a Target Unit.

**Target Share** means a fully paid ordinary share in the capital of Target Co.

**Target Securityholder** means a registered or beneficial holder of Target Securities.

**Target's Statement** means the target's statement to be prepared by the Target in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.

**Target Trust** means Infigen Energy Trust ARSN 116 244 118.

**Target Unit** means a fully paid unit in the Target Trust.

**Third Party** means a party other than the Target, the Bidder or any of their respective Associates.

**Timetable** means such indicative timetable as the Target and the Bidder agree in writing.

**Trust Constitution** means the constitution of the Target Trust adopted on 16 June 2003 (as amended from time to time).

**Trust Property** means all scheme property of the Target Trust, including all of Target RE's rights, property and undertaking which are the subject of the Target Trust, or whatever kind and wherever situated and whether present or future.

**Unlawful Payment** has the meaning given in clause 6.14.

**Wind Farms** means the Alinta Wind Farm located in Western Australia, the Lake Bonney 1 Wind Farm located in South Australia, the Lake Bonney 2 Wind Farm located in South Australia, the Lake Bonney 3 Wind Farm located in South Australia, the Capital Wind Farm located in New South Wales, the Woodlawn Wind Farm located in New South Wales, the Bodangora Wind Farm located in New South Wales, the Kiata Wind Farm located in Victoria, the Toora Wind Farm located in Victoria, the Cherry Tree Wind Farm located in Victoria and the Collector Wind Farm located in New South Wales, each a **Wind Farm**.

## **Interpretation**

1.2 In this Agreement:

- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 the schedules and recitals are to be construed as part of this Agreement:  
and unless the context indicates a contrary intention:
- 1.2.3 the expression 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- 1.2.4 a reference to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- 1.2.5 a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.6 a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- 1.2.7 words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- 1.2.8 references to Parties, clauses, schedules, exhibits or annexures are references to Parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- 1.2.9 specifying anything after the words 'including', 'for example' or similar expression does not limit what else is included unless there is express wording to the contrary;
- 1.2.10 where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.2.11 a reference to '\$' or 'dollar' is to Australian currency;
- 1.2.12 a reference to time is to time in Sydney, Australia, unless otherwise noted;
- 1.2.13 any agreement, representation, warranty or indemnity by two or more Parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.14 any agreement, representation, warranty or indemnity in favour of two or more Parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.15 all covenants and undertakings made by the Target in this Agreement are made by each person who comprises the Target, jointly and severally;
- 1.2.16 a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this agreement or any part of it; and



- 1.2.17 if any day appointed or specified by this Agreement for the payment of any money or doing of anything falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day.

## **2 TAKEOVER BID**

### **Making the Takeover Bid**

- 2.1 The Bidder agrees to:

2.1.1 make an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all the Target Securities on issue as at the date of this Agreement and that are issued on vesting of any Target Performance Rights in accordance with clause 2.3 on terms and conditions no less favourable to Target Securityholders than the Agreed Bid Terms (**Takeover Bid**); and

2.1.2 make offers to the Target Securityholders to acquire the Target Securities pursuant to the Takeover Bid (**Offer**).

- 2.2 The Bidder may satisfy its obligation under clause 2.1, and related obligations under this Agreement, by causing a Related Body Corporate of the Bidder to perform the obligations under clause 2.1 and related obligations under this Agreement, in which case references to the Bidder making the Takeover Bid, and undertaking related matters are taken to be references to the Bidder having a primary obligation to procure that that entity make the Takeover Bid, and undertake the related matters.

### **Securities covered by the Takeover Bid**

- 2.3 The Bidder agrees that, subject to section 617 of the Corporations Act, it will extend the Offer to all Target Securities that are issued as a result of the vesting of any Target Performance Rights during the period from the Record Date to the end of the Offer Period.

### **Public announcement of Takeover Bid**

- 2.4 As soon as reasonably practicable following the execution of this Agreement, the Target will make an announcement to ASX concerning the Takeover Bid in the form set out in schedule 4 (**Agreed Announcement**).

### **Target Directors' recommendation and acceptance**

- 2.5 The Target represents and warrants that:

2.5.1 the Target Board has met and considered the possibility of the Bidder agreeing to make the Takeover Bid; and

2.5.2 each Target Director has informed the Target that if the Bidder complies with clause 2.1, they will:

2.5.2.1 recommend that Target Securityholders accept the Offer to be made to them;

2.5.2.2 accept, or procure the acceptance of, the Offer in respect of any Target Securities that they, own or control, or otherwise have Relevant Interest in; and

2.5.2.3 do not propose to recommend any Competing Proposal,

in each case in the absence of a Superior Proposal.

### **Target Board changes**

- 2.6 Subject to clause 2.7, as soon as practicable after the Bidder acquires a Relevant Interest in more than 50% of the Target Securities and the Offer becomes or is declared unconditional, the Target must:
- 2.6.1 take all actions necessary to cause the appointment of the nominees of the Bidder to the Target Board, subject to those persons having provided a consent to act as a director of the relevant companies; and
- 2.6.2 procure that the Target Directors nominated by the Bidder, resign and unconditionally and irrevocably release subject to payment of all outstanding director fees, the Target from any Claims they may have against the Target (without limitation to any rights they may have under any deed of access and indemnity or policy of directors and officers insurance).
- 2.7 The Target's obligations under clause 2.6, are subject to the following:
- 2.7.1 until the Bidder acquires all of the Target Securities, there must be at least two independent members of the Target Board who are not nominees of the Bidder;
- 2.7.2 the Bidder must procure that its nominees on the Target Board do not participate in any discussions or decisions of the Target Board which relate to the Takeover Bid during the Offer Period; and
- 2.7.3 the Target will not be required to procure any changes to the Target Board if those changes would result in the composition of the Target Board ceasing to include at least two Target Directors independent of the Bidder at any time before the end of the Offer Period.
- 2.8 Bidder, upon acquiring a Relevant Interest in more than 50% of the Target Securities will be entitled to appoint the majority of the Target Board members and in the exercise of such right will seek to comply with applicable corporate governance rules under Australian laws and regulations and in particular in respect of the appointment of independent directors.

## **3 FACILITATION OF OFFER**

### **Bidder's Statement**

- 3.1 The Bidder will prepare and dispatch the Bidder's Statement in accordance with clauses 3.2 and 3.3.
- 3.2 The Bidder will ensure that the Bidder's Statement (including any documentation dispatched together with the Bidder's Statement) is consistent with the Agreed Bid Terms and complies with all applicable legal requirements.

- 3.3 The Bidder will, to the extent practicable, give the Target a reasonable opportunity to review an advanced draft of the Bidder's Statement at least 2 Business Days before the Bidder is required to lodge the Bidder's Statement with ASIC and will consult in good faith with the Target with respect to any comments the Target may have on the draft Bidder's Statement.

#### **Target's Statement**

- 3.4 The Target will prepare and dispatch the Target's Statement in accordance with clauses 3.5 and 3.6.
- 3.5 The Target will ensure that the Target's Statement (including any documentation dispatched together with the Target's Statement) complies with all applicable legal requirements.
- 3.6 The Target will, to the extent practicable, give the Bidder a reasonable opportunity to review an advanced draft of the Target's Statement at least 2 Business Days before the Target is required to lodge the Target's Statement with ASIC and will consult in good faith with the Bidder in relation to any comments the Bidder may have on the draft Target's Statement.

#### **Dispatch of Offer**

- 3.7 The Target represents and warrants to the Bidder that each of the Target Directors has confirmed his or her agreement to the Offer and accompanying documents to be sent by the Bidder under item 6 of section 633(1) of the Corporations Act being sent on a date nominated by the Bidder that is earlier than the date prescribed by item 6 of section 633(1) of the Corporations Act.
- 3.8 Each Party agrees to use reasonable endeavours to implement the Takeover Bid in accordance with the Timetable.

#### **Access to information**

- 3.9 Each Party agrees to provide the other Party, on a timely basis, with information that may be reasonably required to assist in the preparation of the Bidder's Statement and the Target's Statement (as applicable).
- 3.10 From the date of this Agreement until the end of the Offer Period, the Target must:
- 3.10.1 provide the Bidder with a copy of the Register in an electronic form reasonably requested by the Bidder within one Business Day after such request from the Bidder;
  - 3.10.2 provide the Bidder with a copy of the Register in an electronic form within one day after the Target receives a copy from its registry each time a copy is obtained by the Target; and
  - 3.10.3 comply with any reasonable request of the Bidder to give directions to Target Securityholders pursuant to Part 6C.2 of the Corporations Act.

#### **Promoting the Takeover Bid**

- 3.11 The Target must use reasonable endeavours to procure that:
- 3.11.1 from the date of this Agreement until the end of the Offer Period, it will include in all public statements relating to the Takeover Bid (including the announcement to ASX

made by the Target under clause 2.4 and the Target's Statement), a statement to the effect that:

- 3.11.1.1 the Target Directors unanimously recommend that Target Securityholders accept the Offer to be made to them; and
- 3.11.1.2 each Target Director intends to accept, or procure the acceptance of, the Offer made to them in respect of all Target Securities they own or control,

qualified only by words to the effect of "*in the absence of a superior proposal*";

- 3.11.2 each Target Director supports the Takeover Bid and that the Chairman, Managing Director and Finance Director participate in efforts reasonably required by the Bidder to promote the merits of the Takeover Bid;
- 3.11.3 the Target Directors unanimously recommend that Target Securityholders accept the Offers made to them (which recommendation may be qualified by words to the effect of "*in the absence of a superior proposal*") and that each Target Director does not make any public statement or take any other action which would suggest that the Takeover Bid is not unanimously recommended by the Target Directors (which recommendation may be qualified by words to the effect of "*in the absence of a superior proposal*");
- 3.11.4 the Target Directors collectively, and each Target Director individually does not withdraw, adversely revise, or adversely qualify his or her recommendation for Target Securityholders to accept the Offer (which recommendation may be qualified by words to the effect of "*in the absence of a superior proposal*"),

unless the Target has complied with clause 7 and each of the following has occurred:

- 3.11.5 the Target has received, other than as a result of a breach of clause 7, and continues to be in possession of, a Superior Proposal;
- 3.11.6 the Bidder's rights under clause 7.6 have been exhausted; and
- 3.11.7 the Target Board has determined, in good faith and acting reasonably (after obtaining written legal advice from external legal advisors who are reputable and experienced in advising on this area) that compliance with the matters outlined in this clause 3.11 would be inconsistent with the fiduciary or statutory duties owed by any Target Director.

#### **Bid Conditions**

- 3.12 The Bidder must use all reasonable endeavours to satisfy the FIRB Condition.
- 3.13 Subject to clause 3.14, the Target agrees not to do (or omit to do) anything which will, or is likely to, result in any of the Bid Conditions being breached, or not being, or not being capable of being, satisfied.
- 3.14 Nothing in clause 3.13 prevents the Target or the Target Board from taking, or failing to take, any action where to do otherwise would, in the opinion of the Target Board (determined in good faith having obtained written advice from external legal advisors who are reputable and

experienced in advising on this area), constitute a breach of the fiduciary or statutory duties of a Target Director.

- 3.15 If any event occurs or becomes apparent which would cause any of the Bid Conditions to be breached or cause satisfaction of them to be unreasonably delayed, each Party must, to the extent that the Party is actually aware of such information, immediately notify the other Parties of that event.

#### **Target Performance Rights**

- 3.16 The Bidder and the Target acknowledge that the Target Board will exercise its discretion under the terms of the plans under which the Target Performance Rights were issued, in accordance with the Incentive Arrangements Paper.

### **4 CONDUCT OF THE TARGET DURING OFFER PERIOD**

- 4.1 Subject to clauses 4.2 to 4.4, from the date of this Agreement up to and including the end of the Offer Period, the Target must conduct its business, and must cause each Target Group Member to conduct their businesses, in the ordinary and usual course of business and:

- 4.1.1 operate those businesses consistent with past practice, in substantially the same manner as conducted in the past 12 months;
- 4.1.2 use reasonable endeavours to preserve their relationships with Regulatory Authorities, customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
- 4.1.3 ensure that all assets are maintained in the normal course of business consistent with past practice;
- 4.1.4 comply in all material respects with all material contracts to which a Target Group Member is a party; and
- 4.1.5 in accordance with all applicable laws, authorisations and licenses.

- 4.2 Without limiting clause 4.1, but subject to clause 4.3, the Target must not, and must procure that each Target Group Member does not, from the date of this Agreement up to and including the end of the Offer Period, do any of the following (or agree or offer to do any of the following):

- 4.2.1 acquire or lease, one or more businesses, assets, entities or undertakings (or an interest in one or more businesses, assets, entities or undertakings) for an amount greater than \$8,000,000 (individually or in aggregate);
- 4.2.2 dispose of or lease out, one or more business, assets, entities or undertakings (or an interest in one or more businesses, asset, entities or undertakings) for an amount greater than \$8,000,000 (individually or in aggregate);
- 4.2.3 enter into any joint venture, asset or profit sharing arrangement or partnership, that requires, or is reasonably likely to require payments, expenditure or the forgoing of revenue greater than \$8,000,000 (individually or in aggregate);

- 4.2.4 incur or commit to, or grant to another person a right the exercise of which would involve a Target Group Member incurring or committing to any capital expenditure or liability of greater than \$8,000,000 (individually or in aggregate);
- 4.2.5 incur or commit to, or bring forward the time for incurring or committing to any additional Financial Indebtedness (other than draw-downs on or utilisations of bank facilities existing at the Announcement Date) greater than \$8,000,000 (individually or in aggregate);
- 4.2.6 enter into, breach, terminate, extend, renew or vary any contract or commitment which results in a liability, expenditure or revenue, greater than \$8,000,000;
- 4.2.7 exercise an option or contractual right which involves a liability or expenditure, or has a value greater than \$8,000,000 (individually or in aggregate);
- 4.2.8 enter into or agree to enter into a contract or commitment other than on arm's length terms in the ordinary course of business;
- 4.2.9 guarantee or provide security for the obligations of any person other than a Target Group Member;
- 4.2.10 indemnify against acts or omissions of a person other than a Target Group Member other than where necessary for a Target Group Member to conduct business in the ordinary course;
- 4.2.11 guarantee, indemnify or provide security for the obligations of one or more Target Group Members in relation to one or more contracts or commitments having a value, or involving a liability, expenditure or revenue greater than \$8,000,000 (individually or in aggregate);
- 4.2.12 provide financial accommodation by way of Financial Indebtedness in excess of \$2,000,000 other than to Target Group Members (regardless of what form of Financial Indebtedness that accommodation takes);
- 4.2.13 threaten, commence, settle, admit to fault or liability in or accept a compromise for less than full compensation, any claim, proceedings or litigation involving, or which is reasonably expected to involve a claim or expenditure of an amount in excess of \$5,000,000, or which relates to any Regulatory Approval required for any Target Group Member to conduct business in the ordinary course;
- 4.2.14 create any Encumbrance over, or declare itself the trustee of, any part of its business or assets, other than a lien arising in the ordinary course of business or a Permitted Encumbrance;
- 4.2.15 issue, or grant an option to subscribe for any debentures (as defined in section 9 of the Corporations Act);
- 4.2.16 enter into a contract or commitment that materially restrains a Target Group Member from competing with any person or conducting activities in any material market;
- 4.2.17 waive any third party default where the adverse financial impact on a Target Group Member will be in excess of \$5,000,000 (individually or in aggregate);

- 4.2.18 accept as a compromise of a matter less than the full compensation due to a Target Group Member, where the result of the compromise is that the member will receive an amount which is more than \$5,000,000 (individually or in aggregate) less than the amount of full compensation;
- 4.2.19 waive, release, grant or transfer any rights with revenue or expenditure of more than \$8,000,000 (individually or in aggregate);
- 4.2.20 enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instrument;
- 4.2.21 make any material tax elections or changes to any material tax methodologies applied by a Target Group Member in the 12 months prior to the Announcement Date, other than any change in methodology required by a change in law;
- 4.2.22 enter into or resolve to enter into a transaction with any related party of the Target (other than a related party which is a Target Group Member) as defined in section 228 of the Corporations Act;
- 4.2.23 change any accounting policy applied by a Target Group Member to report their financial position other than any change in policy required by a change in accounting standards;
- 4.2.24 agree to pay, make or declare any distribution (whether by way of dividend, capital reduction, trust distribution and whether in cash or in specie);
- 4.2.25 reclassify, combine, split, vary the rights of, redeem or repurchase directly or indirectly any of its securities, including shares or interests in trusts (as applicable);
- 4.2.26 issue securities or other instruments convertible into shares or other securities (including interests in trusts);
- 4.2.27 cease, or threaten to cease, to carry on the business it conducts at the Announcement Date;
- 4.2.28 be deregistered as a company, registered managed investment scheme or otherwise be dissolved;
- 4.2.29 dispose of securities, including shares or interests in trusts, of a Target Group Member, other than to a Target Group Member;
- 4.2.30 make any change to its constitution (including the constitution of any trust) or pass a special resolution or convene a meeting to consider to a resolution to change a constitution of any Target Group Member (including the constitution of any trust) or a special resolution;
- 4.2.31 pay any fee to any adviser where such fee is contingent on the Takeover Bid (other than as Fairly Disclosed in writing to the Bidder before the date of this Agreement);
- 4.2.32 hire any employee or engage any contractor for total annual remuneration (including cash, non-cash financial benefits, contingent remuneration and superannuation) of more than \$250,000 on a full-time equivalent basis, pro-rated if the relevant contract

is for less than one year, or increase any existing employee's or contractor's total annual remuneration (as described above) such that it will exceed that amount;

- 4.2.33 increase the remuneration of, or pay any bonus, termination or retention payment or benefit, or otherwise vary the employment arrangements with any of its senior executives, directors or officers in any material respect;
  - 4.2.34 cancel, terminate, materially amend or reduce the level of cover under, fail to comply with the terms of, fail to renew, or fail to pay any premium on time in respect of, any material insurance policy maintained by the Target Group as at the date of this Agreement; or
  - 4.2.35 authorise or agree, commit or resolve to do any of the things referred to above whether conditionally or otherwise.
- 4.3 The obligations of the Target under clauses 4.1 and 4.2 do not apply in respect of any matter:
- 4.3.1 required or permitted to be done or procured by a Party pursuant to, or which is otherwise contemplated by, this Agreement or the Takeover Bid;
  - 4.3.2 subject to clause 4.4, Fairly Disclosed in the Disclosure Material as being actions that the Target Group may carry out between the date of this Agreement and the end of the Offer Period;
  - 4.3.3 Fairly Disclosed by the Target in any announcement to or filing with ASX or in a document lodged by the Target with ASIC that is publicly available, in each case on or before the Business Day prior to the date of this Agreement;
  - 4.3.4 required by law, the Listing Rules or by order of a court or any applicable Regulatory Authority;
  - 4.3.5 required to be done by any Target Group Member to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or material damage to property); or
  - 4.3.6 the undertaking of which the Bidder has approved in writing.
- 4.4 The Target must, in respect of any matter referred to in clause 4.3.2 that it proposes to undertake:
- 4.4.1 not undertake that matter (or commit to undertake that matter) without first consulting with the Bidder; and
  - 4.4.2 promptly provide the Bidder with any information regarding the matter reasonably requested by the Bidder.
- 4.5 From the date of this Agreement until the end of the Offer Period, unless the Bidder agrees otherwise in writing, the Target will promptly notify the Bidder:
- 4.5.1 of anything of which it becomes aware of that makes any material information publicly filed by the Target to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in a respect which would require the Target to issue corrective disclosure under the Listing Rules or the Corporations Act;



- 4.5.2 if it or a Target Group Member has or will take any action which has, will, or is likely to, result in a material breach of this Agreement; or
- 4.5.3 of anything which it is aware makes any information which is the subject of a Target Representation and Warranty provided in the Disclosure Materials incorrect, untrue or misleading (including by omission) in any material respect and the information is of a kind that had it been disclosed to the Bidder before entry into this Agreement, could reasonably have been expected to have resulted in the Bidder not entering into this Agreement or entering into it on materially different terms.

4.6 From the date of this Agreement (except in respect of clause 4.6.1.2 which is from the date on which the Minimum Acceptance Condition is satisfied) up to and including the end of the Offer Period, the Target must, and must procure that the Target Group Members:

- 4.6.1 promptly provide the Bidder or its Representatives with such information in relation to the Target Group as the Bidder may reasonably request for the purpose of:
- 4.6.1.1 undertaking and implementing the Takeover, including satisfying the FIRB Condition;
  - 4.6.1.2 planning the integration and transition of the Target Group and other matters relating to the Target Group following the end of the Offer Period;
  - 4.6.1.3 refinancing any Target Group debt facilities which the Bidder is considering repaying on or following the end of the Offer Period; or
  - 4.6.1.4 such other purposes as the Target and the Bidder may agree in writing,

including by providing such copies of records, documents and other information of the Target Group, access to officers, employees and other Representatives of the Target Group and access to facilities and premises of the Target Group, as may be reasonably requested; and

- 4.6.2 keep the Bidder reasonably informed (including upon request) of all material developments relating to the Target Group, including:
- 4.6.2.1 in respect of its financial and operating performance; or
  - 4.6.2.2 once the Target Board approves the Target Budget any material variances from the Target Budget.

provided that nothing in this clause will require the Target to provide any information concerning:

- 4.6.3 Target Directors' consideration of the Takeover Bid or any Competing Proposal; or
- 4.6.4 which would breach an obligation of confidentiality or any applicable privacy or other laws.

## **Change of control**

- 4.7 For each Specified Contract that contains a change of control, pre-emptive right or similar provision or restriction in favour of the relevant counterparty which could be triggered by the Takeover Bid (each a **Change of Control Right**), as soon as practicable after the date of this Agreement:
- 4.7.1 the Bidder and the Target will agree a proposed strategy to obtain any consents or waivers required in accordance with a Change of Control Right and use reasonable endeavours to promptly seek those consents or waivers in accordance with the agreed strategy;
- 4.7.2 the Target will consult with the Bidder in good faith in relation to the method and content of communications with each relevant counterparty which has a Change of Control Right; and
- 4.7.3 each Party must promptly provide any information reasonably required by the relevant counterparty and make representatives available, where necessary and reasonable, to meet with the relevant counterparty to deal with issues arising in relation to the matter.

## **5 TAKEOVER BID – VARIATION AND WAIVER**

### **Variation**

- 5.1 The Bidder may vary the terms and conditions of the Takeover Bid in any manner which is permitted by the Corporations Act.

### **Waiver of Bid Conditions and extension**

- 5.2 Subject to the Corporations Act and the FATA, the Bidder may declare the Takeover Bid to be free from any Bid Condition or extend the Takeover Bid at any time.

## **6 PAYMENT OF COSTS**

### **Background**

- 6.1 The Target acknowledges that, if they enter into this Agreement and the Takeover Bid is subsequently not implemented, the Bidder will incur significant costs, including those set out in clause 6.3.
- 6.2 In these circumstances, the Bidder has requested that provision be made for the payments detailed in this clause 6, without which the Bidder would not have entered into this Agreement or have otherwise agreed to implement the Takeover Bid.
- 6.3 The Reimbursement Fee has been calculated to reimburse the Bidder for costs including the following:
- 6.3.1 fees for legal, financial and other professional advice in planning and implementing the Takeover Bid (excluding success fees);

- 6.3.2 reasonable opportunity costs incurred in engaging in the Takeover Bid or in not engaging in other alternative acquisitions or strategic initiatives;
- 6.3.3 costs of management and directors' time in planning and implementing the Takeover Bid;
- 6.3.4 out of pocket expenses incurred by the Bidder and the Bidder's employees, advisers and agents in planning and implementing the Takeover Bid; and
- 6.3.5 any damage to the Bidder's reputation associated with a failed transaction and the implications of those damages if the Bidder seeks to execute similar transactions in the future,

and the parties agree that:

- 6.3.6 the costs actually incurred by the Bidder will be of such a nature that they cannot all be accurately ascertained; and
- 6.3.7 the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.
- 6.4 The Target confirms that the Target Board:
- 6.4.1 has received external legal advice in relation to this Agreement and the operation of this clause 6; and
- 6.4.2 having taken advice from its external legal advisers and financial advisers, believes that the Takeover Bid will provide benefits to it and its securityholders and that it is appropriate for it to agree to the payments referred to in this clause 6 in order to secure the Bidder's participation in the Takeover Bid.

#### **Payment of costs incurred by the Bidder**

- 6.5 The Target undertakes to pay the Reimbursement Fee to the Bidder without set-off or withholding if:
- 6.5.1 during the Exclusivity Period, whether or not permitted under this Agreement, any Target Director:
- 6.5.1.1 fails to make or makes and then, withdraws or adversely changes his or her:
- (a) recommendation that Target Securityholders accept the Offer made to them under the Takeover Bid (which recommendation may, without triggering an obligation to pay the Reimbursement Fee, be qualified by words to the effect of "*in the absence of a superior proposal*"); or
- (b) statement of intention to accept, or procure the acceptance of, the Offer made to him or her in respect of all Target Securities he or she owns or control in the absence of a Superior Proposal (which statement may, without triggering an obligation to pay the Reimbursement Fee, be qualified by words to the effect of "*in the absence of a superior proposal*");

other than as a result of the Target validly terminating this Agreement in accordance with clauses 11.1 and 11.3;

- 6.5.2 during the Exclusivity Period, the Target enters into any agreement in relation to, or any Target Director, whether or not permitted under this Agreement, recommends that Target Securityholders accept or vote in favour of or otherwise supports or endorses (including support by way of accepting or voting in favour of) any actual or proposed Competing Proposal (whether or not that Competing Proposal is subject to any pre-conditions and whether or not that Competing Proposal has already been announced or made as at the date of this Agreement);
- 6.5.3 a Competing Proposal of any kind is announced, or varied during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within twelve months of the date of such announcement, the Third Party or any Associate of that Third Party acquires (either alone or in aggregate) a Relevant Interest in more than 50% of the Target Securities; or
- 6.5.4 the Bidder validly terminates this Agreement in accordance with clauses 11.1.1, 11.2.1, 11.2.2 or 11.2.3.

#### **Timing of payment**

- 6.6 The Target must pay the Reimbursement Fee to the Bidder without set-off or withholding within 20 Business Days after the receipt by the Target of a written demand for payment from the Bidder. The demand may only be made after the occurrence of an event referred to in clause 6.5.

#### **Refund**

- 6.7 Notwithstanding the occurrence of any event described in clause 6.5:
- 6.7.1 if the Bidder (together with its Related Bodies Corporate) ultimately becomes, within twelve months of the Announcement Date, the holder of more than 50% of the Target Securities as a result of the Takeover Bid the Reimbursement Fee is not payable, or if it has been paid, the Bidder must be immediately refunded to the Target; or
- 6.7.2 if the Reimbursement Fee has been paid and within twelve months after the first event triggering the obligation to pay it under clause 6.5, the Bidder (together with its Related Bodies Corporate) subsequently acquires more than 50% of the Target Securities, the Bidder must immediately refund the Reimbursement Fee to the Target.
- 6.8 Clause 6.7 is given for the benefit of, and may be enforced by, any Target Securityholder.

#### **Compliance with law**

- 6.9 This clause 6 does not impose an obligation on the Target to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
- 6.9.1 is declared by the Takeovers Panel to constitute 'unacceptable circumstances';
- 6.9.2 is determined by a court to be unenforceable or unlawful; or
- 6.9.3 is determined by a court to involve a breach of the Target Director's fiduciary or statutory obligations.

- 6.10 The Target must not make or cause or permit to be made, or make submissions in support of any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 6.9.

**Reimbursement Fee payable only once**

- 6.11 Where a Reimbursement Fee becomes payable to the Bidder under this clause 6 and is actually paid to the Bidder, the Bidder cannot make any claim against the Target for payment of any subsequent Reimbursement Fee.

**Limitation of liability**

- 6.12 Notwithstanding any other provision of this Agreement, but subject to clause 6.13:
- 6.12.1 the maximum liability of the Target to the Bidder under or in connection with this Agreement, including in respect of any breach of this Agreement or a breach of a Target Representation or Warranty, is limited to an amount equal to the Reimbursement Fee; and
- 6.12.2 if the Target pays the Reimbursement Fee to the Bidder under this Agreement, the Target has no further liability to the Bidder for any Claim under or in connection with this Agreement.
- 6.13 Nothing in clause 6.12 prevents the Bidder from seeking an order for specific performance by the Target of its obligations under this Agreement from a court of competent jurisdiction.

**Compliance with law**

- 6.14 If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel that all or any part of the Reimbursement Fee (**Unlawful Payment**):
- 6.14.1 would, if paid, be unlawful for any reason;
- 6.14.2 involves a breach of the fiduciary or statutory duties of the Target Board; or
- 6.14.3 constitutes unacceptable circumstances (within the meaning of the Corporations Act) or breaches an order of the Takeovers Panel,
- then:
- 6.14.4 the requirement to pay the Reimbursement Fee does not apply to the extent of the Unlawful Payment; and
- 6.14.5 if the Bidder has received the Unlawful Payment, it must refund it within five Business Days of the final determination being made.
- 6.15 The Target must not seek any such determination and must use all reasonable endeavours to ensure that no such determination is made.

**Survival**

- 6.16 This clause 6 survives termination of this Agreement such that:

- 6.16.1 the Bidder may give the Target a demand for payment of the Reimbursement Fee even if this Agreement has terminated and the Target must pay the Reimbursement Fee to the Bidder, provided an event set out in clause 6.5 has occurred;
- 6.16.2 the Target may give the Bidder a demand for payment of the Unlawful Payment or a refund of the Reimbursement Fee in accordance with clause 6.7 or 6.14 even if this Agreement has terminated and the Bidder must pay the Unlawful Payment or refund the Reimbursement Fee in accordance with clauses 6.7, 6.9 and 6.14.

## 7 EXCLUSIVITY

### Cease existing discussions

- 7.1 The Target warrants that, as at the time of execution of this Agreement:
- 7.1.1 neither the Target nor any of its Representatives is in discussions or negotiations with any Third Party in respect of any Competing Proposal;
- 7.1.2 any discussions or negotiations between the Target or any of its Representatives with any Third Party in respect of any Competing Proposal to the extent on foot prior to execution of this Agreement have ceased;
- 7.1.3 access to any non-public information relating to the Target, or any other Target Group Member, to the extent provided prior to the date of this Agreement, in connection with a Competing Proposal, or the formulation, development, assessment or finalisation of a Competing Proposal, is not continuing; and
- 7.1.4 any agreement with a Third Party in respect of any Competing Proposal to the extent entered into prior to execution of this Agreement, has been terminated.

### No shop and no talk

- 7.2 During the Exclusivity Period, the Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of the Bidder:
- 7.2.1 directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussion with any person (other than the Bidder or its Representatives) in relation to, or that could reasonably be expected to lead to a Competing Proposal;
- 7.2.2 subject to clause 7.5, negotiate, accept or enter into, approve or recommend, participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with any person (other than the Bidder or its Representatives) in relation to, or that could reasonably be expected to lead to, a Competing Proposal, even if:
- 7.2.2.1 the Competing Proposal was not directly or indirectly solicited, initiated or encouraged by the Target or any of its Representatives; or
- 7.2.2.2 the Competing Proposal has been publicly announced; or
- 7.2.3 subject to clause 7.5 make available to any person (other than the Bidder or its Representatives) or permit any such person to receive, any non-public information

relating to the Target or any Target Group Member, in connection with a Competing Proposal, or the formulation, development, assessment or finalisation of a Competing Proposal.

#### **Notification to the Bidder**

- 7.3 During the Exclusivity Period, the Target must promptly notify the Bidder if it is approached by any person to engage in any activity that would breach clauses 7.2.2 or 7.2.3, or would breach clause 7.2.2 or 7.2.3 if not for clause 7.5.
- 7.4 Subject to clause 7.5, a notification given under clause 7.3 must be accompanied by relevant details of the relevant event, including the identity of the relevant person who has made the approach and the terms and conditions of any Competing Proposal or any proposed Competing Proposal (to the extent known).

#### **Fiduciary carve-outs**

- 7.5 Clauses 7.2.2, 7.2.3 and 7.4 do not apply to the extent they would require the Target or any of its Representatives to do or refrain from doing anything with respect to a Competing Proposal or which may prejudice a Competing Proposal where:
- 7.5.1 the Target Board determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
- 7.5.2 the Target Board, acting in good faith and after having taken advice from external legal advisors (who are reputable and experienced in advising on this area), determines that to take or not take the relevant action would be likely to involve a breach of the fiduciary or statutory duties owed by any Target Director.

#### **Matching right**

- 7.6 Without limiting clause 7.2, in respect of any Competing Proposal which has been made, announced or received at the date of this Agreement, or which the Target receives during the Exclusivity Period, the Target must:
- 7.6.1 not enter into a legally binding agreement to give effect to, or consent, accept or give support in any way that is public to, any Competing Proposal; and
- 7.6.2 procure that none of the Target Directors withdraws or adversely changes their recommendation that Target Securityholders accept the Offer made to them under the Takeover Bid as a result of the Competing Proposal or publicly recommend the Competing Proposal,
- unless:
- 7.6.3 the Target Board has made the determinations in clauses 7.5.1 and 7.5.2 in respect of the Competing Proposal and the action proposed to be taken in respect of the Competing Proposal;
- 7.6.4 the Target has notified the Bidder in writing of:
- 7.6.4.1 all relevant details of the Competing Proposal, including the terms and conditions of the Competing Proposal and the identity of the relevant person or persons making the Competing Proposal; and

- 7.6.4.2 the action proposed to be taken in respect of the Competing Proposal;
- 7.6.5 the Bidder's rights under clause 7.6.7 have been exhausted;
- 7.6.6 the Target Board has made the determinations in clauses 7.5.1 or 7.5.2 in respect of the Competing Proposal and the action proposed to be taken in relation to it, after the Bidder's rights under clause 7.6.7 have been exhausted and after evaluation in good faith of any Counter Proposal; and
- 7.6.7 the Target has provided the Bidder with four Business Days following receipt by the Bidder of the information required to be provided under clause 7.6.4, to amend the terms of the Takeover Bid, including by increasing the amount of consideration offered, to make a counter proposal to Target (**Counter Proposal**). If the Bidder does so then the Target Board must review the Counter Proposal in good faith. If the Target Board, determines that the Counter Proposal would be more favourable or no less favourable to the Target and Target Securityholders than the Competing Proposal, then:
- 7.6.7.1 the Target and the Bidder must use all reasonable endeavours to agree and enter into such documentation as is reasonably necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
  - 7.6.7.2 the Target must use all reasonable endeavours to procure that each of the Target Directors:
    - (a) continue to unanimously recommend the Takeover Bid (as modified by the Counter Proposal) to Target Securityholders (which recommendation may be qualified by words to the effect of "*in the absence of a superior proposal*"); and
    - (b) do not recommend the relevant Competing Proposal.
- 7.6.8 For the purposes of this clause 7.6, any modification of a Competing Proposal will be taken to make that proposal a new Competing Proposal in respect of which the Target must comply with its obligations under clause 7.6 again.

#### **Equal access to information**

- 7.7 Where the Target or any Representative provides material confidential information in relation to the business or affairs of the Target or any other Target Group Member to any person in connection with or for the purpose of a current or potential Competing Proposal, which has not previously been provided to the Bidder, the Target must provide a copy of that information to the Bidder.

#### **Normal provision of information**

- 7.8 Nothing in this clause 7 prevents the Target or any of its Representatives from:
- 7.8.1 making normal presentations to brokers, portfolio investors or analysts in the ordinary and usual course of business in relation to the Takeover Bid or its business generally;
  - 7.8.2 providing information to its auditors, advisors, customers, contractors and suppliers acting in that capacity and in the ordinary and usual course of business; or



- 7.8.3 providing information required to be provided by law, a court or any Regulatory Authority.

#### **Legal advice**

- 7.9 The Target confirms that it has received legal advice on this Agreement, including the operation of this clause 7.

### **8 CONFIDENTIALITY AGREEMENT**

- 8.1 The Target releases the Bidder from any obligations it may owe to the Target under or in connection with the Confidentiality Agreement, to the extent necessary for the Bidder to make the Offer (including in relation to the Target's information included in the Bidder's Statement and any supplementary Bidder's Statement) or purchase Target Securities.

### **9 REPRESENTATIONS AND WARRANTIES**

#### **The Bidder's representations and warranties**

- 9.1 The Bidder represents and warrants to the Target that each of the Bidder Representations and Warranties are true and correct in all material respects.

#### **Qualifications on the Bidder Representations and Warranties**

- 9.2 The Bidder Representations and Warranties are subject to matters that:
- 9.2.1 have been Fairly Disclosed in an announcement by Iberdrola S.A. on Comisión Nacional del Mercado de Valores before the date of this Agreement;
  - 9.2.2 have been Fairly Disclosed by the Bidder to the Target in writing before the date of this Agreement; or
  - 9.2.3 the Target or its Representatives has actual knowledge of before the date of this Agreement.

#### **Bidder indemnity**

- 9.3 The Bidder indemnifies the Target against any Claim, action, loss, liability, cost, payment or expense (including legal costs on a full indemnity basis) suffered or incurred by the Target arising out of, or in connection with, any breach of any Bidder Representations and Warranties.

#### **Target's representations and warranties**

- 9.4 The Target represents and warrants to the Bidder that each of the Target Representations and Warranties are true and correct in all material respects.

#### **Qualifications on Target's representations and warranties**

- 9.5 The Target Representations and Warranties are subject to matters that:

- 9.5.1 have been Fairly Disclosed in an announcement of the Target on ASX or public filings with ASIC before the date of this Agreement;
- 9.5.2 have been Fairly Disclosed in the Disclosure Materials; or
- 9.5.3 the Bidder or its Representatives has actual knowledge of before the date of this Agreement.

#### **Target indemnity**

- 9.6 The Target indemnifies the Bidder against any Claim, action, loss, liability, cost, payment or expense (including legal costs on a full indemnity basis) suffered or incurred by the Bidder arising out of, or in connection with, any breach of any Target Representations and Warranties.

#### **Survival of representations and warranties**

- 9.7 Each representation and warranty in clauses 9.1 and 9.4 is severable, survives termination of this Agreement and is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this Agreement.

#### **Status of indemnities**

- 9.8 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Party giving it under this Agreement and survives termination, completion or expiration of this Agreement.

#### **Timing of representations and warranties**

- 9.9 Each of the representations and warranties made or given under clauses 9.1 or 9.4 is given:
- 9.9.1 at the date of this Agreement; or
- 9.9.2 where expressed to be given at a particular time, at that time.

#### **Reliance**

- 9.10 Each Party acknowledges that no Party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- 9.11 Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of any other Party, except for any representation or inducement expressly set out in this Agreement.

#### **Notification**

- 9.12 Each Party will promptly advise each other in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations and warranties given by it under this clause 9.

## **Forward-Looking Information and Opinions**

- 9.13 Notwithstanding anything else in this Agreement and subject to the terms of this 9.13, the Target is under no obligation to provide the Bidder and its Representatives with any Forward-Looking Information or any opinion. If the Bidder or any of its Representatives has received any Forward-Looking Information or opinion (including in connection with any financial analysis or modelling conducted by the Bidder or any of its Representatives), the Bidder agrees that:
- 9.13.1 there are uncertainties inherent in attempting to make forward looking opinions, estimates, projections, business plans, budgets and forecasts and the Bidder is familiar with these uncertainties;
  - 9.13.2 the Bidder will make its own evaluation of the adequacy and accuracy of all Forward-Looking Information and opinions furnished to it;
  - 9.13.3 no representation or warranty of any kind is given in connection with any Forward-Looking Information or opinion; and
  - 9.13.4 to the extent permitted by law, no Target Group Member nor any Representative of a Target Group Member is liable in connection with, and each Bidder Group Member releases each Target Group Member and each Representative of a Target Group Member from, any Claim that arises out of or relates to any Forward-Looking Information or opinion.

## **10 DIRECTORS, OFFICERS AND EMPLOYEES**

### **Release of Bidder Representatives**

- 10.1 To the maximum extent permitted by law, the Target releases its rights against, and will not make any Claim against, any past or present Representatives of the Bidder (other than the Bidder and the Bidder Group Members) in connection with:
- 10.1.1 any breach of the Bidder Representations and Warranties or any other representations and warranties of the Bidder or any other Bidder Group Member in this Agreement;
  - 10.1.2 the negotiation of this Agreement and the Takeover Bid; or
  - 10.1.3 any disclosure containing any statement which is false or misleading whether in content or by omission,
- except where the Representative has engaged in wilful misconduct or fraud.
- 10.2 Nothing in this clause limits any rights the Target may have to make a Claim against the Bidder or any Bidder Group Member.
- 10.3 The Bidder receives and holds the benefit of clause 10.1 to the extent it relates to its past and present Representatives, for and on behalf of, and as trustee for, them.
- 10.4 Clause 10.1 is subject to any Corporations Act restriction which is applicable in relation to the Bidder's Representatives and will be read down accordingly.

### **Release of Target Representatives**

- 10.5 To the maximum extent permitted by law, the Bidder releases its rights against, and will not make any Claim against, any past or present Representatives of the Target (other than the Target and the other Target Group Members) in connection with:
- 10.5.1 any breach of the Target Representations and Warranties or any other representations and warranties of the Target or any other Target Group Member in this Agreement;
  - 10.5.2 the negotiation of this Agreement and the Takeover Bid; or
  - 10.5.3 any disclosure containing any statement which is false or misleading whether in content or by omission,
- except where the Representative has engaged in wilful misconduct or fraud.
- 10.6 Nothing in this clause limits any rights the Bidder may have to make a Claim against the Target or any Target Group Member.
- 10.7 The Target receives and holds the benefit of clause 10.5 to the extent it relates to its past and present Representatives, for and on behalf of, and as trustee for, them.
- 10.8 Clause 10.5 is subject to any Corporations Act restriction which is applicable in relation to the Target Representatives and will be read down accordingly.

### **Deeds of indemnity and insurance**

- 10.9 Subject to the Bidder holding a Relevant Interest in more than 50% of the Target Securities (on a fully diluted basis) and the Offer becoming or being declared unconditional, the Bidder undertakes in favour of Target and each other Representative of the Target that it will procure that:
- 10.9.1 for a period of 7 years from the end of the Offer Period, the constitution of the Target and each Target Group Member will continue to contain such rules as are contained in those constitutions at the date of this Agreement that provide for each company to indemnify each of its previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than the applicable Target Group Member;
  - 10.9.2 the Target and each Target Group Member complies with any deeds of indemnity, access and insurance entered into by them in favour of their respective directors and officers from time to time, including by ensuring that directors' and officers' run-off insurance for those directors and officers for a period of 7 years from the retirement date of each such director and officer as long as it is available on commercially reasonable terms.
- 10.10 The Target receives and holds the benefit of clause 10.9 to the extent it relates to its other Representatives, for and on behalf of, and as trustee for, them.
- 10.11 Clause 10.9 is subject to any Corporations Act restriction which is applicable in relation to the Target Representatives and will be read down accordingly.

- 10.12 The undertakings in clause 10.9 are given until the earlier of the date specified in clause 10.9 and the date on which the relevant Target Group Member ceases to be part of the Bidder Group.

## 11 TERMINATION

### Termination rights

- 11.1 A Party may terminate this Agreement by written notice to the other party if at any time after the date on which the Takeover Bid is announced under clause 2 and before the end of the Offer Period:
- 11.1.1 other than in respect of a breach of either a Target Representation and Warranty or a Bidder Representation and Warranty, the other Party is in material breach of this Agreement and, to the extent that the breach is capable of remedy, that breach is not remedied by that other Party within 10 Business Days (or any shorter period ending at the end of the Offer Period) of it receiving notice from the first Party of the details of the breach and the first Party's intention to terminate;
  - 11.1.2 a court or Regulatory Authority has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits the Takeover Bid, and the action is final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of a successful appeal or review; or
  - 11.1.3 the Bidder withdraws the Takeover Bid or the Takeover Bid lapses for any reason including non-satisfaction of a Bid Condition.
- 11.2 The Bidder may terminate this Agreement by written notice to the Target at any time before the end of the Offer Period if:
- 11.2.1 there is a breach of any Target Representation or Warranty and:
    - 11.2.1.1 the Bidder has given notice in writing to the Target setting out the relevant circumstances giving rise to the breach and stating an intention to terminate this Agreement;
    - 11.2.1.2 the breach continues to exist 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the notice was given under clause 11.2.1.1; and
    - 11.2.1.3 such breach would or would be reasonably likely to give rise to a Material Adverse Change.
  - 11.2.2 any Target Director:
    - 11.2.2.1 fails to make or makes and then, withdraws or adversely changes his or her:
      - (a) recommendation that Target Securityholders accept the Offer made to them under the Takeover Bid (which recommendation may, be qualified by words to the effect of “*in the absence of a superior proposal*”, without triggering this termination right); or

- (b) statement of intention to accept, or procure the acceptance of, the Offer made to him or her in respect of all Target Securities he or she owns or controls (which statement may, be qualified by words to the effect of “*in the absence of a superior proposal*”, without triggering this termination right);

11.2.2.2 recommends that Target Securityholders accept or vote in favour of or otherwise supports or endorses (including support by way of accepting or voting in favour of) any actual or proposed Competing Proposal (whether or not that Competing Proposal is subject to any pre-conditions and whether or not that Competing Proposal has already been announced or made as at the date of this Agreement).

11.2.3 The Bid Conditions in sections 3.5, 3.6, 3.7 or 3.8 of schedule 1 being breached, or not being, or not being capable of being, satisfied.

11.3 The Target may terminate this Agreement by written notice to the Bidder at any time before the end of the Offer Period if the Target Board unanimously or a majority of the Target Board has changed, withdrawn or modified its recommendation as permitted under clause 3.11.

#### **Limited termination events**

11.4 A Party may not terminate or rescind this Agreement, except as permitted under clauses 11.1, 11.2 or 11.3.

#### **Effect of termination**

11.5 If this Agreement is terminated by a Party under clause 11:

11.5.1 each Party will be released from its obligations under this Agreement other than this clause 11.5, clauses 10.1 to 10.8 (inclusive) and clauses 1, 6, 9, 12, 13, 14 and 15;

11.5.2 each Party will retain the rights it has or may have against the other Party in respect of any past breach of this Agreement; and

11.5.3 in all other respects, all future obligations of the Parties under this Agreement will immediately terminate and be of no further force or effect, including without limitation any further obligations in respect of the Takeover Bid.

## **12 TRUSTEE LIMITATION OF LIABILITY**

12.1 Target RE enters into this Agreement in its capacity as responsible entity of the Target Trust and is not liable to the other parties or any other person in any other capacity.

12.2 Any liability of the Target RE arising under or in connection with this Agreement is limited to the amount Target RE actually receives in exercise of its right of indemnity from the Trust Property. This limitation of liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Target RE in any way connected with any representation, warranty, conduct, omission, agreement or transaction of Target RE related to this Agreement.

- 12.3 The other Parties may not sue Target RE in any capacity other than as responsible entity of the Target Trust, including as applicable, seeking the appointment of a receiver, a liquidator, an administrator or similar person to Target RE, or prove in any liquidation, administration or arrangement of or affecting Target RE (except in relation to Trust Property).
- 12.4 The limitation of liability provisions do not apply to any obligation or liability of Target RE to the extent it is not or cannot be satisfied because, under the Trust Constitution, or by operation of law, there is a reduction in the extent of Target RE's indemnification out of the Trust Property, or no such right of indemnification exists, as a result of Target RE's fraud, negligence or breach of trust.
- 12.5 A breach of any obligation imposed on, or a representation or warranty given by, Target RE under or in connection with this Agreement or any other document in connection with it will not be considered a breach of trust, unless Target RE has acted with negligence, or without good faith, in relation to the breach.

## **13 GST**

### **Interpretation**

- 13.1 In this clause 13, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

### **GST gross up**

- 13.2 Subject to clause 13.3, if a Party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 13.2 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 13.3 Clause 13.2 does not apply to any consideration that is expressed in this Agreement to be inclusive of GST.

### **Reimbursements and indemnifications**

- 13.4 If a Party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for the loss, cost or expense, and then increased in accordance with this clause 13.

### **Tax invoice**

- 13.5 A Party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

## **14 NOTICES**

### **Manner of giving notice**

- 14.1 Any notice or other communication to be given under this Agreement:

14.1.1 must be in writing;

14.1.2 must be addressed as follows:

if to the Target:

Address Level 17, 56 Pitt Street, Sydney NSW 2000  
Email company.secretary@infigenenergy.com  
Attention David Richardson

with a copy to:

Email: JWilliamson-Noble@gtlaw.com.au

if to the Bidder:

Address Calle Tomás Redondo, 1, 28033 Madrid (Spain)  
Email mtoledano@iberdrola.es  
Attention Manuel Toledano Lanza

with a copy to:

Email : inigo.gomez-jordana@dlapiper.com and  
james.f.stewart@dlapiper.com

or at any such other address or email address notified for this purpose to the other Parties under this clause);

14.1.3 must be signed by the Party making the communication or by a person duly authorised by that Party or, in the case of email, set out the full name and position or title of the duly authorised sender;

14.1.4 must be delivered or posted by prepaid post to the address (if the country or destination is the same as the country of origin) or by airmail (if the country of destination is different to the country origin) or emailed to the email address, of the addressee, in accordance with clause 14.1.2; and

14.1.5 will be deemed to be received by the addressee:

14.1.5.1 **(in the case of prepaid post sent to an address in the same country)** on the third Business Day after the date of posting by prepaid post;

14.1.5.2 **(in the case of airmail sent to an address in another country)** on the fifth Business Day after the date of posting by airmail;

14.1.5.3 **(in the case of email)** on the earlier of:

(a) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;



- (b) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
- (c) two hours after the email is sent (as recorded in the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a notice or other communication would be taken to be deemed to have been received at a time that is later than 5.00pm or on a day that is not a Business Day, then it will be deemed to have been received at 9.00am on the next Business Day;

- 14.1.5.4 **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in clause 14.1.2, unless that delivery is not made on a Business Day, or is made after 5.00pm on a Business Day, in which case that communication will be deemed to be received at 9.00am on the next Business Day.

## 15 GENERAL

### **Governing law**

This Agreement is governed by the law of New South Wales, Australia. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

### **Severability**

- 15.1 Any provision of this Agreement which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions. This clause has no effect if the severance alters the basic nature of this Agreement.

### **Amendments**

- 15.2 This Agreement may not be modified, amended or otherwise varied except by a document in writing signed by or on behalf of each of the Parties.

### **Waiver**

- 15.3 A waiver of any right, power or remedy under this Agreement must be in writing signed by the Party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion. The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement does not amount to a waiver.

### **Further acts**

- 15.4 Each Party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other Party to give effect to this Agreement.

### **Approvals**

- 15.5 Subject to any law to the contrary and unless this Agreement expressly provides otherwise, where the doing or execution of any act, matter or thing is dependent on the consent or approval of a Party, that consent or approval may be given conditionally or unconditionally or withheld in the absolute discretion of that Party.

### **Duties and Costs**

- 15.6 The Bidder must pay all stamp duty in respect of the execution, delivery and performance of any transaction contemplated by this Agreement.
- 15.7 Except as otherwise provided in this Agreement, each Party must pay its own legal costs and expenses in respect of the negotiation, preparation, execution, delivery and completion of this Agreement.

### **Assignment**

- 15.8 Subject to clause 15.9, a party must not assign, novate or transfer any of its rights or obligations under this Agreement or attempt to do so without the prior written consent of each other parties.
- 15.9 The Bidder may assign, novate or transfer any of its rights or obligations under this Agreement to another Bidder Group Member (**Transferee**), in which case:
- 15.9.1 the Bidder remains responsible for the obligations of the Bidder under this Agreement;
  - 15.9.2 the Target must execute such documents as may be required by the Bidder (acting reasonably) to give effect to the assignment, novation or transfer; and
  - 15.9.3 the Transferee may enforce this Agreement as if named in this Agreement as the Bidder on and from the date of this Agreement.

### **Power of attorney**

- 15.10 Each attorney who signs this Agreement on behalf of a Party declares that the attorney has no notice from the Party who appointed him that the power of attorney granted to him, under which the attorney signs this Agreement, has been revoked or suspended in any way.
- 15.11 Each Party represents and warrants to each other that its respective attorney or authorised officer who signs this Agreement on behalf of that Party has been duly authorised by that Party to sign this Agreement on its behalf and that authorisation has not been revoked, and will provide a copy of such authorisation to the other Party on request of the other Party.

### **Entire agreement**

- 15.12 This Agreement and the Confidentiality Agreement constitute the entire agreement between the Parties in relation to the transaction contemplated by this Agreement and contains all of the representations, warranties, undertakings and agreements of and between the Parties.
- 15.13 The Parties accept that they rely on only those matters expressly set out in this Agreement, as this Agreement supersedes all prior negotiations, contracts, arrangements or understandings with respect to the subject matter dealt with in this Agreement.
- 15.14 There are no representations warranties, undertakings or agreements between the Parties, expressed or implied, except as set out in this Agreement and the Confidentiality Agreement.

### **No merger**

- 15.15 The rights and obligations of the Parties will not merge on completion of any transaction under this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Takeover Bid.

### **Cumulative rights**

- 15.16 The rights, powers and remedies of a Party under this Agreement are cumulative with the rights, powers or remedies provided by law independently of this Agreement.

### **Counterparts**

- 15.17 This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same agreement.
- 15.18 Transmission of an executed counterpart of this Agreement, or the executed signing page of a counterpart of this Agreement by email (in PDF format), shall take effect as delivery of an executed counterpart of this Agreement.

## SCHEDULE 1: AGREED BID TERMS

### 1 CONSIDERATION

- 1.1 \$0.86 for each Target Security.

### 2 OFFER PERIOD

- 2.1 The period the Offer is open for acceptance.

### 3 BID CONDITIONS

#### Minimum Acceptance Condition

- 3.1 At the end of the Offer Period, the Bidder has a Relevant Interest in more than 50% of all Target Securities (on a fully diluted basis).

#### FIRB Condition

- 3.2 Prior to the end of the Offer Period, either:
- 3.2.1 The Treasurer (or the Treasurer's delegate) has provided a written no objection notification under the FATA in respect of the proposed acquisition of Target Securities under the Offer either without conditions or subject only to standard tax conditions; or
  - 3.2.2 following notice of the proposed acquisition of Target Securities under the Offer having been given by the Bidder to the Treasurer under the FATA the Treasurer has ceased to be empowered to make any order under Part 3 of the FATA because the applicable time limit on making orders and decisions has expired.

For the purpose of this clause, a standard tax condition is a condition included in the list of standard tax conditions set out in Part A of Attachment B of the Australian Foreign Investment Review Board's Guidance Note 47 'Tax Conditions' (in the form last updated on 13 August 2018).

#### No regulatory impediment

- 3.3 Between the Announcement Date and the end of the Offer Period (each inclusive):
- 3.3.1 there is not in effect any preliminary or final decisions, order or decree issued by a Regulatory Authority;
  - 3.3.2 no action or investigation is announced, commenced or threatened by any Regulatory Authority; and
  - 3.3.3 no application is made to any Regulatory Authority (other than by the Bidder or any Associate of the Bidder),

in consequence of or otherwise relating to the Offer (other than an application or determination by ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act or if the regulatory action results from action or inaction of the Bidder or its Associates) which is likely to or purports or threatens to:

- 3.3.4 restrain, prohibit or impede, or otherwise materially adversely impact on (or which if granted or made could restrain, prohibit, impede or otherwise materially adversely impact on):
  - 3.3.4.1 the making of the Offer or the Takeover Bid or the completion of any transaction contemplated by the Offer or the Takeover Bid; or
  - 3.3.4.2 the rights of the Bidder in respect of the Target or the Target Securities to be acquired under the Offer or the Takeover Bid;
- 3.3.5 require the variation of the terms of the Offer; or
- 3.3.6 require or approve the divestiture of any Target Securities by Bidder or the divestiture of any assets of any Target Group Member or the Bidder or its Related Bodies Corporate.

**No Material Adverse Change**

- 3.4 Between the Announcement Date and the end of the Offer Period (each inclusive) there not having occurred, or been announced or become known to the Bidder or the Target (whether or not becoming public) a Material Adverse Change.

**No specified events**

- 3.5 Between the Announcement Date and the end of the Offer Period (each inclusive), none of the following events occur:
  - 3.5.1 Target RE ceases to be the trustee or responsible entity of the Target Trust;
  - 3.5.2 a meeting is convened to consider a resolution for the removal, retirement or replacement of Target RE as trustee or responsible entity of the Target Trust;
  - 3.5.3 an application is made to any court for the appointment of a temporary responsible entity of the Target Trust in accordance with the Corporations Act;
  - 3.5.4 the Target (or its Representatives) do or fail to do anything that could restrict Target RE's right of indemnity from Trust Property in respect of the obligations incurred by Target RE;
  - 3.5.5 the Target (or its Representatives) effects or facilitates the termination of the Target Trust;
  - 3.5.6 the Target (or its Representatives) effect or facilitate the resettlement of Trust Property; or
  - 3.5.7 any Target Group Member or any employee of a Target Group Member fails to renew or ceases to hold, or materially breaches any of the Regulatory Approvals required for any Target Group Member to conduct business in the ordinary course.

### **No Prescribed Occurrences before Bid Period**

- 3.6 Between the period from the Announcement Date to the day before the date of the Bidder's Statement (each inclusive), there is no Prescribed Occurrence other than the issue of Target Securities on the vesting of Target Performance Rights.

### **No Prescribed Occurrences**

- 3.7 Between the date of the Bidder's Statement and the end of the Offer Period (each inclusive), there is no Prescribed Occurrence other than the issue of Target Securities on the vesting of Target Performance Rights.

### **No untrue statements to ASX**

- 3.8 Between the Announcement Date and the end of the Offer Period (each inclusive) there not having occurred or been announced or become known to the Bidder or the Target that information announced by the Target to ASX in the twelve months prior to the Announcement Date is incorrect, untrue or misleading in a respect that would be material to the value of the Target Securities.

## SCHEDULE 2: TARGET REPRESENTATIONS AND WARRANTIES

- 2.1 Target Co and Target RE are each validly existing corporations registered under the laws of their place of incorporation.
- 2.2 The execution and delivery of this Agreement by the Target has been properly authorised by all necessary corporate action and the Target has full power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement.
- 2.3 This Agreement constitutes legal, valid and binding obligations on the Target enforceable in accordance with its terms, and the execution of this Agreement of itself does not result in a breach of or default under any agreement or deed, the Trust Constitution, the constitution of Target Co or Target RE, or any writ, order or injunction, rule or regulation to which the Target or any Target Group Member is a party or to which they are bound.
- 2.4 The Target Trust has been duly established and has not been terminated and is a registered managed investment scheme.
- 2.5 Target RE is the only responsible entity and trustee of the Target Trust and no action has been taken or proposed to remove Target RE as the trustee or responsible entity of the Target Trust.
- 2.6 No action has been taken or proposed to either terminate the Target Trust or wind up the Target Trust whether under Chapter 5C of the Corporations Act or otherwise (other than any frivolous or vexatious application).
- 2.7 True and complete copies of the Trust Constitution (including any amending documents) have been provide to the Bidder.
- 2.8 Target RE has not exercised its powers under the Trust Constitution, to release, abandon or restrict any power conferred on it by the Trust Constitution.
- 2.9 Target RE has the right, in accordance with the terms of the Trust Constitution, to be fully indemnified out of the Trust Property in respect of its obligations incurred by it under a document to which it is a party, and, Target RE is not aware of anything that would prevent Target RE from being fully indemnified out of Trust Property, in accordance with the terms of the Trust Constitution, for any obligations under or in connection with this Agreement, or any of the transactions contemplated by this Agreement.
- 2.10 The Target has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Takeover Bid or as Fairly Disclosed in writing to the Bidder in the Disclosure Materials on or before the date of this Agreement).
- 2.11 The Target's issued securities as at the date of this Agreement are 970,698,065 Target Securities, and 6,771,579 Target Performance Rights and it has not issued or granted, or agreed to issue or grant, any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Target Securities and it is not under any obligation to issue or grant and no person has any right to call for the issue or grant

of, any Target Securities, options, warrants, performance rights or other securities or instruments in the Target.

- 2.12 The Target's audited and reviewed financial statements as disclosed to ASX have been prepared in accordance with the applicable accounting standards on a basis consistent with past practice (unless otherwise stated therein) and the audited financial statements provide a true and fair view of the financial position and performance of the Target Group as at the date they were prepared and, so far as the Target is aware, there has not been any event, change, effect or development which would require the Target to restate its financial statements as disclosed to ASX.
- 2.13 The Disclosure Materials have been collated and disclosed to the Bidder and its Representatives in good faith in response to the questions from the Bidder and its Representatives, and the Target has not deliberately withheld from the Disclosure Materials any information which is responsive to those questions.
- 2.14 The Target Board and the senior management of the Target, immediately prior to this Agreement, are not aware of any act, omission, event or fact that would result in one or more of the Bid Conditions being breached or incapable of satisfaction.
- 2.15 So far as the Target is aware, there is no judgment, injunction, order or decree binding on any Target Group Member that has or would be likely to have the effect of prohibiting, materially restricting or materially impairing after completion of the Takeover Bid any business of the Target Group as presently being conducted.
- 2.16 So far as the Target is aware, other than the matters Fairly Disclosed in the Disclosure Materials, no litigation, prosecution, arbitration, mediation, or other legal proceedings relating to the Target Group has been on foot since 1 July 2018, or is current, is pending or threatened.
- 2.17 So far as the Target is aware, each Target Group Member has complied in all material respects with all laws or regulations applicable to them (or order of any Regulatory Authority having jurisdiction over them).
- 2.18 So far as the Target is aware, each Target Group Member:
- 2.18.1 has not violated any provision of Division 70 of the *Criminal Code Act 1995* (Cth); and
  - 2.18.2 whether directly or indirectly, has not made, offered, authorised, or accepted and will not make, offer, authorise, or accept any payment, gift, promise, or other advantage, to or for the use or benefit of any government official or any other person where that payment, gift, promise, or other advantage would comprise a facilitation payment or otherwise a violation of local anti-corruption and/or antibribery law and related regulations or practices applicable to the Target Group.
- 2.19 No Insolvency Event has occurred in respect of any Target Group Member.
- 2.20 There are no Encumbrances over all or any of the assets of the Target Group other than Permitted Encumbrances.
- 2.21 So far as the Target is aware, neither ASIC nor ASX (as applicable) has made a determination against any Target Group Member of any contravention of the requirements of the



Corporations Act or Listing Rules, or any rules, regulations, policy statements or guidance notes under or in connection with the Corporations Act or the Listing Rules.

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### **SCHEDULE 3: BIDDER REPRESENTATIONS AND WARRANTIES**

- 3.1 The Bidder is a validly existing corporation registered under the laws of its place of incorporation.
- 3.2 The execution and delivery of this Agreement by the Bidder has been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement.
- 3.3 This Agreement constitutes legal, valid and binding obligations on the Bidder enforceable in accordance with its terms and the execution of this Agreement of itself does not result in a breach of or default under the Bidder's constitution, or any agreement or deed or any writ, order or injunction, rule or regulation to which the Bidder is a party.
- 3.4 Other than expressly contemplated in this Agreement, as far as the Bidder is aware, no Regulatory Approvals are required to be obtained by the Bidder in order for it to execute and perform this Agreement.
- 3.5 The Bidder is solvent and no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over its assets.
- 3.6 The Bidder will have sufficient internal cash resources, debt funding or a combination of internal cash resources and debt funding to pay the cash consideration payable to Target Securityholders under the Offer in accordance with its terms and conditions and the timing requirements of the Corporations Act.

**SCHEDULE 4: AGREED ANNOUNCEMENT**

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infigenenergy.com

**Infigen Energy Ltd**  
ABN 39 105 051 616

**Infigen Energy Trust**  
ARSN 116 244 118

17 June 2020

## Infigen announces Recommended Takeover Offer from Iberdrola

Infigen (ASX: IFN) has today entered into a Bid Implementation Agreement (BIA) with Iberdrola Renewables Australia Pty Ltd (Iberdrola) under which Iberdrola will make an off-market takeover bid for Infigen at a price of 86 cents per stapled security in cash.

Iberdrola's takeover offer price represents a 69.8% premium to the three month volume weighted average price (VWAP) of Infigen stapled securities prior to the announcement of a takeover offer by UAC Energy Holdings Pty Ltd (UAC) on 3 June 2020 and is at a 7.5% premium to the UAC offer.

The offer from Iberdrola follows an extended period of engagement with Infigen regarding potential cooperation or a control transaction.

Iberdrola is a global energy leader, the number-one producer of wind power, and one of the world's biggest electricity utilities by market capitalisation. Iberdrola has over 55GW of installed capacity with leading market positions in Spain, the UK, the US and South America. Iberdrola is listed on all four Spanish stock exchanges and has an American Depository Receipt (ADR) that trades on the New York Stock Exchange. Iberdrola provides energy to 34 million customer billing points worldwide.

Iberdrola has informed Infigen that Iberdrola and Infigen's largest security holders TCI Funds, have entered into a pre-bid agreement under which TCI Funds has agreed to sell 20% of Infigen Stapled Securities to Iberdrola no earlier than two months after commencement of the offer subject to FIRB approval being obtained and no superior proposal emerging or earlier if TCI Funds' acceptance would result in Iberdrola having a relevant interest in more than 50% of Infigen Stapled Securities.

### 1. Infigen's Recommendation in respect of Iberdrola's offer.

The Board unanimously recommends that security holders accept the offer from Iberdrola and each Director intends to accept the offer, or procure acceptance of the offer, in respect of all Infigen securities they control, in each case in the absence of a superior proposal.

In forming its recommendation that Infigen security holders accept Iberdrola's offer in the absence of a superior proposal, the Board noted the following:

- The offer price represents an attractive premium to Infigen's undisturbed security price (i.e. as at 2 June 2020, being the last day before announcement by UAC of its offer) of:
  - 45.8% to the closing price of 59 cents per security at 2 June 2020;
  - 54.2% to the one month VWAP of 56 cents per security; and
  - 69.8% to the three month VWAP of 51 cents per security;

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- The offer price is a 7.5% premium to UAC's offer price of 80 cents per security.
  - Iberdrola's offer is less conditional overall than UAC's offer, including not being subject to the due diligence and disclosure conditions contained in the UAC offer. Infigen also notes that Iberdrola is aware of the terms of Infigen's debt facilities and has advised that if the corporate facility lenders:
    - Call for a review subsequent to the change in control occurring
    - Require repayment subsequent to the reviewthen if it is necessary, it is Iberdrola's intention to provide an unsecured loan on arm's length terms to Infigen.

Full details of the Board's recommendation will be set out in Infigen's Target's Statement.

## 2. Conditions of Iberdrola's offer.

Detailed conditions of Iberdrola's offer and terms are contained in the attached BIA. Certain key bid conditions are summarised below (Refer Schedule 1 of the BIA):

- Iberdrola's offer is conditional on:
  - approval from FIRB under the Foreign Acquisitions and Takeover Act (1975);
  - there being no material adverse change. A material adverse change is defined as an event which has, or could reasonably be expected to have, the effect of a 15% or greater reduction in Infigen's Net Tangible Assets or EBITDA to 30 June 2020, compared to 30 June 2019 or a 20% or greater reduction in reasonably expected EBITDA for FY21 or FY22, occurring before the Offer becomes unconditional;
  - Iberdrola achieving a relevant interest in more than 50% of Infigen's outstanding securities on a fully diluted basis; and
  - certain other standard conditions set out in full in the attached Bid Implementation Agreement.

Infigen has also agreed to certain exclusivity conditions with Iberdrola in the BIA, including customary 'no shop', 'no talk' provisions (subject to fiduciary exceptions), a matching right in the event of the emergence of a competing proposal and the payment of a reimbursement fee of 1% of the equity value of Infigen implied by the offer in certain circumstances. Full details are set out in the attached BIA.

## 3. UAC Energy – Reject recommendation.

Further to Infigen's ASX release of 3 June recommending investors take no action in relation to UAC's offer, Infigen's Board now unanimously recommends that investors should reject UAC's offer, which is expected to be opened shortly. Full details with respect to this recommendation will be set out in Infigen's Target's Statement in respect of the UAC offer which Infigen expects to send to security holders in the week ending 26 June 2020.

#### 4. Next Steps.

Iberdrola is expected to lodge its Bidder's Statement with ASX and ASIC shortly. Infigen intends to dispatch its Target's Statement with respect to the Iberdrola offer to security holders as soon as practical after the release of the Bidder's Statement.

#### 5. Security holder information line.

Official information will be sent to security holders shortly. If security holders have any questions, please call the security holder helpline on 1300 540 303 (within Australia) or +61 2 8022 7955 (outside Australia) between 9am and 5pm Mondays to Fridays.

#### Ends

This announcement was authorised by Len Gill, Chairman of the Board.

Infigen's legal adviser is Gilbert + Tobin and its financial advisers are Lazard Pty Limited and Goldman Sachs Australia Pty Ltd.

For further information please contact:

**Peter Campbell**

General Manager, Investor Relations

[Peter.Campbell@InfigenEnergy.com](mailto:Peter.Campbell@InfigenEnergy.com)

+61 403 936 030

#### About Infigen

Infigen is leading Australia to a clean future, today. Our strategy is to provide Australian businesses with firm supplies of reliable and competitively priced clean energy.

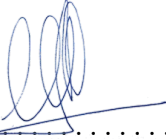
We generate renewable energy from our fleet of owned wind farms. We also source renewable energy from our portfolio of contracted assets. We manage intermittency risk with our fast start assets, enabling us to provide our customers with firm prices and firm volumes for renewable energy.

For more information, please visit: [www.infigenenergy.com](http://www.infigenenergy.com)

**EXECUTION**

Executed as an agreement.

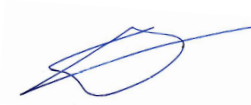
Executed by **Iberdrola Renewables Australia Pty Ltd ACN 628 620 815** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the Corporations Act 2001:



.....  
Signature of director

.....  
César Calvo Hernández

.....  
Name of director (print)



.....  
Signature of director/company secretary

.....  
Fernando Santamaría Mosquera

.....  
Name of director/company secretary (print)

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Executed by **Infigen Energy Limited ACN 105 051 616** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the Corporations Act 2001:



.....  
Signature of director

.....  
Name of director (print)



.....  
Signature of company secretary

.....  
Name of company secretary (print)



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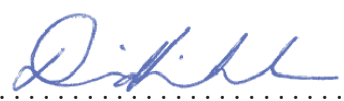
Executed by **Infigen Energy RE Limited ACN 113 813 997 as responsible entity of the Infigen Energy Trust ARSN 116 244 118** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the Corporations Act 2001:



.....  
Signature of director

Ross Rolfe

.....  
Name of director (print)



.....  
Signature of company secretary

David Richardson

.....  
Name of company secretary (print)