

Tamar Valley project

Heads of Agreement

State of Tasmania

Babcock & Brown Power Limited

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- (c) If the SPA is not executed on or before 29 August 2008, either party may by notice in writing to the other party terminate this agreement, in which case neither party will incur any liability to or have any claim against the other party in connection with this agreement.

2.2 Project development

- (a) In consideration for the State's agreement to acquire AETV as set out in clause 2.1(a), BBP will procure that construction of the Power Station and development of the Tamar Valley Project continues to be progressed in a manner consistent with the Work Program:

- (1) until at least 29 August 2008; and
- (2) if the SPA is executed on or before 29 August 2008, until completion of the Sale or earlier termination of the SPA (if any),

and without limitation will ensure that AETV pays all Development Costs due and payable during such periods.

2.3 Due diligence condition

- (a) Prior to execution of the SPA, BBP will allow the State to conduct a full legal, financial, technical and operational due diligence of the Tamar Valley Project (subject to any confidentiality obligations owed by BBP or a subsidiary to third parties).
- (b) The State is not required to execute, or procure that a State-owned entity (or a subsidiary of a State-owned entity) executes, the SPA unless and until it has:
 - (1) reviewed all due diligence information of the nature described in clause 2.3(a); and
 - (2) satisfied itself, acting reasonably, that the results of that review do not reveal any information that is inconsistent, in a material and adverse way, with the key commercial and technical information provided by or on behalf of BBP to certain representatives of the State.
- (c) On or before 29 August 2008 the State must confirm whether the requirements of clause 2.3(b) have been satisfied.

2.4 Other conditions

- (a) Each party will use all reasonable endeavours to ensure that the conditions precedent identified in clause 2.5 are satisfied as expeditiously as possible and will take steps to achieve satisfaction of the conditions precedent from the date of this agreement.
- (b) The parties must keep each other informed of the progress towards satisfaction of the conditions precedent and must provide all reasonable assistance to each other as is necessary to satisfy those conditions precedent.

2.5 Key Terms of the Sale

The parties agree that the following key terms and conditions of the Sale will be contained in the SPA. The parties will not seek to vary or depart from these terms when negotiating the SPA, other than to address a material adverse issue described in

clause 2.3(b) or as expressly contemplated below. However the parties acknowledge that other terms and conditions (not inconsistent with these terms and conditions) may also be included in the SPA.

Subject	Agreed position
Transaction Structure	The Sale will be effected by a sale of the shares in AETV and all other assets that are owned or used by the BBP group and are reasonably required to enable AETV to design, procure, construct and commission the Power Station in accordance with the Work Program, in each case free from all security interests.
Completion	Risk passes on completion of the Sale.
Conditions Precedent	<p>Completion of the Sale is subject to the following conditions precedent. Either party may terminate the SPA if the conditions precedent have not been satisfied or waived by 15 September 2008.</p> <ol style="list-style-type: none">1 ACCC Approval: The State receives a written notice from the ACCC stating that it does not object to the Sale, either unconditionally or on terms that are satisfactory to the State (acting reasonably).2 Frequency standards: A draft ruling is issued by the Australian Energy Market Commission's Reliability Panel such that, if that ruling is made final, it would enable the Power Station to be operated in accordance with the National Electricity Rules at a frequency standard consistent with its design.3 Operational capacity: The State is satisfied, acting reasonably and on the basis of technical advice, that the draft ruling of the Australian Energy Market Commission's Reliability Panel, if it is made final, will not restrict the Power Station from being operated so as to enable AETV to meet its obligations under the agreements referred to in paragraph 2 of the definition of AEATM Agreements (as set out in clause 4.1 of this agreement), assuming those agreements are novated to AETV.4 Parliamentary approval: The parliament of the State of Tasmania passes legislation that authorises or approves the acquisition of the Power Station by the State, a State-owned entity or a subsidiary of a State-owned entity and that legislation receives royal assent. The State will agree to use all reasonable endeavours to ensure that the legislation is passed by both houses of parliament and receives royal assent.5 Guarantees: Each member of the BBP group other than AETV has (unless BBP waives this condition) been unconditionally and irrevocably released, with effect from completion of the Sale, from any guarantee, indemnity, charge or other security given by that entity to a third party to better secure the performance of AETV or required for the benefit of AETV. These guarantees will be identified in the SPA.6 Change of control consents: AETV has obtained written consent to the change of control of AETV contemplated by the SPA from the counterparties to each contract to which AETV is a party, where that contract requires counterparty consent to such a change of control, on terms reasonably satisfactory to BBP and the State. These contracts will be identified in the SPA.7 Novations: Each of the AEATM Agreements has been novated to

AETV, on terms reasonably satisfactory to BBP and the State.

- 8 **Category A Contracts:** The Category A Contracts have each been executed by AETV and the relevant counterparty, either in a substantially similar form as the draft provided to the State prior to execution of the SPA (such draft having been approved by the State, acting reasonably, before execution of the SPA) or otherwise in a form satisfactory to the State (acting reasonably).
- 9 **Financier consents:** Any required consents from financiers to BBP or its subsidiaries required to complete the Sale or for BBP to provide the guarantee.
- 10 **Category B Contract:** If the Category B Contract has not been executed on or before completion of the Sale, AEPG procures that a BBP group member and AETV enters into an interim agreement under which the BBP group member passes through the goods and services to AETV which were to be supplied under the Category B Contract on no less favourable economic terms than the economic terms on which the BBP group member has been able to obtain such goods and services from a third party (such contract having been approved by the State, acting reasonably, within 3 business days of the draft being provided to the State).

AEPG will use all reasonable endeavours to procure that the Category B Contract is executed by AETV and the relevant counterparty on or before completion of the Sale on terms not materially different to the draft terms provided to the State prior to execution of the SPA (such draft having been approved by the State, acting reasonably, before execution of the SPA). AEPG confirms to the State that the economic terms of such draft Category B Contract will be no less favourable to AETV than the economic terms on which a BBP group member is able to obtain the goods and services the subject of the Category B Contract.

Purchase price

- 1 \$100 million; plus
- 2 Development Costs due and payable between 8 August 2008 and completion of the Sale where those Development Costs have been paid in accordance with the Work Program (but excluding such Development Costs as were due and payable prior to 8 August 2008 but which were not so paid); plus
- 3 50% of the Unused Contingency (as calculated below).

Items 1 and 2 will be paid on completion. Item 3 will be calculated by a suitably qualified engineer that is appointed by the State and jointly instructed by the State and BPP (the Independent Engineer) and, if applicable, paid as an adjustment to the purchase price within 5 business days of the Independent Engineer's calculation. If the Unused Contingency is less than or equal to zero then no payment will be made under Item 3.

Costs and expenses comprising Item 2 will be identified (either specifically or by reference to the Work Program) in the SPA.

Costs and expenses of the Independent Engineer in calculating the Unused Contingency will be included in the Work Program.

Calculation of the Unused Contingency

Within 30 business days following Final Practical Completion, the State and BBP will procure that the Independent Engineer calculates the Unused Contingency in accordance with the principles outlined below.

The principles for calculating the Unused Contingency are as follows:

- 1 The Independent Engineer will calculate the total Development
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Costs incurred between 8 August 2008 and Final Practical Completion.

- 2 The Independent Engineer will:
 - (a) subtract from the amount referred to in item 1:
 - any Development Costs spent or incurred as a result of a change of any specifications contained in the project documents since completion of the Sale (other than Development Costs attributable to the rectification of any defects in the design or construction of the Power Station where those defects are referable to a period prior to 8 August 2008);
 - any Development Costs spent or incurred as a result of variations arising from an acceleration of the works delivery since completion of the Sale; and
 - any advisory fees, financial advisory fees or payments to the State or subsidiaries of the State (including Aurora Energy Pty Ltd, Hydro-Electric Corporation and Transend Networks Pty Ltd) not specified in or greater than the amount specified in the Work Program; and
 - (b) add to the amount referred to in item 1 any allowance for financing charges as a result of any delay in Final Practical Completion (when compared against the timetable that is to be specified in the SPA).
- 3 The Independent Engineer will subtract from the amount calculated in Items 1 and 2, the Projected Development Costs (after excluding the Contingency). This amount is the "**Used Contingency**".
- 4 The Independent Engineer will subtract from the Contingency, the amount of the Used Contingency calculated in Item 3. This amount is the "**Unused Contingency**".
- 5 The amounts referred to above are to be calculated on the basis that there will be no double counting, taking into account amounts recoverable from contractors, sub-contractors and under policies of insurance.

The buyer will use all reasonable endeavours to ensure that the Tamar Valley Project is completed within the Projected Development Costs and to minimise use of the Contingency.

Warranties and indemnities



Warranties: AEPG will provide the warranties set out in the Schedule as at the date of the SPA and immediately prior to completion of the Sale (except where they are expressed to be given as at only one of those dates or at a different date). For the avoidance of doubt, the warranties set out in the Schedule are not being provided under this Heads of Agreement.

Cap: AEPG's liability will be limited to \$100 million.

Deductible: AEPG is not liable for a claim for a breach of warranty unless the amount of the claim is at least \$200,000 (alone) and at least \$1 million (either alone or together with other claims).

Warranty period:

- Tax - 7 years
- Other claims – 3 years

Other limitations: other non-monetary qualifications and limitations of liability to be negotiated.

Tax: AEPG will provide an indemnity for any Australian or foreign tax:

(a) payable by AETV in respect of the period before completion (including tax arising from AETV being a member of a BBP consolidated group or GST group);

(b) (except in the case of Tasmanian stamp duty) arising out of the transfer of the shares or assets under the SPA or the undertaking of transactions required or contemplated by the SPA ; or

(c) arising out of the cancellation of loan balances referred to in the section entitled "Debts".

Environment: AEPG will provide an indemnity for all liabilities, costs and expenses incurred by AETV as a result of contamination of any land owned, leased or used by AETV to the extent that contamination is attributable to the acts or omissions of AETV, its contractors or their subcontractors between 17 September 2007 and completion of the Sale. This indemnity will be subject to the cap, deductible and warranty period above, and subject to requirements that buyer group members and AETV exhaust all remedies available to them (including under insurances and contracts with such contractors and subcontractors) and take reasonable mitigatory actions, and that AEPG is not liable under the indemnity for any migratory contamination from outside of the Power Station site or from any site (other than the Power Station site) on which Hydro-Electric Corporation carries or carried on operations.

Losses

Neither party will be liable to the other for any consequential loss arising out of a breach of the SPA.

Debts

AEPG must ensure that AETV pays all amounts due and payable by AETV in the period prior to 8 August 2008.

Before completion, AEPG must identify all existing loans between a BBP group member and AETV and procure that all payments are made and such other actions are taken as may be necessary to ensure the payment in full or cancellation of loan balances between any BBP group member (on the one hand) and AETV (on the other hand) immediately prior to completion.

Guarantor

BBP will guarantee AEPG's performance under the SPA.

The State will guarantee the buyer's performance under the SPA.

Operational Employees

The buyer or AETV will make offers of employment to such employees of the BBP group as are required for the operation of the Power Station. The SPA will contain standard provisions for the transfer of such employees to AETV or the buyer, including that:

- each offer of employment will be for a position that is comparable or superior to the existing position of the employee, commencing on completion and on terms and conditions of employment that are comparable or superior to the existing terms and conditions of employment;
- prior service of the employee with the BBP group will be recognised for the purposes of all service related entitlements (including annual leave, leave loading, accumulated sick leave and long service leave), and any redundancy payments, to be paid or provided after completion;

- on completion, the BBP employer will pay each employee all wages, salaries and any other remuneration or benefit due to or accrued by them as at completion; and
- after completion the buyer will procure that AETV pays or provides each employee all annual leave, leave loading, accumulated sick leave and long service leave due to the employee after completion as and when they fall due.

The BBP employer will be responsible for all employment-related liabilities concerning those employees (including workers compensation) attributable to the period prior to completion. The BBP employer will also be responsible for paying the annual leave, leave loading, accumulated sick leave and long service leave of those employees which is referable to the period prior to completion (it being acknowledged that this obligation may be discharged by paying the relevant amount to the buyer or AETV or the relevant employee).

Transitional Services Agreement

The BBP group will make available the services of its construction and development employees who are currently working on the Tamar Valley Project under a transitional services agreement under which those employees will be required to perform such functions and devote such amount of time as is reasonably required to enable the Power Station to be completed in accordance with the Work Program, and which will include the secondment of employees to the buyer or AETV as appropriate. The services provided under the transitional services agreement will include assisting to negotiate material contracts required for the operation of the Power Station.

AETV will pay the salary of such of these construction and development employees as work full time on the Tamar Valley Project and who are part of the construction management team.

All other such construction and development employees will be provided at no cost to AETV.

Continuity of business

From execution of the SPA until completion of the Sale or earlier termination of the SPA (if any), BBP will procure that:

- (a) construction of the Power Station and development of the Tamar Valley Project continues to be progressed in a manner consistent with the Work Program and all Development Costs due and payable during this period are paid; and
- (b) AETV does all things necessary to comply with contracts and laws by which it is bound.

Other limitations on the conduct of AETV between execution of the SPA and completion of the Sale to be negotiated.

2.6 Exclusivity

In consideration for the State entering into this agreement:

- (a) BBP will ensure that, during the Exclusivity Period, neither AEPG nor AETV enters into an agreement for the sale of shares in, or assets of, AETV with any third party; and
- (b) BPP will not, during the Exclusivity Period, enter into any agreement with any third party under which it agrees to procure the sale of shares in, or assets of, AETV.

3 Co-operation

3.1 Resources

Each party agrees to provide and engage adequate internal and external resources to comply with this agreement in accordance with the timetable set out below.

3.2 Approvals

The parties agree to cooperate and consult and each to use all reasonable endeavours to obtain any regulatory or internal approvals, clearances or consents reasonably necessary for the arrangements set out in this agreement to proceed.

3.3 Aurora, Hydro and Transend

The State will use all reasonable endeavours, and will work with BBP, to ensure that Aurora Energy Pty Ltd, Hydro-Electric Corporation and Transend Networks Pty Limited co-operate with the parties and assist in the implementation of the arrangements set out in this agreement, including providing consents required to satisfy the conditions precedent to the SPA. BBP acknowledges that nothing in this provision requires the State to exercise any power it may have to direct or otherwise require Aurora Energy Pty Ltd, Hydro-Electric Corporation or Transend Networks Pty Limited to do any act or thing.

BBP will co-operate with the State, Aurora Energy Pty Ltd, Hydro-Electric Corporation and Transend Networks Pty Limited for the purpose of implementing the arrangements set out in this agreement.

3.4 Timetable

Without limiting the foregoing, the parties will use all reasonable endeavours to procure that the steps required to perform this agreement are carried out by the dates specified below:

Step	Timing
Execution of these heads of agreement	15 August 2008
Completion of the State's due diligence (subject to the provision of all due diligence information described in clause 2.3(a), including any draft contracts that are referred to in the section entitled "Conditions Precedent", within such time prior to this date as is reasonable to enable the State and its advisers to properly review that information)	29 August 2008
Tabling of the required legislation in parliament	21 August 2008
Execution of the SPA and transitional services agreement	29 August 2008
Satisfaction of Conditions Precedent	15 September 2008

4 General matters

4.1 Definitions

Capitalised terms in this agreement not otherwise defined have the meanings set out below.

Term	Definition
AEATM	Alinta EATM Pty Ltd (ABN 70 083 050 168).
AEATM Agreements	<ol style="list-style-type: none">1 ISDA Master Agreement dated 1 May 2007 between AEATM and Hydro-Electric Corporation, and the one fixed forward commodity contract entered into on 6 July 2007 between AEATM and Hydro-Electric Corporation, together with the Amendment & Restatement Deed dated 27 July 2007.2 ISDA Master Agreement dated 7 March 2007 between AEATM and Aurora Energy Pty Ltd, and each transaction or confirmation entered into pursuant to that ISDA Master Agreement.3 All foreign exchange hedges relating to the construction contracts that have been entered into in connection with the Tamar Valley Project.
AEPG	Alinta Energy Power Generation Pty Ltd (ABN 63 123 391 382), a subsidiary of BBP.
AETV	Alinta Energy (Tamar Valley) Pty Ltd (ABN 29 123 391 613).
Category A Contract	A contract listed in the document entitled "Category A Contracts" initialled by the parties for identification.
Category B Contract	A contract listed in the document entitled "Category B Contracts" initialled by the parties for identification.
Contingency	The contingency amount as at 1 August 2008 as specified in the Work Program.
Development Costs	Costs and expenses incurred up until Final Practical Completion of the kind specified in the Work Program (excluding any allowance for financing charges).

Term	Definition
Exclusivity Period	The period commencing on the date of this agreement and expiring on 29 August 2008.
Final Practical Completion	The issue to AETV of the last of the certificates of practical completion that relates to the Power Station.
Power Station	The Tamar Valley power station to be constructed by AETV, including the planned new 203MW combined cycle gas turbine, the 3 existing 35 MW open cycle gas turbines (to be upgraded to 40MW each), the planned new 60MW open cycle gas turbine and all ancillary plant, equipment and facilities.
Projected Development Costs	The Development Costs projected to be incurred between 8 August 2008 and Final Practical Completion as specified in the Work Program (including the Contingency).
Tamar Valley Project	The design, procurement, construction and commissioning of the Power Station and all related transmission, connection, gas connection, metering and other equipment, utilities and works necessary for the development, completion and commissioning of the Power Station.
Unused Contingency	The amount of that name calculated by the Independent Engineer under clause 2.5.
Used Contingency	The amount of that name calculated by the Independent Engineer under clause 2.5.
Work Program	The document entitled "Work Program" initialled by the parties for identification

4.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement;
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical form of a word or phrase defined in this agreement have a corresponding meaning.

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- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or regulatory body or agency as well as an individual.
- (f) A reference to a clause, party or schedule is a reference to a clause of, and a party or schedule to, this agreement and a reference to this agreement includes any schedule.
- (g) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (h) A reference to a party to a document includes that party's successors and permitted assignees.
- (i) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (j) A reference to '\$' means the lawful currency of Australia.
- (k) Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

4.3 Notices

- (a) A notice or other communication under this agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or fax to a party at the address or the fax number for that party set out below or as otherwise specified by a party by Notice:
 - (1) If to BBP:

Address: Level 23, The Chifley Tower, 2 Chifley Square, Sydney, NSW, 2000

Fax: +61 2 9238 4581

Attention: The Company Secretary
 - (2) If to the State:

Address: The Treasury Building, 21 Murray Street, Hobart, Tasmania, 7000

Fax: +61 3 6223 3503

Attention: The Secretary of Department of Treasury and Finance.
- (b) Email or similar electronic means of communication must not be used to give Notices under this agreement.
- (c) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (d) A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within 4 hours of it being transmitted.
- (e) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

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- (f) In this clause a “**Business Day**” means a day on which banks are open for business in Sydney and Hobart excluding a Saturday, Sunday or public holiday in Sydney or Hobart.

4.4 Waiver and variation

- (a) No party to this agreement may rely on the words or conduct of the other party as a waiver or election of or in relation to any right, power, authority, discretion or remedy arising under or in connection with this agreement unless the waiver or election is in writing and signed by the party granting the waiver or making the election.
- (b) A variation of any term of this agreement must be in writing and signed by the parties.

4.5 Invalidity and enforceability

If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

4.6 Governing law and jurisdiction

This agreement is governed by the law in force in Tasmania. Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Tasmania 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.

4.7 Costs

Each party will pay its own costs and expenses incurred by it in connection with the negotiation and execution of this agreement and the SPA.

4.8 Counterparts

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Warranties

1 Ownership and Structure

1.1 Group structure

AETV is not a holder or beneficial holder of any shares or other capital in any body corporate (wherever incorporated).

1.2 Ownership

- (a) The AETV Securities comprise the whole of the issued share capital of AETV.
- (b) As at the date of this agreement and immediately prior to Completion, the Seller is the legal and beneficial owner of the AETV Securities free and clear of all Encumbrances and there is no agreement to give or create any Encumbrance over the AETV Securities.

1.3 No Encumbrances or other arrangements

The AETV Securities:

- (a) can be sold and transferred by the Seller free of any competing rights, including pre-emptive rights or rights of first refusal; and
- (b) have been validly allotted and are fully paid and no money is owing in respect of them.

1.4 No options

- (a) AETV is not under an obligation to issue, and no person has the right to call for the issue or transfer of, any shares or other securities in it at any time.
- (b) AETV has not issued securities with conversion rights to shares or securities in them and there are no agreements or arrangements under which options or convertible notes have been issued by it.

2 Power and Authority

2.1 No legal impediment

The execution, delivery and performance by the Seller and BBP of this agreement and each transaction contemplated by this agreement does not or will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under:

- (a) any provision of their constitutions;
- (b) any security arrangement, undertaking, agreement or deed; or
- (c) any writ, order or injunction, judgment, or law to which they are a party or are subject or by which they are bound.

2.2 Corporate Authorisations

All necessary authorisations for the execution, delivery and performance by the Seller and BBP of this agreement in accordance with its terms have been obtained or will be obtained before Completion.

2.3 Power and capacity

- (a) The Seller and BBP have full corporate power and lawful authority to execute and deliver this agreement and to consummate and perform or cause to be performed their obligations under this agreement and each transaction contemplated by this agreement and to be performed by the Seller and BBP, and this agreement constitutes a legal, valid and binding obligation of the Seller and BBP enforceable in accordance with its terms.
- (b) The Seller and BBP are duly incorporated under the laws of the place of their incorporation.
- (c) The Seller has full corporate power and authority to own the AETV Securities.

2.4 Incorporation

AETV:

- (a) is duly incorporated under the laws of the place of its incorporation;
- (b) has full corporate power and authority to own its assets and carry on the Business as it is being carried on at Completion;
- (c) is duly registered and authorised to do business in those jurisdictions which, by the nature of its business and assets, makes registration or authorisation necessary; and
- (d) has conducted the Business in compliance with the constitution or other constituent documents of AETV.

2.5 No trust

The Seller and BBP enter into and perform this agreement on their own account and not as trustees for or nominees of any other person.

3 Financing arrangements

As at Completion, there are no:

- (a) financing agreements or arrangements entered into by AETV for the borrowing of money for an amount exceeding \$200,000;
- (b) debentures, bonds, notes or similar debt instruments issued by AETV (whether by one instrument or by all of the instruments in a series) for an amount exceeding \$200,000;
- (c) guarantees given by AETV, or to which AETV is otherwise subject, in relation to any other person for an amount exceeding \$200,000; or
- (d) Encumbrances over the assets or securities of AETV for an amount exceeding \$200,000.

4 Financial position and conduct of Business

- (a) The Work Program correctly records the expenditure undertaken by AETV as at the date of execution of the SPA in relation to the design, procurement, construction and commissioning of the Power Station.
- (b) The balance sheet prepared in respect of AETV which is dated 30 June 2008 and is included in the Data Room discloses the amount of all liabilities of AETV as at that date, being liabilities that are required to be disclosed in accordance with Accounting Standards, and such liabilities have been calculated in accordance with Accounting Standards.
- (c) All material changes to the liabilities referred to in item 4(b) have been disclosed in the Data Room.

5 Project

5.1 Contracts

- (a) Full and correct details of all Contracts have been disclosed in the Data Room.
- (b) Neither AETV, BBP nor any Related Body Corporate of BBP has received notice of any material default under any Contract.
- (c) Subject to satisfaction of the conditions precedent, there has been no failure by AETV, BBP or any Related Body Corporate of BPP to comply with a material obligation under a Contract, including where that failure may result in termination or a material variation to

that Contract. So far as the Seller is aware, or so far as a person in the position of the Seller conducting the Business as at the date of this agreement should be aware, no other party to a Contract is in material breach of or in material default under that Contract, or would be in material breach or material default but for a requirement of notice or lapse of time or both.

- (d) The only Contracts which require AETV to obtain the consent or approval of another party to the sale of the AETV Securities are those set out in a list initialled by the parties for the purposes of identification.

5.2 No other activities

AETV has not undertaken any business other than the development, progression and implementation of the Project and related or incidental activities.

6 Properties

Note: In the SPA these and other warranties will be subject to a qualification that warranties are not given in respect of the period prior to acquisition from Hydro or breaches arising from that period.

6.1 Interests in land

- (a) AETV has no interest in land except for the Project Site, and there is no material deficiency in the title to any interest in land held by AETV.
- (b) The Project Site

comprises all the land that is reasonably required by AETV to enable it to conduct the Business as carried on at the date of this agreement.
- (c) Where AETV is the registered proprietor of any land forming part of the Project Site it is the legal and beneficial owner of that land free from all Encumbrances except for those disclosed in the Data Room Documentation or apparent from public searches of the Tasmanian land registry.
- (d) All buildings and other improvements at the Project Site conform in all material respects to and are being used in material conformance with all ordinances and regulations and building, environmental, health and other laws, subject to receipt of Authorisations to be obtained between Completion and Final Practical Completion.
- (e) So far as the Seller is aware:
 - (1) there is no action contemplated, pending or threatened to change the planning, zoning or other ordinances affecting the Project Site;
 - (2) there is no pending or threatened condemnation of the Project Site; and
 - (3) no proposals have been made or are intended to be made by any local or other competent authority concerning the compulsory acquisition of the whole or any part of the Project Site or which may adversely affect the use of the Project Site or any part of it.

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- (f) Neither AETV, BBP nor any Related Body Corporate of BBP has received written notice from any Governmental Agency, or from any third person, adversely affecting in a material respect or which may adversely affect in a material respect the use of the Project Site or any part of it.
- (g) The use of the Project Site for the carrying on of the Business is in material compliance with all applicable laws.

6.2 Environmental

- (a) Other than as disclosed in the Data Room Documentation, AETV has not received written notification of any breach of any Environmental Law and neither BBP nor any Related Body Corporate of BBP has received written notification of any breach of any Environmental Law in respect of AETV, the Power Station or the Project.
- (b) All authorisations and approvals required under Environmental Laws that are material to the Business as carried on at the date of this agreement are in full force and effect.

7 Litigation and compliance

7.1 Litigation

- (a) AETV is not, as at the date of this agreement, a party to any material litigation, investigation, prosecution, mediation, arbitration or other legal proceedings.
- (b) As at the date of this agreement, there is no material unsatisfied judgement, order or award outstanding against AETV.
- (c) So far as the Seller is aware, there are no claims, demands, investigations or disputes in respect of AETV that will, or would reasonably be likely to have, a material adverse effect on AETV or the Project, nor has AETV, BBP or any Related Body Corporate of BBP received notice of any disputes, investigations, claims or demands in respect of AETV which are likely to give rise to litigation, prosecution, mediation, arbitration or other legal proceedings which may have a material adverse effect on AETV or the Project.

7.2 Authorisations

- (a) AETV has all necessary Authorisations material to the conduct of the Business .
- (b) AETV is in material compliance with all Authorisations that are material to the development and construction phase of the Project and has not breached any such Authorisation that is likely to cause that Authorisation to be terminated or varied in a material respect.

7.3 Compliance

AETV is in material compliance with all applicable laws.

8 Employees

AETV does not, and has not in the past, employed any employees.

9 Insurance

- (a) The insurance policies relating to AETV and the Project as disclosed in the Data Room Documentation are current and in place at the date of this agreement and will continue to be in place until Completion, and so far as the Seller is aware no fact or circumstance exists that would render any such insurance void or unenforceable in any material respect.
- (b) AETV has a level and scope of insurance coverage that a prudent person responsible for the development and construction of a power station of the nature of the Power Station would have for the construction and development of the Project . There is no fact or circumstance that is known or should reasonably have been known to AETV or the party taking out that insurance which would lead to any of the contracts of insurance which cover those risks being cancelled.

10 Solvency

10.1 No liquidation

Neither BBP, the Seller nor AETV has:

- (a) gone, or is proposed to go, into liquidation;
- (b) passed a winding-up resolution or commenced steps for winding-up or dissolution; or
- (c) received a deregistration notice under section 601AB of the Corporations Act or applied for deregistration under section 601AA of the Corporations Act.

To the best of the knowledge of the Seller there are no facts, matters or circumstances which give any person the right to apply to liquidate or wind up BBP or the Seller.

10.2 No winding-up process

No petition or other process for winding-up or dissolution has been presented or threatened in writing against BBP, the Seller or AETV.

10.3 No receiver or manager

No receiver, receiver and manager, judicial manager, liquidator, administrator or like official has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of BBP, the Seller or AETV.

10.4 Arrangements with creditors

Neither BBP, the Seller nor AETV has entered into, or taken steps or proposed to enter into, any scheme of arrangement with its creditors or a class of them.

10.5 Payment of Debts

Neither BBP nor the Seller is (or is taken to be under applicable legislation) unable to pay its debts, other than a debt or claim the subject of a good faith dispute, or has stopped or suspended, or threatened to stop or suspend, the payment of all or a class of its debts.

11 Disclosure

So far as the Seller is aware, having made all reasonable enquiries:

- (a) all historical and factual information concerning the Business contained in the Data Room Documentation is complete and accurate in all material respects;
- (b) none of that information is misleading in any material respect, whether by the inclusion of misleading information or the omission of information or both; and
- (c) no historical or factual information has been omitted from the Data Room Documentation which would render the Data Room Documentation misleading in any material respect.

12 Intellectual Property

12.1 Ownership

- (a) AETV is the sole legal and beneficial owner, or has a right to use or have the benefit of, all of the Intellectual Property required for the Business as carried on at the date of this agreement.
- (b) Details of all material written licences of intellectual property rights granted to or by AETV or which are otherwise used in the Business have been included in the Data Room.

12.2 Infringements

- (a) AETV has not received any written material notice or claim alleging that the current activities of AETV infringe the intellectual property rights of any third party.
- (b) AETV has not received written notice of any material disputes, challenges, litigation or opposition proceedings in respect of the Intellectual Property referred to in item 12.1(a), and AETV has not received written notice of any claim which is reasonably likely to give rise to any disputes, challenges, litigation or opposition proceedings in respect of that Intellectual Property that would have a material adverse effect on AETV or the Project.

13 Assets

- (a) AETV owns, or has a right to use or have the benefit of, all of the tangible assets that are material for the conduct of the Business as carried on at the date of this agreement.
- (b) Each tangible asset owned by AETV is the absolute property of, and legally and beneficially owned by, AETV free of all Encumbrances.

14 Management and Other Agreements

From Completion:

- (a) AETV is not a party to any management, profit sharing or similar agreement with BBP or any of its Related Bodies Corporate; and
- (b) all transactions and dealings between AETV and BBP or any of its Related Bodies Corporate will cease,
except as contemplated by this agreement or as fully disclosed in the Data Room.

15 Materiality and Awareness

For the purposes of these warranties:

- (a) a matter, circumstance, event or thing will be regarded as material if, as a result of it occurring, AETV is likely to suffer an adverse financial consequence in excess of \$200,000; and
- (b) references to knowledge and awareness are references to:
 - (1) the knowledge and awareness of persons engaged in or associated with AETV, the Business or the Project, being persons who have a significant degree of involvement with AETV, the Business or the Project and who will be listed in the SPA; and
 - (2) the knowledge and awareness that such persons should reasonably have if they had made reasonable enquiries, the nature of which is to be specified in the SPA.

Definitions

Term	Meaning
Accounting Standards	requirements of the Australian Accounting Standards, other authoritative pronouncements of the Australian Accounting Standards Board and the Urgent Issues Group Consensus views, the requirements of the Corporations Act in relation to the preparation and content of accounts and, to the extent that the matter is not covered by them, the generally accepted accounting principles applied from time to time in Australia by companies similar to AETV.
AETV Securities	all of the issued share capital in AETV, being as at the date of this agreement, 2 fully paid ordinary shares in AETV that are held by the Seller.
Authorisation	any approval, licence, consent, authority or permit issued by a Governmental Agency.
Business	the business currently carried on by AETV, being the business of developing and constructing the Power Station.
Completion	completion of the sale and purchase of the AETV Securities under clause [*]
Contract	a material contract to which AETV is a party.
Data Room	the Freehills online data room to which the State and its officers, employees, agents and advisers have had access and which contains information and materials relating to AETV and the Project.
Data Room Documentation	<ol style="list-style-type: none">1 all documentation contained in the Data Room; and2 all written information provided to the State or its officers, employees, agents and advisers by or on behalf of BBP or Related Bodies Corporate of BBP as part of the due diligence review being undertaken by the State.
Encumbrance	<p>an interest or power:</p> <ul style="list-style-type: none">• reserved in or over an interest in any asset including any retention of title; or• created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power, <p>by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above.</p>
Environmental Law	a law or regulation relating to the protection of the environment (including air, water, groundwater and the ground).
FT8 Units	the three Pratt and Whitney FT8 35MW open cycle gas turbines that are part of the Power Station.

Freehills

Term	Meaning
Governmental Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.
Intellectual Property	all intellectual property rights (including copyright, confidential information, trade secrets, technical data, inventions and designs).
Power Station	The Tamar Valley power station to be constructed by AETV, including the planned new 203MW combined gas cycle turbine, the 3 existing 35 MW open cycle gas turbines (to be upgraded to 40 MW each), the planned new 60MW open cycle gas turbine and all ancillary plant, equipment and facilities which are owned or operated by AETV.
Project	the design, procurement, construction and commissioning of the Power Station and its connection to the electricity and gas transmission systems and other equipment, utilities and works necessary for the development, completion and commissioning of the Power Station.
Project Site	the freehold and leasehold properties of AETV upon which the Power Station is located excluding the Thermal Unit Site and the waste disposal site, the details of which are set out in the Data Room Documentation.
Seller	Alinta Energy Power Generation Pty Ltd (ABN 63 123 391 382), a subsidiary of BBP.
Thermal Unit Site	the site on which the Thermal Units are located.
Thermal Units	the two existing 120MW gas fired thermal generating units with steam turbines located at the Bell Bay Power Station site.

Executed as an agreement

Signed by
**The Honourable Michael Aird, MLC Treasurer for and on behalf of the
Crown in the right of Tasmania**

sign here ▶ [M Aird] _____

print name Michael Aird, MLC Treasurer _____ r

sign here ▶ [D Challen] _____

print name Donald Challen _____ Witness

Signed by
Babcock & Brown Power Limited
by

sign here ▶ [J Remedios] _____
Company Secretary/Director

print name John Remedios _____

sign here ▶ [W Murphy] _____
Director

print name Warren Murphy _____
