Draft No 1

23 March 2021

Pacific Heat and Power Pty Ltd

[Insert]

Feedstock Options Agreement

 Contents

[1 Definitions 1](#_Toc67402351)

[2 Option 2](#_Toc67402352)

[2.1 Feedstock Supply Agreement 2](#_Toc67402353)

[2.2 Option 2](#_Toc67402354)

[2.3 Use of Feedstock 2](#_Toc67402355)

[2.4 Expiry of the Option Term 2](#_Toc67402356)

[3 Confidentiality 3](#_Toc67402357)

[4 Notices 3](#_Toc67402358)

[4.1 General 3](#_Toc67402359)

[4.2 How to give a communication 3](#_Toc67402360)

[4.3 Particulars for delivery of notices 4](#_Toc67402361)

[4.4 Communications by post 4](#_Toc67402362)

[4.5 Notices by email 4](#_Toc67402363)

[4.6 After hours communications 4](#_Toc67402364)

[5 General 5](#_Toc67402365)

[5.1 Legal costs 5](#_Toc67402366)

[5.2 Amendment 5](#_Toc67402367)

[5.3 Waiver and exercise of rights 5](#_Toc67402368)

[5.4 Rights cumulative 5](#_Toc67402369)

[5.5 Governing law and jurisdiction 5](#_Toc67402370)

[5.6 Assignment 5](#_Toc67402371)

[5.7 Liability 5](#_Toc67402372)

[5.8 Counterparts 5](#_Toc67402373)

[5.9 Entire understanding 5](#_Toc67402374)

[5.10 Relationship of parties 6](#_Toc67402375)

[5.11 Consideration 6](#_Toc67402376)

[5.12 Construction 6](#_Toc67402377)

[5.13 Headings 6](#_Toc67402378)

[6 Supplier as Agent 7](#_Toc67402379)

[6.1 Definitions 7](#_Toc67402380)

[6.2 Capacity 7](#_Toc67402381)

[6.3 Liability 7](#_Toc67402382)

[Execution 8](#_Toc67402383)

**Date**

Parties

**Pacific Heat and Power Pty Ltd** ABN 71 622 871 087 of 132 Cremorne Street, Cremorne VIC 3121 (**Purchaser**)

**[Supplier Name Insert]** ABN [insert] of [insert address] (**Supplier**)

Background

1. The Supplier [owns / operates / manages] a [farm / facility] which, amongst other things, produces the Feedstock.
2. The Purchaser (or its assigned entity) is a developer and investor in cereal straw-based clean energy assets and/or other bio-based derivatives and is currently developing a project which may require the use of the Feedstock.
3. The Supplier has agreed to grant the Purchaser an Option to purchase the Feedstock on the terms set out in this document.
4. If the Purchaser, at its discretion, decides to exercise the Option within the Option Term, the parties must enter into the Feedstock Supply Agreement.

# Agreed terms

## Definitions

In this document these terms have the following meanings:

|  |  |
| --- | --- |
| **Business Day** | 1. A day which is not a Saturday, Sunday or bank or public holiday in Melbourne.
 |
| **Contract Particulars** | 1. The details set out in Schedule 1 of this document.
 |
| **Facility**  | 1. The facility described in the Contract Particulars which, amongst other things, produces the Feedstock.
 |
| **Feedstock** | 1. The material described in Schedule 2 of this document.
 |
| **Feedstock Supply Agreement** | 1. A contract for the supply of the Feedstock formed in accordance with **clause 2.1**.
 |
| **Lead-in Period** | 1. The period set out in item 2 of the Contract Particulars.
 |
| **Option**  | 1. The Purchaser’s election to take up the supply of the Feedstock in accordance with **clause 2.2**.
 |
| **Option Term** | 1. The period set out in item 3 of the Contract Particulars as extended, if at all, by written agreement between the parties.
 |

## Option

### Feedstock Supply Agreement

The parties:

#### acknowledge and agree that the key terms of the Feedstock Supply Agreement are as set out in Schedule 2 of this document; and

#### must, during the Option Term, act in good faith to negotiate and agree the full terms of the Feedstock Supply Agreement.

If the Purchaser exercises the Option prior to the expiry of the Option Term and the parties:

#### have agreed the full terms for the supply of the Feedstock, a contract shall be formed on the basis of those agreed full terms and the parties must execute such an agreement; or

#### have not agreed the full terms for the supply of the Feedstock, a contract shall be formed on the basis of the key terms set out in Schedule 2 of this document and shall come into effect on the date on which the Purchaser exercises the Option,

(**Feedstock Supply Agreement**).

### Option

The Purchaser may, at any time during the Option Term, exercise the option to purchase the Feedstock from the Supplier by providing a written notice to the Supplier setting out the date on which the supply of the Feedstock shall commence, which must not be shorter than the Lead-in Period (**Option**).

By entering into this document, the Purchaser makes no representations or warranties that it will exercise the Option and the Purchaser may do so at its absolute discretion.

### Use of Feedstock

Prior to the commencement of the Feedstock Supply Agreement, the Supplier may use the Feedstock for any purpose it sees fit.

Upon commencement of the Feedstock Supply Agreement, the Supply must supply the Feedstock to the Purchaser in accordance with the terms of the Feedstock Supply Agreement.

### Expiry of the Option Term

If the Purchaser does not exercise the Option prior to the expiration of the Option Term, this document shall be discharged and neither party shall have any on-going liability or obligations to the other.

## Confidentiality

Except as required by law or by a stock exchange, the terms and existence of this document must be kept confidential and may only be disclosed by a party to:

#### its professional advisers on condition that they agree to be bound by the terms of this clause; or

#### other persons with the prior written consent of all the other parties which may be given or withheld by a party conditionally or unconditionally without giving its reasons for doing so.

## Notices

### General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

### How to give a communication

In addition to any other lawful means, a communication may be given by being:

#### personally delivered;

#### left at the party’s current delivery address for notices;

#### sent to the party’s current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or

#### emailed to the current email address for notices.

### Particulars for delivery of notices

#### The particulars for delivery of notices are initially:

**Pacific Heat and Power Pty Ltd (ABN 71 622 871 087):**

Delivery address: 132 Cremorne Street, Cremorne VIC 3121

Postal address: Same as delivery address

Email: scott.grierson@pacificheatandpower.com

Attention: Dr Scott Grierson

[**Party 2]:**

Delivery address: #**idd Party2 street address**#

Postal address: #**idd Party2 PO box details or if there is no PO box insert ‘same as delivery address’**#

Email: #**idd Party2 email**#

Attention: #**idd Party2 attention**#

#### Each party may change its particulars for delivery of notices by notice to each other party.

### Communications by post

Subject to **clause 4.8**,a communication is given if posted:

#### within Australia to an Australian postal address, three Business Days after posting; or

#### outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

### Notices by email

Subject to **clause 4.8**, a notice sent by email is taken to be received at the time the email was sent, as recorded on the device from which the sender sent the email (provided the sender does not receive a delivery failure message).

### After hours communications

If a communication is given:

#### after 5.00 pm in the place of receipt; or

#### on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## General

### Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

### Amendment

This document may only be varied or replaced by a document executed by the parties.

### Waiver and exercise of rights

#### A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

#### A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

### Governing law and jurisdiction

#### This document is governed by and is to be construed in accordance with the laws applicable in Victoria.

#### Each party irrevocably and unconditionally submits to the non‑exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### Assignment

#### The Purchaser as developer of an energy asset may choose to assign this Agreement to a nominated Special Purpose Vehicle (SPV) established with the specific intent of owning and operating the proposed plant that will utilise the Feedstock.

#### A party must not otherwise assign or deal with any right under this document without the prior written consent of the other parties.

#### Any purported dealing in breach of this clause is of no effect.

### Liability

An obligation of two or more persons binds them separately and together.

### Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### Entire understanding

#### This document contains the entire understanding between the parties as to the subject matter of this document.

#### All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.

#### No oral explanation or information provided by any party to another:

##### affects the meaning or interpretation of this document; or

##### constitutes any collateral agreement, warranty or understanding between any of the parties.

### Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

### Consideration

In consideration for the Supplier granting the Purchaser the right to exercise the Option pursuant to this document, the Purchaser agrees to pay the Supplier the sum of $[x] per tonne of volume upon exercising such Option.

### Construction

Unless expressed to the contrary, in this document:

#### words in the singular include the plural and vice versa;

#### any gender includes the other genders;

#### if a word or phrase is defined its other grammatical forms have corresponding meanings;

#### ‘includes’ means includes without limitation;

#### no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

#### a reference to:

##### a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

##### a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

##### any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

##### an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

### Headings

Headings do not affect the interpretation of this document.

***[Note: only include the clause below where the Supplier is entering into this contract as agent for one or more other parties. If that is not the case, the clause below should be deleted.]***

## Supplier as Agent

### Definitions

For the purposes of this **clause 6**:

#### **Assets** includes all assets, property and rights real and personal of any value whatsoever of the Entity;

#### **Entity** means any entity or entities (joint and severally and including a natural person, partnership, trust or company) for whom the Supplier acts as agent in relation to the supply of the Feedstock, including:

##### [insert list of entities]; and

#### **Obligations** means all obligations and liabilities of the Supplier arising out of or in connection with this document.

### Capacity

The Supplier enters into this document in its capacity as agent of the Entity and in no other capacity.

The Supplier warrants that it has the full power and authority to enter in this document as agent of the Entity and perform the Obligations on behalf of the Entity.

### Liability

To the extent that the Supplier acts within its authority as agent of the Entity and does not act fraudulently, negligently or in a manner constituting wilful default or wilful misconduct:

#### it will only be liable to the Purchaser in its personal capacity in respect of any of the Obligations to the extent that the Supplier is entitled to be indemnified in relation to such liability from the Entity; and

#### the Purchaser waives its rights to recover any monies from the Supplier in its personal capacity other than to the extent of the Supplier’s liability under paragraph (a).

Nothing in this **clause 6** limits any rights which the Purchaser may have against the Entity. N

Execution

**Executed** as an agreement.

|  |  |  |
| --- | --- | --- |
| **Executed** by **AusPellets Pty Ltd** | )) |  |
| ...........................................................Company Secretary/Director...........................................................Name of Company Secretary/Director (print) |  | ...........................................................Director...........................................................Name of Director (print) |

|  |  |  |
| --- | --- | --- |
| **Executed** by **[Insert]** | )) |  |
| ...........................................................Company Secretary/Director...........................................................Name of Company Secretary/Director (print) |  | ...........................................................Director...........................................................Name of Director (print) |

1. Schedule 1 - Contract Particulars

| **Item**  | **Description** | **Particulars** |
| --- | --- | --- |
| 1.
 | Facility | [The farm located at…] |
| 1.
 | Lead-in Period | [12] months |
| 1.
 | Option Term | [24] months |

Schedule 2 – Key terms of the Feedstock Supply Agreement

Set out below are the key agreed terms for any Feedstock Supply Agreement to be entered into between the parties. A reference to the “Feedstock Options Agreement” is a reference to this document.

| **Item**  | **Item** | **Key Term** |
| --- | --- | --- |
|  | Commencement Date | As provided for in the Feedstock Options Agreement |
|  | Term | [24] months with [2] options to renew for a period of [12] months each which may be exercised by the Purchaser at its discretion.  |
|  | Feedstock | [insert] |
|  | Feedstock Quality | Feedstock must: * 1. be free from pollution, mould or contamination;
	2. comply with all legislative requirements and regulations;
	3. comply with any applicable industry standards; and
	4. be supplied with a maximum inherent moisture (IM) content of [x]%
	5. carry a minimum lower heating value (LHV) of [y]MJ/kg, as supplied
 |
|  | Required Volume | Minimum of: [insert] metric tonnes per [year]The Purchaser may elect at its sole discretion to take an additional volume on the same terms, should the Supplier have surplus available feedstock, as negotiated between the parties and agreed in writing. |
|  | Price | AUD$[insert] / [metric tonnes/bale] available at the Collection Point |
|  | Indexation of the Price | In the event that the Purchaser is entitled to annually index the amount it is paid for the energy products and services it sells to its customers which are made from the Feedstock, the Purchaser will pass through an equivalent proportionate indexation to the Supplier |
|  | Payment | Monthly in arrears |
|  | Collection Point | [insert] |
|  | Feedstock Form | [loose / bailed to the following agreed quality, density and dimensions] |
|  | Responsibility for Transport | Purchaser  |
|  | Responsibility for Insurance | Supplier, prior to collection; Purchaser, post-collection and transfer of risk  |
|  | Forecasts | Each of the parties must provide the other with a rolling seasonal forecast of its anticipated supply of, and demand for, the Feedstock over the Term.  |
|  | Risk and Title | Risk passes from the Supplier to the Purchaser upon Collection. Title passes from the Supplier to Purchaser on payment.  |
|  | Termination for convenience | The Purchaser may terminate the Feedstock Supply Agreement at any time for its convenience by providing the Supplier with not less than [3] months’ prior written notice.The Supplier may terminate the Feedstock Supply Agreement at any time where it is impossible for the Supplier to continue to produce the Feedstock for reasons beyond its control by providing the Purchaser with not less than [3] months’ prior written notice.  |
|  | Alternative Feedstock | The Purchaser may purchase alternative feedstock from other suppliers, whether during the Term or upon termination of the Feedstock Supply Agreement (including for convenience).  |