



Tripartite Agreement – Details

Contract Name/No.	[insert contract name or number]
Contractor	[insert name] [address] ABN [insert] Tel: [insert]
Financier	[insert name] [address] ABN [insert] Tel: [insert]
Owner	[insert name] [address] ABN [insert] Tel: [insert]
Guarantor	[insert name] [address] ABN [insert] Tel: [insert]
Commencement Date	The Commencement Date is [insert date] or [insert days] days from the date of signing this Contract. If nothing stated, then the Commencement Date is the date of signing the Contract.
Contractor's Representative	Your Representative is: [insert name and details]
Financier's Representative	Your Representative is: [insert name and details]
Owner's Representative	Your Representative is: [insert name and details]
Guarantor's Representative	Our Representative is: [insert name and details]

Cure, step-in and novation rights (GC 3)	[insert additional relevant information if required]
Parent Guarantee (GC 4)	[insert additional relevant information if required]
Assignment (GC 7)	[insert additional relevant information if required]
Address for Service of Notices (GC 8.2)	<p>[insert name of Contractor] Attention: [insert name] Address: [insert address] Email address: [insert address]</p> <p>[Insert name of Financier] Attention: [insert name] Address: [insert address] Email address: [insert address]</p> <p>[Insert name of Owner] Attention: [insert name] Address: [insert address] Email address: [insert address]</p> <p>[Insert name of Guarantor] Attention: [insert name] Address: [insert address] Email address: [insert address]</p>
Date of this Contract	/ /

The parties agree to the performance of the Works on the terms and conditions set out in this Contract.

Executed as a deed

Executed as a deed in accordance with section 127
of the *Corporations Act 2001* by **[insert name]**
(ABN **[insert ABN]**)

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Executed as a deed in accordance with section 127
of the *Corporations Act 2001* by **[insert name]**
(ABN **[insert ABN]**)

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

General conditions

1 Consents and acknowledgements

- 1.1 The Contractor and the Guarantor consent to the creation of the Security.
- 1.2 The Owner acknowledges and agrees that neither the creation of the Security nor the exercise by an Enforcing Party of any Power under the Security, constitutes an Owner Default or entitles the Contractor to terminate, rescind or accept repudiation of, or suspend performance of any of its obligations under, the EPC Contract.
- 1.3 Each of the Contractor and the Guarantor acknowledges and agrees that this deed constitutes notice to it of the Security.
- 1.4 Each of the Contractor and the Guarantor acknowledges that at any time after enforcement of the Security, any Enforcing Party may exercise any of the Powers, and perform any of the obligations, of the Owner under or in relation to the EPC Contract as if it were the Owner to the exclusion of the Owner.
- 1.5 Each of the Contractor and the Guarantor acknowledges that no Enforcing Party will be liable, or take to have assumed liability, for any liability of the Owner under the EPC Contract by reason only of the Security or the exercise in accordance with the Security of the Owner's rights under the EPC Contract.

2 Undertakings

- 2.1 The Contractor must notify the Financier as soon as it becomes aware of any material Dispute (within the meaning given to that term in the EPC Contract) with the Owner under or in relation to the EPC Contract.
- 2.2 The Contractor must notify the Financier as soon as it becomes aware of any Owner Default and must provide the Financier with full details of the Owner Default including the nature of the Owner Default, any action which it considers appropriate to remedy the Owner Default or the amount necessary to compensate it for the Owner Default, and any other information which the Financier reasonably requires in relation to the Owner Default.
- 2.3 The Contractor must provide the Financier with a copy of any notice of or relating to any Owner Default and any notice exercising or relating to the exercise of any right, power, authority, discretion or remedy the Contractor has as a result of any Owner Default at the same time it gives that notice to the Owner.
- 2.4 The Contractor must provide the Financier promptly with any other information relating to the EPC Contract or any Owner Default

reasonably requested by the Financier.

- 2.5 The Contractor must not, without the prior written consent of the Financier agree to:
 - (a) any material amendment to, material waiver of or material modification of
 - (b) the release, termination, cancellation or suspension of
 - (c) the sale, assignment, transfer or other disposal of the benefit of the EPC Contract

3 Cure, Step-in and Novation rights

- 3.1 The Contractor undertakes to the Financier that it will not exercise any right under or arising out of the EPC Contract to suspend the Works or terminate the EPC Contract or to release itself or the Owner from any of their respective obligations under the EPC Contract (**Right to Terminate or Suspend**) unless:
 - (a) it is entitled to do so under the EPC Contract and the Owner Cure Period has expired without the Owner Default having been rectified
 - (b) the Contractor has given a Default Notice to the Owner and the Financier in accordance with Clause 3.2
 - (c) the Owner Default on which the Right to Terminate or Suspend is based has not been remedied by the expiration of the cure periods set out below:
 - (i) in the case of a financial default, the breach is not remedied by the Owner, any Enforcing Party or any other person within 30 days of receipt by the Financier of the Default Notice
 - (ii) in the case of a non-financial default, the breach is not remedied by the Owner, any Enforcing Party or any other person within 30 days (or such further time agreed by the Financier and the Contractor), of receipt by the Financier of the Default Notice
 - (iii) in the case of an event described in Clause [insolvency event default] of the EPC Contract (other than an event arising as a consequence of the enforcement of the Security or the exercise of any rights as contemplated in Clause 3.1(b)), the Financier has not either:
 - A. given a notice under Clause 3.4 within 30 days of receipt by the Financier of the Default Notice to novate the EPC Contract in accordance with that Clause 3.2 and Clause 1.5

B. enforced the Security and appointed a receiver, or receiver and manager with respect to the Owner.

- (d) The Contractor acknowledges and agrees with the Financier that, despite anything in the EPC Contract, the Contractor is not be entitled to, and must not, exercise any Right to Terminate or Suspend which may arise as a consequence of the enforcement by the Financier or any other Finance Party of any Power under the Security or exercise any rights against the Owner.
- 3.2 Any Default Notice given by the Contractor can only be given after the expiry of the Owner Cure Period and must:
 - (a) specify and comprehensively detail the Owner Default and the circumstances in which the Right to Terminate or Suspend has accrued to the Contractor under the EPC Contract
 - (b) attach copies of all notices given by the Contractor under Clauses of the EPC Contract in relation to the Owner Default and the Right to Terminate or Suspend
 - (c) outline what acts, matters or things would be required to remedy the Owner Default.
- 3.3 The Financier may at any time request the Contractor to provide to it such further information as may be reasonable concerning the matters stated, set out in or implied by the Default Notice. The Contractor must use its reasonable endeavours to provide such information to the Financier promptly on request.
- 3.4 The Contractor acknowledges that the Financier or any Enforcing Party or any person acting on behalf of any of them may (but will have no obligation to) cure any Owner Default under the EPC Contract.
- 3.5 The Contractor agrees that any remedy of an Owner Default effected by, or on behalf of, an Enforcing Party will be effective as a remedy of the relevant Owner Default by the Owner.
- 3.6 At any time before or within 21 days after receipt by the Financier of a Default Notice, the Financier may give to the Contractor written notice (**Novation Notice**) that the EPC Contract is to be novated by the Owner to the nominee stated in the Novation Notice (the **Novatee**).
- 3.7 Upon receipt by the Contractor of a Novation Notice, the EPC Contract will be novated so that the Novatee will take the place of the Owner under the EPC Contract as though the Novatee had always been party to the EPC Contract instead of the Owner (**Novation**). Without limiting the foregoing, the Contractor must perform, execute and complete the

- Works and the Novatee will be liable to the Contractor for the performance of all the Owner's obligations under the EPC Contract.
- 3.8 Notwithstanding Clause 3.7 above, the Novatee or the Financier will be entitled, on giving 30 days written notice to the Contractor, to bring the Novation to an end by effecting a further novation of the EPC Contract to a person (**New Party**) nominated by either of them so that the New Party will take the place of the Novatee under the EPC Contract as though the New Party had always been party to the EPC Contract instead of the Novatee. Without limiting the foregoing, the Contractor must perform, execute and complete the Works and the New Party will be liable to the Contractor for the performance of all of the Novatee's obligations under the EPC Contract. The Contractor, the Novatee and the New Party will enter into such documents as may be reasonably required to effect the further novation.
- 3.9 The Contractor and the Owner each agree with the Financier that on and from the date on which the New Party takes the place of the Novatee under the EPC Contract the Novatee will have no obligations under or by virtue of the EPC Contract or this deed to the Contractor or the Owner except for:
- moneys that the Novatee was liable to pay or cause to be paid during the period of the Novation for the work performed under the EPC Contract during the period of the Novation
 - the cost of materials ordered under the EPC Contract during the period of the Novation to the extent that the Contractor cannot cancel such orders (with or without the payment of a cancellation fee) provided that:
 - upon payment by the Financier the unencumbered titles to the materials passes to the Financier
 - the materials were not prematurely ordered
 - neither the Novatee nor the Owner have previously paid the Contractor in respect of any part of all or the materials.
- 3.10 The provisions of the EPC Contract will apply to any payments made by the Novatee or the Financier during the period of the Novation pursuant to Clause 3.9 above, as if such payments had been made by the Owner.
- 3.11 Prior to issuing a Novation Notice under Clause 3.6 or a notice under Clause 3.8, the Financier agrees to consult with the Contractor in relation to the identity of the nominee to whom the EPC Contract is to be novated under either Clause 3.6 or Clause 3.8.
- 3.12 The Financier agrees that the EPC Contract will only be novated to:
- the Financier or an entity controlled by it
 - a party who is able to demonstrate that it has adequate funding available to it to comply with the remaining obligations of the Owner under the EPC Contract
 - a party who is able to demonstrate to the Financier's satisfaction that it has the financial capacity to comply with the Owner's remaining obligations under the EPC Contract
 - the Owner.
- 3.13 Nothing in this deed in any way derogates from, limits or prejudices any rights the Financier may have against the Owner under any securities held by it, any other contract or at law but to the extent of any inconsistency (as between the Financier and the Owner only) between the Financing Agreements and this deed, the Financing Agreements take priority.
- #### 4 Parent Guarantee
- The Guarantor undertakes to the Financier that it will not terminate or rescind the Parent Guarantee during the term of this deed without the prior written consent of the Financier.
 - Each of the Financier or any Enforcing Party may exercise the Owner's rights under or in relation to the Parent Guarantee after the enforcement of the Security.
 - The Guarantor acknowledges and agrees that it:
 - will make any payments under the Parent Guarantee without set-off, deduction or counterclaim
 - is not entitled to be subrogated in any respect to any Powers of the Financier against the Owner (including pursuant to any Security Interest held in respect of the Owner).
- #### 5 Contractor representations and warranties
- 5.1 The Contractor and the Guarantor each represent and warrant to the Financier that:
- registration:** it is a corporation duly incorporated and validly existing under the laws of **[insert]**
 - authority:** it has capacity, power and authority to enter into and perform its obligations under this deed and, in the case of the Contractor only, the EPC Contract
 - authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed and, in the case of the Contractor only, the EPC Contract
- binding obligations:** this deed and, in the case of the Contractor only, the EPC Contract constitute its legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable against it in accordance with their terms subject to laws generally affecting creditors' rights and principles of equity
 - transaction permitted:** the execution, delivery and performance by it of this deed and the EPC Contract will not breach or result in a contravention of:
 - any law, regulation or Authorisation
 - its constitution or other constituent documents.
 - no default or breach:** it is not in default or breach under this deed or, in the case of the Contractor only, the EPC Contract
 - no notice:** it has not received notice of, and is not otherwise aware of, any Encumbrance over the rights of the Owner under the EPC Contract other than the Security
 - representations true:** in the case of the Contractor only, each of its representations and warranties in the EPC Contract is true and correct and not misleading when made or repeated or regarded as made or repeated.
- 5.2 The representations and warranties given under this deed:
- survive the execution of this deed
 - are repeated on the last day of each calendar quarter with respect to the facts and circumstances then subsisting.
- #### 6 Payments, costs, taxes
- 6.1 The Owner must pay any Tax in respect of this deed and any document contemplated by this deed (including in respect of the execution, delivery, performance, release, discharge, amendment or enforcement or attempted enforcement in respect of this deed and any document contemplated by this deed).
- 6.2 The Owner must pay the reasonable costs and expenses of the Financier in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this deed or any document contemplated by this deed.
- #### 7 Assignment
- 7.1 The Contractor and the Guarantor must not deal with, sell, assign, transfer, novate or otherwise dispose of, or create or allow to

exist any Encumbrance over, any of its rights or obligations under this deed or the EPC Contract without the Financier's prior written consent.

- 7.2 The Financier may assign or transfer any of its rights or obligations under any of the Transaction Documents without the consent of any other party, but only if the assignee or transferee enters into a deed by which it undertakes to be bound by this deed as if it were the Financier.
- 7.3 In the exercise of its Powers under the Security, any Enforcing Party may deal with, sell, assign, transfer, novate or otherwise effect a disposal of any rights or obligations of the Owner under the EPC Contract without the consent of any other party.

8 General

- 8.1 This deed and the obligations of the parties under this deed continue in full force and effect until the Security has been fully discharged and released.
- 8.2 Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be in legible writing and in English addressed to the party in accordance with its details, or as specified to the sender by any party by notice.
- 8.3 If the sender is a company, any such notice or other communication must be signed by an Officer of the sender.
- 8.4 Any such notice or other communication is regarded as being given by the sender and received by the addressee:
- (a) if by delivery in person, when delivered to the addressee
 - (b) if by post, on delivery to the addressee
 - (c) if by facsimile transmission, when received by the addressee in legible form
- but if the delivery or receipt is on a day which is not a Business Day in the place of receipt or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.
- 8.5 Any such notice or other communication can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- 8.6 A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under Clause 8.4 and informs the sender that it is not legible.
- 8.7 This deed is governed by the laws of [insert].
- 8.8 The parties irrevocably submit to the non-exclusive jurisdiction of the

courts of [insert], Australia and any courts that may hear appeals from these courts regarding any proceedings under or in connection with this deed.

- 8.9 Any provision of, or the application of any provision of, any Transaction Document or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 8.10 Any provision of, or the application of any provision of, any Transaction Document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- 8.11 Waiver of any right arising from a breach of this deed or of any Power arising upon a default under this deed must be in writing and signed by the party granting the waiver.
- 8.12 A failure or delay in exercise, or partial exercise of:
- (a) a right arising from a breach of this deed
 - (b) a Power created or arising upon default under this deed
- does not result in a waiver of that right or Power.
- 8.13 A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed as constituting a waiver of that right or Power.
- 8.14 A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- 8.15 Clauses 8.11 to 8.14 may not themselves be waived except in writing.
- 8.16 A variation of any term of this deed must be in writing and signed by the parties.
- 8.17 This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. A party may execute this deed by signing any counterpart.
- 8.18 Each of the attorneys executing this deed states that the attorney has no notice of revocation of the power of attorney appointing that attorney.

9 Definitions and Interpretation

- 9.1 In this Agreement unless the contrary intention appears:
- Attorney means an attorney appointed under a Transaction Document.

Authorisation means:

- (a) any consent, registration, filing, agreement, notice of non objection, notarisation, certificate, licence, approval, permit, authority or exemption

- (b) in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.

Business Day means a day on which banks are open for business in the city where the notice or other communication is received, excluding a Saturday, Sunday or public holiday.

Encumbrance means an interest or power:

- (a) reserved, trust or power in or over any asset by way of, or having similar commercial effect to, security for the payment or performance of any obligation, including any retention of title
- (b) created or otherwise arising in or over any asset under a security interest, bill of sale, mortgage, charge, lien or pledge.

Enforcement Action means the taking of any step (including the giving of a notice) by or on behalf of the Contractor towards:

- (a) terminating or revoking the EPC Contract
- (b) suspending the performance of any of its obligations under the EPC Contract
- (c) commencing, applying for or otherwise being a party to any insolvency proceedings in respect of the Owner
- (d) commencing or continuing any enforcement action against the Owner or any part of its property, undertaking or assets including execution, distress, attachment or other legal process
- (e) commencing or continuing any legal proceedings or other legal process other than subject to paragraphs (a) to (d) above (inclusive), to pursue its contractual remedies in accordance with the EPC Contract.

Enforcing Party means the Financier, any Attorney, receiver, receiver and manager or any other person appointed under a Security.

EPC Contract means the engineering, procurement and construction contract for the Plant (as that term is defined therein) between the Owner and the Contractor, dated on or about the date of this deed.

Security means each Encumbrance granted by the Owner in favour of the Financier over the Owner's right, title and interest in and to the EPC Contract.

Government Agency means any government or any governmental, semi governmental, administrative,

fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Officer means:

- (a) in relation to a party (other than the Financier), a director or a secretary, or a person notified to be an authorised officer, of that party
- (b) in relation to the Financier, any person whose title includes the word 'Director', 'Managing Director', 'Manager' or 'Vice President', and any other person appointed by the Financier to act as its authorised officer for the purposes of this deed.

Owner Cure Period means in relation to an Owner Default, any grace period allowed under the EPC Contract to remedy that Owner Default before the Contractor becomes entitled to terminate, rescind or accept a repudiation of, or suspend the performance of any of its obligations under, the EPC Contract.

Owner Default means the occurrence of:

- (a) any breach of, or event under, the EPC Contract by, or in relation to, the Owner
- (b) any other event or circumstance which entitles, or which with the giving of notice, the expiration of time or the satisfaction or non satisfaction of any condition would entitle, the Contractor to terminate, rescind or accept repudiation of, or suspend all or any of the Works or the performance of any of its obligations under, the EPC Contract.

Parent Guarantee means the parent guarantee between the Guarantor and the Owner, dated on or about the date of this deed.

Power means any right, power, authority, discretion or remedy conferred on an Enforcing Party by any Transaction Document or any applicable law.

Tax means:

- (a) any tax including any levy, charge, impost, duty, fee, deduction, compulsory loan or withholding
- (b) any income, stamp or transaction duty, tax or charge

which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of the above.

Transaction Document means the Security, this deed, or any document or agreement entered

into or given under the Security or this deed.

Works has the meaning given to that term in the EPC Contract.

- 9.2 In this Agreement unless the contrary appears:
- (a) a reference to this Agreement or another instrument includes any variation or replacement of either of them
 - (b) the singular includes the plural and vice versa
 - (c) the word person includes a firm, a body corporate, an unincorporated association or an authority
 - (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns
 - (e) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day
 - (f) a reference to a GC or schedule is a reference to a GC or schedule in this Agreement
 - (g) the words "including" and "include" are a reference to "including, but not limited to"
- 9.3 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.