

## Confidentiality Undertaking

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Date ► \_\_\_\_\_

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Given by

(Recipient)

In favour of

**Spicers Creek Wind Farm Pty Ltd**, ABN – 83 648 166 269, 171 – 173 Mounts Bay Road, Perth WA 6000 (**Company**) and each Company Person.

Recitals

1. The Company is developing the Project.
2. The Recipient will acquire Confidential Information to enable it to participate in the procurement process for the Project.
3. The Recipient agrees to keep the Confidential Information confidential in accordance with this deed poll.

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This deed poll 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 poll are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Company Person</b>	<ol style="list-style-type: none"><li>1 any Related Body Corporate of the Company;</li><li>2 the trustee from time to time of The Minderoo Foundation Trust (ABN 24 819 440 618) which, at the time of this deed poll, is Minderoo Foundation Limited (ACN 651 422 141); and</li><li>3 the trustee from time to time of The Peepingee Trust (ABN 44 994 119 389) which, at the time of this deed poll, is Tattarang Pty Ltd (ACN 055 961 361).</li></ol>
<b>Confidential Information</b>	<p>all information (in any form):</p> <ol style="list-style-type: none"><li>1 disclosed by or on behalf of the Company or a Company Person to the Recipient or a Recipient Associate; or</li><li>2 acquired by the Recipient or a Recipient Associate from the Company or a Company Person,</li></ol> <p>whether before or after the date of this deed poll and whether directly or indirectly:</p> <ol style="list-style-type: none"><li>3 which relates to the Project or the procurement process for the Project (including any expression of interest, request for proposal or request for tender documents or processes in connection with the Project);</li><li>4 which relates to any past, existing or future business, operations, plans, finances, personnel, counterparties or customers of the Company or a Company Person; or</li><li>5 which is expressly provided or made available on a confidential basis or could reasonably be expected to have been provided or made available on a confidential basis,</li></ol> <p>but excluding information which is:</p> <ol style="list-style-type: none"><li>3 in the public domain, other than due to a breach of confidentiality; or</li><li>4 lawfully obtained by the Recipient or a Recipient Associate from a different source in circumstances which do not impose a duty of confidence.</li></ol>
<b>Project</b>	the proposed Spicers Creek Wind Farm, north east of Wellington, within the Central-West Orana Renewable Energy Zone

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Term	Meaning
<b>Recipient Associate</b>	<ol style="list-style-type: none"> <li>1 any Related Body Corporate of the Recipient;</li> <li>2 any contractor, consultant or adviser of the Recipient or a person referred to in paragraph 1; and</li> <li>3 any officer, employee or agent of the Recipient or a person referred to in paragraph 1 or 2.</li> </ol>
<b>Related Body Corporate</b>	the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).

## 1.2 Interpretation

In this deed poll, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this deed poll;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed poll have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;
- (f) unless otherwise expressly set out, a reference to a clause, section, party, attachment, exhibit or schedule is a reference to a clause of, section of, and a party, attachment, exhibit and schedule to, this deed poll and a reference to this deed poll includes any attachment, part, exhibit and schedule;
- (g) a reference to a document includes all amendments, supplements, replacements or novations to or of that document;
- (h) a reference to a party to a document includes that party's successors and permitted assigns;
- (i) specifying anything in this deed poll after the words 'include' or 'for example' or similar expressions does not limit what else is included; and
- (j) no provision of this deed poll will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed poll or that provision.

## 2 Confidentiality

- (a) The Recipient acknowledges that the Confidential Information is confidential to the Company and the Company Persons.
- (b) The Recipient:

- (1) subject to clause 3, must keep the Confidential Information strictly confidential and not directly or indirectly disclose, or cause or permit the disclosure of, the Confidential Information (or any part of it) to any person.
- (2) must not use the Confidential Information for any purpose other than the Permitted Purpose;
- (3) must keep the Confidential Information secure and protected from any use, disclosure or access which is not permitted by this deed poll;
- (4) must immediately notify the Company if it suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of the Confidential Information; and
- (5) must, at its own expense, do anything reasonably required by the Company to prevent or stop the suspected or actual unauthorised use, storage, copying or disclosure of the Confidential Information or breach of this deed poll, whether by court proceedings or otherwise.

### 3 Permitted use and disclosure

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- (a) The Recipient may disclose Confidential Information:
  - (1) to the Recipient Associates to the extent necessary for the Permitted Purpose;
  - (2) with the Company's prior written consent (which may be granted on any conditions that the Company, in its absolute discretion, considers appropriate); or
  - (3) to the extent required to comply with law or the requirements of any recognised stock exchange.
- (b) Where the Recipient is disclosing Confidential Information under clause 3(a)(1), the Recipient must:
  - (1) before disclosing the Confidential Information, ensure that the relevant Recipient Associate knows that the Confidential Information is confidential to the Company and the Company Persons and is aware of the Recipient's obligations under this deed poll;
  - (2) ensure that the relevant Recipient Associate complies with the Recipient's obligations under this deed poll as if it were the Recipient; and
  - (3) if requested by the Company, ensure that the Recipient Associate promptly executes and delivers to the Company a deed poll on terms no less onerous than this deed poll.
- (c) Where the Recipient is disclosing Confidential Information under clause 3(a)(3), the Recipient must:
  - (1) if reasonably possible before disclosing the Confidential Information, give the Company prior notice of the disclosure and consult with Company regarding the form and content of the disclosure; and
  - (2) ensure that the Recipient only discloses the minimum Confidential Information required to comply with the relevant law or requirement of the recognised stock exchange.

## 4 Return and destruction of Confidential Information

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- (a) Subject to clause 4(b), the Recipient must, if requested in writing by the Company at any time:
  - (1) promptly return to the Company, or destroy or delete, as the Company directs all documents and records (in any form) in the possession or control of the Recipient or a Recipient Associate containing Confidential Information; and
  - (2) give the Company written confirmation that the Recipient has complied with clause 4(a)(1).
- (b) The Recipient and the Recipient Associates may retain a copy of the documents and records referred to in clause 4(a)(1) for so long as is required by law or good corporate governance, after which time the copies must also be returned, destroyed or deleted as required by clause 4(a)(1).

## 5 Acknowledgments

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- (a) The Recipient acknowledges that:
  - (1) as between the Recipient and the Company, the Confidential information remains the property of the Company and this deed poll does not convey any proprietary or other interest in the Confidential Information to the Recipient or any Recipient Associate;
  - (2) disclosure of Confidential Information in breach of this deed poll could cause considerable commercial and financial detriment to the Company and the Company Persons; and
  - (3) damages may not be an adequate remedy for any breach of its obligations under this deed poll and that the Company may seek specific performance or injunctive relief to prevent the disclosure of Confidential Information in breach of this deed poll.
- (b) The Company makes no representations or warranties, express or implied, as to the quality, accuracy and completeness of the Confidential Information.
- (c) To the maximum extent permitted by law, the Company and the Company Persons have no liability for any loss or damage suffered by any person who uses or relies on the Confidential Information disclosed.
- (d) The Recipient indemnifies the Company and the Company Persons from and against any claim, action, damage, loss, cost, expense or liability (howsoever arising) brought against, suffered or incurred by the Company or the Company Persons arising out of or in connection with a breach of this deed poll by the Recipient.

## 6 Duration

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- (a) Subject to clause 6(b), the Recipient's obligations under clauses 2 and 3 continue for a period of 5 years from the date of this deed poll.

- (b) This deed poll will be superseded by any further confidentiality agreement entered into between the Company and the Recipient in respect of the Project.

## 7 General

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- (a) This deed poll is governed by the laws of New South Wales. The Recipient submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, and courts of appeal from them, in respect of any proceedings arising out of or in connection with this deed poll.
- (b) Waiver of any right, power, authority, discretion or remedy arising on a breach of this deed poll must be in writing and signed by the party granting the waiver.
- (c) A failure or delay in the exercise or partial exercise of a right, power, authority, discretion or remedy created or arising on a breach of this deed poll does not result in a waiver of that right, power, authority, discretion or remedy.
- (d) This deed poll must not be revoked or otherwise modified without the prior written consent of the Company.
- (e) The Recipient's obligations and liabilities under this deed poll are in addition to, and do not replace or limit, its other obligations and liabilities at law or in equity.
- (f) This deed poll benefits the Company and each the Company Persons. The Company on behalf of, or the relevant Company Persons directly, may enforce the rights of the Company Persons under this deed poll against the Recipient.

# Signing page

Executed as a deed poll

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Signed, sealed and delivered for

by its authorised individual on its behalf  
pursuant to section 126 of the *Corporations Act 2001* (Cth)

*sign here* ► \_\_\_\_\_  
Authorised individual

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