

PLANNING AND ENVIRONMENT ACT 1987

PLANNING SCHEME MOYNE

PERMIT NO. 2015/23858/A

ENDORSED PLAN

SHEET 1 OF 69

SIGNED S. Menzies FOR

MINISTER FOR PLANNING

DATE: 8 / 1 / 19

ENDORSED TO COMPLY  
WITH CONDITION

55b

OF PLANNING PERMIT

2015/23858/A

# DUNDONNELL WIND FARM

## *Brolga Compensation Plan*

*Planning Permit No. 2015/23858*

*(Condition 55b)*

December 2018



## Dundonnell Wind Farm

Document Title: Brolga Compensation Plan  
Revision: Final  
Date: 12 December 2018

**APPROVED FOR THE  
MINISTER FOR PLANNING**

SHEET 2 OF 69

### Document History and Status

Revision	Date	Description	By	Review	Approved
0	17/08/2018	First draft for early DELWP review	C. Layton (Tilt)	-	-
1	25/09/2018	Second draft for DELWP review	C. Layton (Tilt)	I. Kulik, B. Lane (BL&A)	-
2	16/10/2018	Final report	I. Kulik (BL&A)	C. Righetti (Tilt)	-
3	23/10/2018	Minor changes based on DELWP's comments	I. Kulik (BL&A)	C. Righetti (Tilt)	-
4	5/11/2018	Final for lodgement with DELWP	C. Layton (Tilt)	-	C. Layton (Tilt)
5	27/11/2018	Edits requested by DELWP - Planning prior to endorsement	C. Layton (Tilt)	-	C. Layton (Tilt)
6	12/12/2018	Edits requested by DELWP – Environment prior to endorsement	C. Layton (Tilt)	-	C. Layton (Tilt)

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## 1.0 Introduction

This Brolga Compensation Plan (the Plan) has been prepared for the Dundonnell Wind Farm (DDWF) project in accordance with Condition 55b of Planning Permit No. 2015/23858 (the Permit).

The intent of the Plan is to help achieve the state government's policy<sup>1</sup> of avoiding cumulative impacts from the wind energy industry on the Victorian Brolga (*Antigone rubicunda*) population by ensuring that each wind farm achieves '**zero net impact**'.

This Plan sets out the way in which the impacts of the DDWF will be offset by replacing the estimated number of individuals lost to the population over the life of the project.

The objective of the Plan is:

*To replace 19 adult birds estimated to be lost over 25 years to the Victorian population of the Brolga as a consequence of the Dundonnell Wind Farm, through the restoration of lost breeding habitat to support additional breeding pairs to produce 24 additional fledged young that survive to become 19 adults.*

The objective will be achieved through restoring a number of wetlands to attract regular, successful breeding by the Brolga, to produce additional young birds to replace those lost.

The Plan provides the framework to achieve the objective of this Plan including:

- Providing the context of the Plan, including details of the Permit requirements, the process and assessments which informed those requirements, as well the key considerations relating to the Victorian Brolga population that were considered in the development of this Plan. (Section 2.0)
- Outlining the framework for the Plan, including the aim, objectives and principles for implementation, restoration, management and protection (including wetland selection and management) and monitoring, evaluation and reporting. (Section 3.0)
- Definition of the roles and responsibilities and implementation schedule of the Plan, including the role of DELWP in the oversight of the Plan. (Section 4.0)
- Outlines the framework for monitoring, evaluation of the wetlands and overarching Plan performance, and reporting requirements, including public reporting. (Section 5.0)

The Dundonnell Wind Farm Pty Ltd (the Proponent) has entered into an agreement with a not-for-profit environmental organisation to implement the Plan (see Section 3.2.1 and 4.1). Implementation will be overseen by DELWP.

This plan has been prepared by Tilt Renewables Australia Pty Ltd (on behalf of Dundonnell Wind Farm Pty Ltd) based on technical advice and analysis provided by Brett Lane and Associates Pty Ltd and Symbolix Pty Ltd.

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<sup>1</sup> *Interim guidelines for the assessment, avoidance, mitigation and offsetting of the impacts of wind farms on the Victorian Brolga population* (DSE 2012)

## 2.0 Background

### 2.1 Dundonnell Wind Farm Project

The DDWF project is located in western Victoria, approximately 23km north east of Mortlake, approximately 225km west of Melbourne and entirely within the Shire of Moyné.

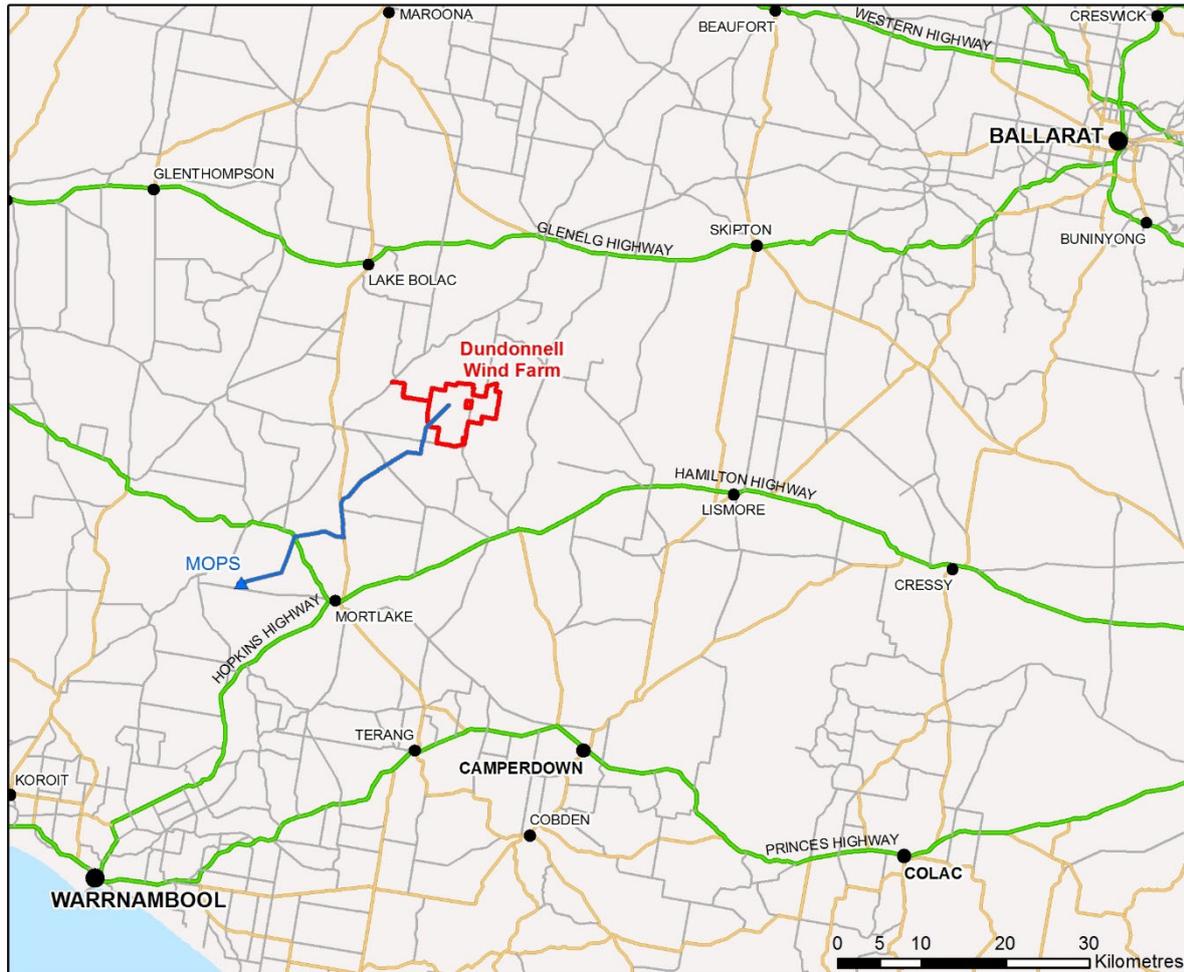


Figure 1: DDWF Project Location

The wind energy facility site is approximately 4500 hectares, across 11 farming properties, which will host 80 wind turbines (V150 – 4.2MW) and associated infrastructure. The turbines will have a blade tip height of 189m above ground level, a rotor diameter of 150m and a minimum blade clearance of 39m.

The wind energy facility site is situated in the range of the Brolga, a species of crane considered to be at risk of collision with wind turbines, within a regional area where the specific sub-population present (i.e. western Victoria and the South East of South Australia) has experienced decline as a result of habitat modification and loss, especially wetland drainage and development.

### 2.2 Planning Permit Requirements

The Permit was issued on 30 June 2016 for the: *“Use and development of land for a Wind Energy Facility and associated buildings and works, business identification signage, removal of native vegetation and alteration of access to a road in a Road Zone – Category 1.”*

The Permit was issued following consideration through an Environment Effect Statement (EES) process,



including a public comment period and an inquiry. EES is the accredited assessment process for the *Environment Protection and Biodiversity Conservation Act 1999* under the bilateral agreement between the Commonwealth and the State of Victoria. The Commonwealth approved the project (EPBC 2012/6557) on 28 August 2016. A key focus of this approval process was the potential impact on Brolga.

In the second half of 2017, the Proponent requested written consent from the Minister for Planning to vary the maximum tip height of wind turbines to be installed at the DDWF (pursuant to Condition 6 of the Permit) from 165m to 189m.

As part of the application, an assessment on the potential change in impact on birds and bats was undertaken (BLA, 2017)<sup>2</sup>. This included updated collision risk modelling undertaken by Symbolix (2017) to inform the potential change in impact to Brolga.

The collision risk modelling was undertaken based on 88 turbines (with a worst case 166m rotor diameter) which found that the calculated average collision risk for the project at a 95% avoidance rate is 0.49 Brolga per year. This would result in an average of 12.25 Brolga colliding with turbines over 25 years. Since no half birds can be hit, the Poisson statistical model was run by Symbolix to calculate at a 95% confidence level over 25 years the likelihood of 0, 1, 2, 3, etc. Brolga colliding with a turbine each year over the life of the wind farm. This resulted in a range of expected number of Brolga collision over the life of the wind farm of between 7 and 18 Brolga.

The inclusion of the potential impact of 1 bird loss (based on an average collision rate of 0.04) as a result of the transmission line (as determined in the original EES assessment, BLA, 2014), results in a total modelled estimate of maximum 19 birds lost over the 25-year life of the project.

Appendix A includes the collision risk modelling results tabulated, the result of running the Poisson statistical model with the input of 0.53 birds affected on average per year (from the wind farm and transmission line), but assuming that only a whole bird can be hit (0,1,2,3 etc.). It calculates the likelihood of 0-19 birds hit cumulatively in the first year, in the second year, in the third year, etc. The green area covers the most likely scenario, whereas the yellow area are less likely scenarios. Appendix A has been used as the basis for defining the Plan performance targets (see Section 5.2).

This table is an accepted method for calculating triggers for adaptive management actions and in Australia is being used in a similar manner in relation to contingency actions for eagle collisions with wind turbines in Tasmania.

The Minister for Planning provided written consent on 28 December 2017. The written consent requested that when the Brolga Compensation Plan is prepared, that it uses the most current impact assessment information available. The most current impact assessment information is considered to be the 2017 Symbolix assessment<sup>3</sup>.

Table 1 below sets out the requirements of Condition 55b of the Permit and how this Plan addresses each requirement.

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<sup>2</sup> The assessment used the maximum blade rotor diameter allowed by the varied turbine specifications of 166 m in diameter.

<sup>3</sup> It is noted that the final turbine layout for the DDWF contains less turbines and have a smaller rotor diameter (with a greater blade clearance) than what was assessed in the 2017 modelling. It is therefore considered that the results of the 2017 assessment are conservative.

**Table 1: Condition 55b**

Condition Requirement	How this requirement is addressed
<p>A Brolga Compensation Plan must be prepared in consultation with DELWP – Environment Portfolio to the satisfaction of the responsible authority. When approved, the plan will be endorsed by the responsible authority will then form a part of the permit. On endorsement of the Brolga compensation plan must be placed on the project website for a minimum period of five years. The plan must include:</p>	<p>This Plan has been prepared in consultation with DELWP – Environment Portfolio. The Plan also identifies an ongoing role of DELWP in the oversight of the Plan.</p> <p>Once endorsed the Plan will be placed on the project website for a minimum of 5 years. Public reporting against the performance measures identified in this Plan will be undertaken.</p>
<p>i. Accountabilities for plan implementation and monitoring;</p>	<p>Section 3.0 of the Plan sets out the framework for the Plan, including the aim, objectives and principles for implementation, restoration, management and protection and monitoring, evaluation and reporting (including roles and responsibilities).</p> <p>Additionally, Section 4.0 provide further definitions of the roles and responsibilities and implementation schedule of the Plan, including DELWP hold points.</p> <p>Section 5.0 outlines the framework for monitoring, evaluation of the wetlands and overarching Plan performance, and reporting requirements, including roles and responsibilities.</p>
<p>ii. Principles for the selection of historical Brolga breeding wetlands that will be enhanced;</p>	<p>Section 3.2 sets out how the Proponent’s Delivery Partner will independently identify wetlands that are considered suitable for wetland restoration and provide the information necessary for DELWP to determine if the identified wetlands meet the principles set out in this Plan.</p> <p>The principles set out that the location of the Brolga breeding wetlands that will be enhanced must</p> <ul style="list-style-type: none"> <li>- be situated within the current confirmed range for Brolga breeding of the sub-population that occurs in western Victoria and the South East of South Australia (see Figure 2).</li> <li>- have supported past breeding records of the Brolga but were no longer suitable for Brolga breeding as a consequence of permanent drainage. If, after a significant attempt, the Delivery Partner is unable to identify adequate numbers of known historical breeding wetlands for restoration, then DELWP will consider wetlands which: <ul style="list-style-type: none"> <li>o are adjacent or nearby to wetlands where Brolga are still regularly sighted; and/or</li> <li>o have supported past (often unsuccessful) breeding by the Brolga but through management could support more regular and/or improved breeding outcomes.</li> <li>o These wetlands will need to be assessed on their suitability to support the entire offsetting approach, including demonstrating that successful breeding at these wetlands will be able to be attributed to the wetland restoration and management as a result of this Plan.</li> </ul> </li> </ul>
<p>iii. Evidence of agreements to participate in the breeding site enhancement project for its duration for the life of the wind energy facility;</p>	<p>The Proponent must enter into an agreement with a not-for-profit environmental organisation to implement the Plan (see Section 3.2.1 and 4.1).</p> <p>The Proponent has entered into an agreement with a Delivery Partner who is a charitable not-for-profit organisation that meets the above requirements and has access to the necessary skills and resources to implement the Plan. Evidence of this agreement is contained in Appendix B.</p> <p>The agreement between the qualifying Delivery Partner and the Proponent must be prepared to the satisfaction of DELWP. Evidence of the executed agreement must be provided to DELWP (separate to this Plan) prior to the commencement of works under the Permit in accordance with the implementation program set out in Section 4.2.</p>

Condition Requirement	How this requirement is addressed
	The wetlands selected for restoration must be secured using an on-title agreement (including reference to the wetland management Plan (s), to the satisfaction of DELWP (e.g. a Section 69 <i>Conservation, Forest and Land Act 1987</i> agreement). Evidence of on title security to be provided as per the implementation program set out in Section 4.2.
iv. Methods of enhancement appropriate to each enhancement site such as restoration of the natural flooding regime and controlled grazing or stock removal;	Section 3.0 of the Plan sets out the framework for the Plan, including the restoration, management and protection (including wetland management). Once the wetlands are selected by the Delivery Partner and endorsed by DELWP, wetland management plans will be prepared and implemented in accordance with the conditions set out in this Plan.  The wetland management plan(s) will be wetland specific, including details of the restoration works and management in accordance with the principles set out in this Plan, however appropriate to each individual wetland.
v. where appropriate, a program of appropriate fox baiting leading up to each breeding season in areas subject to the plan;	Section 3.0 of the Plan sets out the framework for the Plan, including the restoration, management and protection (including fox control).  Whilst studies suggest that the successful breeding of Brolgas in agricultural landscapes relied upon adequate predator control, it is also known that fox control activities may lead to significant disturbance of breeding Brolga. As such, this Plan proposes a reactive approach to fox control, whereby if the wetland monitoring and reporting suggest that the habitat is restored with breeding attempts but where poor fledging rates can be attributed to fox predation, then suitable options for a sensitive program of fox control will be assessed and developed.
vi. Five-yearly performance targets for each site and the program as a whole, consistent with the outcomes of the Population Viability Assessment included in the Dundonnell Wind Farm EES (Trust Power 2015), the zero net impact objective (to be amended every five years depending on outcomes), and the data and recommendations in the Brolga monitoring plan referred to in condition 55(a); and	Section 5.0 outlines the framework for monitoring, evaluation of the wetlands and overarching Plan performance (including 5 yearly targets).  This Plan is responsive to the findings of the Brolga Monitoring Plan (endorsed Condition 52 and Condition 55a of the Permit) as part of the 5-yearly reporting and evaluation cycle, as described in Section 5.2. The relationship between each Plan provides for adaptive management if the impact on the Brolga population is found to be greater than the modelled estimate.  The Minister for Planning provided written consent on 28 December 2017 to increase the maximum tip height of turbines for the DDWF. The written consent requested that when the Brolga Compensation Plan is prepared, that it uses the most current impact assessment information available. The most current impact assessment information is considered to be the 2017 Symbolix assessment (see Section 2.2).
vii. Monitoring and reporting requirements, including public reporting after 1 year, 2 years, 5 years, 10 years, 15 years, 20 years and 25 years from commencement of plan implementation approval, on whether the number of sites being managed and the way management is proceeding are expected to meet the 25-year zero net impact objective.	Section 5.0 outlines the framework for monitoring, evaluation of the wetlands and overarching Plan performance, and reporting requirements.  This includes schedule of reporting (Section 5.3), which sets out the distribution of reporting, reporting which requires a DELWP review process, and the years which the final reporting will be made public (at the end of year 1, 2, 3, 5, 10, 15, 20, 25 from commencement of Plan implementation).

Condition 55a of the Permit requires a Brolga Monitoring Plan to be prepared for the project. This requirement has been addressed through the overarching Bat and Avifauna Management Plan for the DDWF, which is endorsed under Condition 52 and Condition 55a of the Permit.

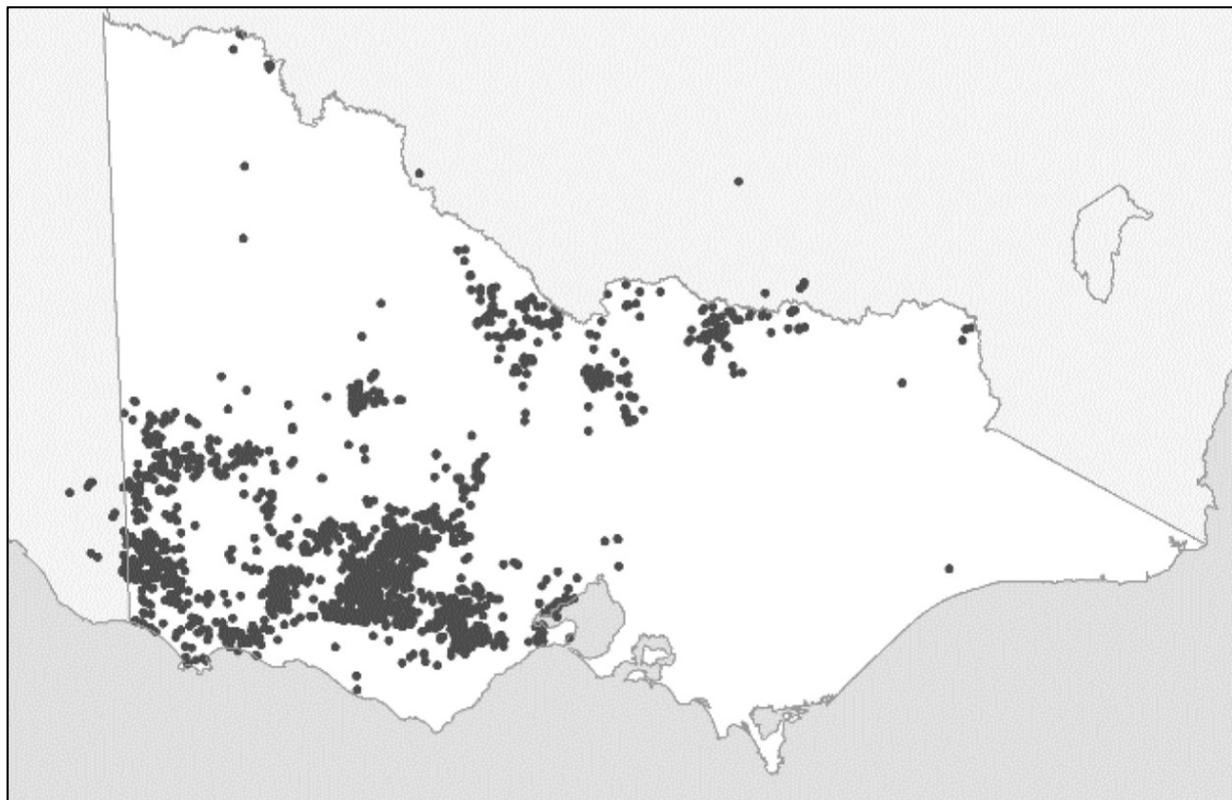
This Plan is responsive to the findings of the Brolga Monitoring Plan as part of the 5-yearly reporting and evaluation cycle, as described in Section 5.2. The relationship between each plan provides for adaptive management if the impact on the Brolga population is found to be greater than the modelled estimate.

### 2.3 Victorian Brolga Population

In 2012, the state government issued the *Interim guidelines for the assessment, avoidance, mitigation and offsetting of the impacts of wind farms on the Victorian Brolga population* (DSE 2012). This sets out an approach by which each project avoids and mitigates impacts on the ‘south-eastern Australian’ (Victorian) population of the Brolga and provides for offsetting of residual impacts.

The Brolga is one of two indigenous crane species in Australia, and are highly dependent on suitable wetland habitats throughout their entire lifecycle (including breeding, roosting and foraging).

The distribution of the Victorian population of the Brolga is now largely restricted to South-West Victoria and the lower South-East South Australia (Figure 2). It is geographically isolated from the larger populations of northern Australia, with intervening habitats drained for agriculture or degraded due to river regulation. Wetland drainage has also drastically reduced habitat availability and reliability within the species current range.



**Figure 2: Victorian Brolga Population Distribution** (based on VBA Data)

In 2010, a long drought broke in south western Victoria, filling a large number of seasonal wetlands that had been dry for many years. In the subsequent flocking season surveys (2012 and 2013), a higher than usual percentage of young birds was found in non-breeding flocks. This indicated that expanding the availability of breeding habitat will directly result in improved breeding outcomes by Brolgas (i.e. the production of more young and increased recruitment). This increase occurred without any widespread targeted management to enhance the chances of successful Brolga breeding.

It is known that pro-actively managed wetlands also regularly produce young Brolga that successfully fledge (Herring, 2005). It is anticipated that the targeted wetland management that the Plan facilitates will permanently enhance and expand breeding opportunities for the Brolga. By removing the influence of artificial drainage from key areas with reliable flows/rainfall (i.e. those areas where drainage has greatly reduced annual depth, duration and reliability of inundation) it is possible to mimic what occurs when habitat availability increases naturally after above average rainfall events. Hence, restoration activities will allow the landscape to behave like it did prior to comprehensive artificial drainage.

### 2.3.1 Population Viability

McCarthy (2016) provided a Population Viability Assessment for the Victorian Brolga population that is used to assess the population consequences of DDWF impacts for the Victorian Brolga population. This study discussed the mortality rate for Brolgas and derived a survival rate of 0.976, or a mortality rate of approximately 2.5% per year.

This is considered a comparatively high survival rate for a crane species the weight of the Brolga, which was expected to have a slightly lower survival rate of about 0.91 with a 95% credible interval of [0.77, 0.96], or a mortality rate of between 4 and 23%.

**A conservative 23% mortality rate applied to fledged birds before they become adults has been used for the purpose of determining the objective this Plan – a total of 24 fledged young<sup>4</sup> to be produced over the 25-year life of the project.**

Birdlife Australia Nest Record Scheme data, summarised in Marchant and Higgins (1993), indicates a fledging success rate of 29% (i.e. 29% of breeding attempts [assuming two eggs per attempt] produced a fledgling).

Myers (2001) found a fledging success of 20% (i.e. 20% of 42 breeding attempts) during a drier than average year with more limited wetland habitat availability.

**This Plan adopts the assumption of an average unmanaged fledgling success rate of 25% for the purpose of determining the number of wetlands to be restored to become breeding sites.** This means with 2 eggs laid on average per nest, and with a nest present from year 4 to 6 and every second year thereafter (12 years with a nest present), six chicks will successfully fledge per wetland over 25 years. This is considered appropriate noting that the wetlands will be selected and pro-actively managed on the basis of their suitability to support successful Brolga breeding and, therefore, may achieve a higher breeding success. On the basis of these assumptions **this Plan proposes the restoration of four wetlands..**

This Plan (Section 6.0) requires monitoring and evaluation of the success of the restoration of each wetland and the overall plan, including evaluation against the results of the Brolga Monitoring Plan (part of the endorsed DDWF Bat and Avifauna Management Plan). This process will address the Plan's progress in achieving a zero net impact outcome and make recommendations on an adjustment to the aim of the Plan (including the number of restored wetlands required), if required.

### 2.3.2 Habitat

Herring (2000) found that native vegetation cover was an important determinant of Brolga breeding success. Sheldon (2005) found that the average aquatic plant cover in wetlands used by breeding Brolga in south western Victoria was 82%. These plants are generally less than one metre high and taller plants such as reeds (*Phragmites australis*; *Typha spp.*) are not suitable and generally occur in wetlands that are too deep for Brolga. Treed wetlands are generally not suited to Brolga breeding unless tree cover is less than 10% given breeding Brolga require a wide view of their wetland habitat (and of approaching predators) (Herring 2007).

Specifically, extensive, dense stands of rushes and sedges provide:

- A substrate and shelter for aquatic biota that form part of the Brolga diet;
- A source of starchy tuber (e.g. Spike Rush) that Brolga feed on;
- Material with which the Brolga can build its nest, which consists of a raised platform of aquatic vegetation sourced from the area of the wetland around the nest; and
- Shelter and cover for newly-hatched chicks to hide from birds of prey or ground-based predators, such as foxes.

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<sup>4</sup> Maximum of 19 birds lost over the 25-year life of the project x 23% mortality rate = 24 (23.37) birds.



The Brolga breeds in shallow wetlands, in water depths generally of about 0.3 metres (Sheldon 2005; Herring 2007). The Brolga breeding cycle involves a 30-day incubation period followed by a 95-day chick raising period. Therefore, an individual wetland either needs to remain suitable for Brolga for at least 4 to 5 months (130 days), or be situated in a complex of wetlands where those conditions occur nearby, to support a successful breeding attempt. Where possible, the wetland (or at least some wetlands in the complex) must remain wet for the whole Brolga breeding season (i.e. July to December).

A Brolga will use a larger, deeper wetland, building its nest in emergent aquatic vegetation in shallow water of the ephemeral zone around the wetland, then continue to use wet habitat as the water level drops and the littoral zone moves inwards, following the reduced area of inundation.

Whilst studies (e.g. Herring 2000) suggest that the successful breeding of Brolgas in agricultural landscapes relied upon adequate predator control, it is also known that fox control activities may lead to significant disturbance of breeding Brolga. As such, this Plan proposes a reactive approach to fox control, whereby if the wetland monitoring and reporting suggest that the habitat is restored with breeding attempts but where poor fledging rates can be attributed to fox predation, then suitable options for a sensitive program of fox control will be assessed and developed.

The Brolga, in common with many Australian waterbirds is mobile and opportunistic. Past studies indicated that a Brolga pair can use different breeding sites in close proximity within or between years, depending on the suitability of the wetlands, which can vary seasonally and annually due to rainfall and land use changes.

## 3.0 Plan Framework

### 3.1 Aim and Objective

The aim of the Plan is to ensure that the DDWF has a zero-net impact on the Victorian Brolga population, in accordance with the intent of Condition 55b of the Permit, and consistent with the state government's policy of avoiding cumulative impacts from the wind energy industry on the Victorian Brolga.

In order to achieve this, the objective of the Plan is to:

*To replace 19 adult birds estimated to be lost over 25 years to the Victorian population of the Brolga as a consequence of the Dundonnell Wind Farm, through the restoration of lost breeding habitat to support additional breeding pairs to produce 24 additional fledged young that survive to become 19 adults.*

The objective is based on the results of collision risk modelling (Symbolix, 2017), discussed in Section 2.2, which estimates that the DDWF project will result in the potential impact of 19 birds lost over the 25-year life of the project. Based on a 23% mortality rate, discussed in Section 2.3, 24 additional fledged young will be required to compensate for the 19 adult birds.

This Plan involves the restoration of four wetlands which will be capable of supporting four breeding pairs of Brolga to successfully fledge young.

### 3.2 Principles

The following principles have been developed to ensure that the Plan results in the restoration, management and protection of wetlands with the greatest likelihood of successfully attracting Brolga to breed and recruit, under active conservation management.

The overarching principles of the Plan are:

1. *Implementation* – To ensure the integrity of the offset and the successful implementation of the Plan.
2. *Restoration, Management and Protection* – To ensure that the Plan results in the restoration, management and protection of wetlands with the greatest likelihood of successfully attracting Brolga to breed and recruit, under active conservation management.
3. *Monitoring, Evaluation and Reporting* – To ensure high quality, independent monitoring occurs at the restored wetlands, to determine if the works deliver the intended results at set intervals and ultimately meet the 25-year zero net impact objective.

This plan will cease when the project is decommissioned (end of Year 25) if the program has been implemented to the satisfaction of DELWP and the modelled impact or exceeded project mortality impact has been achieved.

#### 3.2.1 Implementation

Implementation of this Plan will ultimately be the responsibility of the Proponent. However, in recognition that public interest and scrutiny in the Brolga is high and given that wetland ecology, surveys, restoration and management is not the core business of the Proponent, the following steps will be undertaken:

- The Proponent will engage and adequately fund an external delivery partner (Delivery Partner) to implement the Plan on its behalf, to the satisfaction of DELWP.
- That Delivery Partner:
  - o must be a not-for-profit, charitable entity, whose primary purpose is the benefit the natural environment;
  - o will be responsible for ensuring satisfactory completion of activities defined as their responsibility within this Plan; and



- will liaise with and report directly to DELWP (concurrently with the Proponent) to ensure the independence of the process for wetland selection, monitoring protocols and reporting.

Further details on the roles and responsibilities for implementing the Plan are provided in Section 4.1.

This method for implementation of the Plan is proposed:

- to address community perception and/or concern about the independence of for profit consultants who are ordinarily engaged directly by (and accountable to) Proponents of development in Victoria;
- to ensure that the Proponent is at arm's-length from the work that is being undertaken on its behalf to offset this development;
- to ensure that the very best wetlands, ecological experts and land managers are available to make their wetlands available for restoration work, recognising that this might not be the case if the process is being run and hosted by the Proponent;
- with the intention of attracting additional investment in wetland restoration activities to benefit the Brolga, in the hope of surpassing the minimum threshold of outcomes required under the Permit; and,
- to demonstrate the strong commitment of the Proponent to meeting our environmental obligations in a transparent way that builds trust with the community and government agencies.

The agreement between the qualifying Delivery Partner and the Proponent must be prepared to the satisfaction of DELWP. Evidence of the executed agreement must be provided to DELWP prior to the commencement of works under the Permit.

The Proponent has entered into an agreement with a Delivery Partner who is a charitable not-for-profit organisation that meets the above requirements and has access to the necessary skills and resources to implement the Plan. Evidence of this agreement is contained in Appendix B.

**3.2.2 Restoration, Management and Protection**

**Wetland Selection**

The Proponent's Delivery Partner will independently identify wetlands that are considered suitable for wetland restoration and provide the information necessary for DELWP to determine if the identified wetlands meet the principles set out in this Plan.

The Delivery Partner will use the principles set out in Table 2 to identify, prioritise and propose drained wetland wetlands for Brolga habitat restoration.

Wetlands are to be considered a priority for restoration if they:

- are owned by a party willing (including if provided with an incentive payment) to participate in the wetland restoration program.
- are adjacent to Protected Areas on public or private land.
- are part of a larger wetland complex which consist of multiple wetlands of different depths and character.
- have landowner commitment to be actively managed for conservation in perpetuity after restoration and beyond the life of the wind farm, over and above basic on-title protection.

*Table 2: Wetland Selection Principles*

Principle	
Historical Brolga breeding site or area	<ul style="list-style-type: none"> <li>- The wetlands must be situated within the current confirmed range for Brolga breeding of the sub-population that occurs in western Victoria and the South East of South Australia (see Figure 2).</li> <li>- The wetlands must have supported past breeding records of the Brolga but were no longer suitable for Brolga breeding as a consequence of permanent drainage. If, after a significant</li> </ul>

Principle	
	<p>attempt, the Delivery Partner is unable to identify adequate numbers of known historical breeding wetlands for restoration, then DELWP will consider wetlands which:</p> <ul style="list-style-type: none"> <li>○ are adjacent or nearby to wetlands where Brolga are still regularly sighted; and/or</li> <li>○ have supported past (often unsuccessful) breeding by the Brolga but through management could support more regular and/or improved breeding outcomes.</li> </ul> <p>These wetlands will need to be assessed on their suitability to support the entire offsetting approach, including demonstrating that successful breeding at these wetlands will be able to be attributed to the wetland restoration and management as a result of this Plan.</p>
Suitable vegetation habitat, once restored	<ul style="list-style-type: none"> <li>- The wetlands belonged to one or a number of the following wetland categories (DELWP classification): <ul style="list-style-type: none"> <li>○ permanent freshwater marsh;</li> <li>○ permanent freshwater swamp;</li> <li>○ temporary freshwater marsh; and/or</li> <li>○ temporary freshwater swamp and temporary freshwater lake.</li> </ul> </li> <li>- The wetlands are likely to recover to support a high cover of emergent aquatic macrophytes (<i>excluding Phragmites australis and Typha spp.</i>), once restored, based on the presence of such species in or near the existing wetland basin.</li> </ul>
Suitable inundation, once restored, including extent, depth and timing	<ul style="list-style-type: none"> <li>- The wetlands, once rehabilitated, must have inundation: <ul style="list-style-type: none"> <li>○ Minimum depth 30 centimeters and maximum depth 50 centimeters for a minimum of 150 days in late winter and spring</li> <li>○ Flooding across at least half the wetland basin (depending on wetland size, basin shape and fill level).</li> <li>○ A summer-autumn dry phase in the majority of years</li> <li>○ Seasonal flooding in at least three out of four years</li> </ul> </li> <li>- A hydrological (including climate considerations) report(s) must be prepared to determine the catchment yield and the future fill extent of the wetlands.</li> </ul>
Appropriate wetland size	<ul style="list-style-type: none"> <li>- The final rehabilitated wetlands must be suitable size to support Brolga breeding<sup>5</sup> (e.g. a minimum area of 2.5ha, ideally 10ha or larger)</li> </ul>
Appropriate landscape context	<ul style="list-style-type: none"> <li>- The wetlands is (or will be) separated from potentially conflicting land uses, e.g. shooting ranges, blasting sites, wind farms, residences / dwellings.</li> <li>- The wetlands are located within a landscape context which includes other wetland features to ensure a breeding pair of Brolga has access to feeding habitat.</li> <li>- The wetlands must be a minimum distance of 3.2km from known Brolga breeding sites for 3.2km from another wetland selected for restoration under this Plan, to allow for breeding season home ranges<sup>6</sup>, unless otherwise agreed in writing by DELWP – Environment Portfolio.</li> </ul>
Landowner is willing to participate	<ul style="list-style-type: none"> <li>- The landowner(s) is prepared to forego any incompatible productive use of the wetland and surrounds so it can be restored and maintained for the ecological purpose of a functioning wetland suitable for successful Brolga breeding (through a Section 69 <i>Conservation, Forest and Land Act 1987</i> agreement, or similar agreement to the satisfaction of DELWP).</li> </ul>
Enhancement works must not have detrimental impacts to other wetland values ( <i>include onsite, upstream and downstream values</i> )	<ul style="list-style-type: none"> <li>- The wetlands must have clear evidence of artificial drainage and the ability to reverse that artificial drainage without negatively impacting onsite, upstream and downstream values</li> <li>- Water availability at the wetland has not been compromised as a result of upstream catchment and/or groundwater changes since artificial drainage occurred.</li> <li>- To assist in determining the above, an IWC assessment must be undertaken to inform understanding of wetland/s condition and values, and hydrological (including climate considerations) report developed to the satisfaction of DELWP.</li> </ul>

<sup>5</sup> Herring (2007) indicated that Brolgas breed in natural wetlands between 10 and 200 hectares in extent and in constructed wetlands significantly smaller than this (< 5 hectares).

<sup>6</sup> *Interim guidelines for the assessment, avoidance, mitigation and offsetting of the impacts of wind farms on the Victorian Brolga population* (DSE 2012)

The Delivery Partner will ensure that wetland restoration, management, protection and monitoring occurs at the selected wetlands.

The Delivery Partner will have independence and flexibility in how it chooses to engage with landowners and/or other service providers to deliver these outcomes, subject to the approval of DELWP. In order to comply with the implementation principles and to ensure both the independence of the Delivery Partner and its ability to engage with all potential participants in the program, the Proponent proposes to have no active role in this process (noting that the data from this process will be made available to the Proponent for reporting purposes). This will ensure that the best potential wetlands are available for investment by the Proponent.

### Wetland Management and On-title Security

Once the wetlands are selected by the Delivery Partner, meet the criteria for a suitable wetland site as outlined in this Plan and are accepted by DELWP, wetland management plans will be prepared and implemented in accordance with the conditions set out in this Plan.

The wetland management plans will be specific to each wetland, including details of the restoration works and management appropriate to each site. The wetland management plans must follow the general enhancement methods outlined in Table 3.

**Table 3: Enhancement Methods**

Methods	
Restoration Works	<ul style="list-style-type: none"> <li>- The restoration works will involve reversing man-made alterations to the wetland (e.g. blocking (and if necessary filling) drains and providing sills at the original, natural invert level of the wetland outfall).</li> <li>- The restoration works will use a temporary restoration measure, in the first instance, to ensure no permanent negative impact to the wetland if the restoration measures are proven not to be successful or appropriate.</li> </ul>
Revegetation	<ul style="list-style-type: none"> <li>- The aim of restoration will be to encourage the regeneration of in situ aquatic plants leading to an increase in their extent within the wetland and their cover within these areas, as well as the natural transportation of wetland seeds via the movement of waterbirds between wetlands. Experience indicates that wetland plants can thrive and cover much of the suitable habitat within a restored wetland within two to three years.</li> <li>- If an extent and cover target of 75% of the regularly inundated part of the wetland supporting sedges and rushes at 80% cover are not met (see Section 5.1) within three years, active planting of aquatic plants may be required. If monitoring of vegetation condition indicates a favourable trajectory of wetland vegetation recovery and that the target will be met within another year or so then active planting may not be required.</li> <li>- If required, active planting of aquatic plants, will need to be done by qualified and experienced wetland revegetation specialists, to the satisfaction of DELWP.</li> </ul>
Stock Control and Fencing	<ul style="list-style-type: none"> <li>- Livestock will be excluded in the first two years' management commences, to permit natural regeneration of wetland vegetation. The first-year stock is excluded the vegetation grows and sets seed. The second-year stock are excluded there is a burst of natural regeneration from seed that was produced the preceding year and vegetation becomes denser and starts to provide cover. By the third year it is expected that wetland habitat will be suitable for Brolga breeding.</li> <li>- If it is not viable for the landholders to exclude stock from the whole paddock during this time temporary fencing is to be erected around the wetlands. The type of fencing and its location will be determined in consultation with the landholder and will take into consideration the potential collision risk of Brolga and the entanglement of young flightless Brolga chicks.</li> </ul>
Fox Control	<ul style="list-style-type: none"> <li>- Fox control activities may lead to significant disturbance of breeding Brolga. As such, this Plan proposes a reactive approach to fox control, whereby if the wetland monitoring and reporting suggest that the habitat is restored however fledging's are not surviving attributed to fox predation then a program for fox control will be developed.</li> <li>- Fox control will involve an integrated approach (outside of the Brolga breeding season), in consultation with Agriculture Victoria, which will be adapted to the specific wetland circumstances, including measures such as:</li> </ul>



Methods	
	<ul style="list-style-type: none"> <li>○ Baiting (using 1080 baits)</li> <li>○ Den fumigation and ripping;</li> <li>○ Shooting;</li> <li>○ Property hygiene; and</li> <li>○ Harbour removal.</li> </ul>
On-title security	- The wetlands must be secured using an on-title agreement (including reference to the wetland management plans, to the satisfaction of DELWP (e.g. a Section 69 <i>Conservation, Forest and Land Act 1987</i> agreement)

### 3.2.3 Monitoring, Evaluation, and Reporting

Section 5.0 of this Plan provides sets out the framework for monitoring, evaluation of plan performance and reporting, including:

- Wetland Monitoring and Reporting (yearly)
- Plan Evaluation and Reporting (5 yearly)

The Delivery Partner will be accountable for ensuring that independent experts are engaged and available to undertake the wetland monitoring of vegetation regeneration, inundation and Brolga breeding and recruitment at the wetlands selected for restoration.

The wetland monitoring report(s) will be provided directly (and concurrently) to both DELWP and the Proponent. This will allow DELWP to have a clear 'line of sight' over the data from its source and can therefore have confidence in its accuracy.

Additionally, the Proponent will use the data to meet its public reporting requirements (at year 1, 2, 5, 10, 15 and 25), and will enable the required 5 yearly evaluation against the plans performance targets and whether the aim of the Plan is being met (see Section 5.2).

Should further remedial on-ground action be determined necessary through the evaluation process, additional wetland restoration works will follow the same principles as outlined in 3.2.2. This will be necessary if at the key milestones either:

- Brolga recruitment from the restored wetlands is not yet at the level required to meet the modelled impact of the wind farm; or
- The operating wind farm has resulted in detected mortality rates that exceed the modelled impact, and that are not adequately offset by the measured Brolga recruitment.



## 4.0 Plan Implementation

### 4.1 Roles and Responsibilities

The responsibility in meeting the objectives of this Plan is ultimately be the responsibility of the Proponent, with assistance provided by their Delivery Partner to implement to Plan on its behalf.

Oversight over the implementation of this Plan will require ongoing liaison between:

- Delivery Partner;
- The regional office of the DELWP; and
- or rightful successors of any of the above parties.

The implementation schedule in Section 4.2 includes key 'hold points' in the process which requires the liaison with DELWP before the Proponent and/or the Delivery Partner can proceed. The 'hold points' will ensure that DELWP, the Proponent and Delivery Partner are confident that implementation is in accordance with the requirements set out in this Plan.

Reporting will be in accordance with the monitoring evaluation and reporting framework in Section 5.0 of this Plan, with copies of all reports (once finalised) to also be submitted to the parties to the on-title agreement (i.e. DELWP and the landowner).

### 4.2 Implementation Schedule

The key steps in the implementation of this Plan is outlined in Table 4, including the key steps from Year 0 to Year 25<sup>7</sup>.

**Table 4: Implementation Schedule**

Step		Timing		Responsibility	DELWP 'hold points'	Plan Reference
		Year	Timeframe			
1	Execution of agreement between the Proponent and Delivery Partner.	-	Before development commences under the Permit.  The date of the execution of this agreement constitutes the commencement of the Plan (the commencement of Year 0)	Proponent and Delivery Partner.	X	Section 3.2.1
2	Undertake wetland selection process	Year 0	Within 6 months after the commencement of the Plan.	Delivery Partner	X	Section 3.2.2
3	Agreements secured with landowners, including wetland management plans	Year 0	Within 9 months after the commencement of the Plan.	Delivery Partner	X	Section 3.2.2
4	Obtain relevant permits / consents to undertake restoration works	Year 0	Within 12 months after the commencement of the Plan.	Delivery Partner		Section 3.2.2

<sup>7</sup> Year 1 commences (and Year 0 concludes) concurrently with the commencement of operation of the first stage of the project to align with the commencement of the implementation of the DDWF Brolga Monitoring Plan. This also ensures that the Plan evaluation will align with the monitoring and reporting associated with the Brolga Monitoring Plan.



Step		Timing		Responsibility	DELWP 'hold points'	Plan Reference
		Year	Timeframe			
5	Registration of agreements, including wetland management plan, on title	Year 0	Within 12 months after the commencement of the Plan.	Delivery Partner		Section 3.2.2
6	Undertake restoration works, as require by the wetland management plan	Year 0	Within 12 months after the commencement of the Plan.	Delivery Partner		Section 3.2.2
7	Undertake Year 0 evaluation of the Plan (including reporting)	Year 1	Within one month after the end of Year 0.	Delivery Partner	X	Section 3.2.3 Section 5.2
8	Implementation of wetland management measures	All	Ongoing	Delivery Partner		Section 3.2.2
9	Implementation of wetland monitoring (refer to Section 5.1 for more detail)	All	Ongoing	Delivery Partner		Section 3.2.3 Section 5.1
10	Undertaken annual wetland evaluation (refer to Section 5.1 and 5.3 for further details)	All	Within one month after the end of each year.	Delivery Partner	X	Section 3.2.3 Section 5.1 Section 5.3
11	Undertake 5 yearly evaluation of the Plan (including reporting)	Year 6 Year 11 Year 16 Year 21 Year 26	Within three months of the end of Year 5, Year 10, Year 15, Year 20 and Year 25.  This step may be required to be undertaken out of cycle (see section 5.2). If required, this will be undertaken within two months after the evaluation has been triggered.	The Proponent	X	Section 3.2.3 Section 5.2 Section 5.3
12	Implement contingency measures	As required	As determine by step 10 and 11.	The Proponent, and/or Delivery Partner, as required.		Section 3.2.2 Section 5.1 Section 5.2

## 5.0 Monitoring, Evaluation and Reporting

This section of the Plan sets out the framework for monitoring, evaluation of plan performance and reporting.

### 5.1 Wetland Monitoring and Reporting

Evaluation of progress against plan objectives requires a range of information to be gathered each year by the Delivery Partner at each selected wetland.

In Year 1 and Year 2<sup>8</sup> monitoring will focus on progress in restoring water levels and extent, and aquatic vegetation. During breeding season<sup>9</sup> wetland monitoring will also include monitoring of the wetlands every two months to determine if Brolga are utilising the wetland as a breeding site.

In subsequent years, or if Brolga breeding behavior is observed in Year 1 and Year 2, the wetland will be monitored one every month during breeding season.

If breeding is confirmed, then detailed monitoring at the wetland will be undertaken fortnightly throughout the breeding attempt to ascertain the stage, progress and outcomes of nest building, laying, hatching, chick rearing and fledging.

The monitoring program is presented in Table 5, relating to the wetland restoration and management monitoring, and Table 6, relating to monitoring of Brolga utilization of the wetlands and breeding activities.

All observations will be undertaken using optical aids, such as 10x binoculars or 20x spotting scope/telescope from at least 300 metres from the breeding birds, unless they are breeding where routine farm activities are closer and the breeding pair has habituated to these.

The data collected will be recorded in a standardised manner, as defined in the wetland management plan.

**Table 5: Wetland Restoration and Management Monitoring Program**

Measure	Method	Timing	
		Year 1 and Year 2	Year 3 to Year 25
Water extent	Mapping of the extent of water.	Fortnightly from first fill to drying.	Concurrently with Brolga Utilisation and Breeding monitoring (Table 6) E.g.: - Monthly during breeding season; or - Fortnightly from first observation of breeding behaviour.
Water depth and duration	Monitoring of depth posts (four per wetland along a transect between the shore and the deepest point).		
Vegetation	Data on habitat components collected as per the Roberts et al. DST method <sup>10</sup> .	Annually in December (date subject to avoiding disturbance to breeding Brolga).	Annually.

<sup>8</sup> Year 0 evaluation and reporting will be undertaken at a Plan level, see Section 5.2.

<sup>9</sup> Between July and November, in average rainfall years, or until February if rainfall exceeds above average in spring and summer. This allows for the potential of a re-attempt to breed by Brolga later in the season if nests flood and wetland condition (i.e. inundation levels) remain conducive.

<sup>10</sup> Monitoring of wetland recovery will be done using the latest approach developed by DELWP, namely the Wetland Vegetation Recovery Decision Support Tool V 1.0 (Roberts et al. 2017). This scheme (the DST) for evaluating site management plans is flexible enough to accommodate work targeted at providing fauna habitat for a particular species or group of wetland fauna, in this case the Brolga. Importantly, it is a decision support tool rather than a measurement alone, something more relevant to the adaptive management framework of this plan. Key physical indicators are also proposed to be monitored (area, depth, extent and depth of inundation) against the habitat objectives in this plan. Each wetland involved will have its current and predicted hydrological regime modelled and documented.

**Table 6: Brolga Utilisation and Breeding Monitoring Program**

Measure	Method	Timing	
		Year 1 and Year 2	Year 3 to Year 25
<b>Utilisation</b>			
Brolga use of the wetland	<p>Observations of the number and age of birds.</p> <p>Observations of evidence of breeding activity, including:</p> <ul style="list-style-type: none"> <li>- Stage of breeding (i.e. nest building, laying, incubation, parental care, fledging);</li> <li>- The outcomes of breeding attempts; and</li> <li>- Observations on factors that affect breeding activities and outcomes (e.g. water level fluctuations, predation, disturbance).</li> </ul> <p>If breeding activity is observed, then Breeding Activity Monitoring (as outlined below) will commence.</p> <p>Any Brolga breeding activity will be reported immediately to DELWP to be added annually to the Victorian Biodiversity Atlas (VBA) database administered by DELWP.</p>	Every two months, during breeding season.	Monthly, during breeding season.
<b>Breeding Activities</b>			
Breeding behaviour	Field-based observations of evidence of breeding activity (as per the 'Utilisation' method above).	Fortnightly from first observation of breeding behaviour	
Hatched chicks	Field-based observations of breeding success and survival of chicks.	Weekly until chick is fledged (approximately after 12 weeks).	

Evaluation of the wetlands will be undertaken by the Delivery Partner, based on the findings of the wetland monitoring against the individual wetland performance targets defined in Table 7. This includes the relevant contingency measures to ensure that the forward plan responds to lessons learnt in the preceding management periods, in order to ensure performance targets are met<sup>11</sup>.

The evaluation will be presented in an annual report that includes:

- a summary of the results of the wetland monitoring (across all wetlands)
- an evaluation of each wetland against the performance targets, including an evaluation of the effectiveness of the wetland management measures;
- recommendations on the implementation of contingency measures (e.g. adaptive management).

<sup>11</sup> For example, new techniques for controlling high threat weeds may become available, or further information on the ecology of shallow freshwater wetlands, may necessitate adjustment to management actions. Additionally, it could be determined that the selected wetland is unable to be successful and that a new wetland should be selected.

Table 7: Wetland Performance Targets

Monitoring Measure	Key Indicator	Performance Target	Key Milestone		Contingency
			Year 1 and Year 2	Year 3 to Year 25	
<b>Wetland Restoration and Management</b>					
Water extent, depth and duration	Ecologically effective inundation of each wetland during average and above average years.	A minimum 30-centimetres inundation of 75% or more of the wetland basin for more than a full Brolga breeding event.	Re-establishment of required inundation regime.	Required inundation occurs on average at least every second year.	Review invert level of wetland outlet and adjust if required using sand bags or similar.
Vegetation	Extent and percentage cover of suitable aquatic vegetation (i.e. rushes and sedges).	<ul style="list-style-type: none"> <li>a) 80% or greater aquatic vegetation cover over 40% of the wetland basin within two fillings.</li> <li>b) 80% of greater aquatic vegetation cover over 60% of the wetland within four fillings.</li> <li>c) No decline in the extent and cover of aquatic vegetation after the fourth filling.</li> </ul>	<ul style="list-style-type: none"> <li>a) At the end of the second wetland filling</li> <li>b) At the end of the fourth wetland filling</li> <li>c) Ongoing</li> </ul>	Targets b) and c) achieved.	Develop wetland replanting plan.
	Results from the DST method	DST assessment shows improvement in meeting habitat objectives	Annual and ongoing	Annual and ongoing	Adjust relevant wetland management parameters to ensure effective habitat rehabilitation.
<b>Brolga Utilisation and Breeding Activities</b>					
Brolga use of the wetland	Brolga present and engaging in courting/pairing behaviour	Brolga present	Brolga present by year 3	Brolga present most years during suitable conditions.	Use of decoys to attract birds. Investigate possible disturbances/predator behaviour deterring birds. See above.
Nesting behaviour	Brolga pair building nest and laying eggs.	Nest present, eggs laid	See above	Nest present from year 4 to 6, then on average at least every second year.	Provision of supplementary nest material if required (e.g. hay). Investigate possible disturbances/predator behaviour deterring birds.



Monitoring Measure	Key Indicator	Performance Target	Key Milestone		Contingency
			Year 1 and Year 2	Year 3 to Year 25	
<b>Wetland Restoration and Management</b>					
Fledged young	Number of young successfully fledged.	Young successfully fledged at the average rate of about one every second year across each wetlands in the plan from year four.		One fledged chick every second year from year 4 to 25	Investigate and control any predation of eggs and young birds. Refine water regime management to ensure appropriate conditions long enough to produce fledglings.

## 5.2 Plan Evaluation and Reporting

Evaluation of the Plan will be undertaken at key milestones to ensure that the objective of the Plan is adjusted in response to the Brolga Monitoring Plan (which forms part of the endorsed DDWF Bat and Avifauna Management Plan) and that contingency measures can be implemented to ensure it meets the 25 year zero net impact objective.

The first evaluation will be undertaken at the end of Year 0, by the Delivery Partner, and will report on the progress (and completion) of the Year 0 implementation steps (see Table 4 in Section 4.2), including:

- Date of execution of agreement between the Proponent and the Delivery Partner;
- Summary and outcome of the wetland selection process;
- Summary of landowner agreements and corresponding wetland management plans<sup>12</sup>; and
- Details of restoration works and management measure undertaken.

At the end of Year 5, Year 10, Year 15, Year 20 and Year 25 evaluation of the Plan will be undertaken, by the Proponent (in consultation with the Delivery Partner). An evaluation of the Plan outside of the 5-yearly cycle (e.g. earlier than Year 5) may be triggered if:

- prolonged drought stops wetland filling and Brolga breeding for two or more years; and/or
- the Brolga Monitoring Plan results show that project impacts are above those predicted (Appendix A)<sup>13</sup>.

The Plan will be evaluated against the performance targets set out in Table 8. The performance targets are based on the number of fledging young produced as a result of this Plan and the number of Brolgas impacted (as found by the Brolga Monitoring Plan).

Table 8 also defines contingency measures that will be implemented should the evaluation find that the Plan is not meeting the performance targets or project impacts are higher than those indicated at each key milestone.

The evaluation will be presented in a report that includes:

- a summary of the results of wetland monitoring for the previous 5 years;
- evaluation of the effectiveness of the wetland management measures and breeding success, and recommendations on contingency measures (including changes to the wetland management plans), if required;
- evaluation of the impact of drought conditions on the rate at which the required number of fledglings can be produced;
- results from the Brolga Monitoring Plan, including comparison of the number of Brolgas affected by the project versus the number of fledglings produced by this plan and an updated estimated Brolga impact;
- findings of the evaluation of the Plan against the Plan performance targets;
- conclusion on the progress of the Plan in achieving a zero-net impact objective;
- recommendations on an adjustment to the aim of the Plan if impacts to Brolga are above those predicted (including additional restored wetlands required)<sup>14</sup>.

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<sup>12</sup> As it will be made public, the reporting must not include sensitive or confidential information about the landowner or the exact location of the wetlands.

<sup>13</sup> E.g. if the mortality numbers move into the yellow area (less likely scenario) for more than a year, the Plan would need to be reviewed.

<sup>14</sup> The aim (recruitment target) will only be adjusted upward, if required.



**Table 8: Plan Performance Targets**

Key Indicator	Performance Target <sup>15</sup>		Key Milestone	Contingency <sup>16</sup>
	Fledgling Success	Monitored Project Impact		
Brolgas fledged at or greater than rate required to offset the updated projected impact of the project.	Brolgas fledged at or greater than an average replacement rate of one fledgling per year.	Not more than six Brolgas impacted	Year 5	Additional wetland(s) may be required if performance target not met.
	Brolgas fledged at or greater than replacement rate of one fledgling per year.	Not more than nine Brolgas impacted	Year 10	Additional wetland(s) may be required if performance target not met.
	Brolgas fledged at or greater than replacement rate of one fledgling per year	Not more than 13 Brolgas impacted	Year 15	Additional wetland(s) may be required if performance target not met.
	Brolgas fledged at or greater than replacement rate of one fledgling per year.	Not more than 16 Brolgas impacted	Year 20	Additional wetland(s) may be required or plan to be extended beyond project life if performance target not met.
	25 or more Brolgas fledged	Not more than 19 Brolgas impacted	Year 25	Additional wetland(s) may be required or plan to be extended beyond project life if performance target not met.

The implementation of contingency measures following the review of each Annual Wetland Report will be undertaken in consultation with DELWP.

### 5.3 Reporting Schedule

Table 9 sets out the schedule of reporting, including reporting which requires DELWP review, and the years which the final reporting will be made public.

All reporting will be provided to DELWP for review before finalising, as per the implementation schedule outlined in Section 4.2.

Once finalised, the wetland reporting will be provided to the Proponent for their records, whilst the reporting in Year 1, 2, 3, 5, 10, 15, 20, and 25 will be made publicly available on the project website.

Additionally, once endorsed this Plan will be placed on the project website for a minimum of 5 years.

**Table 9: Reporting Schedule**

<sup>15</sup> The number of Brolgas impacted by the wind farm is defined based on the collision risk modelling (Appendix A and discussed in Section 2.2). The fledging success target includes compensation for both the wind farm and the powerline. The project impact refers only to the wind farm (it is assumed an additional bird will be affected by the powerline). Any recorded Brolga impacts associated with the powerline will be factored into the recruitment target.

<sup>16</sup> Contingency measures are triggered based on the actual number of Brolgas affected by the wind farm exceeding the 95% likely predicted number of birds affected after each five-yearly review period. This will also take into consideration the annual drought evaluation.



Year		Monitoring and Reporting	
	Wetland	Plan	Public
Year 0		X	X
Year 1	X		X
Year 2	X		X
Year 3	X		X
Year 4	X		
Year 5	X	X	X
Year 6	X		
Year 7	X		
Year 8	X		
Year 9	X		
Year 10	X	X	X
Year 11	X		
Year 12	X		
Year 13	X		
Year 14	X		
Year 15	X	X	X
Year 16	X		
Year 17	X		
Year 18	X		
Year 19	X		
Year 20	X	X	X
Year 21	X		
Year 22	X		
Year 23	X		
Year 24	X		
Year 25	X	X	X



## 6.0 References

Brett Lane & Associates (BL&A) 2017, *Dundonnell Wind Farm – Proposed Turbine Modification Impacts on Birds and Bats, Report 9184 (34.4)*, Consultant's Report to Tilt Renewables Pty Ltd.

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Symbolix Pty Ltd 2017. *Turbine collision risk model update – results v. 1.0*. Consultant's report prepared for Tilt Renewables.



## Appendix A: Broilga Collision Likelihood Table

Rate	Physical Mortality																							
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
0.53																								
1	58.9%	31.2%	8.3%	1.5%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
2	34.6%	36.7%	19.5%	6.9%	1.8%	0.4%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
3	20.4%	32.4%	25.8%	13.7%	5.4%	1.7%	0.5%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
4	12.0%	25.4%	27.0%	19.1%	10.1%	4.3%	1.5%	0.5%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
5	7.1%	18.7%	24.8%	21.9%	14.5%	7.7%	3.4%	1.3%	0.4%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
6	4.2%	13.2%	21.0%	22.3%	17.7%	11.3%	6.0%	2.7%	1.1%	0.4%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
7	2.4%	9.1%	16.8%	20.8%	19.3%	14.3%	8.9%	4.7%	2.2%	0.9%	0.3%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
8	1.4%	6.1%	13.0%	18.3%	19.4%	16.5%	11.6%	7.0%	3.7%	1.8%	0.7%	0.3%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
9	0.8%	4.0%	9.6%	15.3%	18.3%	17.5%	13.9%	9.5%	5.6%	3.0%	1.4%	0.6%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
10	0.5%	2.6%	7.0%	12.4%	16.4%	17.4%	15.4%	11.6%	7.7%	4.5%	2.4%	1.2%	0.5%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
11	0.3%	1.7%	5.0%	9.7%	14.1%	16.5%	16.0%	13.3%	9.7%	6.3%	3.7%	1.9%	0.9%	0.4%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
12	0.2%	1.1%	3.5%	7.4%	11.8%	15.0%	15.9%	14.4%	11.5%	8.1%	5.2%	3.0%	1.6%	0.8%	0.4%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
13	0.1%	0.7%	2.4%	5.5%	9.6%	13.2%	15.1%	14.9%	12.8%	9.8%	6.8%	4.2%	2.4%	1.3%	0.6%	0.3%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
14	0.1%	0.4%	1.6%	4.1%	7.6%	11.2%	13.9%	14.7%	13.7%	11.3%	8.4%	5.6%	3.5%	2.0%	1.1%	0.5%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
15	0.0%	0.3%	1.1%	3.0%	5.9%	9.3%	12.4%	14.0%	14.0%	12.3%	9.8%	7.1%	4.7%	2.9%	1.6%	0.9%	0.4%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
16	0.0%	0.2%	0.7%	2.1%	4.5%	7.6%	10.7%	13.0%	13.8%	13.0%	11.0%	8.5%	6.0%	3.9%	2.4%	1.3%	0.7%	0.4%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%
17	0.0%	0.1%	0.5%	1.5%	3.4%	6.0%	9.1%	11.7%	13.2%	13.2%	11.9%	9.7%	7.3%	5.1%	3.3%	2.0%	1.1%	0.6%	0.3%	0.1%	0.0%	0.0%	0.0%	0.0%
18	0.0%	0.1%	0.3%	1.0%	2.5%	4.7%	7.5%	10.3%	12.2%	13.0%	12.4%	10.7%	8.5%	6.3%	4.3%	2.7%	1.6%	0.9%	0.5%	0.2%	0.1%	0.0%	0.0%	0.0%
19	0.0%	0.0%	0.2%	0.7%	1.8%	3.7%	6.1%	8.8%	11.1%	12.4%	12.5%	11.5%	9.6%	7.4%	5.4%	3.6%	2.3%	1.3%	0.7%	0.4%	0.2%	0.1%	0.0%	0.0%
20	0.0%	0.0%	0.1%	0.5%	1.3%	2.8%	4.9%	7.4%	9.8%	11.6%	12.3%	11.8%	10.5%	8.5%	6.5%	4.6%	3.0%	1.9%	1.1%	0.6%	0.3%	0.2%	0.1%	0.0%
21	0.0%	0.0%	0.1%	0.3%	0.9%	2.1%	3.9%	6.2%	8.6%	10.6%	11.8%	11.9%	11.1%	9.5%	7.5%	5.6%	3.9%	2.5%	1.6%	0.9%	0.5%	0.3%	0.1%	0.0%
22	0.0%	0.0%	0.1%	0.2%	0.7%	1.6%	3.0%	5.0%	7.3%	9.5%	11.0%	11.7%	11.4%	10.2%	8.5%	6.6%	4.8%	3.3%	2.1%	1.3%	0.8%	0.4%	0.2%	0.1%
23	0.0%	0.0%	0.0%	0.2%	0.5%	1.1%	2.3%	4.0%	6.1%	8.3%	10.1%	11.2%	11.4%	10.7%	9.3%	7.6%	5.8%	4.1%	2.8%	1.8%	1.1%	0.6%	0.4%	0.2%
24	0.0%	0.0%	0.0%	0.1%	0.3%	0.8%	1.8%	3.2%	5.1%	7.2%	9.1%	10.6%	11.2%	11.0%	10.0%	8.4%	6.7%	5.0%	3.5%	2.4%	1.5%	0.9%	0.5%	0.3%
25	0.0%	0.0%	0.0%	0.1%	0.2%	0.6%	1.3%	2.5%	4.1%	6.1%	8.1%	9.7%	10.8%	11.0%	10.4%	9.2%	7.6%	5.9%	4.4%	3.0%	2.0%	1.3%	0.8%	0.4%

Note: The Green range encompasses values that are 95% likely; the Yellow range encompasses values that are 99% likely; the cross-hatched yellow range encompasses values that are outside the 99% likelihood range.

**APPROVED FOR THE  
MINISTER FOR PLANNING**

SHEET 28 OF 69



## **Appendix B: Evidence of Agreement**

**APPROVED FOR THE  
MINISTER FOR PLANNING**

SHEET 29 OF 69

**HWL**  
**EBSWORTH**  
LAWYERS

## Services Agreement

### Dundonnell Wind Farm Project

**Dundonnell Wind Farm Pty Ltd**

and

**Odonata.org Ltd**

Level 26, 530 Collins Street, Melbourne VIC 3000 Australia  
PO Box 3, Collins Street West VIC 8007 Australia  
DX 564 Melbourne

Telephone +61 3 8644 3500  
Facsimile 1300 365 323 (Australia) +61 2 8507 6582 (International)  
hwlebsworth.com.au

PAD:285265  
Doc ID 602730433/v1

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## Dundonnell Wind Farm Project Services Agreement

Date

Parties

**Dundonnell Wind Farm Pty Ltd ACN 133 651 019**

of GPO Box 16080, Collins Street West, Melbourne, Victoria, 8007

**(Proponent)**

**Odonata.org Ltd ACN 620 085 583**

of 2/5 Raglan St, South Melbourne, Victoria 3205

**(Delivery Partner)**

Recitals

- A. The Proponent wishes to engage the Delivery Partner to provide the Services.
- B. The Delivery Partner has agreed to provide the Services to the Proponent on the terms of this agreement.

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

### 1. Definitions and interpretation clauses

#### 1.1 Definitions

In this agreement:

<b>Authorisation</b>	means any approval, licence, consent, authority or permit.
<b>Brolga Compensation Plan</b>	means the Brolga Compensation Plan in the form attached as Annexure A that has been prepared for the Project, and which is to be endorsed pursuant to Condition 55b of the Planning Permit.
<b>Business Day</b>	means any day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.
<b>Claim</b>	means any claim, action, demand, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether in connection with this agreement, at Law, in equity, under statute or otherwise.

**Commencement Date** means:

- (a) the date the last party executes this agreement; or
- (b) such other date as is agreed in writing by the Delivery Partner and the Proponent.

**Confidential Information** means:

- (a) the terms of this agreement; and
- (b) all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the Project, or a business of a party or a Related Body Corporate of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with this agreement,

but does not include:

- (c) information which is or becomes generally available in the public domain (other than through any breach of confidence);
- (d) information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party; or
- (e) information which has been independently developed by the other party.

**Consequential Loss** means any loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from claims by third parties, loss of or damage to credit rating, loss of anticipated savings, loss or denial of opportunity or any other loss, damage, cost or expense incurred by a party or any other person that is indirect or consequential.

**Contaminant** means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Site or the surrounding Environment:

- (a) unsafe or unfit for habitation or occupation by persons or animals;

- (b) not comply with any Environmental Law; or
- (c) not satisfy the contamination criteria or standards published or adopted by the relevant environmental authority.

<b>CPI</b>	means All Groups Consumer Price Index for the City of Melbourne published by the Australian Bureau of Statistics. If this index is no longer measured, it means an index that the President of the API decides reflects changes in the cost of living in Melbourne;
<b>Defaulting Party</b>	has the meaning provided in clause 14.1(a).
<b>Delivery Partner's Equipment</b>	has the meaning provided in clause 8.1(a).
<b>Delivery Partner Background Intellectual Property Rights</b>	means all Intellectual Property Rights owned or used by the Delivery Partner prior to the date of this agreement, excluding Developed Intellectual Property.
<b>Delivery Partner Material</b>	means any material supplied by the Delivery Partner or on the Delivery Partner's behalf in connection with this agreement including any raw materials, tooling, plans, designs, engineering information, data, specifications and reports.
<b>DELWP</b>	means the Department of Environment, Land, Water and Planning – Environment Portfolio.
<b>Developed Intellectual Property</b>	means any Intellectual Property Rights that are: <ul style="list-style-type: none"> <li>(a) developed by the Delivery Partner for the Proponent in relation to the Project; or</li> <li>(b) procured under licence by the Delivery Partner for the Proponent in relation to the Project.</li> </ul>
<b>Disclosing Party</b>	has the meaning given in clause 19.2.
<b>Dispute</b>	has the meaning given in clause 20.1(a).
<b>Dispute Notice</b>	has the meaning given in clause 20.1(a).
<b>Environment</b>	means the physical factors of the surroundings of human beings including the land, waters, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants, and the social factor of aesthetics.
<b>Environmental Law</b>	means a law relating to the Environment, including any law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, soil or groundwater contamination, chemicals, waste, use of

hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades, or any other aspect of protection of the Environment or person or property.

**Final Report** means the report to be prepared by the Delivery Partner to discharge the Delivery Partner's year 25 reporting obligation under the Broлга Compensation Plan.

**Force Majeure Event** means:

- (a) an act of God;
- (b) war;
- (c) revolution;
- (d) any unlawful act against public order or authority;
- (e) a national or state-wide strike or industrial dispute; or
- (f) a government restraint.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**GST** means as applicable, goods and services tax levied under *A New Tax System (Goods and Services Tax) Act 1999* (Cth), at the rate prevailing from time to time, including any tax levied in substitution for such tax, but excluding any penalties or interest payable in respect of such tax.

**GST Act** has the meaning provided in clause 13.1.

**Health and Safety Legislation** means all applicable occupational health and safety, environmental protection, dangerous goods and electricity safety Laws, together with any directions on safety or notices issued by any relevant authority or any code of practice or compliance code, appropriate or relevant to the supply of the Services.

**Health and Safety Requirements** means any and all directions, instructions, requests or requirements made by:

- (a) the Proponent; or
- (b) the person with management or control of the Site, relevant to or associated with or necessary for compliance by the Delivery Partner or the Proponent with Health and Safety Legislation and including any such matters of which the Delivery Partner has been informed by the Proponent or the entity with management or control of the Site orally or in writing.

**Indemnified Parties** means the Proponent and its Personnel and an Indemnified Party means any of the Indemnified Parties.

**Insolvency Event** means the happening of any of these events:

- (a) where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;
- (b) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;
- (c) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
- (d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
- (f) a body corporate is or states that it is insolvent;
- (g) as a result of the operation of section 459F(1) of the Corporations Act 2001, a body corporate is taken to have failed to comply with a statutory demand;
- (h) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001;
- (i) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
- (j) a body corporate ceases to carry on business; or

- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Insurance Policy**

means the policies of insurance the Delivery Partner is required to take out for the purposes of this agreement specified in Schedule 3.

**Intellectual Property Rights**

means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) Confidential Information and trade secrets;
- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the *Circuit Layouts Act* 1989 (Cth).

**Law**

means:

- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any government agency;
- (b) certificates, licences, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the Services being provided under this agreement.

**Loss**

means loss, cost, damage, expense (including lawyer's fees and expenses on a full indemnity basis), Claim, demand or liability.

**Personnel**

means:

- (a) in the case of the Delivery Partner, any of its officers, employees, agents and representatives, any of the Delivery Partner's Related Entities and subcontractors and any of the officers, employees, agents and representatives of any Related Bodies Corporate and subcontractors, who are involved

either directly or indirectly in performing the Services; and

- (b) in the case of the Proponent, any of the past or present officers, employees, agents or representatives of the Proponent or any of its Related Bodies Corporate.

<b>Planning Permit</b>	means Planning Permit No. 2015/23858 with respect to the Wind Farm issued on 30 June 2016 for the: " <i>Use and development of land for a Wind Energy Facility and associated buildings and works, business identification signage, removal of native vegetation and alteration of access to a road in a Road Zone – Category 1</i> ".
<b>Plant and Equipment</b>	includes plant, equipment, tools, appliances and any other property or tangible goods.
<b>Policy</b>	means any reasonable rules, plans, standards, policies and procedures of the Proponent as communicated or made available to the Delivery Partner from time to time.
<b>Project</b>	means the project of developing, designing, constructing and operating the Wind Farm.
<b>Proponent's Background Intellectual Property Rights</b>	means all Intellectual Property Rights owned or used by the Proponent prior to the date of this agreement.
<b>Quarter</b>	means each 3 month period ending on 31 March, 30 June, 30 September or 31 December each year.
<b>Recipient</b>	has the meaning provided in clause 13.3.
<b>Related Body Corporate</b>	has the meaning given to that term in the <i>Corporations Act 2001 (Cth)</i> .
<b>Related Entity</b>	has the meaning given to that term in the <i>Corporations Act 2001 (Cth)</i> .
<b>Services</b>	means the activities specified to be the Delivery Partner's responsibility within the Brolga Compensation Plan.
<b>Service Fees</b>	means the fees payable by the Proponent to the Delivery Partner for and in connection with the provision of Services, calculated and payable in accordance with Schedule 2.
<b>Site</b>	means the Wind Farm Site and the Wetland Site.

<b>Site Safety Requirements</b>	means safety requirements at or associated with the Site (as are imposed or required by any person) which are related to health and safety.
<b>Term</b>	means the period commencing on the Commencement Date and ending on the earlier of: <ul style="list-style-type: none"><li>(a) the date that DELWP has reviewed and approved the Final Report;</li><li>(b) termination of this agreement; or</li><li>(c) expiry of this agreement.</li></ul>
<b>Terminating Party</b>	has the meaning provided in clause 14.1(a).
<b>Variation Request</b>	has the meaning provided in clause 6.1(a).
<b>Variation Response Notice</b>	has the meaning provided in clause 6.1(b).
<b>Wetland Site</b>	means the wetland site(s) identified by the Delivery Partner during the course of delivering the Services.
<b>Wind Farm</b>	means the proposed wind electricity generation facility known as the Dundonnell Wind Farm to be constructed on the Wind Farm Site, for the purpose of generating and delivering electricity to the national electricity grid or electricity transmission system including its wind turbine generators, access roads, crane hard standing areas, underground electrical cabling, overhead power lines, electrical substations, electrical transmission line to connect to the existing transmission network, buildings and any other associated infrastructure as may be required for the construction, operation, maintenance and repair of the wind farm and its connection to the national electricity grid.
<b>Wind Farm Site</b>	means the proposed site of the Wind Farm being the land that is located in western Victoria, approximately 23km north east of Mortlake, approximately 225km west of Melbourne and entirely within the Shire of Moyne, as defined in the Planning Permit for the Wind Farm.

## 1.2 Interpretation

In this agreement unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this agreement;
- (b) the singular includes the plural and the plural includes the singular;

- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure or schedule is a reference to a clause of, and a party, annexure and schedule to, this agreement and a reference to this agreement includes any clause, annexure and schedule;
- (h) a reference to a document (including this agreement) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (k) a reference to an agreement other than this agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (m) a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
- (n) a provision of this agreement may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this agreement or the preparation or proposal of that provision;
- (o) a reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this agreement do not limit what else is included

and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;

- (q) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (r) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (s) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (t) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

### 1.3 **Business Day**

Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the next Business Day.

## 2. **Supply of Services**

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### 2.1 **Supply**

The Delivery Partner must supply the Services in accordance with this agreement.

### 2.2 **Services already supplied**

Where some or all of the Services have been performed before the date of this agreement, the provisions of this agreement will apply as if those Services had been performed on the Commencement Date.

### 2.3 **Other terms and conditions not applicable**

The provisions of this agreement apply to all Services provided by the Delivery Partner (and any other services provided by the Delivery Partner related to or provided in connection with the Services for which no written agreement has been executed by the parties) and overrides any invoices or other documentation exchanged between the parties.

### 3. Service warranties

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#### 3.1 Service warranties

The Delivery Partner warrants that:

- (a) it will supply the Services:
  - (i) with due care and skill and in a proper, efficient and cost-effective manner using that standard of skill, diligence, prudence and oversight that would reasonably be expected from a prudent, expert and experienced provider of services which are similar to the Services in Australia;
  - (ii) using appropriately qualified and trained Personnel of the Delivery Partner;
  - (iii) in compliance with:
    - (A) this agreement;
    - (B) all Laws relevant to the Services;
    - (C) any Policies; and
    - (D) the reasonable directions of the Proponent;
  - (iv) to the reasonable satisfaction of the Proponent.
- (b) the Services are fit for purposes for which equivalent services are commonly acquired;
- (c) before it entered into this agreement it investigated all conditions affecting the supply of the Services;
- (d) before entering into this agreement, it made its own enquiries to satisfy itself as to the truth and accuracy of, and has therefore not relied upon, any written or oral information provided by the Proponent;
- (e) it is an experienced provider of services similar to the Services and has fully informed itself in relation to all matters relevant to the supply of the Services under this agreement; and
- (f) its Personnel will act in a safe manner, in accordance with all Laws and in accordance with this agreement.

### **3.2 Mutual warranties**

Each party warrants to the other party that:

- (a) it has the power to execute, deliver and perform its obligations under this agreement; and
- (b) all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

### **3.3 Reliance on warranties**

The Delivery Partner acknowledges that the Proponent has entered into this agreement in reliance on the warranties given by the Delivery Partner in this agreement.

## **4. Service requirements**

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The Delivery Partner must:

- (a) do all things reasonably necessary and incidental for the proper performance of the Delivery Partner's obligations under this agreement;
- (b) obtain and maintain all necessary Authorisations that are required by Law in order for the Delivery Partner to perform the Services;
- (c) ensure that the Delivery Partner's Personnel are courteous and display acceptable behaviour at all times;
- (d) regularly consult with the Proponent regarding the carrying out of the Services and provide information as required to the Proponent in relation to the performance of the Services;
- (e) as soon as practicable after becoming aware of any matter or circumstance which may adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to the Proponent detailing the matter or circumstance and its anticipated effect on the Services; and
- (f) provide all necessary equipment to perform the Services.

## **5. Endorsement of Brolga Compensation Plan**

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- (a) Following endorsement of the Brolga Compensation Plan pursuant to Condition 55b of the Planning Permit, the Proponent must provide written notice to the Service Provider confirming such endorsement and attaching a copy of the endorsed Brolga Compensation Plan.

- (b) Without limiting the Delivery Partner's obligations under this agreement, the Proponent acknowledges and agrees that it is responsible for complying with the Planning Permit, including the endorsed Broлга Compensation Plan.

## 6. Variations

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### 6.1 Varying Services

- (a) Where:
- (i) there is an amendment to the Broлга Compensation Plan (including by reason of the implementation of additional or alternative wetland restoration activities, and including an amendment between the form of Broлга Compensation Plan attached at Annexure A and the form that is endorsed pursuant to Condition 55b of the Planning Permit) that necessitates a subsequent change to the Services; or
  - (ii) the Proponent otherwise wishes to make any other changes to the Services,
- the Proponent must notify the Delivery Partner of such changes in writing (**Variation Request**).
- (b) As soon as reasonably practicable but no later than 10 Business Days after the Delivery Partner receives the Variation Request, it must advise the Proponent of the additional or revised Service Fees (if any) using:
- (i) the existing pricing structure in Schedule 2 (where appropriate); or
  - (ii) an alternative pricing structure where the nature of the Variation Request requires an alternative to be used,
- (**Variation Response Notice**).
- (c) Within 2 Business Days after receiving the Variation Response Notice, the Proponent must advise the Delivery Partner whether it wishes to proceed with the Variation Request.
- (d) If the Proponent wishes to proceed with the Variation Request, the Delivery Partner will perform the Services as varied in accordance with the Variation Response Notice.
- (e) If the Proponent does not advise the Delivery Partner of its decision within that time or advises the Delivery Partner that it does not wish to proceed with the Variation Request, at the Proponent's discretion:
- (i) the specifications and scope of the Services will remain as they were prior to the Variation Request;

- (ii) the Proponent may engage a third party to conduct any additional or alternative services that are the subject of the Variation Request and the Delivery Partner will continue to deliver the Services according to the specifications and scope applicable before the delivery of the Variation Request; or
- (iii) the Proponent may terminate this agreement by providing twenty (20) Business Days written notice to the Delivery Partner.

## 6.2 Variations requested by Delivery Partner

- (a) Where:
  - (i) there is an amendment to the Broilga Compensation Plan (including by reason of the implementation of additional or alternative wetland restoration activities, and including an amendment between the form of Broilga Compensation Plan attached at Annexure A and the form that is endorsed pursuant to Condition 55b of the Planning Permit) that necessitates a subsequent change to the Services; or
  - (ii) the actions or inactions of a landholder that hosts or is proposed to host a wetland site necessitates a change to the Services,

the Delivery Partner may notify the Proponent in writing to request such changes (**Delivery Partner Variation Request**) and specify the corresponding additional or revised Service Fees (if any) using:

- (iii) the existing pricing structure in Schedule 2 (where appropriate); or
- (iv) an alternative pricing structure where the nature of the revised Services requires an alternative to be used.

### **(Delivery Partner Variation Notice)**

- (b) Within 10 Business Days after receiving a Delivery Partner Variation Notice, the Proponent must advise the Delivery Partner whether it wishes to proceed with the Delivery Partner Variation Request.
- (c) In determining whether to agree to a Delivery Partner Variation Request, the Proponent must act reasonably and in good faith having regard to the reasons that create the need for a variation in Services, the proposed change in Service Fees and the requirements of the Broilga Compensation Plan.
- (d) If the Proponent wishes to proceed with the Delivery Partner Variation Request, the Delivery Partner will perform the Services as varied in accordance with the Delivery Partner Variation Notice.
- (e) If the Proponent does not advise the Delivery Partner of its decision within the time period specified in clause 6.2(b) or advises the Delivery Partner that it does not wish to proceed with the Delivery Partner Variation Request:

- (i) the specifications and scope of the Services will remain as they were prior to the Delivery Partner Variation Request; and
  - (ii) the Delivery Partner will continue to deliver the Services according to the specifications and scope applicable before the delivery of the Delivery Partner Variation Request.
- (f) The Delivery Partner must not make any variations to the Services unless approved in writing by the Proponent.

## 7. Site

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- (a) The Delivery Partner must provide the Services from its own offices and as applicable at the Site, and such other locations as may be reasonably necessary from time to time.
- (b) The Delivery Partner must ensure that its Personnel comply with the Policies regarding access to and use of the Site, as communicated by the Proponent to the Delivery Partner from time to time.

## 8. Equipment

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### 8.1 Delivery Partner's Plant and Equipment

- (a) The Delivery Partner must supply, at its own expense, all plant, equipment, tools, appliances, property or items it requires to fulfil its obligations under this agreement (**Delivery Partner's Equipment**).
- (b) The Delivery Partner will ensure that all approved Delivery Partner's Equipment:
  - (i) are first grade and suitable for the purposes intended;
  - (ii) comply with all relevant Laws; and
  - (iii) are well maintained in a clean, safe and presentable condition.

### 8.2 Proponent's Plant and Equipment

If the Proponent provides or makes available to the Delivery Partner any Plant and Equipment to enable the Delivery Partner to comply with its obligations under this agreement, that Plant and Equipment remains the property of the Proponent at all times and the Delivery Partner must:

- (a) only use that Plant and Equipment for the purposes of fulfilling its obligations under this agreement;

- (b) not remove that Plant and Equipment from the Site without the Proponent's prior written consent;
- (c) maintain that Plant and Equipment in good order and condition (subject to fair wear and tear);
- (d) compensate the Proponent for any Loss of that Plant or Equipment by the Delivery Partner or its Personnel; and
- (e) immediately return that Plant and Equipment to the Proponent at the expiration or upon termination of the agreement, in the same condition as when it was provided by the Proponent (subject to fair wear and tear).

## 9. Delivery Partner's Personnel

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### 9.1 Provision of Personnel

- (a) The Delivery Partner must provide, at its own expense, appropriately qualified, accredited and trained Personnel to provide the Services under this agreement.
- (b) The Delivery Partner must hold, and must ensure that where relevant its Personnel hold, all necessary Authorisations for the supply or performance of the Services.
- (c) Upon request, the Delivery Partner must provide certified copies of all documents reasonably required by the Proponent to verify that all Personnel who will provide the Services are appropriately authorised, qualified, accredited and trained to provide the Services.
- (d) The Delivery Partner must ensure that its Personnel attend any induction required by the Proponent.

### 9.2 Conduct and presentation of Personnel

The Delivery Partner must ensure that all of its Personnel:

- (a) follow all directions from the Proponent while on the Site;
- (b) display good and proper conduct while at the Site at all times; and
- (c) demonstrate the necessary skill and experience to competently perform their duties.

### 9.3 Status

All Personnel of the Delivery Partner are either employees, officers, agents, representatives, contractors or subcontractors (as the case may be) of the Delivery Partner. The Proponent has no responsibility to the Delivery Partner or to the Delivery Partner's Personnel in respect of any remuneration, taxation instalments, worker's

compensation, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any industrial agreement or law.

## 10. Health and Safety

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### 10.1 Health and Safety Requirements

- (a) The Delivery Partner must comply with, and ensure that any of the Delivery Partner's Personnel involved with supply of the Services comply with all:
  - (i) Health and Safety Legislation;
  - (ii) Site Safety Requirements;
  - (iii) Health and Safety Requirements; and
  - (iv) Environmental Laws.
- (b) The Delivery Partner must, upon reasonable request by or on behalf of the Proponent demonstrate compliance with such requirements including, providing evidence of measures taken to achieve such compliance.
- (c) The Delivery Partner must and must ensure its Personnel:
  - (i) co-operate with any other contractors or other persons engaged in or associated with the Services or other works at the Site in order to maintain uniform safety and industrial practices;
  - (ii) co-operate with the Proponent to enable the Proponent to comply with its obligations under all relevant Health and Safety Legislation; and
  - (iii) immediately advise the Proponent in writing of any act, fact or circumstance associated with the activities of the Delivery Partner or any other person relevant to the ability of the Delivery Partner to supply the Services in a manner that is safe and without risks to health.

### 10.2 Risk assessment

The Delivery Partner must, prior to the supply of the Services, undertake an assessment of the risks associated with the Services (if any) and identify and implement appropriate measures to control all such risks. Details of the risk assessment and evidence of implementation of adequate risk control measures must be provided to the Proponent upon and in accordance with any reasonable request by or on behalf of the Proponent.

### 10.3 Incident reporting

The Delivery Partner must immediately notify the Proponent of any accident, injury, property damage or Contaminant which occurs during the provision of the Services. The Delivery Partner must, within two (2) days of any such incident, provide a written report to the Proponent giving complete details of the incident, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

### 10.4 General

- (a) For the avoidance of doubt, any breach by the Delivery Partner of any part of this clause 10 will be considered a breach of a material obligation by the Delivery Partner under this agreement for the purposes of clause 14.1.
- (b) Notwithstanding clause 10.4(a), if the breach exposes a person to an immediate risk of serious injury, the breach will be considered a breach of a material obligation that cannot be remedied, in which case the Proponent may immediately terminate this agreement on written notice to the Delivery Partner in accordance with clause 14.1(a)(i).

## 11. Service Fees

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### 11.1 Service Fees

The Proponent must, in consideration of the Delivery Partner providing the Services in accordance with this agreement, subject to this agreement pay to the Delivery Partner the Service Fees.

### 11.2 Calculation of the amount payable

The amount payable by the Proponent to the Delivery Partner under this agreement will, subject to clause 11.4, be determined in accordance with the amounts set out in Schedule 2 of this agreement.

### 11.3 Components of the Service Fees

Unless otherwise stated in this agreement, the Service Fees are inclusive of:

- (a) all costs incurred by the Delivery Partner in supplying the Services (including all labour costs, delivery, reporting, freight and installation costs and the Delivery Partner's Equipment costs); and
- (b) all federal, state and territory taxes and duties (other than GST).

## 11.4 Increase in costs of Services

- (a) If the costs incurred by the Delivery Partner in supplying the Services increase beyond the amount of the Service Fees specified in Schedule 2, the Delivery Partner may give written notice to the Proponent specifying the amount and cause of the increase in costs.
- (b) To the extent that:
  - (i) the Delivery Partner can demonstrate that it has used its best endeavours to supply the Services by using only the Service Fees specified in Schedule 2; and
  - (ii) the increase in Service Fees notified to the Proponent in accordance with clause 11.4(a) is caused by a factor outside of the Delivery Partner's control; and
  - (iii) the increase in Service Fees notified to the Proponent in accordance with clause 11.4(a) is reasonably necessary to be incurred in order to the deliver the Services; and

the Proponent agrees, subject to clause 11.4(c), to pay the Delivery Partner within 20 Business Days of receipt of the notice under clause 11.4(a), an amount equal to the increase in Service Fees notified to the Proponent in accordance with clause 11.4(a).

- (c) The Delivery Partner can provide notice to the Proponent under clause 11.4(a) on one or more occasions provided that the Delivery Partner satisfies all conditions under clauses 11(b)(i), 11.4(b)(ii) and 11(b)(iii).
- (d) The Delivery Partner must provide the Proponent with a tax invoice (as defined in the GST Act) at the time any amount becomes due and payable under this clause 11.4.

## 12. Payment

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### 12.1 Invoices

The Delivery Partner must provide the Proponent with a tax invoice (as defined in the GST Act) at the time that any payment of Service Fees becomes due and payable pursuant to Schedule 2, such invoice to detail each amount that is being invoiced.

### 12.2 Payment

Subject to the Delivery Partner not being in breach of this agreement, the Proponent must pay the invoiced amount due to the Delivery Partner in accordance with Schedule 2.

### 12.3 Disputed invoices

- (a) If any invoiced amount is disputed by the Proponent, the Proponent must pay the undisputed amount to the Delivery Partner in accordance with this agreement and the parties must resolve the disputed amount in accordance with clause 20.
- (b) Once the dispute is resolved, any amount that is resolved to be payable to the Delivery Partner must be paid by the Proponent within 10 Business Days of such resolution.

## 13. Goods and Services Tax (GST)

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### 13.1 Preliminary

Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.

### 13.2 GST exclusive

Unless otherwise stated, any amount specified in this agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

### 13.3 Liability to pay GST

If a party makes a taxable supply under this agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

### 13.4 Tax invoice

Notwithstanding the foregoing, the Recipient is not obliged under this agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

### 13.5 Adjustment event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this agreement, the amount paid or payable by the Recipient pursuant to clause 13.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

### 13.6 Reimbursement of expenses

If a third party makes a taxable supply and this agreement requires a party to this agreement (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

### 13.7 Non merger

This clause will continue to apply after expiration or termination of this agreement.

## 14. Termination

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### 14.1 Termination rights

- (a) A party (**Terminating Party**) may immediately terminate this agreement by written notice to the other party (**Defaulting Party**) if the Defaulting Party breaches a material obligation in this agreement and, in the reasonable opinion of the Terminating Party, the breach:
- (i) cannot be remedied; or
  - (ii) can be remedied, but is not remedied by the Defaulting Party within 20 Business Days after the Terminating Party gives the Defaulting Party notice of the breach.
- (b) A party may immediately terminate this agreement by written notice to the other party if the other party is subject to an Insolvency Event.

### 14.2 Termination by Delivery Partner for no cause

The Delivery Partner may terminate this agreement for no cause by providing the Proponent with at least 24 months' written notice.

### 14.3 Consequences of termination or expiry

On expiry or termination of this agreement:

- (a) the Delivery Partner must stop working on any incomplete or unperformed Services unless notified by the Proponent;
- (b) this agreement continues to bind the parties in connection with all transactions, entered into before expiry or termination;
- (c) each party must return to the other party within 5 Business Days after the date of expiry or termination, the other party's Confidential Information;

- (d) any accrued rights and remedies of each party as at the date of termination or expiration are unaffected; and
- (e) the Proponent's only liability will be to pay the Delivery Partner the Service Fee applicable to any Services:
  - (i) that have been performed;
  - (ii) which the Proponent has not subsequently rejected under this agreement; and
  - (iii) that are not yet paid for.

## 15. Indemnity and release

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### 15.1 Indemnity by Delivery Partner

The Delivery Partner must indemnify the Proponent from and against all Loss arising directly or indirectly from or in connection with:

- (a) a breach of this agreement by the Delivery Partner;
- (b) personal injury to, or illness or death of, any person (including the Delivery Partners' Personnel, the Proponent's Personnel or a third party) in connection with the Services;
- (c) damage to any property (including to any property of the Delivery Partner, the Proponent or a third party) caused or contributed to by an act or omission of the Delivery Partner or in connection with the Services;
- (d) any claim made against the Proponent by any of the Delivery Partner's Personnel in respect of any Law concerning remuneration, income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;
- (e) any claim by a third party against the Proponent arising out of any act or omission of the Delivery Partner in breach of this agreement or the Services;
- (f) any penalty imposed for breach of any Laws in connection with the Services;
- (g) any claim that the Services or anything the Delivery Partner does in connection with the Services infringes or allegedly infringes the Intellectual Property Rights of any person; and
- (h) any misleading or deceptive conduct by the Delivery Partner or any of its Personnel.

## 15.2 Extent to which indemnity will not apply

The indemnity in clause 15.1 will not apply to the extent that any Loss is caused by the negligence of the Proponent, or its Personnel (other than the Delivery Partner or the Delivery Partner's Personnel).

## 15.3 Benefit of indemnity

- (a) Every exemption, limitation, defence, immunity or other benefit contained in this agreement to which the Delivery Partner is entitled will also be held by the Delivery Partner to the benefit of, and will extend to protect, each of the Indemnified Parties (excluding the Delivery Partner's Personnel).
- (b) The Proponent holds the benefit of each indemnity in this agreement on trust for each of the Indemnified Parties and may enforce the indemnity on their behalf.
- (c) Each indemnity in this agreement is a continuing obligation separate and independent from the Delivery Partner's other obligations and survives termination or expiry of this agreement.
- (d) It is not necessary for an Indemnified Party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

## 15.4 Consequential Loss

- (a) Subject to clause 15.4(b), neither party is liable to the other party for any Consequential Loss suffered by the other party under or in connection with this agreement (**Consequential Loss Exclusion**).
- (b) The Consequential Loss Exclusion does not limit a party's liability to the other to the extent that the Claim or Loss:
  - (i) is recoverable under an insurance policy required by the agreement or would have been recoverable by such insurance policy if the relevant party had complied with its obligations under this agreement or the insurance policy;
  - (ii) arises as a result of fraud, wilful misconduct (including wilful default) or criminal conduct by a party and / or its Personnel;
  - (iii) arises as a result of any claims for infringement of the Intellectual Property Rights of any person or breach of confidentiality;
  - (iv) is in connection with any property or injury to, illness or death of any person; or
  - (v) cannot be limited at Law.

## 15.5 Assumed risks by Delivery Partner

Despite:

- (a) any information provided to the Delivery Partner by or obtained by the Delivery Partner from the Proponent or others or which is withheld (except where information is unreasonably withheld by the Proponent);
- (b) any difficulties the Delivery Partner might have in satisfying the requirements of this agreement;
- (c) any errors, omissions, ambiguities, conflicts or other problems in any specification provided by the Proponent to the Delivery Partner;
- (d) any differences in the conditions encountered on, in, near, or in connection with, the Site from those which the Delivery Partner anticipated;
- (e) any changes in Law whether or not foreseeable at the date of execution of this agreement;
- (f) compliance with the Proponent's reasonable directions and any consequences in connection with such compliance; and
- (g) any increases in cost,

the Delivery Partner acknowledges that these matters are regarded as within the Delivery Partner's liability and risk and the Delivery Partner remains fully responsible for providing the Services in accordance with the requirements of this agreement at its own expense and the Service Fee in this agreement will be regarded as providing adequate allowance for this.

## 16. Force majeure

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### 16.1 Suspension of obligations

An obligation of a party under this agreement (other than the obligation to make any payment) is suspended for the time and to the extent that that party is prevented from or delayed in complying with that obligation by a Force Majeure Event.

### 16.2 No relief

The occurrence of a Force Majeure Event does not relieve the affected party from performing its obligations:

- (a) if the delay or failure by the affected party in the performance or the occurrence of a Force Majeure Event could have been prevented by reasonable precautions taken by the affected party; or

- (b) if the Force Majeure Event results from any intentional act or omission on the part of the affected party, except to the extent such fault was itself caused by a Force Majeure Event.

### 16.3 Responsibilities

On the occurrence of a Force Majeure Event, the affected party must promptly:

- (a) notify the other party and describe in reasonable detail the nature of the Force Majeure Event and its likely effect on the ability of the affected party to perform its obligations under this agreement;
- (b) use all reasonable endeavours to avoid or remove the cause of the Force Majeure Event and perform its obligations under this agreement as soon as possible; and
- (c) take all reasonable steps to mitigate any losses caused to the other party.

### 16.4 Step in rights to use Delivery Partner's Equipment

If a Force Majeure Event affects the Delivery Partner, the Delivery Partner grants the Proponent the right to use the Delivery Partner's Equipment itself or arrange for a third party to use the Delivery Partner Equipment to provide the Services for the duration of the Force Majeure Event. The Proponent must take reasonable care of the Delivery Partner's Equipment during such period, fair wear and tear excepted.

### 16.5 Termination

Either party may by 20 Business Days notice to the other party, terminate this agreement if a Force Majeure Event continues for at least 6 months.

## 17. Intellectual Property Rights

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### 17.1 Delivery Partner Background Intellectual Property Rights

- (a) The Delivery Partner remains the owner or licensee (as the case may be) of all Delivery Partner Background Intellectual Property Rights.
- (b) The Delivery Partner grants or must procure the granting to the Proponent of a non-exclusive, royalty-free licence to use the Delivery Partner Background Intellectual Property Rights for the purpose of the Proponent performing its obligations under this agreement and the Broilga Compensation Plan.

### 17.2 Proponent's Background Intellectual Property Rights

- (a) The Proponent remains the owner or licensee (as the case may be) of all of the Proponent's Background Intellectual Property Rights.

- (b) The Proponent grants to the Delivery Partner a non-exclusive, non-sub-licensable licence to use within Australia the Proponent's Background Intellectual Property as provided to the Delivery Partner for the limited purpose of performing its obligations under this agreement.

### 17.3 Developed Intellectual Property

- (a) Any and all Developed Intellectual Property is owned by the Proponent (as between the Delivery Partner and the Proponent). The Delivery Partner hereby assigns all right, title and interest in the Developed Intellectual Property to the Proponent with effect from the date of creation. The Delivery Partner agrees to execute all documents and do all things as may be necessary to give full effect to this clause 17.3(a).
- (b) The Delivery Partner agrees not to do any act, or assist any other person directly or indirectly to do any act, which would or may:
  - (i) infringe any part of the Developed Intellectual Property or Proponent's Background Intellectual Property; or
  - (ii) invalidate or result in a challenge to the Proponent's title to the Developed Intellectual Property.
- (c) The Proponent grants to the Delivery Partner a non-exclusive, royalty free, non-assignable licence to use the Developed Intellectual Property.

## 18. Insurance

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### 18.1 Insurance policies

The Delivery Partner must, before the Commencement Date, take out and maintain during the Term the Insurance Policies.

### 18.2 Currency certificate

On reasonable request from the Proponent, the Delivery Partner must provide to the Proponent evidence of the currency of the Insurance Policies it is required to maintain under clause 18.1 and a copy of the relevant policies.

### 18.3 No prejudice

The Delivery Partner must not do anything which prejudices any of the Insurance Policies and must immediately notify the Proponent in writing of any event which results in an insurance policy being altered where such alteration materially affects coverage under this agreement.

#### 18.4 Policy claims

If any event occurs which may give rise to a claim involving the Proponent under any Insurance Policy to be taken out by the Delivery Partner under clause 18.1, then the Delivery Partner must notify the Proponent within 14 days of that event and ensure that the Proponent is kept fully informed of any subsequent actions and developments concerning the relevant claim.

#### 18.5 Subcontractors

The Delivery Partner must ensure that any subcontractor engaged by the Delivery Partner in relation to the supply of the Services under clause 23.2 effects and maintains the insurances, and for the amounts, required by clause 18.1 and must ensure that its subcontractors comply with all relevant Laws concerning insurance cover for liabilities in relation to employees and subcontractors.

### 19. Confidentiality

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#### 19.1 No disclosure

Other than as permitted under clause 19.2, neither party may disclose to any person the Confidential Information.

#### 19.2 Permitted disclosures

A party (**Disclosing Party**) may disclose the Confidential Information of the other party:

- (a) to its Related Bodies Corporate, its Personnel and/or a Personnel of its Related Body Corporate who needs to know the Confidential Information for the purposes of this agreement subject to the Disclosing Party taking reasonable steps to ensure that any such Related Bodies Corporate and/or Personnel (as applicable) is fully aware of the confidential nature of the Confidential Information before the disclosure is made;
- (b) which is required to be disclosed by Law, provided that the Disclosing Party has:
  - (i) given the other party prior notice where practicable; and
  - (ii) provided all assistance and co-operation which the other party reasonably considers necessary for that purpose;
- (c) to professional advisers of a party or to potential buyers of the party or the party's business, provided that the recipients of such Confidential Information are subject to obligations of confidentiality;
- (d) to DELWP for the purposes of discharging the Disclosing Party's obligations under this agreement or under the Brolga Compensation Plan; and

(e) as agreed between the parties.

### 19.3 Personnel undertaking

Each party must ensure that its Related Bodies Corporate and Personnel who have or may have access to the Confidential Information of the other party are aware of the confidential nature of the Confidential Information and treat the Confidential Information accordingly and must procure that any such Related Bodies Corporate and/or Personnel keep such information confidential.

### 19.4 Duration of obligations

The obligations under this clause 19 will continue for a period of three years after the expiry or termination of this agreement.

### 19.5 Benefit

The Disclosing Party holds the benefit of this clause 19 for itself and for each of its Related Bodies Corporate.

## 20. Disputes

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### 20.1 Parties to discuss

- (a) If any party to this agreement claims that a dispute has arisen under or in connection with this agreement (**Dispute**), that party must give notice of the Dispute (**Dispute Notice**) to the other party.
- (b) Within 10 Business Days of the date of the Dispute Notice (or such other period as agreed between the parties), the parties must meet to negotiate in good faith and seek to resolve the Dispute.

### 20.2 Mediation

If the Dispute is not resolved under clause 20.1(b) within 25 Business Days after the date of the Dispute Notice (or such other period agreed between the parties), the Dispute must be referred to mediation administered by the Resolution Institute. The mediation must be conducted in accordance with most recent version of the Rules of the Resolution Institute which set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved. (The terms of the Rules of the Resolution Institute are deemed to be incorporated into this agreement).

### 20.3 Litigation

If the Dispute is not resolved under clause 20.2 within 45 Business Days after the date of the Dispute Notice (or such other period agreed between the parties), either party may commence litigation proceedings.

#### 20.4 **Injunctive relief**

A party may seek interim or urgent interlocutory relief at any time.

### 21. Records and reporting

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#### 21.1 **Record keeping**

The Delivery Partner must maintain accurate and complete records of the Services performed for the Proponent.

#### 21.2 **Audit of records**

- (a) During the Term and for a period of two years thereafter, the Delivery Partner must permit the Proponent (or any third party appointed by the Proponent) at its expense, to audit the records and books of the Delivery Partner, relating to activities undertaken in connection with this agreement and the performance of the Delivery Partner's obligations against this agreement, all charges made by the Delivery Partner under this agreement and payment made or benefits conferred (whether in kind or in cash) by the Delivery Partner for or on behalf of the Proponent in the performance of or otherwise in relation to this agreement.
- (b) The Delivery Partner must provide and ensure that its Personnel provide the Proponent, or any third party on behalf of the Proponent, with all reasonable assistance, including the provision of any information reasonably requested by the Proponent or the third party (as the case may be) in relation to such an audit.

#### 21.3 **Reporting**

The Delivery Partner must comply with any reporting requirements outlined in the Brolga Compensation Plan as well as any additional reporting requirements notified by the Proponent to the Delivery Partner from time to time.

### 22. Notices

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#### 22.1 **Requirements**

All notices, requests, demands, consents, approvals, or other communications under this agreement (**Notice**) to, by or from a party must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;

- (c) addressed to a party in accordance with its details set out in Schedule 1 or as otherwise specified by that party by Notice (**Notified Contact Details**); and
- (d) signed by the sending party or a person duly authorised by the sending party or, if a Notice is sent by email (if applicable), sent by the sending party.

## 22.2 How a Notice must be given

In addition to any other method of giving Notices permitted by statute, a Notice must be:

- (a) delivered personally;
- (b) sent by regular post if sent within Australia;
- (c) sent by airmail if sent to a place outside Australia;
- (d) sent by airmail if sent from a place outside Australia; or
- (e) sent by email.

## 22.3 When Notices considered given and received

A Notice takes effect when received (or such later time as specified in it) and a Notice is regarded as being given by the sending party and received by the receiving party:

- (a) if delivered by hand to the address set out in the Notified Contact Details, when delivered to that address;
- (b) if sent from a place within Australia by regular post to the address set out in the Notified Contact Details which is an address that is within Australia, at 9.00 am on the sixth Business Day after the date of posting;
- (c) if sent from a place within Australia by airmail to the address set out in the Notified Contact Details which is an address outside Australia, at 9.00 am on the tenth Business Day after the date of posting;
- (d) if sent from a place outside Australia by airmail to the address set out in the Notified Contact Details which is an address that is within or outside Australia, at 9.00 am on the twelfth Business Day after the date of posting; or
- (e) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

## 22.4 Time of delivery and receipt

If pursuant to clause 22.3 a Notice would be regarded as given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, then the Notice will be deemed as given and received at 9.00 am on the next Business Day.

## 22.5 General

A party may change its contact details as set out in Schedule 1 by giving a Notice to the other party.

## 23. General

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### 23.1 Assignment

- (a) The Delivery Partner must not assign or novate or otherwise deal with any of its rights under this agreement, without the prior written consent of the Proponent.
- (b) The Proponent may assign or novate any or all of its rights or obligations under this agreement at any time to a Related Body Corporate.
- (c) A breach of clause 23.1(a) is intended by the parties to be void and of no force and effect and entitles the Proponent to terminate this agreement.

### 23.2 Subcontracting

- (a) The Delivery Partner must not subcontract any of its obligations under this agreement without the prior written consent of the Proponent, which may be withheld by the Proponent in its discretion acting reasonably.
- (b) Where the Proponent consents to a subcontracting arrangement, the Delivery Partner is liable to the Proponent for any act or omission, default or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default or negligence of the Delivery Partner.
- (c) A breach of clause 23.2 is intended by the parties to be void and of no force and effect and entitles the Proponent to terminate this agreement.

### 23.3 Variation

A variation of any term of this agreement will be of no force or effect unless it is in writing and signed by each of the parties.

### 23.4 Costs and expenses

- (a) Subject to clause 23.4(b), each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this agreement.
- (b) The Proponent agrees to reimburse the Delivery Partner up to a maximum amount of \$2,500 as a contribution to the Delivery Partner's legal expenses in connection with the negotiation, preparation and execution of this agreement, subject to the Delivery Partner's provision to the Proponent of satisfactory supporting documentation evidencing such expenses.

### 23.5 Waiver

- (a) A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver.
- (b) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power.
- (c) A waiver given by a party in accordance with clause 23.5(a):
  - (i) is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion; and
  - (ii) does not preclude that party from enforcing or exercising any other right, remedy or power under this agreement nor is it to be construed as a waiver of any other obligation or breach.

### 23.6 Severance

If a provision in this agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this agreement.

### 23.7 Governing law and jurisdiction

- (a) This agreement is governed by and is to be construed under the laws in force in Victoria, Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, 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.

### 23.8 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this agreement and the transactions contemplated by it.

### 23.9 No reliance

Neither party has relied on any statement by the other party which has not been expressly included in this agreement.

#### **23.10 Entire agreement**

This agreement states all of the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

#### **23.11 Counterparts**

- (a) This agreement may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- (b) A party that has executed a counterpart of this agreement may exchange that counterpart with another party emailing it to the other party or the other party's legal representative and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party or the other party's legal representative. However, the validity of this agreement is not affected if the party who has faxed or emailed the counterpart delays in delivering or does not deliver it by hand or by post.

#### **23.12 Relationship of parties**

- (a) The parties are not and are not to be taken to be in a partnership, joint venture, employment or fiduciary relationship.
- (b) Nothing in this agreement gives a party authority to bind any other party in any way.

#### **23.13 Remedies cumulative**

Except as provided in this agreement and permitted by law, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

#### **23.14 Clauses that survive termination**

Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination or expiry of this agreement, clauses 10, 14.3, 17, 19, 20, and this clause 23.14 survive the termination or expiry of this agreement.

## Schedule 1 Notice Details

### Item 1 Proponent details

Name:	Dundonnell Wind Farm Pty Ltd
ABN/ACN:	ACN 133 651 019
Address:	GPO Box 16080, Collins Street West, Melbourne, Victoria, 8007
Contact name:	Amanda Jones (Manager Stakeholders and Environment)
Email:	amanda.jones@tiltrenewables.com

### Item 2 Delivery Partner's details

Name:	Odonata.org Ltd
ABN/ACN:	ACN 620 085 583
Address:	2/5 Raglan Street, South Melbourne, Victoria 3025
Contact name:	Nigel Sharp
Email:	nigel@odonata.org.au

Schedule 2      Service Fees

Step	Amount	Indicative Budget	Payment Type
<b>Wetland Selection and Registration</b> <ul style="list-style-type: none"> <li>• Step 1 – Execution of contract</li> <li>• Step 2 - Undertake wetland selection process</li> <li>• Step 3 - Agreements secured with landowners, including wetland management plans</li> <li>• Step 4 - Obtain relevant permits / consents to undertake restoration works</li> <li>• Step 5 - Registration of agreements, including wetland management plan, on title</li> </ul>		\$----- \$----- \$----- \$-----	Within 10 Business Days of execution of the agreement
<b>Wetland Restoration</b> <ul style="list-style-type: none"> <li>• Step 6 - Undertake restoration works, as required by the wetland management plan</li> </ul>		\$-----	Within 10 Business Days of execution of the agreement
<b>Annual Reporting (Year 0)</b> <ul style="list-style-type: none"> <li>• Step 7 - Undertake Year 0 evaluation of the plan (including reporting)</li> </ul>		\$-----	Within 10 Business Days of execution of the agreement
<b>TOTAL UPFRONT</b>	\$-----		
<b>Annual Reporting (Post Year 0)</b> <ul style="list-style-type: none"> <li>• Step 10 - Undertaken annual wetland evaluation</li> </ul>		\$-----	Annually in advance, from Year 1 (26 years)
<b>Management and Monitoring</b> <ul style="list-style-type: none"> <li>• Step 8 - Implementation of wetland management measures</li> <li>• Step 9 - Implementation of wetland monitoring.</li> </ul>		\$-----	Annually in advance, from Year 1 (25 years)
<b>ANNUAL PAYMENT (POST YEAR 0)</b>	\$-----		

**Note:**

- (a) The Proponent agrees to pay any amount due and payable to the Delivery Partner with respect to the steps identified above within 10 Business Days of the later of:
  - (i) the date specified in the 3rd column of the table above; or
  - (ii) upon receipt of a valid tax invoice from the Delivery Partner for the relevant amount.
- (b) Subject to paragraph (a) above, all annual amounts must be paid in advance on each anniversary of the Commencement Date.
- (c) Annual payment amounts for Step 8, Step 9 and Step 10 will be indexed in accordance with any increase from the CPI last published prior to the Commencement Date to the CPI last published prior to the due date for payment of the relevant amount.

## Schedule 3 Insurance Policies

### 1. Professional indemnity insurance

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The Delivery Partner must take out and maintain professional indemnity insurance in respect of the supply of the Services in connection with this agreement for an amount of at least \$----- (to be maintained during the Term of the agreement and for a period of not less than seven years after the expiry or termination of this agreement).

### 2. Public liability insurance

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The Delivery Partner must take out and maintain a comprehensive public liability insurance policy to cover all sums which the Delivery Partner may become legally liable to pay as compensation consequent on:

- (a) death of, or bodily injury (including disease or illness) to, any person;
- (b) loss of, or damage to, property; and
- (c) happening anywhere in Australia arising out of or in connection with this agreement, for an amount of at least \$----- per event.

### 3. Workers compensation insurance

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The Delivery Partner must take out and maintain insurance in respect of all claims and liabilities arising, whether at common law or under statute, relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Delivery Partner in connection with the Services. This insurance must be in compliance with the Laws of the relevant jurisdiction in which the Services are performed and be extended to indemnify the Proponent where the jurisdiction allows.

### 4. Additional insurance

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The Delivery Partner must take out and maintain any other insurance policies reasonably required by the Proponent from time to time.

## Signing Page

### Executed as an Agreement

Executed by Dundonnell Wind Farm )  
Pty Ltd ACN 133 651 019 in accordance )  
with section 127 of the Corporations Act )  
2001 (Cth):

Director

.....  
(Print) Full Name

.....  
(Print) Full Name

Executed by Odonata.org Ltd ACN 620  
085 583 in accordance with section 127 of  
the Corporations Act 2001 (Cth):

.....  
(Print) Full Name

.....  
(Print) Full Name

## Annexure A    Brolga Compensation Plan