

Deed

Collgar Wind Farm

## Compensation Deed

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Collgar Wind Farm Pty Ltd

**Freehills**

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## Compensation Deed

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Date ►

Between the parties

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**Collgar Wind Farm Pty Ltd**

ACN 130 586 088 of Level 31 Chifley Tower 2 Chifley Square Sydney  
New South Wales

(Collgar)

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(Owner)

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Recitals

- 1 The Owner is the registered proprietor of the Affected Land.
  - 2 Collgar plans to construct one or more Wind Turbine Generators on land which is adjacent to the Affected Land.
  - 3 Collgar agrees to pay the Owner the Sum subject to the terms and conditions set out in this Document.
- 

This deed witnesses as follows:

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1 Definitions and interpretation

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1.1 Definitions

The meanings of the terms used in this deed are set out below.

| Term                  | Meaning   |
|-----------------------|---|
| Attachment            | an attachment to this Document.   |
| Affected Land         | the land described in Item 1 of Schedule 1.   |
| Business Day          | a day other than a Saturday, Sunday or public holiday in Western Australia.   |
| Buyer                 | The buyer, assignee or transferee of any part or the whole of the Affected Land.  |
| Commencement Date     | the date of this Document.  |
| Consent Authority     | any Municipal, State or Commonwealth government department or agency, including the Shire of Merredin and the Environmental Protection Authority.   |
| Consumer Price Index  | the consumer price index published by the Australian Bureau of Statistics for Perth (Capital City) (All Groups Index Numbers) or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician. |
| Current CPI           | the Consumer Price Index number last published prior to the relevant Payment Date.  |
| Document              | this deed as amended, supplemented or varied from time to time.   |
| LEADR                 | the Australasian not for profit organisation that promotes alternative dispute resolution under the name of "LEADR".  |
| Local Planning Scheme | the local planning scheme in force under the <i>Planning and Development Act 2005 (WA)</i> in respect of the Affected Land.   |

# Freehills

| Term                             | Meaning  |
|----------------------------------|--|
| Local Planning Scheme Amendments | amendments to be made to the Local Planning Scheme related to the Project, by way of re-zoning or other restriction of the Affected Land, to prevent the development of new Noise-Sensitive Premises on the Affected Land. |
| Noise-Sensitive Premises         | has the same meaning as the term 'noise-sensitive premises' as defined in the <i>Environmental Protection (Noise) Regulations 1997 (WA)</i> .  |
| Owner's Covenants                | the covenants, agreements and obligations contained or implied in this Document or imposed by law to be observed and performed by the Owner.   |
| Participating Land               | land upon which one or more Wind Turbine Generators and any Wind Monitoring Equipment will be constructed and installed.   |
| Party                            | Collgar or the Owner according to the context.   |
| Payment Date                     | the Supply Date and each anniversary of that date.   |
| Previous CPI                     | the Consumer Price Index number last published before the immediately preceding Payment Date.  |
| Project                          | the project to design, construct, operate and maintain a Wind Energy Facility near Collgar, Western Australia.   |
| Restrictive Covenant             | a covenant restricting the use of the Affected Land for the benefit of other land and binding on every owner of the Affected Land, in the form or substantially in the form contained in Attachment 2.                     |
| Restricted Area                  | the area of the Affected Land hatched on the plan attached as Attachment 1 to this Document or any lesser area nominated by Collgar in accordance with clause 3.3(b).  |
| Schedule                         | a schedule to this Document.   |
| Sum                              | the amount specified in Item 2 of Schedule 1 as varied from time to time under this Document.  |

# Freehills

| <b>Term</b>                      | <b>Meaning</b>   |
|----------------------------------|--|
| <b>Supply Date</b>               | the date upon which the Wind Energy Facility commences supplying electricity into the South West Interconnected System.  |
| <b>Termination Date</b>          | the termination date defined in clause 2(b).   |
| <b>Wind Energy Facility</b>      | a grouping of Wind Turbine Generators and all associated infrastructure that Collgar treats as being a wind farm for the purposes of electricity generation.   |
| <b>Wind Monitoring Equipment</b> | the equipment, facility, building or works which Collgar requires for monitoring or assessing the nature of the wind and other meteorological parameters on or above any Participating Land.   |
| <b>Wind Turbine Generator</b>    | a wind turbine constructed for generating electricity that is driven by wind power, the structures and plant used to provide the energy derived from the wind to drive the turbines, the electricity transformation equipment, the electricity transmission and distribution lines used to transmit or distribute the electricity for injection into a local electricity distribution network and all associated plant and structures used for their safe and efficient operation, housing, control, support and production. |

## **1.2 Interpretation**

### **(a) Joint and several covenants**

If a Party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them.

### **(b) Headings**

Headings in this Document are for convenience and identification of clauses only and do not otherwise affect its interpretation.

### **(c) References to a Party**

Unless contrary to the sense or context, a reference to a Party includes that Party's executors, administrators, personal representatives, successors and assigns, and if a Party comprises two or more persons, the executors, administrators, personal representatives, successors and assigns of each of those persons.

## **2 Term**

- (a) This Document commences on the Commencement Date and, subject to any lawful early termination under clause 6, will expire on the earlier of the date of:

- (1) Collgar providing notice to the Owner that it has decided to not proceed with the Project;
  - (2) Collgar providing notice to the Owner that the Wind Energy Facility has been decommissioned; or
  - (3) the Termination Date.
- (b) The Termination Date is the later of:
- (1) 30 years from the Supply Date; and
  - (2) 50 years from the Supply Date, if Collgar provides notice in writing to the Owner prior to the date specified in clause 2(b)(1) that it is extending the Termination Date under this clause 2(b)(2).
- (c) Neither party will have any rights against the other regarding this Document following the termination of this Document, other than under clause 8 and any rights that have accrued prior to termination which will continue to apply.

## **3 Owner's obligations**

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### **3.1 Objections**

The Owner must not object to:

- (a) the Local Planning Scheme Amendments;
- (b) any application by Collgar to any Consent Authority in relation to the Project; and
- (c) the ongoing operation of the Project.

### **3.2 Consents**

The Owner must provide or sign any consents in support of the Project if and when requested by Collgar, including to the Shire of Merredin and the Environmental Protection Authority.

### **3.3 Restrictive Covenant**

- (a) Owner to do all things to enable the Restrictive Covenant to be registered

The Owner must:

- (1) sign the Restrictive Covenant in favour of the registered proprietor for the time being of the adjacent Participating Land if and when requested to do so by Collgar;
- (2) sign any consents or other documents if and when requested by Collgar;
- (3) provide any information if and when requested by Collgar; and
- (4) do all things reasonably necessary to facilitate the Project and to enable the registration of the Restrictive Covenant over the Affected Land at the cost and expense of Collgar.

- (b) Collgar may amend the Restricted Area



At any time and so often as is necessary, prior to the registration of the Restrictive Covenant at Landgate, Collgar may by notice in writing to the Owner nominate a lesser area to be the Restricted Area in which case Collgar will obtain and attach a new plan to the Restrictive Covenant to reflect the new Restricted Area and replace the old plan in Attachment 1 to this Document.

- (c) Owner must not apply or agree to remove or vary the Restrictive Covenant

The Owner must not apply or agree to have the Restrictive Covenant removed or varied without the consent of Collgar which consent may be withheld by Collgar in its absolute discretion.

### **3.4 Use of the Affected Land**

The Owner must:

- (a) comply with the requirements of the Local Planning Scheme as it applies to the Affected Land;
- (b) not apply for planning approval to construct a Noise-Sensitive Premises within the Restricted Area, without the prior written approval of Collgar which Collgar may withhold in its absolute discretion;
- (c) not construct or permit to be constructed a Noise-Sensitive Premises within the Restricted Area, without the prior written approval of Collgar which Collgar may withhold in its absolute discretion;
- (d) not construct or install or permit to be constructed or installed any building or structure of a height of more than 5 metres within 200 metres of a Wind Turbine Generator or Wind Monitoring Equipment without the prior written approval of Collgar, which cannot be unreasonably withheld; and
- (e) not construct or install or permit to be constructed or installed any building or structure of a height of more than 10 metres within 500 metres of a Wind Turbine Generator or Wind Monitoring Equipment without the prior written approval of Collgar, which cannot be unreasonably withheld.

### **3.5 Give notice**

The Owner must give notice of this Document to any potential purchaser, lessee or licensee of part or the whole of the Affected Land.

### **3.6 Dealings with the Affected Land**

The Owner must not:

- (a) grant or permit to be granted any lease or licence of or deal with any part or the whole of the Affected Land, unless:
- (1) Collgar provides its prior written consent, which cannot be unreasonably withheld. For the avoidance of doubt, where the potential lessee or licensee is proposing to use the Affected Land for a purpose which is likely to interfere with the operation of the Wind Energy Facility, then Collgar is entitled to withhold its consent; and
- (2) the potential lessee or licensee enters into a deed of covenant with Collgar whereby it agrees to be bound by and observe and perform the Owner's Covenants in favour of Collgar as if the lessee or licensee was named as the Owner in this Document; or

- (b) sell, assign, transfer, mortgage or charge any part or the whole of the Affected Land without obtaining a deed of covenant signed by the Buyer, mortgagee or chargee by which the Buyer, mortgagee or chargee of part or the whole of the Affected Land, as applicable, agrees to be bound by and observe and perform the Owner's Covenants in favour of Collgar as if the Buyer, mortgagee or chargee was named as the Owner in this Document.

### **3.7 Charge**

- (a) The Owner charges the Affected Land with the due performance and observance of the Owner's Covenants and agrees that Collgar is entitled to lodge an absolute caveat over the Affected Land pursuant to this charge to protect its interests.
- (b) If Collgar lodges a caveat over the Affected Land under clause 3.7(a), it will upon request by the Owner and subject to the Owner complying with the provisions of clause 3.6 as soon as is reasonably possible in the circumstances, withdraw the caveat to permit the registration of any dealing on the Affected Land which does not affect Collgar's rights under this Document, at the cost and expense of Collgar.
- (c) Following the withdrawal of any caveat under clause 3.7(b), Collgar is entitled to lodge another caveat to protect its interests under this Document pursuant to clause 3.7(a) following the registration of any dealing contemplated by clause 3.7(b) and the provisions of clause 3.7(b) will continue to apply.

## **4 Payment of the Sum**

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### **4.1 Time for payment**

Subject to the Owner observing and performing the Owner's Covenants, Collgar must pay to the Owner the Sum upon each Payment Date.

### **4.2 Manner of payment**

Collgar must pay the Sum into the nominated bank account referred to in Item 3 of Schedule 1 on each Payment Date.

### **4.3 Sum to be adjusted for CPI**

For each successive Payment Date after the date of commissioning of the Wind Energy Facility, the Sum will be calculated by the Sum payable for the immediately preceding Payment Date multiplied by Current CPI and divided by Previous CPI.

### **4.4 Sum to be adjusted following dealings with the Affected Land**

If the Owner sells, assigns or transfers part of the Affected Land then the Sum payable to the Owner and the Buyer will be apportioned between the Owner and the Buyer according to the portion of the Affected Land held by each following settlement of the sale, assignment or transfer.

## 5 Payment of council rates

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### 5.1 Owner must pay council rates

The Owner must pay any council rates payable in respect of the Affected Land.

### 5.2 Payment of any increase in council rates

- (a) The Owner must provide Collgar with copies of any relevant council rates notices and correspondence from the Shire of Merredin on council rates payable in respect of the Affected Land.
- (b) Within 10 Business Days of being provided a relevant council rates notice, Collgar must pay the Owner any increase in the council rates payable in respect of the Affected Land immediately preceding the Local Planning Scheme Amendments and the council rates payable in respect of the Affected Land after the Local Planning Scheme Amendments as a result of the Local Planning Scheme Amendments, until the expiry of this Document under clause 2.

## 6 Essential terms

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- (a) Each of the Owner's Covenants which are specified in clauses 3.1, 3.2, 3.3, 3.4, 3.6 and 3.7 are essential terms of this Document.
- (b) If the Owner breaches an essential term, Collgar may withhold any payments which are otherwise payable under this Document and/or terminate this Document by giving the Owner 2 Business Days' notice in writing.

## 7 Assignment

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- (a) Collgar may assign the rights under, and the benefit of, this Document.
- (b) If paragraph (a) of this clause applies, the Owner must upon the request of Collgar and at the cost and expense of Collgar, enter into a deed of covenant with Collgar's assignee to continue to observe and perform the Owner's Covenants in favour of the assignee as if the assignee was originally a party to this Document.

## 8 Confidentiality

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- (a) The Owner must not disclose to any third party without the prior written consent of Collgar:
  - (1) this Document or any of its provisions; or
  - (2) any report or other information obtained by the Owner in the course of or as a result of the Owner's negotiations with Collgar,but the Owner may disclose without consent in the following circumstances:

- (3) information to the extent that the Owner is legally required to do so to any person who is authorised by law to receive that information;
  - (4) information which is in or becomes part of the public domain through no fault of the Owner;
  - (5) information to the Owner's employees, consultants, legal advisers, accountants or auditors provided that the person receiving the information agrees to comply with the provisions of this clause 8;
  - (6) to a bank or financial institution in connection with the Owner organising its financial affairs;
  - (7) information which is necessary for the purpose of resolving any dispute in accordance with this Document; and
  - (8) to any person to the extent necessary to enable the Owner to observe and perform the Owner's obligations under this Document.
- (b) The obligations set out in this clause are continuing obligations.

## 9 Notices

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### 9.1 Form, service and time when notices are given

Any notice, or other communication including but not limited to any request, demand, consent or approval to or by a Party under this Document:

- (a) must be in writing and given in accordance with the details set out in Item 4 of Schedule 1 or to any other address specified by any Party to the sender by notice;
- (b) will be treated as having been given by the sender and received by or served on the addressee:
  - (1) if by delivery in person when delivered to the addressee;
  - (2) on the day which is the 2nd Business Day after the date of posting; and
  - (3) if by facsimile transmission, on the date of transmission where a transmission report is produced by the facsimile machine by which the facsimile message was transmitted which indicates that the facsimile message was transmitted in its entirety to the facsimile number of the recipient,

but if the transmission of a facsimile is on a day which is not a Business Day in the addressee's place or is after 4.00 pm (addressee's time) it will be treated as having been given on the next following Business Day in the addressee's place.

### 9.2 Persons who may sign Notices

A notice to a person may be signed:

- (a) if given by an individual, by the person giving the notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation; or
- (c) by a solicitor or other agent of the person giving the notice.

## 10 Dispute resolution

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### 10.1 Notice of dispute

In the event of a dispute either Party must deliver a notice of dispute to the other Party.

### 10.2 Information in the notice of dispute

The notice of dispute must include information about the nature of the dispute and the relief that is claimed.

### 10.3 Negotiation

- (a) The Parties must try to resolve the dispute by negotiation.
- (b) Unless otherwise agreed in writing, all communications at or in relation to the negotiation are without prejudice and confidential.
- (c) Any agreement reached by negotiation must be in writing and signed by both Parties.
- (d) If the dispute is not resolved within 10 Business Days of a Party receiving the notice of dispute, the Parties must agree to attend mediation.

### 10.4 Mediation

The Parties must:

- (a) appoint an independent mediator by agreement. If the Parties fail to agree the mediator within 15 Business Days after the notice of dispute was delivered or any longer period agreed by the Parties, either Party may request the President of the Law Society of Western Australia of the time being, or the President's nominee, to appoint an independent mediator. The President or the President's nominee may consult with LEADR or any other recognised alternative dispute organisation operating in Western Australia in choosing the mediator;
- (b) share the costs of the appointed mediator equally;
- (c) comply with the directions of the mediator for the conduct of the mediation;
- (d) hold the mediation in Perth, Western Australia; and
- (e) record any resolution arising from the mediation in writing signed by the Parties.

If the Parties fail to resolve the dispute by mediation within 15 Business Days of appointing a mediator then either Party may take the course of action which it considers appropriate, including commencing legal proceedings.

### 10.5 Injunction

Nothing in this clause 10 prevents proceedings being issued for urgent injunctive relief.

## 11 Costs and stamp duty

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Collgar must pay:

- (a) Collgar's own legal costs in relation to the preparation, execution and stamping of this Document;
- (b) the Owner's legal costs of and incidental to this Document not exceeding the sum of \$500 inclusive of GST; and
- (c) any stamp duty assessed on this Document.

## 12 Goods and services tax

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### 12.1 Definitions

Unless the context indicates otherwise, in this clause:

- (a) **GST** means a tax levied on the value of a good or service or property supplied under the GST Act;
- (b) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- (c) **Supply** means a good or service or property supplied under or in connection with this Document;
- (d) **Recipient** means a person that receives a Supply; and
- (e) **Supplier** means a person that supplies a Supply.

### 12.2 Interpretation

Any reference in clause 12 to a term defined or used in the GST Act is a reference to that term as defined or used in the GST Act, unless the context indicates otherwise.

### 12.3 Prices do not include GST

Unless expressly included, the price for each Supply under this Document does not include GST on that Supply.

### 12.4 Recipient must pay GST

To the extent that GST is payable in respect of a Supply, the Recipient must pay to the Supplier the amount of any GST the Supplier pays or is liable to pay on a Supply in addition to the GST exclusive price for that Supply.

### 12.5 Tax invoices

The Supplier must issue a tax invoice to the Recipient at or before the time of payment for the Supply or at such other time as the Parties agree.

## **12.6 Apportionment of GST**

Where a Supply is not separately supplied to the Recipient, the liability of the Recipient for any amount for GST in relation to that Supply is determined on the same basis as the liability of the Recipient for payment for that Supply is determined.

## **12.7 Adjustment**

Whenever an adjustment event occurs in relation to any taxable Supply, the Supplier must determine the net GST in relation to the supply (taking into account) any adjustment and if the net GST differs from the amount previously paid under clause 12.4, the amount of the difference must be paid by, refunded to or credited to the Recipient, as applicable.

## **12.8 Reimbursement**

If a Party is entitled to be reimbursed or indemnified for a loss or expense incurred in connection with this Document, then the amount of the reimbursement or indemnity payment must first be reduced by the amount of any input tax credit to which that Party is entitled and then if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST.

## **13 General**

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### **13.1 Governing law**

- (a) This Document is governed by the laws of Western Australia.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### **13.2 Entire agreement**

- (a) This Document constitutes the entire agreement between the Parties with respect to its subject matter. It supersedes all previous agreements between the Parties with respect to the matters the subject of this Document.
- (b) The Owner acknowledges that it has not relied on any oral statement, representation, undertaking, covenant or agreement made before the date of this Document relating to the matters the subject of this Document and not contained in this Document.

### **13.3 Further assurances**

Each Party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Document.

**13.4 Severance**

If any part of this Document is, or becomes, void or unenforceable, that part is, or will be, severed from this Document so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

**13.5 Waiver**

No Party may rely on the words or conduct (including delay in the exercise of a right) of any other Party as a waiver of any right arising under or in connection with this Document unless the waiver is in writing and signed by the Party granting the waiver.

**13.6 Variation**

A variation of any term of this Document must be in writing and signed by the Parties.



## Schedules

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**Reference schedule**

**15**

Reference schedule

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1 **Affected Land**

The Affected Land comprises of:

(A)

(B)

(C)

2 **Sum**

The Sum payable upon the Supply Date is the sum of the following amounts:

| Lot:  | Amount payable for the Lot: |
|-------|-----------------------------|
| _____ | _____                       |
| _____ | _____                       |
| _____ | _____                       |
| _____ | _____                       |
| _____ | _____                       |

3 **Nominated bank account**

Bank name:

Branch name:

Account name:

BSB number:

Account number:

4 **Notices**

**Collgar:**

Contact person:

Lynne Lagan

Address:

Level 31 The Chifley Tower 2 Chifley Square  
Sydney NSW 2000

Facsimile number:

+61 2 9293 2322

Owner:

Contact person:

Address:

Facsimile number:

Executed as a deed

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**Collgar**

Signed by  
**Collgar Wind Farm Pty Ltd**  
by

*sign here* ▶ \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ▶ \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

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**Owner**

Signed by

*sign here* ▶ \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ▶ \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

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**Plan of Restricted Area**

**Restrictive Covenant**

Restrictive Covenant

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