



TransGrid
Infrastructure

Load Dedicated Connection Agreement Clarence Correctional Centre

TransGrid Services Pty Limited (ACN 626 136 865) as trustee for **TransGrid Services Trust** (ABN 94 121 353 950)

Department of Justice Corrective Services (ABN 32 980 170 687)

August 2018

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PARTIES **TransGrid Services Pty Limited** (ACN 626 136 865) as trustee for **TransGrid Services Trust** (ABN 94 121 353 950) of Level 1, 180 Thomas Street, Sydney NSW 2000 (the "**Dedicated Assets Provider**")

Department of Justice Corrective Services (ABN 32 980 170 687) of Henry Deane Building 20 Lee Street, Sydney NSW 2000 (the "**Customer**")

Background

- A. The Customer is, or will be at the Services Commencement Date, the owner and operator of the Customer's Facilities.
- B. The Dedicated Assets Provider is the owner and operator of the Dedicated Assets and the owner of the Shared Assets. TransGrid is, or will be at the Services Commencement Date, the operator of the Shared Assets.
- C. The Dedicated Assets Provider has agreed that the Customer's Facilities may be connected to the Dedicated Assets, and to operate and maintain the Dedicated Assets, on the terms set out in this agreement.
- D. The Customer is also party to the Network Connection Agreement with TransGrid pursuant to which TransGrid has agreed to connect the Customer's Facilities to the Transmission System utilising the Dedicated Assets and the Shared Assets, and to provide the Customer with the services (including connection and exit services) set out in that agreement.

The parties agree

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

"**ACCC**" means the Australian Competition and Consumer Commission.

"**Acceptable Credit Rating**" has the meaning given to that term in paragraph 1(a) of Schedule 1.

"**AEMC**" means the Australian Energy Market Commission.

"**AEMO**" means the Australian Energy Market Operator.

"**AER**" means the Australian Energy Regulator.

"**Agreed Capability**" has the meaning given in the Network Connection Agreement.

"**Altered Services**" has the meaning given to that term in clause 9.2(a).

"**Annual Connection Fee**" has the meaning given to that term in Schedule 5.

"**Anticipated Upgrade Costs**" has the meaning given to that term in paragraph 9(b)(i) of Schedule 5.

"Applicable Laws" means the ESA, the NEL, the Rules and any other legislation, rules, regulations, codes, Directives, licence conditions and other regulatory instruments which are directly or indirectly binding on or are expressed to apply to the Dedicated Assets Provider or the Customer (as applicable), and which relate to the Dedicated Assets, the Customer's Facilities and/or the provision and receipt of any of the services (and for the avoidance of doubt includes any Emissions Requirements).

"APRA" means the Australia Prudential Regulatory Authority.

"Asset" and **"Assets"** have the meaning given to those terms in the Project Agreement.

"Asset Stranding Charge" has the meaning given to that term in paragraph 6 of Schedule 5.

"Assignment" has the meaning given to that term in clause 17.1.

"Associates" means, in relation to a party:

- (a) each of that party's holding companies (as defined in the *Corporations Act 2001* (Cth)), Subsidiaries or Related Bodies Corporate;
- (b) each of that party's sub-contractors; and
- (c) all officers, employees, authorised agents, (sub-)contractors and professional advisers engaged or employed by or on behalf of that party and any person or entity referred to in limbs (a) and (b) above.

"Authorisation" has the meaning given to that term in the Project Agreement.

"Authority" means any government, governmental, semi-governmental or judicial entity or authority, including any self-regulatory organisation established under statute, AEMO, TransGrid acting as a *System Operator* or service provider to AEMO under clause 4.3.3 of the Rules, AER, AEMC and ACCC, provided that for the avoidance of doubt, while acting in any capacity other than as a *System Operator* or service provider to AEMO under clause 4.3.3 of the Rules, TransGrid is not an Authority under this definition.

"Benefitted Party" means any party benefitted by a Security Interest as referred to in clause 19(b).

"Billing Period" means:

- (a) the period from the Payment Commencement Date to the end of the then current calendar month;
- (b) the period from the first day of the month preceding the date of termination of this agreement to the date of termination of this agreement; and
- (c) each calendar month during the Term starting from the end of the period referred to in limb (a) above and ending on the beginning of the period referred to in limb (b) above.

"Business Day" means any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

"Capacity" has the meaning given to it in the Network Connection Agreement.

"Charges" has the meaning given in clause 3.1.

"Claims" means all claims, demands, actions, disputes and proceedings whether arising in contract, tort (including breach of statutory duty and negligence), equity or otherwise.

"Commencement Date" means the date on which the conditions precedent in clause 1.5(a) are satisfied.

"Connection Agreement Data Book" has the meaning given in the Network Connection Agreement.

"Connection Point" has the meaning given in the Network Connection Agreement.

"Connection Work" has the meaning given to that term in the Project Agreement.

"Continuation Period" has the meaning given to that term in clause 8.3.

"Contract Year" means each consecutive 12-month period during the term of this agreement commencing on the Payment Commencement Date.

"Contract Year Cap" means the amount equal to the Annual Connection Fee for the Contract Year in which the claiming party became aware of the event causing Damages to that party.

"Credit Support" has the meaning given to that term in paragraph 2 of Schedule 1.

"Customer Connection Assets" has the meaning given to that term in the Project Agreement.

"Customer's Facilities" means:

(a) all *facilities* that are:

- (i) directly or indirectly *connected* to the Transmission System at a Connection Point;
- (ii) located on the Customer's side of the relevant Interface Point; and
- (iii) described in paragraph 4 of Part A of the Connection Agreement Data Book; and

(b) all plant and equipment related to the *facilities* described in limb (a) above, whether or not owned, controlled or operated by the Customer,

including the Customer Connection Assets, the Customer's Property and the Customer's Protection, Control and Alarm Equipment.

"Customer's Property" means property, buildings or other structures owned, operated or otherwise used by the Customer.

"Customer's Protection, Control and Alarm Equipment" has the meaning given to that term in the Network Connection Agreement.

"Customer's Technical Obligations" means all Technical Obligations as may apply to the Customer at any time.

"Customer's Work" has the meaning given to that term in the Project Agreement.

"Damages" means all liabilities, injuries, expenses, losses, damages and costs of any nature (including legal costs on a full indemnity basis and whether incurred by or awarded against a party).

"Dedicated Assets" has the meaning given to that term in the Project Agreement.

"Dedicated Assets Provider's Technical Obligations" means all Technical Obligations as may apply to the Dedicated Assets Provider at any time.

"Dedicated Variation Costs" means the Variation Costs (as defined in the Project Agreement) attributable to the Dedicated Assets and the Shared Assets, as identified by TransGrid in a notice given under clause 14.1(a) of the Project Agreement.

"Default Rate" means [REDACTED]

"Directive" means any present or future requirement, instruction, direction or order of an Authority (whether formal or informal) which is binding on, or expressed to apply to the Dedicated Assets Provider or the Customer or relates directly or indirectly to the design, construction, operation or maintenance of the Dedicated Assets, the Customer's Facilities or the provision or receipt of any of the services provided under this agreement.

"Easements" has the meaning given to that term in the Project Agreement.

"Emergency" means the actual or imminent occurrence of an event which in any way poses or has the potential to pose a threat to the safety of persons, any equipment or property or *power system security*.

"Emissions Requirements" means any legislation, rule, regulation, code, Directive, licence condition or other regulatory instrument which has as one of its purposes the reduction or limitation of greenhouse gases, reporting greenhouse gas emissions or any related information, trading in greenhouse gas emissions, offsets or other types of greenhouse gas emissions related permits, addressing the effects of climate change, encouraging the generation of renewable energy or the minimisation of the impact on the environment of the electricity industry generally, or the imposition of any tax, levy, charge, impost or other cost levied in connection with the emission of greenhouse gases, and includes the *National Greenhouse and Energy Reporting Act 2007* (Cth), the *National Greenhouse and Energy Reporting Regulations 2008* (Cth) and the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

"ESA" means the *Electricity Supply Act 1995* (NSW).

"Event" has the meaning given to that term in 9.1(b).

"Execution Date" means the date this agreement is executed by the last party to do so.

"Expert" means a person appointed as an expert pursuant to clause 13.3.

"Expiry Date" means the date that is 20 years from the Services Commencement Date.

"Fault" means an abnormal *network* circuit connection which inhibits or prevents the conveyance of balanced 3 phase electrical current through a line or some other piece of equipment and requires corrective action to restore the line or piece of equipment to within normal operating limits.

"Financial Default" means a failure to pay an amount due under this agreement when such amount is due, subject to any right under clause 3.7 to raise a bona fide dispute in relation to such amount.

"Financial Year" means the period from 1 July in any year until and including 30 June in the following year.

"Force Majeure Event" has the meaning given to that term in clause 10.1(a).

"**Fund**" means a trust, a partnership, a body corporate or similar vehicle that is used for collective investment by investors or members.

"**GST**" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**GST Amount**" has the meaning given to that term in clause 3.6(d).

"**Infrastructure NSW**" means Infrastructure NSW (ABN 85 031 302 516) of Level 15, 167 Macquarie St, Sydney NSW 2000.

"**Insolvency Event**" means, in respect of a party, any of the following events:

- (a) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint an administrator to that party;
- (b) a receiver, receiver manager, official manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth)) or similar officer is appointed over the assets or undertakings of that party;
- (c) that party enters into or proposes to enter into any arrangement, composition or compromise with or assignment for the benefit of, its creditors or a class of them;
- (d) that party is deemed by the provisions of the *Corporations Act 2001* (Cth) to be insolvent; and/or
- (e) anything occurs that has a substantially similar effect to any of the events set out in limbs (a) to (d) above.

"**Intellectual Property Rights**" means intellectual property rights being all rights conferred by law, including those in and in relation to inventions, patents, designs, copyright, registered and unregistered trademarks, trade names, brands, logos and get up, names, circuit layouts and confidential information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"**Interest Rate**" means, in relation to a particular day, the Overdraft Index Rate applied that day by the Commonwealth Bank of Australia (ACN 123 123 124) (which rate is published at <https://www.commbank.com.au/business/rates-fees.html>). If the bank stops publishing that rate, then it means an equivalent rate used on that day by the Commonwealth Bank of Australia at which it lends money to its corporate customers.

"**Interface Point**" means the agreed point or points described in Part A of the Connection Agreement Data Book at which the Customer's Facilities is connected to the Dedicated Assets.

"**kV**" means kilovolts.

"**Land**" has the meaning given to that term in the Project Agreement.

"**Licences**" has the meaning given to that term in the Project Agreement.

"**Manual Reclosure**" means the reclosure of a circuit breaker through manual intervention following the detection of a Fault on a *transmission line* or a *distribution line*.

"**Maximum Agreed Demand**" has the meaning given in the Network Connection Agreement.

"**National Electricity Law**" or "**NEL**" means the *National Electricity (NSW) Law* as referred to in section 6(b) of the *National Electricity (New South Wales) Act 1997*.

"Network Connection Agreement" means the agreement entered into between the Customer and TransGrid pursuant to which TransGrid has agreed to connect the Customer's Facilities to the Transmission System via the Dedicated Assets and provide the Customer with the services described in that agreement.

"Network Operating Agreement" means the network operating agreement entered into between TransGrid and the Dedicated Assets Provider dated on or about the date of this agreement.

"Non-Financial Default" means any default or a failure to perform this agreement which is not a Financial Default.

"Operating Protocol" means the document set out at Attachment 3 as amended from time to time.

"Outage Plan" has the meaning given to that term in paragraph 2 of Schedule 2.

"Payment Commencement Date" means the later of the Date for Practical Completion under the Project Agreement and the earlier of:

- (a) the Date of Practical Completion under the Project Agreement; and
- (b) if Practical Completion under the Project Agreement cannot be achieved due to a failure of Infrastructure NSW to comply with the Project Agreement, including a failure to complete any Customer's Work or obtain any Authorisation under the Project Agreement (including a failure to obtain approval of Infrastructure NSW's Technical Obligations or AEMO registration in respect of the Customer's Facilities) necessary for the commissioning or testing required to demonstrate Practical Completion under the Project Agreement, the date that TransGrid would have been capable of conducting the necessary commissioning or testing required to demonstrate Practical Completion under the Project Agreement were it not for that failure of Infrastructure NSW.

"Payment Date" has the meaning given to that term in paragraph 6 of Schedule 5.

"Performance Standards" means, in relation to the Customer's Facilities, the *performance standards* registered with AEMO from time to time in relation to any part of the Customer's Facilities or the *performance standards* taken to be an applicable performance standard in accordance with clause 5.3.4A(i) of the Rules, as applicable.

"PPSA" means the *Personal Property Securities Act 2009* (Cth), as referred to in clause 19.

"Project Agreement" means the "Project Agreement for the connection of the Clarence Correctional Centre" entered into between TransGrid and Infrastructure NSW on or about the same date as this agreement.

"Related Body Corporate":

- (a) has the meaning given in the *Corporations Act 2001* (Cth), but on the basis that "subsidiary" has the meaning given to Subsidiary in this agreement and that "body corporate" includes a Fund; but
- (b) for the purposes of this agreement, the Dedicated Assets Provider and its Subsidiaries will be deemed not to be Related Bodies Corporate of TransGrid,

"Related Company" means any entity (other than the Customer) which could suffer Damages or could incur Claims as a direct or indirect result of electricity being taken or not being taken by the Customer's Facilities (or any part of it), pursuant to the services to be delivered by the Dedicated Assets Provider under this agreement.

"Rules" means the National Electricity Rules as defined in the NEL.

"Scope of Works" has the meaning given in the Project Agreement.

"Security Interest" means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust, power or other form of security or deposition, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

"Services Commencement Date" has the meaning given to that term in the Project Agreement.

"Shared Assets" has the meaning given in the Network Connection Agreement.

"Standard and Poor's" means Standard & Poor's (Australia) Pty Limited.

"Subsidiary" has the meaning given to "subsidiary" in the *Corporations Act 2001* (Cth), amended as necessary such that:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) a body corporate or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a body corporate.

"Substation" has the meaning given to that term in the Project Agreement.

"Substation Site" has the meaning given to that term in the Project Agreement.

"Switching" means mechanically or electronically opening or closing an electrical path.

"Technical Obligations" means in relation to:

- (a) the Dedicated Assets Provider and the Dedicated Assets, the Performance Standards and the other standards and requirements set out in (or determined in accordance with) paragraph 1 of Part E of the Connection Agreement Data Book;
- (b) the Customer and the Customer's Facilities, the Performance Standards and the other standards and requirements set out in (or determined in accordance with) paragraph 2 of Part E of the Connection Agreement Data Book; and
- (c) a party, any other requirements or standards (in addition to those referred to in limbs (a) and (b) above) set out in, or published by any Authority under, Applicable Laws that relate to the physical performance or operation of, or a service provided by, that party's electricity infrastructure (as those requirements are modified by any derogations in force under those Applicable Laws at that time or the provisions of this agreement).

"Term" means the period on and from the Commencement Date to the earlier of the Expiry Date and the date on which this agreement is terminated in accordance with clause 10.4 or clause 11.

"Third Party Property" means property owned, leased or otherwise under the control of a third party which is leased, occupied or used by a party to this agreement.

"TransGrid" means NSW Electricity Networks Operations Pty Limited (ACN 609 169 959) as trustee for NSW Electricity Networks Operations Trust (ABN 70 250 995 390) of Level 1, 180 Thomas Street, Sydney NSW 2000.

"**TransGrid Services**" has the meaning given to the term "Services" in the Network Connection Agreement.

"**Transmission System**" means *connection assets* and *network assets* used by TransGrid to provide *transmission services*.

"**Trust**" means the TransGrid Services Trust (ABN 94 121 353 950).

"**Trustee**" means the trustee of the Trust.

"**Upgrade Work**" has the meaning given to that term in paragraph 9(a) of Schedule 5.

"**Work**" means installation, construction, commissioning, *augmentation*, *extension*, removal, inspection, testing, undertaking of repairs, undertaking of maintenance or the *connection* of another *Network User* to the Dedicated Assets.

1.2 General interpretation

In this agreement unless the contrary intention is specifically expressed:

- (a) italicised words and phrases have the meaning ascribed to them in the glossary which comprises chapter 10 of the Rules;
- (b) a reference to a recital, clause, paragraph, schedule or attachment is a reference to a recital, clause or paragraph of or schedule or attachment to this agreement and references to this agreement include any schedule or attachment;
- (c) a reference to this agreement, any other agreement, deed or instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, deed, instrument or provision;
- (d) a reference to a statute, ordinance, licence, code or other law includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements of that statute, ordinance, licence, code or law;
- (e) a reference to a thing (including an amount) is a reference to the whole and each part of it;
- (f) the singular includes the plural and vice versa;
- (g) the word "person" includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, an unincorporated association and any authority;
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (i) a reference to one gender includes all genders;
- (j) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (k) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (l) a reference to a month is a reference to a calendar month;

- (m) a reference to time is a reference to Sydney time;
- (n) mentioning anything after include, includes or including does not limit what else might be included;
- (o) if a word or phrase is specifically defined in this agreement other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (p) any reference to a party complying with the requirements of the Rules will in the case of the Customer include all requirements of the Rules which are expressed to apply to a *Customer* in relation to the Customer's Facilities even if the Customer is not registered or ceases to be registered as a *Customer* for the Customer's Facilities under the Rules or appoints an *intermediary* for the Customer's Facilities under clause 2.9.3 of the Rules; and
- (q) a reference to "\$", AUD or dollars is to Australian currency.

1.3 Determinations, consents and discretions

A reference in this agreement to a party:

- (a) making a determination;
- (b) giving its consent; or
- (c) exercising a discretion,

will be interpreted as a reference to that party making that determination, giving that consent or exercising that discretion on reasonable grounds, after taking into account all relevant facts and (where applicable) in a manner which reflects and is consistent with *good electricity industry practice* at that time.

1.4 Headings

Headings are inserted for convenience and do not affect the interpretation of this agreement.

1.5 Conditions precedent

- (a) Subject to clause 1.5(b), this does not come into force or effect until:
 - (i) Infrastructure NSW and TransGrid have executed the Project Agreement; and
 - (ii) the Customer and TransGrid have executed the Network Connection Agreement.
- (b) Clauses 1, 11.1, 12 to 19 (inclusive) and 21 come into force and effect on the Execution Date.
- (c) Notwithstanding any other provision of this agreement, if the conditions precedent referred to in clause 1.5(a) have not been satisfied or waived within 20 Business Days from the Execution Date, either party may terminate this agreement by serving written notice to the other party.
- (d) Only the Dedicated Assets Provider may waive the conditions precedent referred to in clause 1.5(a).
- (e) Notwithstanding any other provision of this agreement, the Dedicated Assets Provider is not required to commence to perform the services until:

- (i) TransGrid and/or AEMO have approved the Customer's Technical Obligations under the Rules where such approval is required under the Rules; and
- (ii) the Customer has provided to the Dedicated Assets Provider Credit Support if required, which satisfies the requirements of Schedule 1.

1.6 Relationship between Customer and Rules

- (a) The parties acknowledge that the Rules contain certain provisions which are relevant to the operation of this agreement, and which need to be incorporated into this agreement:
 - (i) to require the Dedicated Assets Provider to comply with various technical obligations imposed upon the Dedicated Assets Provider in relation to the operation of the Dedicated Assets under the Rules; and
 - (ii) to require the Customer to comply with various technical obligations imposed upon the Customer in relation to the operation of the Customer's Facilities under the Rules.

- (b) For the period while the Dedicated Assets Provider is not a *Registered Participant*, any provisions of Chapters 4, 5, 7 and 8 of the Rules that set out:
 - (i) rights and obligations of a *Dedicated Connection Asset Service Provider* against a *Customer* and vice versa; and
 - (ii) technical and operational specifications that are relevant to the Dedicated Assets that are the subject of this agreement,

and are required for any of the purposes set out in clause 1.6(a), are incorporated into this agreement *mutatis mutandis* and any reference to the application of the Rules to the Dedicated Assets Provider, or the compliance by the Dedicated Assets Provider with the Rules, under this agreement will be taken to be the application of, or compliance with, those Rules referred to in this clause 1.6(b).

- (c) For the period while the Customer is not a *Registered Participant*, any provisions of Chapters 4, 5, 7 and 8 of the Rules that set out:
 - (i) rights and obligations of a *Customer* against a *Dedicated Connection Asset Service Provider* and vice versa; and
 - (ii) technical and operational specifications that are relevant to the Customer's Facilities that are the subject of this agreement;

and are required for either of the purposes set out in clause 1.6(a), are incorporated into this agreement *mutatis mutandis* and any reference to the application of the Rules to the Customer, or the compliance by the Customer with the Rules, under this agreement will be taken to be the application of, or compliance with, those Rules referred to in this clause 1.6(b).

- (d) Any provisions that are incorporated into this agreement under clause 1.6(b) must be read and construed in accordance with the following:
 - (i) references to *Customer* and analogous terms are to be taken to be references to the Customer as appropriate;

- (ii) references to *Non-Registered Customer*, *Transmission Customer*, *Transmission Network User* and *Network User* are to be taken to be references to the Customer as appropriate;
- (iii) references to *Market Customer* will not be taken to be a reference to the Customer;
- (iv) references to *Network Service Provider* and analogous terms are to be taken to be references to TransGrid;
- (v) any other terms relevant to the abovementioned terms must be construed accordingly; and
- (vi) to the extent the provision purports to impose an obligation on a party to:
 - A. interact in some manner with a third party;
 - B. comply with a requirement of a third party;
 - C. provide information to a third party; or
 - D. be subject to the jurisdiction of a third party,
 that requirement will have no effect.
- (e) This clause 1.6 does not affect the Customer's obligation to comply with the Rules, as the case may be, as a *Registered Participant*, a *Non-Registered Customer*, a *Transmission Customer*, a *Transmission Network User* and/or a *Network User*.
- (f) In addition, in order to interpret the above provisions, the following provisions of the Rules apply to the extent necessary to give meaning to any provisions incorporated into the agreement in accordance with clause 1.6(b) above:
 - (i) Clause 4.1.1;
 - (ii) Clause 5.1.2;
 - (iii) Clause 7.1.1;
 - (iv) Clause 8.1.3;
 - (v) Chapter 9, to the extent that it modifies any provisions incorporated into the agreement in accordance with clause 1.6(b) above;
 - (vi) Chapter 10; and
 - (vii) any other provisions which are specifically referred to in Chapter 10 and are necessary to give meaning to the definitions set out in Chapter 10.
- (g) The Customer acknowledges that the Dedicated Assets Provider is not a *Network Service Provider* under the Rules and is not responsible for the operation, maintenance or control of the Transmission System. The Customer agrees to hold harmless the Dedicated Assets Provider and its Associates from loss, damage, liability, costs or expenses which may be suffered or incurred by the Customer or its Associates arising from or in connection with the Transmission System.

1.7 Title and risk

Title to and risk in the Shared Assets and the Dedicated Assets rests with the Dedicated Assets Provider or a person nominated by the Dedicated Assets Provider at all times.

2. SERVICES TO BE PROVIDED BY THE DEDICATED ASSETS PROVIDER

2.1 Services

- (a) The Dedicated Assets Provider must operate, control and maintain the Dedicated Assets:
- (i) in accordance with the Dedicated Assets Provider's Technical Obligations, *good electricity industry practice*, the requirements of this agreement and all Applicable Laws including clause 5.2.7(b) of the Rules; and
 - (ii) so as to protect and avoid damage to or any other adverse effect upon:
 - A. the Customer; and
 - B. the Transmission System and any other plant, equipment and property (including the Customer's Facilities and the Shared Assets),

which the Dedicated Assets Provider knows or ought reasonably to know could occur if it does not comply with this clause 2.1(a).

- (b) Without limiting clause 2.1(a), the Dedicated Assets Provider will:
- (i) not operate the Dedicated Assets so that the Agreed Capability is exceeded for any Connection Point; and
 - (ii) immediately notify the Customer if the Dedicated Assets Provider becomes aware of any actual and probable threat of a breach of clause 2.1(a) or this clause 2.1(b).
- (c) The Dedicated Assets Provider must, during the Term, ensure that the Dedicated Assets comply with the interface specifications provided by TransGrid under clause 5.3.3(b)(7) of the Rules.

2.2 Co-ordination of Outage Plan and maintenance activities

The Dedicated Assets Provider must comply with Schedule 2.

2.3 Compliance program

The Dedicated Assets Provider must comply with any compliance program relating to the Dedicated Assets which is instituted from time to time under the Rules.

2.4 Fault levels and Voltage Range

- (a) The parties agree and acknowledge that the fault levels specified in the Performance Standards are an approximation of actual fault levels that may apply at a Connection Point from time to time.
- (b) To ensure that the fault levels specified in the Performance Standards resemble, as closely as possible, the actual fault levels applying at a Connection Point from time to time, each party agrees to:
- (i) periodically review the fault levels applying at each Connection Point; and

- (ii) consult with the other party and exchange such information as is necessary to facilitate each party's conduct of a review under clause 2.4(b)(i).
- (c) Each party will ensure that all plant and equipment belonging to it at each Connection Point can withstand the actual fault levels applying at the relevant Connection Point from time to time.

3. PAYMENTS FOR SERVICES

3.1 Amount of Charges

- (a) The Customer must pay to the Dedicated Assets Provider:
 - (i) any charges payable to the Dedicated Assets Provider under this agreement;
 - (ii) any other amount which is payable by the Customer from time to time under Schedule 5; and
 - (iii) any charges or other amounts payable to TransGrid under the Network Connection Agreement from time to time,(the "**Charges**") in accordance with the requirements of this agreement.
- (b) The Customer acknowledges and agrees that:
 - (i) the Dedicated Assets Provider has been appointed by TransGrid as TransGrid's billing agent for the purpose of collecting the amounts described in clause 3.1(a)(iii); and
 - (ii) the Charges are payable on and from the Payment Commencement Date irrespective of whether the Services Commencement Date and provision of the services have occurred.

3.2 Adjustment of Charges to reflect Dedicated Variation Costs

- (a) As soon as practicable after receiving a notice under clause 14.1(a) of the Project Agreement, the Dedicated Assets Provider must provide to the Customer a notice setting out:
 - (i) the Dedicated Variation Costs; and
 - (ii) details of the alteration to the Charges which the Dedicated Assets Provider determines will result from the inclusion of the Dedicated Variation Costs in the costs used to determine the Charges in a manner which is consistent with the manner in which the original Charges under this agreement were determined by the Dedicated Assets Provider.
- (b) The remaining paragraphs of this clause 3.2 apply only if the Customer makes an election under paragraph 3(a)(ii) of Schedule 5.
- (c) Within 10 Business Days (or such other longer period as agreed between the parties) of receipt of the notice given under clause 3.2(a), the Customer must give a notice to the Dedicated Assets Provider stating whether it will agree to the proposed alteration to the Charges as stated in the notice.
- (d) Any failure on the part of the Customer to respond to a notice provided under clause 3.2(a) within the time period specified (or otherwise agreed) under clause 3.2(c) will be deemed to be consent on the part of the Customer to the varied Charge.

- (e) If the Customer notifies the Dedicated Assets Provider within the timeframe set out in clause 3.2(c) that it does not agree to the proposed alteration to the Charges stated in the notice given under clause 3.2(a), the Dedicated Assets Provider will refer that matter to Expert determination in accordance with the dispute resolution procedures set out in clause 13.
- (f) Notwithstanding anything to the contrary in clause 13, if the Dedicated Assets Provider refers the question as to whether the proposed alteration to the Charges has been determined in a manner which is consistent with the manner in which the original Charges under this agreement were determined by the Dedicated Assets Provider to Expert determination in accordance with clause 13, the parties agree that:
 - (i) the Dedicated Assets Provider will provide full details concerning the methodology used to determine the original Charges under this agreement to the Expert;
 - (ii) the Expert will be instructed to determine the adjustment to the Charges using the methodology provided by the Dedicated Assets Provider under clause 3.2(f)(i) and the Dedicated Variation Costs and advise the parties of its decision concerning that adjustment within 20 Business Days after receipt of the information from the Dedicated Assets Provider under clause 3.2(f)(i);
 - (iii) the Expert will be instructed not to disclose details concerning the methodology used to determine the original Charges under this agreement but to simply certify that the adjustment to the Charges has been determined by applying that methodology and the Dedicated Variation Costs;
 - (iv) on notification by the Expert of the Expert's determination under this clause 3.2(f) the parties will be bound by that determination and the Charges will be adjusted and this agreement will be deemed to have been amended from the Services Commencement Date to reflect that adjustment;
 - (v) if the Charges notified under clause 3.2(a) are greater than the Charges determined by the Expert in accordance with clause 3.2(f):
 - A. the Dedicated Assets Provider will set off against the future Charges payable by the Customer under this agreement any excess Charges paid by the Customer, together with interest on that excess at a rate equal to the Interest Rate calculated on a daily basis; and
 - B. the Dedicated Assets Provider must pay the Expert's costs;
 - (vi) if the Charges notified under clause 3.2(a) are less than the Charges determined under clause 3.2(f):
 - A. the Customer must pay the shortfall to the Dedicated Assets Provider, together with interest on that shortfall at a rate equal to the Interest Rate calculated on a daily basis; and
 - B. the Customer must pay the Expert's costs.
- (g) For the avoidance of doubt, any alteration to the Charge payable by the Customer in accordance with the notice in clause 3.2(a) must be paid by the Customer in accordance with its obligations under this agreement until such time as the Charge is either modified:
 - (i) in accordance with this agreement; or

- (ii) by an Expert in accordance with clause 3.2(f).

3.3 Invoicing

- (a) The Dedicated Assets Provider will render to the Customer within 10 Business Days after the end of each Billing Period an invoice for the Charges payable under clause 3.1 in relation to that Billing Period or a previous Billing Period.
- (b) The Customer must pay the Dedicated Assets Provider the amount stated as payable on any such invoice by direct credit to the bank account from time to time specified for this purpose by the Dedicated Assets Provider or such other method as agreed in writing between the parties.
- (c) Payments by the Customer must be made no later than 4:00 pm on the 10th Business Day after the date of an invoice rendered by the Dedicated Assets Provider under this clause 3.2.

3.4 Contents of invoices

The Dedicated Assets Provider will ensure that any invoices rendered under clause 3.2 will be valid for GST purposes and will include the following information:

- (a) **Charges:** particulars of the Charges payable by the Customer or amount due to the Customer under clause 3.1 (including sufficient information in relation to such Charges and other amounts to reasonably enable the Customer to verify the basis of the relevant charge or other amount);
- (b) **Other amounts:** particulars of any other Charge payable by the Customer in respect of the invoice period that applies under clause 3.2, including any amounts payable under clauses 3.5, 3.6, 3.8, 3.9 and 3.10 (including sufficient information in relation to such charges to reasonably enable the Customer to verify the basis of the relevant charges); and
- (c) **Rules information:** any information required to be provided in invoices under clause 6A.27.2 of the Rules.

3.5 Taxes

If:

- (a) the Customer is required by law to make any deduction or withholding from any amount paid or payable by it under this agreement; or
- (b) the Dedicated Assets Provider is required by law to make any payment, on account of a tax, duty, levy, impost or other charge or in the nature of any such thing on or in relation to any amount received or receivable by it under this agreement or in relation to any services provided under this agreement or which is payable as a result of entering into or performing this agreement (other than income tax),

and such amount is not in respect of GST and the Charges have not otherwise been adjusted to reflect or take account of the relevant deduction, withholding or payment then:

- (c) the Customer will ensure that any such deduction or withholding does not exceed the legal minimum and will pay any such tax or other amount required to be deducted or withheld to the relevant taxation or other authority before the date on which penalties apply;

- (d) the amount payable by the Customer under this agreement will be increased to the extent necessary to ensure that, after the making of the relevant deduction, withholding or payment, the Dedicated Assets Provider receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount (after allowances for any credit or benefit received by the Dedicated Assets Provider as a result of the Customer's deduction, withholding or payment) equal to the amount which the Dedicated Assets Provider would have received and so retained had no such deduction, withholding or payment been made unless the Dedicated Assets Provider is prohibited under the Rules from receiving such amount; and
- (e) the Customer will deliver to the Dedicated Assets Provider, within 5 Business Days after each deduction or withholding is required by law to be made, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made.

3.6 GST

- (a) Unless the context requires otherwise, words and phrases in this clause that have a specific meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) shall have the same meaning in this clause.
- (b) If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (c) Unless otherwise stated, all amounts expressed to be payable under or in connection with this Agreement are exclusive of any GST.
- (d) A recipient of a taxable supply under or in connection with this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (the "**GST Amount**"). The recipient must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.
- (e) If an adjustment event occurs in relation to a supply made under or in connection with this agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- (f) Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another party under this agreement, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus any GST Amount payable under this clause.
- (g) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (h) If a party has a Claim under or in connection with this agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

- (i) The Customer indemnifies the Dedicated Assets Provider against any Damages suffered or Claims incurred by the Dedicated Assets Provider arising out of any act, matter or thing done, permitted or omitted to be done by the Customer and its Associates in relation to the Customer's late payment of the GST Amount for any taxable supply made or to be made by the Dedicated Assets Provider under this agreement.
- (j) This clause will not merge upon completion and will continue to apply after expiration or termination of this agreement.

3.7 Disputed invoices

- (a) In the event of any dispute concerning an invoiced amount the Customer will, within 10 Business Days after the date it received the invoice, notify the Dedicated Assets Provider in writing identifying the amount in dispute and giving full reasons for the dispute.
- (b) The Customer will pay the full amount of any portion of the invoice which is not in dispute.
- (c) The parties will meet to try to resolve the dispute, and failing resolution within a further 10 Business Days, the dispute will be determined in accordance with clause 13.
- (d) If, and for so long as, the Customer complies in good faith with the provisions of this clause 3, it will not, for that reason alone be in breach of its obligations under clause 3.2 as a result of failing to pay any portion of an invoice which is in dispute.

3.8 Interest on disputed amount

Where, as a result of the determination of a dispute of the nature referred to in clause 3.7, either party has to pay money to the other then, in addition to such payment, interest will be payable thereon from the date the disputed invoice was due until the date the paying party actually pays the other party the relevant amount at a rate equal to the Interest Rate calculated on a daily basis with payment of such interest due on the date agreed between the parties or determined in accordance with clause 13 for the payment of the principal amount.

3.9 Adjustment of invoices

- (a) This clause 3.9 applies if:
 - (i) the Customer has been overcharged or undercharged in any form whatsoever;
 - (ii) the Customer has actually paid the invoices containing such overcharge or undercharge; and
 - (iii) the overcharge or undercharge is in relation to an invoice dated within the preceding 12 months from the date of discovery of the overcharge or undercharge.
- (b) Within 20 Business Days after the overcharge or undercharge (as the case may be) has been discovered and the amount of the overcharge or undercharge has been agreed by the parties or determined pursuant to the provisions of clause 13, the Dedicated Assets Provider will refund to the Customer the amount of the overcharge (if any) and the Customer will pay to the Dedicated Assets Provider the amount of the undercharge (if any).

- (c) Interest will be payable at a rate equal to the Interest Rate on such amounts from the date on which the incorrect invoice was due for payment until the date of payment of such undercharge or overcharge calculated on a daily basis with payment of such interest due on the date on which the amount of the undercharge or overcharge is due.

3.10 Default interest

If either party fails to pay any amount payable under this agreement on the due date for payment (or, where the amount is upon demand, upon such demand being made) then interest will be payable on the amount unpaid from the due date for payment until actual payment, at a rate equal to the Default Rate, calculated on a daily basis. This clause 3.10 does not apply to any amount that is permitted to be withheld under clause 3.7.

3.11 Credit support

If required under Schedule 1, the Customer must provide Credit Support in favour of the Dedicated Assets Provider in accordance with Schedule 1 and otherwise comply with the requirements in Schedule 1.

4. CUSTOMER OBLIGATIONS IN RELATION TO THE SERVICES

4.1 Compliance with Technical Obligations

The Customer must comply with the obligations set out in paragraph 2 of Part E of the Connection Agreement Data Book.

4.2 Co-ordination of Outage Plan and maintenance activities

The Customer must comply with Schedule 2.

4.3 Compliance program

The Customer must comply with any compliance program relating to the Customer's Facilities which is instituted from time to time under the Rules.

4.4 Operation and control of Customer's Facilities

- (a) The Customer must operate, control and maintain the Customer's Facilities:
- (i) in accordance with the Customer's Technical Obligations, *good electricity industry practice*, the requirements of this agreement and all Applicable Laws; and
 - (ii) so as to protect and avoid damage to or any other adverse effect upon:
 - A. the Dedicated Assets Provider; and/or
 - B. the Transmission System and any other plant, equipment and property (including the Dedicated Assets),

which the Customer knows or ought reasonably to know could occur if it does not comply with this clause 4.4(a).

- (b) Without limiting clause 4.4(a), the Customer will:

- (i) not operate the Customer's Facilities so that the Agreed Capability is exceeded for any Connection Point;
- (ii) not operate the Customer's Facilities so that the Maximum Agreed Demand for the Customer's Facilities is exceeded; and
- (iii) immediately notify the Dedicated Assets Provider if the Customer becomes aware of any actual or probable threat of a breach of clause 4.4(a) or this clause 4.4(b).

5. CONNECTION AGREEMENT DATA BOOK

5.1 Connection Agreement Data Book

- (a) The Connection Agreement Data Book as at the Execution Date is set out at Attachment 2 of the Network Connection Agreement and forms part of this agreement.
- (b) The information set out in the Connection Agreement Data Book will be updated upon completion of the Connection Work in accordance with clause 3 of the Project Agreement and the process set out in the Network Connection Agreement.
- (c) If the Rules or any other Applicable Law requires any additional Technical Obligations to be documented under this agreement, the parties agree to use reasonable endeavours to agree relevant amendments to this agreement or the Connection Agreement Data Book (as applicable).
- (d) If the parties are unable to agree on any proposed amendments to this agreement or the Connection Agreement Data Book, no amendment will be made unless and until it has been resolved in accordance with clause 13.

5.2 Status of amendments

- (a) The Connection Agreement Data Book, as amended from time to time, forms part of this agreement.
- (b) The parties must provide any information marked on the Execution Date as "TBA" in the Connection Agreement Data Book within 20 Business Days after the Services Commencement Date or such later date as is agreed between the parties in writing.

6. SWITCHING

6.1 Operating Protocol

- (a) The Dedicated Assets Provider and the Customer must comply with the Operating Protocol for the day to day operations of the Customer's Facilities and the Dedicated Assets.
- (b) The Dedicated Assets Provider and the Customer will agree to amend the Operating Protocol as required from time to time.
- (c) If the Dedicated Assets Provider and the Customer are unable to reach agreement under clause 6.1(a) or clause 6.1(b), then the parties will be taken to be in dispute about the terms of the Operating Protocol and either party may seek to have the matter resolved as a dispute in accordance with clause 13.

6.2 Switching for planned works

Subject to clause 6.3, each party will use its reasonable endeavours to perform any Switching in relation to its equipment reasonably requested by the other party to allow planned works by the other party to be carried out. Any request for Switching that a party wishes to be carried out on the other party's *facilities* must be made by notice in writing in accordance with the switching procedures set out in the Operating Protocol including complying with all applicable notice periods required for Switching.

6.3 Switching for emergency conditions

A party may request the other party to carry out Switching in relation to its equipment and provide less than the notice specified under clause 6.2 if that party reasonably considers that such Switching needs to be carried out as a matter of urgency to avoid a serious risk of damage to property or to avoid any risk of injury or death to any person. Each party will use its reasonable endeavours to comply with such a request and to have operating staff available to ensure minimal delay in performing Switching in such circumstances.

6.4 Manual Reclosure

- (a) The Customer acknowledges that the Dedicated Assets Provider will only carry out Manual Reclosure of:
 - (i) the Customer's overhead *transmission lines connected* to an Interface Point;
 - (ii) the Customer's overhead *distribution lines connected* to an Interface Point; or
 - (iii) any other part of the Customer's *Facilities connected* to an Interface Point,if expressly requested to do so by the Customer.
- (b) The Customer indemnifies the Dedicated Assets Provider against any Damages suffered or Claims incurred by the Dedicated Assets Provider as a result of the Dedicated Assets Provider carrying out Manual Reclosure in accordance with the Customer's request, provided that, at the time the Dedicated Assets Provider carried out such Manual Reclosure, the Dedicated Assets were operating in accordance with this agreement and in a manner which would have enabled the Manual Reclosure to be carried out.

6.5 No liability for Switching

A party (the "**switching party**") will have no liability to the other party (the "**requesting party**") in respect of any Switching carried out by the switching party in accordance with a request made by the requesting party under clauses 6.2 or 6.3 and the requesting party indemnifies the switching party against any Damages suffered by the switching party in connection with any Claims made or brought by any third party arising from or relating to such Switching carried out in accordance with such a request provided that:

- (a) if the Dedicated Assets Provider is the switching party, the Dedicated Assets were operating in accordance with this agreement and in a manner which would have enabled the Switching to be carried out; and
- (b) if the Customer is the switching party, the Customer's *Facilities* were operating in accordance with this agreement and in a manner which would have enabled the Switching to be carried out.

7. SITE ACCESS, INSPECTION AND TESTING

7.1 The Dedicated Assets Provider's site access

If any of the Dedicated Assets are to be located or are located on the Customer's Property, the Dedicated Assets Provider and its Associates will have:

- (a) **Right of access:** a right of access to and over the Customer's Property (such right to be exercised reasonably) for the purpose of installing, testing, inspecting, maintaining, reading, repairing, replacing, operating or removing any of the Dedicated Assets and for any other related purpose; and
- (b) **Right to use amenities:** a right to use (at its own expense or on the condition that it reimburses the Customer for expenditure incurred (if and as may be appropriate in any particular case)) amenities available to the Customer which are associated with, or are ordinarily used in association with, any of the Dedicated Assets (such right to be exercised reasonably),

provided that such rights of access or use may not be exercised in a manner which prevents the Customer from performing its obligations under this agreement or Applicable Laws. In exercising the rights of access and use under this clause 7.1, the Dedicated Assets Provider must comply with any reasonable procedures, access and safety protocols specified from time to time by the Customer (including the access and safety protocols set out at Attachment 4). The Customer must ensure that any of the Dedicated Assets located on the Customer's Property are not the subject of any Security Interest created or permitted by it.

7.2 Customer's site access

If any of the Customer's Facilities are to be located or are located on the Dedicated Assets Provider's property for the proper performance of this agreement, the Customer and its Associates will have:

- (a) **Right of access:** a right of access to and over the Dedicated Assets Provider's property (such right to be exercised reasonably) for the purpose of installing, testing, inspecting, maintaining, reading, repairing, replacing, operating or removing any of the Customer's Facilities and for any other related purpose; and
- (b) **Right to use amenities:** a right to use (at its own expense or on the condition that it reimburses the Dedicated Assets Provider for expenditure incurred (if and as may be appropriate in any particular case)) amenities available to the Dedicated Assets Provider which are associated with, or are ordinarily used in association with, any of the Customer's Facilities (such right to be exercised reasonably),

provided that such rights of access or use may not be exercised in a manner which prevents the Dedicated Assets Provider from performing its obligations under this agreement, the Network Operating Agreement or Applicable Laws. In exercising the rights of access or use under this clause 7.2, the Customer must comply with any reasonable procedures, access and safety protocols specified from time to time by the Dedicated Assets Provider, and any reasonable requirements imposed by a third-party lessor or licensor (who is not an Associate of the Dedicated Assets Provider) under leases or licences over the Dedicated Assets Provider's property (including the access and safety protocols and third-party requirements set out at Attachment 5). The Dedicated Assets Provider must ensure that any of the Customer's Facilities located on the Dedicated Assets Provider's property are not the subject of any Security Interest created or permitted by it.

7.3 Provisions applying to site access

The right of access conferred by clause 7.1 or clause 7.2 (as applicable) will, where or when appropriate, be exercised as follows:

- (a) **Notice:** where reasonably practicable to do so, the party seeking access will give the other party reasonable notice that it will be exercising its right of access and the purpose for access; and
- (b) **Inconvenience and safety rules:** the party seeking access will cause as little inconvenience to the other party as is practicable and will observe the other party's recognised safe working practices, including the access and safety protocols set out at Attachments 4 and 5, their reasonable amendments and all other reasonable procedures, access and safety protocols specified from time to time by the other party (to the extent they are applicable) at all times,

and will be in addition to any right of access either party may otherwise have under Applicable Laws and any Licences or Easements.

7.4 Each party's access to Third Party Property

If any of the Dedicated Assets or the Customer's Facilities are to be located or is located on Third Party Property leased, occupied or used by the other party (such party called the "**occupier**") and the other party requires access or will require access to it for the proper performance of this agreement (such party called the "**party requiring access**"), the occupier must use its reasonable endeavours to secure a right of access that is capable of being exercised by the party requiring access so as to permit the party requiring access to properly perform this agreement. The party requiring access must comply with any reasonable requirements, access and safety protocols imposed by the party or parties controlling access to the Third Party Property as a condition of allowing such access (including the access and safety protocols and third-party requirements set out at Attachment 6).

7.5 Rights survive expiry or termination

Without limiting the Dedicated Assets Provider's ongoing rights under any Easements or Licences, the provisions of this clause 7 will remain in effect for a period of 24 months after the termination of this agreement but only for the purpose of enabling the Dedicated Assets Provider to disconnect the Customer's Facilities and remove the Dedicated Assets or the Dedicated Assets Provider's property from the Land, or either party to remove any plant or equipment installed or provided by it on property belonging to the other party or to a third party.

7.6 Safety requirements

- (a) Definitions

In this clause 7.6:

- (i) the terms construction work construction project, principal contractor and workplace are as defined in the WHS Legislation;
- (ii) "**Applicable Laws**" is defined to include the WHS Legislation;
- (iii) "**Notifiable Incident**" means a notifiable incident as defined in the WHS Legislation or any other incident which the Dedicated Assets Provider is required to notify to an Authority under Applicable Laws; and

- (iv) **"Other Principal Contractor"** means Serco Australia Pty Limited (ABN 44 003 677 352) or any other sub-contractor of the Customer to the extent they are engaged as principal contractor for a construction project which is adjacent or in close proximity to the workplace at which any installing, testing, inspecting, maintaining, reading, repairing, replacing, operating, Upgrade Work, dismantling, decommissioning or removing any of the Dedicated Assets and for any other related purpose (to the extent it is considered to be a construction project under the WHS Legislation) (**Relevant Work**) will be undertaken.

(b) General

Subject to Clause 7.6(c) the Dedicated Assets Provider must:

- (i) comply with, and ensure that its personnel and all persons for whom it is responsible or over whom it is capable of exercising control while executing the Relevant Work comply with all Applicable Laws, Authorisations and Directives;
- (ii) comply with, and ensure that its personnel, all persons for whom it is responsible or over whom it is capable of exercising control while executing the Relevant Work comply with any reasonable directions relating to safety issued from time to time to the Dedicated Assets Provider by the Customer or an Authority;
- (iii) ensure that any person who proposes to carry out the Relevant Work has undertaken the required training (including general induction training, work activity based health and safety induction training and site specific health and safety induction training) and holds all licences, permits or qualifications required to perform the Relevant Work;
- (iv) develop, implement and maintain appropriate safety systems so as to prevent injury to persons or damage to property on, about or adjacent to the Land and related access routes arising from the Relevant Work;
- (v) in addition to notifying the relevant Authority, immediately notify the Customer of any Notifiable Incident related to the Relevant Work and conduct any investigation reasonably required by the Customer in relation to it;
- (vi) provide to the Customer all notices and correspondence concerning work health and safety in connection with the Relevant Work within 2 Business Days after the receipt or dispatch of any such notice or correspondence;
- (vii) regularly audit and monitor its compliance with its work health and safety systems, procedure and records, obligations under this agreement and WHS Legislation and, if requested, provide a report to the Customer about the outcome of any audit;
- (viii) regularly audit and monitor the compliance of any Associate engaged by the Dedicated Assets Provider to perform any part of the Relevant Work with its obligations under WHS Legislation; and
- (ix) when directed by the Customer in writing, provide access and all necessary assistance to the Customer to allow it (or a third party appointed by the Customer) to audit any part of the Dedicated Assets Provider's compliance with its work health and safety systems, procedures, records and obligations under this agreement and under WHS Legislation.

(c) WHS Legislation

- (i) Unless notified otherwise or unless the Dedicated Assets Provider nominates another entity reasonably acceptable to the Customer to be appointed as the principal contractor for the construction project forming a part or whole of the Relevant Work , the Customer appoints the Dedicated Assets Provider as the principal contractor for the construction project forming a part or whole of the Relevant Work under WHS Legislation.
- (ii) The Dedicated Assets Provider accepts the appointment and engagement as principal contractor under clause 7.6(c)(i).
- (iii) The Customer authorises the Dedicated Assets Provider to exercise such authority of the Customer as is necessary, including management and control of the workplace at which the Relevant Work will be performed, to enable the Dedicated Assets Provider to discharge its responsibilities as the principal contractor under WHS Legislation.
- (iv) Without limiting the Dedicated Assets Provider's obligations under this agreement, the Dedicated Assets Provider must comply with the duties of a principal contractor under WHS Legislation.
- (v) As both the Dedicated Assets Provider and the Other Principal Contractor will be appointed principal contractor in respect of separate construction projects being undertaken adjacent or in close proximity to each other, the Dedicated Assets Provider must ensure arrangements are put in place to ensure with respect to the workplace at which the Relevant Work will be performed and for which it has been appointed principal contractor in accordance with this in clause 7.6(c), that:
 - A. the Dedicated Assets Provider meets its obligations under WHS Legislation and this agreement;
 - B. the Customer meets its obligations under WHS Legislation and this agreement; and
 - C. without limiting the other paragraphs of this clause 7, the area over which the Dedicated Assets Provider has been appointed principal contractor by the Customer in respect of the Relevant Work and the area over which the Other Principal Contractor has been appointed principal contractor are clearly demarcated at all times and any specific arrangements for access and egress are clear and notified to the Dedicated Assets Provider, the Other Principal Contractor and their Associates as well as any sub-contractors engaged by the Customer, as required.
- (d) The Customer must include an obligation in its agreement(s) with the Other Principal Contractor for the Other Principal Contractor to comply with its obligations under WHS Legislation and must take all reasonably necessary action to ensure that the Other Principal Contractor complies with such obligations.

8. SUSPENSION OF SERVICES

8.1 Right to suspend

- (a) If the Customer does not pay any part of an invoice rendered by the Dedicated Assets Provider on or before the day on which such invoice is due for payment under clause 3.2 or has failed to make any other payment required under this agreement on or before the date on which such payment is due then, unless the Customer has given a notice under clause 3.7(a) in respect of that amount and has otherwise complied with its obligations under clause 3.7, the Dedicated Assets Provider, by notice to the Customer, may suspend or limit the provision of the services to the Customer until such time as payment is made.

- (b) Subject to clause 8.1(c) and clause 9.1, the Dedicated Assets Provider may suspend or limit the provision of the services to the Customer if the Customer commits a Non-Financial Default and the Customer has not:
 - (i) provided to the Dedicated Assets Provider a plan to rectify the Non-Financial Default within 10 Business Days after the Dedicated Assets Provider notifying the Customer of the existence of the Non-Financial Default, which rectification plan must specify a reasonable date (taking into account the nature of the Non-Financial Default and the requirements of all Applicable Laws and *good electricity industry practice*) by which the Non-Financial Default will be rectified by the Customer;
 - (ii) commenced to rectify the Non-Financial Default within 10 Business Days after providing the rectification plan to the Dedicated Assets Provider under clause 8.1(b)(i); or
 - (iii) rectified the Non-Financial Default by the date specified in the rectification plan provided to the Dedicated Assets Provider under clause 8.1(b)(i).
- (c) Nothing in clause 8.1(b) will limit the Dedicated Assets Provider's right (without notice to the Customer) to suspend or limit the provision of services to the Customer if the Dedicated Assets Provider considers that the Non-Financial Default by the Customer could cause any risk of Damages to any person or property.
- (d) Any suspension or limitation of the provision of services under clauses 8.1(a), (b) or (c) will not affect any right the Dedicated Assets Provider may have to terminate this agreement under clause 11.
- (e) The giving, or failure to give, by the Dedicated Assets Provider of notice under clause 8.1(a) will not affect any right the Dedicated Assets Provider may have to be paid interest under clause 3.10 as a result of the Customer's failure to pay any part of an invoice.

8.2 Customer required to comply

The suspension or limitation of services by the Dedicated Assets Provider in accordance with clause 8.1 will not affect any obligation that the Customer has to pay the Dedicated Assets Provider for services notwithstanding that, as a result of the suspension or limitation, the Dedicated Assets Provider has ceased to provide such services to the Customer. For the purposes of determining the Charges payable in such circumstances, the Customer will be deemed to have taken an amount of power equal to the average of the amount of power taken by the Customer in the 3 calendar months preceding such suspension.

8.3 No liability

If at any time, the Dedicated Assets Provider has the right to suspend or limit the provision of services under clause 8.1 but has not exercised such right then, during any period when the Dedicated Assets Provider is entitled to suspend or limit the provision of services but continues to provide any such services (the "**Continuation Period**"), the Dedicated Assets Provider will have no liability to the Customer for any Damages suffered or Claims incurred in relation to:

- (a) the provision of services by the Dedicated Assets Provider during the Continuation Period; or
- (b) any failure by the Dedicated Assets Provider during the Continuation Period to comply with an obligation under this agreement relating to the provision of services.

9. DISCONNECTION AND DISMANTLING

9.1 Disconnection and reduction in services

- (a) The Dedicated Assets Provider may disconnect a Connection Point or otherwise reduce the level of services being provided during the Term:
- (i) for the purposes of undertaking any Work in accordance with Schedule 2;
 - (ii) where, in the Dedicated Assets Provider's opinion, action is urgently required as a result of any actual or potential Emergency;
 - (iii) as requested by the Customer;
 - (iv) upon termination of this agreement under clause 11;
 - (v) in accordance with any Directive given under Applicable Laws or this agreement; or
 - (vi) as otherwise provided or required (whether directly or indirectly) under Applicable Laws or this agreement.
- (b) If the Dedicated Assets Provider disconnects a Connection Point or reduces the level of services being provided in accordance with clause 9.1(a) (an "**Event**"):
- (i) the Dedicated Assets Provider will use its reasonable endeavours to only reduce the level of services being provided to a level which the Dedicated Assets Provider reasonably determines is necessary to enable it to manage that Event in accordance with the requirements of all Applicable Laws and in a manner and to a standard consistent with *good electricity industry practice*, provided that this obligation does not apply to an Event referred to in clause 9.1(a)(ii), 9.1(a)(iv), 9.1(a)(v) or 9.1(a)(vi);
 - (ii) after the circumstances giving rise to the Event have ceased or been rectified, the Dedicated Assets Provider will use its reasonable endeavours to:
 - A. restore the provision of the services to the level that was being provided immediately before the occurrence of the Event; or
 - B. re-establish the *connection* at that Connection Point,provided that this obligation does not apply to an event referred to in clause 9.1(a)(iv); and
 - (iii) where the Dedicated Assets Provider has restored the provision of the services or re-established the *connection* under clause 9.1(b)(ii), the Customer must pay the reasonable costs of the restoration or reconnection as determined by the Dedicated Assets Provider.
- (c) The disconnection of a Connection Point under clause 9.1(a) or the reduction in the level of services being provided under that clause will not affect any obligation that the Customer has to pay the Dedicated Assets Provider for the services (except to the extent that the disconnection or reduction in the level of services by the Dedicated Assets Provider in accordance with clause 9.1(a) arises as a result of a wilful breach by the Dedicated Assets Provider of its obligations under this agreement). For the purposes of determining the Charges payable in such circumstances, the Customer will be deemed to have taken an amount of power equal to the greater of:

- (i) the amount of power actually taken by the Customer; and
- (ii) the average of the amount of power taken by the Customer in the 3 calendar months preceding such disconnection or reduction.

9.2 Reduction in level or standard of the services

- (a) If the Customer requires a permanent reduction in the level or standard of the services, including a permanent disconnection of any Dedicated Assets from a Connection Point (the "**Altered Services**"), then the Dedicated Assets Provider will:
 - (i) be entitled to *disconnect*, dismantle, *decommission* and remove any of the Dedicated Assets which are no longer required to provide the Altered Services; and
 - (ii) undertake, complete and commission all other work which the Dedicated Assets Provider reasonably determines is necessary in accordance with *good electricity industry practice* and the other requirements of Applicable Laws following the removal of the Dedicated Assets referred to in clause 9.2(a)(i).
- (b) In the case referred to in clause 9.2(a), the Customer will:
 - (i) pay the portion of the Asset Stranding Charge (if any) in respect of such reduction determined in accordance with paragraph 6 of Schedule 5 and Schedule 7; and
 - (ii) reimburse the Dedicated Assets Provider for any costs which are directly and necessarily incurred by the Dedicated Assets Provider in undertaking the work referred to in clause 9.2(a), upon receipt from the Dedicated Assets Provider of reasonable evidence substantiating the amount of costs incurred.

10. FORCE MAJEURE

10.1 Force Majeure Events

- (a) If either party fails to comply with or observe any provision of this agreement (other than an obligation to make a payment) and that failure is caused by an event or circumstance which is beyond the reasonable control of that party and which that party could not have prevented by the exercise of reasonable care and *good electricity industry practice* (a "**Force Majeure Event**"), that failure will not give rise to any cause of action or liability based on breach of the relevant provision of this agreement.
- (b) Without limiting clause 10.1(a), the following events will be Force Majeure Events to the extent that they satisfy the requirements of clause 10.1(a):
 - (i) **Acts of God etc.:** any event or circumstance occasioned by or in consequence of any acts of God, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, animals, aircraft, landslips, landslides, lightning, earthquakes, fires, storms, floods, washouts, geomagnetically induced currents, arrests, restraints of rulers and civil disturbances;
 - (ii) **Applicable Laws:** the compliance by the affected party in good faith with Applicable Laws;

- (iii) **Directives, court orders etc.:** the binding order or Directive of any court, tribunal or Authority (other than TransGrid) by reason of any cause beyond the control of the party invoking this clause 10.1 and which does not arise from a breach of this agreement by the party invoking this clause 10.1;
- (iv) **Breakages and accidents:** breakage or failure of and accidents to any plant, equipment or other facility owned or operated by the party invoking this clause 10.1;
- (v) **Strikes and lockouts:** strikes, lockouts and other labour disputes other than those solely involving the employees (or employees of contractors and sub-contractors) of the party invoking this clause 10.1;
- (vi) **Power supply failure:** a partial or entire failure of the supply or availability of electricity to the power system, a partial or entire failure of any *Generator* or *Market Network Service Provider*, other than the Customer, to inject electricity into the national grid, or a partial or entire failure of any other person to take electricity;
- (vii) **Failure of supplier:** a failure by a supplier (being a party with whom the affected party contracts from time to time) of goods and services to provide such goods or services by reason of any event, circumstance, act or omission, or combination of them, which is beyond the reasonable control of that supplier;
- (viii) **Delay of supplier:** a delay by a supplier (being a party with whom the affected party contracts from time to time) of goods and services to provide those goods or services, where that supplier is entitled under the terms of its contract with the affected party to claim an extension of time for the provision of those goods or services; and
- (ix) **Acts of third parties:** acts or omissions by a third party beyond the control of the party invoking this clause 10.1 and its Associates, including an Authority (other than TransGrid) and any person (other than the Customer) with facilities directly or indirectly connected to the Dedicated Assets. An act or omission by TransGrid will be deemed not to be beyond the control of the Dedicated Assets Provider.

10.2 Notice

If a party becomes aware of the existence of, or a serious prospect of, a forthcoming Force Majeure Event, it will notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 10.1, it will notify the other party as soon as reasonably practicable of full particulars of the Force Majeure Event relied upon.

10.3 Avoidance and mitigation

The party invoking clause 10.1 must:

- (a) use all reasonable endeavours to overcome or avoid the Force Majeure Event;
- (b) use all reasonable endeavours to mitigate the effects or consequences of the Force Majeure Event; and
- (c) consult with the other party on the performance of the obligations referred to in clauses 10.3(a) and 10.3(b).

However, nothing in this clause 10.3 will be construed as requiring the party invoking clause 10.1 to settle a strike, lock-out or other industrial disturbance by acceding against its judgement to the demands of opposing parties.

10.4 Termination on account of Force Majeure Event

- (a) Subject to clause 10.4(c), if the Force Majeure Event or its direct effect or consequence on the operations of either party is of such magnitude or the parties agree at any certain point in time while the Force Majeure Event persists that it will be (or that it is more probable than not that it will be) of such duration, that after a period of not less than 12 consecutive months from the date of the commencement of the Force Majeure Event, it is unreasonable in all the circumstances for either party to perform, comply with or observe this agreement, that party may, by serving no less than 10 Business Days' prior notice, terminate this agreement.
- (b) Without limiting clause 10.4(a), if a Force Majeure Event has the effect of reducing the Capacity of TransGrid's *transmission network* to deliver power at any Connection Point for a period of more than 6 consecutive months from the date of the commencement of that Force Majeure Event, the Customer may, by serving no less than 10 Business Days' prior notice, terminate this agreement.
- (c) Clause 10.4(a) will not apply to a Force Majeure Event which prevents or limits either party from performing any obligation under this agreement if the Customer:
 - (i) notifies the Dedicated Assets Provider that it does not want this agreement to terminate as a result of that Force Majeure Event; and
 - (ii) continues to pay the Charges and (where relevant) complies with its other obligations under this agreement.

11. TERM OF AGREEMENT

11.1 Term

Subject to clause 1.5(b), this agreement commences on the Commencement Date and will continue until the Expiry Date unless terminated earlier in accordance with clause 10.4 or this clause 11 (the "Term").

11.2 Default

If either party (referred to in this clause 11 as the "**defaulting party**") commits:

- (a) a Financial Default, then the party not in default (referred to in this clause 11 as the "**non-defaulting party**") may give the defaulting party a notice specifying the Financial Default that has occurred and requiring the defaulting party to rectify the Financial Default within 20 Business Days after receipt of that notice (the "**rectification period**");
- (b) a Non-Financial Default, then the non-defaulting party may give the defaulting party a notice specifying the Non-Financial Default that has occurred (a "**default notice**") and requiring the defaulting party to provide to the non-defaulting party a plan to rectify the Non-Financial Default (the "**rectification plan**").

The rectification plan must be provided by the defaulting party to the non-defaulting party within 10 Business Days after receiving the default notice and must specify a reasonable date (taking into account the nature of the Non-Financial Default and the requirements of all Applicable Laws and *good electricity industry practice*) by which the Non-Financial Default will be rectified (the "rectification period").

11.3 Failure to rectify

(a) In the case of a Financial Default, if the defaulting party does not rectify the relevant Financial Default within the rectification period specified in clause 11.2(a), then the non-defaulting party may, in addition to any other rights and remedies under this agreement, exercise any or any combination of the following remedies:

- (i) terminate this agreement by serving prior written notice to the defaulting party; and
- (ii) exercise all available legal and equitable remedies including, but not limited to, suing for compensation or seeking orders for declaration, injunctive relief or damages or such other orders and relief as it may think fit.

(b) In the case of a Non-Financial Default, if the defaulting party does not:

- (i) commence to rectify the Non-Financial Default within 10 Business Days after providing the rectification plan to the non-defaulting party under clause 11.2(b); or
- (ii) rectify the relevant Non-Financial Default within the rectification period specified in clause 11.2(b),

then the non-defaulting party may, in addition to any other rights and remedies under this agreement exercise any or any combination of the following remedies:

- (iii) terminate this agreement by serving prior written notice to the defaulting party; and
- (iv) exercise all available legal and equitable remedies, including suing for compensation or seeking orders for declaration, injunctive relief or damages or such other orders and relief as it may think fit.

11.4 Termination notice

A termination notice under clause 11.3, 11.5 or 11.6 takes effect on the later of:

- (a) the time it is given to the defaulting party in accordance with clause 15; and
- (b) the time specified in the notice.

11.5 Customer insolvency

The Dedicated Assets Provider may terminate this agreement at any time by giving the Customer notice of termination if any Insolvency Event occurs in respect of the Customer.

11.6 Dedicated Assets Provider insolvency

The Customer may terminate this agreement at any time by giving the Dedicated Assets Provider notice of termination if any Insolvency Event occurs in respect of the Dedicated Assets Provider.

11.7 Obligation to notify of Insolvency Event

If an Insolvency Event occurs with respect to a party, then that party must immediately notify each other party that the Insolvency Event has occurred.

11.8 Survival

Termination or expiration of all or part of this agreement for any reason does not affect:

- (a) any rights of any party against another party which:
 - (i) arose prior to the time at which such termination or expiration occurred; and
 - (ii) otherwise relate to, or may arise at any future time from, any breach or non-observance of obligations under this agreement occurring prior to the termination or expiration; or
- (b) the rights and obligations of the parties under clauses 1, 3, 6.4(b), 6.5, 7, 8.3, 9, 11, 12, 13 14, 15, 21, paragraph 6 of Schedule 1 and paragraph 6 of Schedule 5, and any other clauses that expressly or by implication are intended to survive termination or expiry of this agreement.

11.9 No other right to terminate

Except as expressly provided in this agreement, but despite any right which would otherwise be conferred at law or in equity, the parties have no right (and waive any right which they may otherwise have had) to rescind or terminate this agreement.

11.10 Effect of termination

- (a) Upon termination of this agreement, the Dedicated Assets Provider will be entitled to:
 - (i) *disconnect*, dismantle, *decommission* and remove any of the Dedicated Assets; and
 - (ii) undertake, complete and commission all other work which the Dedicated Assets Provider reasonably determines is necessary in accordance with *good electricity industry practice* and the other requirements of Applicable Laws following the *disconnection*, dismantling, *decommissioning* or removal of the Dedicated Assets referred to in clause 11.10(a).
- (b) If the Dedicated Assets Provider commences to *disconnect*, dismantle, *decommission* and remove any of the Dedicated Assets in accordance with clause 11.10(a) during the 24-month period following the termination of this agreement, (other than where the Dedicated Assets Provider is the Defaulting Party), the Customer must reimburse the Dedicated Assets Provider for any costs which are directly and necessarily incurred by the Dedicated Assets Provider in undertaking that work (upon receipt from the Dedicated Assets Provider of reasonable evidence substantiating the amount of costs incurred) to the extent that those costs were not taken into account in calculating the amount of any Asset Stranding Charge paid by the Customer under clause 11.10(c).
- (c) If this agreement is terminated before the Expiry Date (other than where the Dedicated Assets Provider is the defaulting party) the Customer must pay the Asset Stranding Charge to the Dedicated Assets Provider in accordance with Schedule 5.

- (d) For the avoidance of doubt, if the Customer's obligation to pay the Asset Stranding Charge under clause 11.10(c) is unenforceable for any reason (including because the Asset Stranding Charge is deemed to be a penalty), the Dedicated Assets Provider may claim general damages against the Customer for termination of the agreement, up to a maximum of the Asset Stranding Charge which would have been payable under clause 11.10(c) had that clause been enforceable.

11.11 Cross-termination

Either party may terminate this agreement by serving prior notice to the other party upon the termination of:

- (a) the Network Connection Agreement; or
- (b) the Project Agreement, on or before the Date of Practical Completion as defined in the Project Agreement,

without prejudice to the provisions of:

- (i) clauses 11.8 and 11.10; and
- (ii) where clause 11.11(b) applies, clauses 16.10 and 16.12 of the Project Agreement,

which remain in full force and effect.

12. LIABILITY

12.1 No liability for failure to supply

The Customer acknowledges that, except as expressly provided in this clause 12, the terms of this agreement do not represent a waiver by the Dedicated Assets Provider of, nor an agreement to limit or exclude, any limitation of its liability under sections 119 or 120 of the NEL.

12.2 Limitation of the Dedicated Assets Provider's liability

- (a) To the extent permitted by law, the Dedicated Assets Provider and its Associates will not be liable to the Customer for any Damages or Claims arising from any act or omission by the Dedicated Assets Provider and its Associates in relation to this agreement or the performance or non-performance of any of the Dedicated Assets Provider's obligations under it, other than:
 - (i) **Direct loss or damage:** subject to clauses 12.2(b) and 12.4, the direct loss, injury, damage or expense of the Customer caused by the Dedicated Assets Provider's failure to comply with, observe or perform any provision of this agreement; and
 - (ii) **Total amount of liability:** subject to clauses 12.2(b) and 12.8, in respect of such direct loss or damage to the Customer referred to in clause 12.2(a)(i), up to the amount of the Contract Year Cap in respect of all events or circumstances of failure occurring in any one Contract Year.
- (b) To the extent permitted by law and without limiting clauses 12.2(a) and 12.4:

- (i) the Dedicated Assets Provider and its Associates are not liable for any loss of use, revenue or profit by the Customer and its Associates or the amount of any Damages awarded against the Customer in favour of, or monies paid by the Customer by way of settlement to, any third party and any costs or expenses of the Customer in connection with the same; and
- (ii) for the avoidance of doubt, the limitation on the Dedicated Assets Provider's and its Associates' liability as provided in this clause 12.2(b) will apply to any negligent act or omission, fault or cause by the Dedicated Assets Provider and its Associates.

12.3 Limitation of the Customer's liability

- (a) To the extent permitted by law, the Customer and its Associates will not be liable to the Dedicated Assets Provider for any Damages or Claims arising from any act or omission by the Customer and its Associates in relation to this agreement or the performance or non-performance of any of the Customer's obligations under it, other than:
 - (i) **Payment of amounts:** any obligation on the Customer to pay the Charges under clause 3 and any other amounts (including the Asset Stranding Charge and interests) due under this agreement;
 - (ii) **Indemnities:** any obligation on the Customer to indemnify the Dedicated Assets Provider in accordance with clauses 6.4(b), 6.5, 12.7(b) and 20.3;
 - (iii) **Direct loss or damage:** subject to clauses 12.3(b) and 12.4, the direct loss, injury, damage, or expense of the Dedicated Assets Provider caused by the Customer's failure to comply with, observe or perform any provision of this agreement; and
 - (iv) **Total amount of liability:** subject to clauses (b) and 12.8, in respect of such direct loss or damage to the Dedicated Assets Provider referred to in clause 12.3(a)(iii), up to the amount of the Contract Year Cap in respect of all events or circumstances of failure occurring in any one Contract Year.
- (b) To the extent permitted by law and without limiting clauses 12.3(a) and 12.4:
 - (i) the Customer and its Associates are not liable for any loss of use, revenue or profit by the Dedicated Assets Provider or the amount of any Damages awarded against the Dedicated Assets Provider in favour of, or monies paid by the Dedicated Assets Provider by way of settlement to, any third party and any costs or expenses of the Dedicated Assets Provider in connection with the same; and
 - (ii) for the avoidance of doubt, the limitation on the Customer's and its Associates' liability as provided in this clause 12.3(b) will apply to any negligent act or omission, fault or cause by the Customer and its Associates.

12.4 No liability for indirect loss

- (a) Neither party has any liability to the other party, nor will either party be entitled to make any Claims, for any indirect loss.
- (b) For the purpose of this clause 12.4, "**indirect loss**" means loss that does not arise directly or naturally from the relevant breach.

12.5 Part Contract Year

The limitation of each party's liability described in clauses 12.2(a)(ii) and 12.3(a)(iv) in any Contract Year is to apply for a whole Contract Year. Accordingly:

- (a) if the Payment Commencement Date does not fall on 1 July, this limitation will be pro-rated on a monthly basis, to reflect the period between the Payment Commencement Date and the start of the following Financial Year; and
- (b) if the date on which this agreement is terminated does not fall on 30 June, this limitation will be pro-rated on a monthly basis to reflect the period between the end of the previous Financial Year and the date on which this agreement is terminated.

12.6 No implied terms

Subject to the *Competition and Consumer Act 2010* (Cth) and the express provisions of this agreement, all warranties, terms and conditions in relation to the performance of the Dedicated Assets Provider's obligations or the exercise of the Dedicated Assets Provider's rights under this agreement, which may be implied by use, statute or otherwise, are excluded (to the maximum extent permitted by law).

12.7 Related Company indemnity

- (a) The Customer will not appoint any Related Companies in relation to the Customer's Facilities (and will ensure that none of its Associates appoint any Related Companies in relation to the Customer's Facilities) without requiring those Related Companies to first enter into a deed with the Dedicated Assets Provider in the form set out at Attachment 1.
- (b) If, despite clause 12.7(a), the Customer appoints a Related Company without first requiring the Related Company to enter into a deed of the type described in clause 12.7(a) with the Dedicated Assets Provider, then the Customer hereby indemnifies and continues to indemnify the Dedicated Assets Provider and its Associates from and against any Claims made against the Dedicated Assets Provider and its Associates by a Related Company as a result of any act or omission by the Dedicated Assets Provider and its Associates relating directly or indirectly to the provision of the services or the use of the Transmission System generally to the extent that the amount claimed by that Related Company would not have been recoverable from the Dedicated Assets Provider if clause 12.7(a) had been complied with.

12.8 Exclusions

The limits of liability referred to in clauses 12.2(a)(ii) and 12.3(a)(iv) do not apply to, exempt, limit or restrict in any way the liability of a party in respect of:

- (a) any liability in respect of personal injury or death, to the extent caused by that party; and
- (b) any loss suffered or incurred by the other party as a result of any criminal acts, wilful misconduct, wilful breach or fraud on the part of that party,

and any liability of the type or nature referred to in clauses 12.8(a) and 12.8(b) shall not be taken into account for the purposes of calculating whether the limits of liability referred to in clauses 12.2(a)(ii) and 12.3(a)(iv) have been reached or exceeded.

13. DISPUTES

13.1 Rule disputes

If a dispute arises between the parties under or in relation to this agreement which:

- (a) relates to the obligations of either party under the Rules;
- (b) relates to the interpretation of the Rules; or
- (c) is otherwise within the terms of clause 8.2.1(a) of the Rules,

then such disputes will be resolved in accordance with clause 8.2 of the Rules.

13.2 Other disputes

- (a) If a dispute arises between the parties under or in relation to this agreement which is not required in accordance with clause 13.1 to be resolved in accordance with clause 8.2 of the Rules, then one party in dispute may give the other party a notice specifying the matters in dispute (a "**notice of dispute**").
- (b) If after a period of 25 Business Days after delivery of a notice of dispute, the parties have not been able to resolve the dispute then either party may, by notice in writing to the other, require the dispute to be determined by an Expert. For the avoidance of doubt, this clause 13 is not a reference to arbitration.

13.3 Agreement to appoint Expert

- (a) If a dispute is to be determined by an Expert then the parties must use their reasonable endeavours to agree to appoint a suitably qualified person to act as the Expert.
- (b) Each party must bear 50% of the costs of the Expert and associated disbursements (including room hire) for the full duration of the Expert's appointment under this clause 13.
- (c) If the parties have not agreed on the person to be appointed within 3 Business Days after a party requiring the dispute to be determined by an Expert then either party may serve a notice nominating a person to be appointed.
- (d) If the parties do not agree on the person to be appointed within 5 Business Days after the delivery of the notice, then:
 - (i) either party may request the President of the Law Society of New South Wales, from time to time (or in the event that there is no office of such society of that name, the person who in substance carries out the role of that office) to appoint the Expert; and
 - (ii) the person appointed by the President of the Law Society of New South Wales, from time to time (or in the event that there is no office of such society of that name, the person who in substance carries out the role of that office) following the first request by a party to make such appointment is the Expert for the purpose of determining the dispute.

13.4 Expert determination

If any matter must be determined by the Expert in accordance with this clause 13, then the parties to the dispute must continue to perform their obligations under the agreement while the dispute is being resolved.

13.5 Terms of appointment of Expert

The parties must ensure that the Expert's terms of appointment include the following requirements:

- (a) the Expert must consult with the parties concerning the matters under dispute;
- (b) the Expert must make a draft report available to the parties within 20 Business Days after their appointment;
- (c) the Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;
- (d) the Expert must keep confidential information provided by or on behalf of the parties to the Expert;
- (e) the Expert may investigate the matters under dispute and make inquiries in relation to them, and take the advice of any other person the Expert wishes (subject to the other person providing a confidentiality undertaking); and
- (f) the Expert will use their reasonable endeavours to notify the parties of the Expert's determination within 35 Business Days after the referral to the Expert.

13.6 Expert not liable

The parties agree that the Expert will not be liable in contract, tort (including negligence) or otherwise for any Damages suffered or Claims incurred by a party or any other person as a consequence of any matter or thing done or omitted to be done by the Expert if the matter or thing was done or omitted in good faith for the purposes of carrying out the responsibilities of the Expert as contemplated by this clause 13. If required by an Expert appointed under this clause 13, the parties will enter into an agreement or deed with the Expert agreeing that this clause 13.6 applies and binds them in relation to the matters referred to the Expert.

13.7 Parties to provide information

The parties must comply with all reasonable requests by an Expert appointed in accordance with this clause 13 for information relating to the matters giving rise to their appointment.

13.8 Parties bound by determination

On notification by the Expert of the Expert's determination under clause 13.5(f), the parties are bound by that determination, except in the existence of fraud or manifest error.

13.9 Urgent interlocutory relief

This clause 13 does not prevent either party from:

- (a) obtaining, from a court, any injunctive, declaratory or other interlocutory relief that may be urgently required; or

- (b) initiating any legal process immediately prior to the end of any period specified by a relevant law during which legal process or the bringing of an action must be initiated.

14. CONFIDENTIALITY

14.1 General obligation

All information acquired or received by any one party (the "**receiving party**") from the other party (the "**disclosing party**") in connection with this agreement, the fact of the existence of the information and the terms of this agreement will be held and kept confidential by the receiving party, will only be used by the receiving party and the persons to whom disclosure is permitted under this clause 14.1 for the purposes of implementing this agreement and the Network Connection Agreement, complying with the receiving party's obligations under Applicable Laws or operating the Dedicated Assets or the Customer's Facilities and must not be disclosed by the receiving party to any third party except with the prior consent of the disclosing party and upon such terms as may be stipulated by the disclosing party, provided that this clause 14.1 does not apply to:

- (a) **Assignee:** disclosure to or use by a bona fide intending assignee of the receiving party upon obtaining a similar undertaking of confidentiality from such intending assignee;
- (b) **Associates:** disclosure to any Associates, but only to the extent that such disclosure is necessary and provided that the receiving party has made the Associate aware of the confidential nature of the matters and information and the Associate has agreed to keep the matters and information confidential;
- (c) **Professional Consultants:** disclosure to or use by any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants;
- (d) **Banks etc.:** disclosure to or use by any bank or financial institution from whom the receiving party is seeking to obtain finance, upon obtaining a similar undertaking of confidentiality from such bank or institution;
- (e) **Under Applicable Laws:** disclosure of information that the receiving party bona fide believes is required to enable the receiving party to comply with obligations or exercise rights under Applicable Laws, including the Rules;
- (f) **Public Domain:** disclosure or use of information that has become generally available to the public other than as a result of an unauthorised disclosure by either party and any of their Associates;
- (g) **Legal Proceedings:** disclosure or use of information in any mediation, adjudication, arbitration, litigation or legal proceeding of any kind arising out of or in connection with this agreement or otherwise in compliance with the order of any Court of competent jurisdiction;
- (h) **Statutes and listing requirements:** disclosure of information that the receiving party bona fide believes is required either by any relevant law or the listing requirements of any recognised stock exchange;
- (i) **Employees:** disclosure of information by the receiving party or any person to whom the receiving party is permitted to disclose information, to an employee or officer of the receiving party or that person which require the information for the purposes of this agreement or for the purpose of advising the receiving party in relation to this agreement, and use of the information by that employee for that purpose, provided that the receiving party takes appropriate steps to ensure that such employees keep the information confidential;

- (j) **Safety:** disclosure of information if required to protect the safety of personnel or equipment;
- (k) **Potential Investment:** disclosure, use or reproduction of information by or on behalf of the receiving party to the extent reasonably required in connection with the receiving party's financing arrangements, investment in that party or a disposal of that party's assets, or the disposal or transfer of any issued shares in relation to that party or the issuance of any new shares in relation to that party;
- (l) **Modelling:** disclosure, use or reproduction of data held by AEMO or a *Network Service Provider* for the purpose of modelling the operation of the *power system*, to the extent reasonably necessary to enable a *Connection Applicant* to develop an *application to connect*;
- (m) **Compliance:** disclosure of a *performance standard* to a *Network Service Provider* for the purpose of establishing a compliance program, or if *connection* at that *performance standard*, in AEMO's opinion, affects, or is likely to affect, the performance of that *Network Service Provider's* network; and
- (n) **Related entities:** in the case of the Dedicated Assets Provider, disclosure to or use by any owner or lessee of any assets comprising any part of the Transmission System or (in the case of either party) to TransGrid.

14.2 Associates

Each party will be responsible for ensuring that its Associates, and the Dedicated Assets Provider will be responsible for ensuring that any person to whom it discloses confidential information under clause 14.1(n), who are at any time in possession of confidential information of a kind referred to in clause 14.1 will observe and comply with clause 14.1 and will accordingly be responsible for the acts or omissions of the same.

14.3 Compulsory disclosure

If either party to this agreement believes it is required either by any relevant law or the listing requirements of any recognised stock exchange to disclose confidential information of a kind referred to in clause 14.1 to a third party, then, to the extent that it is legally able to do so, that party will give notice thereof as soon as is reasonably practicable to the other party (including details of the confidential information to be disclosed and the third party to whom it is to be disclosed).

15. COMMUNICATIONS AND NOTICES

15.1 Operational communications

- (a) Any operational communications given by or on behalf of either party may be by telephone or other instantaneous means of communication.
- (b) Operational communications are to be recorded in a manner satisfactory to both parties. The parties will ensure that logs are kept in which persons giving and receiving operational communications record brief details of their substance and timing.

15.2 Written notices

All notices, other than operational communications, must be in writing and must be:

- (a) delivered by hand to the street address of the addressee;

- (b) sent by prepaid registered or certified post (airmail if posted to or from a place outside Australia) to the postal address of the addressee; or
- (c) sent by email to the email address of the addressee.

15.3 Addresses and emails

- (a) The street address, postal address, phone number, email address and contact for each party to which notices must be sent are as specified in Part F of the Connection Agreement Data Book.
- (b) Any party may at any time by notice given to the other party, change its notice details specified in Part F of the Connection Agreement Data Book.
- (c) The address of a party must always be an address within Australia.

15.4 Notice takes effect

A notice will be effective from the later of:

- (a) the time it is actually received or deemed to be received; or
- (b) any later time specified in the communication, provided it has actually been received prior to that time.

15.5 Deemed receipt

- (a) Other than operational communications, a notice delivered by hand to the address of a party will be deemed to have been received if it is handed (with or without acknowledgement of delivery) to any person at that address who, in the reasonable judgement of the person making the delivery (upon making appropriate enquiries), represents themselves and appears to be an officer of the party.
- (b) A notice sent by post will be deemed to have been received 2 Business Days after posting.
- (c) Any communication sent by email will be deemed to have been received at the earlier of:
 - (i) when the addressee's email system logs the email message as having been received; or
 - (ii) when the email message enters the addressee's information system..
- (d) If a communication is received on a day which is not a Business Day or after 5:00pm on a Business Day, it is taken to be received on the next Business Day.

16. CHANGES TO APPLICABLE LAWS OR OTHER CIRCUMSTANCES

16.1 Amendments to this agreement

If, after the Execution Date, an Applicable Law:

- (a) is introduced or commences operation; or
- (b) is modified, re-enacted or substituted,

then subject to clauses 16.2 and 16.3, this agreement will be interpreted (as far as possible) in such a way as to enable compliance with that Applicable Law.

16.2 Negotiation

Despite clause 16.1, if at any time after the Execution Date:

- (a) an Applicable Law is introduced, modified, re-enacted, substituted or commences operation;
- (b) the manner in which an Applicable Law is interpreted or applied materially changes;
- (c) without limiting clauses 16.2(a) or (b), the manner in which an Applicable Law or any Authority regulates how any Charge is to be calculated, varied or applied (or the terms upon which any services will be provided) materially changes;
- (d) without limiting clauses 16.2(a), (b) or (c), the activities comprised within or the service standards applying to any service materially change due to a change in an Applicable Law; or
- (e) without limiting clauses 16.2(a), (b), (c) or (d), any other event, circumstance or change occurs which materially affects the way in which any of the services are provided or either party operates its *facilities*, provided such event, circumstance or change is the result of a change in an Applicable Law,

and that change in circumstances or event will result in a material change in the commercial position of either party, the parties will consider and negotiate in good faith any specific amendment to this agreement requested by a party to take account of that change, event or circumstance so as to substantially return the parties to their respective commercial positions under this agreement prior to that change, event or circumstance.

16.3 Disputes

- (a) If the parties are unable to agree upon any amendment proposed by a party in accordance with clause 16.2 within 28 days after commencing negotiations, either party may refer that dispute for resolution in accordance with clause 13.
- (b) In determining a dispute arising under this clause 16, the Expert must take into account (amongst other things) the following factors:
 - (i) that the contents of this agreement must be fair and reasonable having regard to the commercial interests of the parties;
 - (ii) that at all times, any Service provided under this agreement must be provided in accordance with *good electricity industry practice*, all Applicable Laws and the other requirements of this agreement; and
 - (iii) that this agreement should be consistent with the prevailing practices and standards in the electricity industry at that time.

17. ASSIGNMENT AND CHANGE OF CONTROL

17.1 General prohibition of Assignment

Subject to this clause 17, each party's rights and obligations under this agreement are personal to it. Subject to clause 17.4, neither party may assign, novate or otherwise transfer any of its rights or obligations under this agreement (an "**Assignment**") without the prior written consent of the other party which may not be unreasonably withheld, delayed or given subject to unreasonable conditions.

17.2 Withholding consent

A party ("**continuing party**") may only withhold its consent to an Assignment by the other party ("**assignor**") if:

- (a) the continuing party is reasonably satisfied that the proposed assignee is not financially, technically and legally capable of performing the assignor's obligations, under this agreement; and/or
- (b) the assignor does not comply with clause 17.3 or clause 17.6.

17.3 Requirements of Assignment

- (a) No Assignment by the Customer of its rights and obligations under this agreement may be made or effected unless the Customer at the same time also assigns, transfers or disposes of (its interest in) the Customer's Facilities to the proposed assignee.
- (b) If the Customer proposes to assign all its rights in accordance with clause 17.3(a) the Customer must ensure that the proposed assignee:
 - (i) enters into a deed in form and substance satisfactory to the Dedicated Assets Provider under which the proposed assignee assumes all of the obligations and liabilities of the assignor under this agreement, including those arising prior to the Assignment and not then performed or discharged;
 - (ii) obtains all requisite authorisations for the Assignment and assumption; and
 - (iii) if and when required, procures the Credit Support and has sufficient technical expertise to operate the Customer's Facilities.

17.4 Dedicated Assets Provider Assignment to Related Bodies Corporate

- (a) The Dedicated Assets Provider may from time to time, without the Customer's consent, assign, novate or otherwise transfer any or all of its rights or obligations under this agreement to a Related Body Corporate.
- (b) The Dedicated Assets Provider must provide the Customer with written notice of an Assignment which occurs pursuant to clause 17.4(a) as soon as practicable after the Assignment.
- (c) Where the Dedicated Assets Provider proposes to assign, novate or otherwise transfer any of its rights or obligations under this agreement in accordance with clause 17.4(a), the Customer must do all such things and sign all such documents as may be required by law or reasonably required by the Dedicated Assets Provider to give effect to such Assignment.

17.5 Security Interests

- (a) Subject to clause 17.5(b) and clause 19, neither party is permitted to create or permit to exist any security interest of its rights under this agreement except with the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- (b) The Dedicated Assets Provider may grant Security Interests over this agreement where such Security Interest is granted to financiers for the purposes of financing any of the Dedicated Assets Provider's business operations.

17.6 Transfer or disposal of Customer's Facilities

The Customer may not transfer or dispose of (its interest in) the Customer's Facilities (or any part of the Customer's Facilities) unless it at the same time assigns, transfers or disposes of its rights and obligations under this agreement to the proposed transferee or beneficiary and satisfies the requirements of clause 17.3.

17.7 Not used

17.8 Successors

This agreement binds the successors and permitted assigns of each party.

17.9 Change of Control

- (a) For the purpose of this clause 17.9:
 - (i) a "**Change of Control**" occurs if the Customer comes under the Control of a third party who did not Control the Customer at the commencement of this agreement;
 - (ii) "**Control**" has the meaning given to it section 50AA of the *Corporations Act 2001* (Cth); and
 - (iii) if the Customer comprises more than one entity, this clause applies if a Change of Control occurs in respect of any one of the entities comprising the Customer.
- (b) The Customer must give the Dedicated Assets Provider prior written notice of any proposed Change of Control of the Customer.
- (c) The Customer must not be the subject of any Change of Control without the prior written consent of the Dedicated Assets Provider, such consent not to be unreasonably withheld, delayed or given subject to unreasonable conditions, provided that:
 - (i) the Dedicated Assets Provider is reasonably satisfied that the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the Customer to fulfil its obligations under this agreement; or
 - (ii) if the Dedicated Assets Provider is not so satisfied, the Customer provides Credit Support that complies with Schedule 1 and Schedule 1 applies to the Credit Support so provided.

18. MISCELLANEOUS

18.1 Governing law

This agreement is governed by and will be construed according to the laws of New South Wales.

18.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts located in New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this agreement.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any Claims it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 18.2(a).

18.3 Amendments

This agreement may only be varied by a document signed by or on behalf of each of the parties.

18.4 Waiver

- (a) Failure to exercise or enforce or delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.

18.5 Further acts

Each party will promptly do and perform all reasonable further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this agreement.

18.6 Counterparts

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, all of which together constitute one agreement.
- (b) A party who has executed a counterpart of this agreement may exchange that counterpart with another party by faxing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that other party the executed counterpart so exchanged by fax, but delay or failure by that party to so deliver a counterpart of this agreement executed by it will not affect the validity of this agreement.

18.7 No representation or reliance

- (a) Each party acknowledges that the other party (or any person acting on its behalf) has not made any representation or other inducement to it to enter into this agreement, except for inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of the other party, except for any inducement expressly set out in this agreement.

18.8 Inconsistency between agreement and Rules

- (a) If any terms of this agreement are inconsistent with any obligation imposed or right conferred on a *Registered Participant* by Chapter 5 of the Rules and the application of the conflicting terms of this agreement would adversely affect the quality or security of *network service* to other *Network Users*, the provisions of Chapter 5 of the Rules will prevail over the terms of this agreement to the extent of the inconsistency.

- (b) The Customer must comply with the Rules as if it was registered as a *Customer* in relation to the Customer's Facilities.
- (c) If this agreement imposes an obligation on a party and compliance by that party with that obligation would cause that party to breach the Rules then the party need not comply with that obligation to the extent necessary to avoid breaching the Rules.
- (d) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency between Applicable Laws, this agreement, the Project Agreement and other agreements relating to the services between the parties:
 - (i) Applicable Laws, including the Rules;
 - (ii) this agreement; and
 - (iii) other agreements relating to the services between the parties.

18.9 Acknowledgement of Rules obligations

The parties acknowledge that, notwithstanding clause 18.8, the Rules include a number of obligations which relate to this agreement and that, except as otherwise expressly provided for, this agreement is not intended to affect such Rules obligations.

18.10 Indemnities

Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this agreement.

18.11 Entire agreement

To the extent permitted by law, this agreement embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties, and supersedes any prior agreement (whether or not in writing) between the parties, in relation to the subject matter of this agreement.

18.12 Publicity

A party may not make press or other announcements or releases relating to this agreement and the transactions the subject of this agreement without the approval of the other party to the form and manner of the announcement or release unless that announcement or release is required to be made by law or by a recognised stock exchange.

19. PERSONAL PROPERTY SECURITIES ACT

If a party determines that this agreement (or any transfer or transaction in connection with it) is or contains a security interest for the purposes of the *Personal Property Securities Act 2009* (Cth) (the "**PPSA**") (or any similar legislation) (a "**Security Interest**"), each party agrees to do all things (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;

- (b) enabling the party benefitted by the Security Interest (a "**Benefitted Party**") to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Benefitted Party; or
 - (c) enabling the Benefitted Party to exercise rights in connection with the Security Interest,
- in each case at the Benefitted Party's cost and for the purpose of the PPSA.

20. INTELLECTUAL PROPERTY RIGHTS

20.1 Agreement grants no interest

Unless the parties otherwise agree in writing, the Customer acknowledges that nothing in this Agreement grants it any Intellectual Property Rights in any material owned or controlled by the Dedicated Assets Provider and that all Intellectual Property Rights in any material developed or used by the Dedicated Assets Provider to perform the services will remain in the ownership of the Dedicated Assets Provider.

20.2 Licence from the Customer

In consideration of the Dedicated Assets Provider performing the services the Customer grants a non-exclusive royalty free licence to the Dedicated Assets Provider and its Associates to use any Intellectual Property Rights in any material provided by it to the Dedicated Assets Provider which is used to perform the services for the purpose of providing the services in accordance with this agreement.

20.3 Indemnity from the Customer

The Customer indemnifies and saves harmless the Dedicated Assets Provider and its Associates from any Damages suffered or Claims incurred by the Dedicated Assets Provider and its Associates arising from or in connection with any actual or alleged infringement by the Dedicated Assets Provider and its Associates of Intellectual Property Rights of a third party, where, pursuant to this Agreement, such Intellectual Property Rights have been furnished or licensed to the Dedicated Assets Provider by the Customer.

20.4 Customer to co-operate

The Customer will render all reasonable assistance to and will co-operate with the Dedicated Assets Provider for the purposes of defending or otherwise in connection with any Claims which are brought against the Dedicated Assets Provider and its Associates in respect of any such actual or alleged infringement. The Dedicated Assets Provider will notify the Customer as soon as practicably possible after the date on which any such Claims become known to the Dedicated Assets Provider.

21. TRUSTEE'S CAPACITY AND LIABILITY

21.1 Limitation of liability

Despite any other provision of this agreement:

- (a) the Trustee enters into this agreement in its capacity as trustee of the Trust and in no other capacity;

- (b) subject to clause 21.1(d), the recourse of the Customer or any other person to the Trustee in respect of any of the Trustee's obligations and liabilities under or in connection with this agreement is limited to the amount the Trustee actually receives in the exercise of its right of indemnity from the assets of the Trust;
- (c) subject to clause 21.1(d), if the Trustee does not receive all or any part of the money owing to it in connection with the Trustee not complying with any obligation or not paying any liability under or in connection with this agreement because the Trustee cannot obtain that money under the indemnity referred to in clause 21.1(b), the Customer cannot bring proceedings against the Trustee in its personal capacity to recover that money; and
- (d) clauses 21.1(b) and 21.1(c) do not apply to any obligation or liability of the Trustee under or in connection with this agreement to the extent that it is not complied with or paid because the Trustee's right to be indemnified from the Trust assets is reduced because of the Trustee's own fraud or breach of trust.

21.2 Contribution to liability

An act or omission of the Trustee (including acts and omission that result in the Trustee not complying with any obligation or not paying any liability under or in connection with this agreement does not constitute fraud or breach of trust by the Trustee for the purposes of this clause 21 to the extent to which that act or omission was caused or contributed to by any act or omission of the Customer.

Executed as an agreement on

2018

Each attorney executing this agreements states that he or she has no notice of the revocation or suspension his or her power of attorney.

SIGNED for and on behalf of **TransGrid Services Pty Limited** (ACN 626 136 865) as trustee for **TransGrid Services Trust** (ABN 94 121 353 950) by its attorneys under power of attorney dated

:

Signature of Attorney

Name and position of Attorney

SIGNED for and on behalf of the Crown in Right of the State of New South Wales acting through the **Department of Justice**, but not so as to incur personal liability:

Andrew Cappie-Wood

Secretary, Department of Justice Corrective Services

In the presence of:

Name of witness

Signature of Attorney

Name and position of Attorney

Signature

Date:

Signature of witness

Date:

Executed as an agreement on 13th August 2018

Each attorney executing this agreements states that he or she has no notice of the revocation or suspension his or her power of attorney.

SIGNED for and on behalf of **TransGrid Services Pty Limited** (ACN 626 136 865) as trustee for **TransGrid Services Trust** (ABN 94 121 353 950) by its attorneys under power of attorney dated

[Redacted Signature]

Signature of Attorney

[Redacted Name and Position]

Name and position of Attorney

[Redacted Signature]

Signature of Attorney

Name and position of Attorney

[Redacted Name and Position]

SIGNED for and on behalf of the Crown in Right of the State of New South Wales acting through the **Department of Justice**, but not so as to incur personal liability:

Andrew Cappie-Wood
Secretary, Department of Justice Corrective Services

[Redacted Signature]

Date: 10.8.2018

In the presence of:

[Redacted Name]

Name of witness

Level 4, 50 Phillip St, Sydney

[Redacted Signature]

Signature of witness

Date: 10/8/2018

Schedule 1 – Financial capacity

1. ACCEPTABLE CREDIT RATING

- (a) For the purposes of this Schedule 1, an entity will have an **"Acceptable Credit Rating"** if at all times it holds a long term issuer credit rating of at least A- in respect of unsecured obligations of the entity, as rated by Standard & Poor's (Australia) Pty Limited (**"Standard & Poor's"**) or its equivalent by other rating agencies as may be agreed by the Dedicated Assets Provider acting reasonably.
- (b) If, in the Dedicated Assets Provider's reasonable opinion, the methods by which Standard & Poor's or the relevant rating agency determine credit ratings materially change or that organisation no longer determines credit ratings then the Dedicated Assets Provider may, from time to time, in its discretion determine a credit rating for the relevant entity for the purposes of this Schedule 1.

2. CREDIT SUPPORT

If at any time during the Term the Customer ceases to be an entity that is wholly owned and controlled by the State of New South Wales (the **"relevant date"**), the Customer must, to the extent required under paragraph 7 of this Schedule 1 and as from the relevant date, procure credit support which:

- (a) is issued by a bank or financial institution approved by the Dedicated Assets Provider (acting reasonably) which is an Approved Deposit-taking Institution supervised by the Australia Prudential Regulatory Authority (**"APRA"**) and carries an Acceptable Credit Rating;
- (b) is issued from a branch located in Australia by the entity described under paragraph 2(a) of this Schedule 1;
- (c) is in the form of an unconditional and irrevocable bank guarantee reasonably acceptable to the Dedicated Assets Provider;
- (d) is duly executed by the credit support provider and delivered unconditionally to the Dedicated Assets Provider;
- (e) constitutes a valid and binding unsubordinated obligation of the credit support provider to make payment to the Dedicated Assets Provider; and
- (f) permits drawings or claims by the Dedicated Assets Provider to an amount which is not less than the amount set out in paragraph 3 of this Schedule 1,

(the **"Credit Support"**).

3. AMOUNT OF CREDIT SUPPORT

If the Customer has been required to procure the Credit Support, the Customer must ensure that at all times the aggregate undrawn or unclaimed amount of Credit Support is not less than the amount determined in accordance with paragraph 7 of this Schedule 1 from time to time (the **"Guaranteed Amount"**).

4. CHANGES TO CREDIT SUPPORT

Before any Credit Support ceases to be current or valid, the Customer must procure replacement Credit Support at least 20 Business Days before it expires so as to comply with its obligation to maintain aggregate undrawn current and valid Credit Support for the then current Guaranteed Amount.

5. DRAWINGS ON CREDIT SUPPORT

- (a) The Dedicated Assets Provider may draw or claim upon the Credit Support where the Customer has failed to:
 - (i) pay any amount to the Dedicated Assets Provider under this agreement on the due date for payment (except for any amounts in respect of which it has given notice pursuant to clause 3.7 of this agreement and has otherwise complied with its obligations under clause 3.7 of this agreement in respect of those amounts);
 - (ii) comply with paragraph 3 of this Schedule 1; or
 - (iii) provide replacement Credit Support when required in accordance with paragraph 4 of this Schedule 1.
- (b) Where the Dedicated Assets Provider draws or claims upon any Credit Support, the Customer must procure the immediate issue of further Credit Support in the amount drawn or claimed so as to comply with its obligation to maintain aggregate undrawn current and valid Credit Support for the then current Guaranteed Amount.
- (c) The provisions of this paragraph 5 of this Schedule 1 will survive the termination of this agreement.

6. CHANGES IN AMOUNT OF CREDIT SUPPORT

- (a) The Dedicated Assets Provider agrees to reduce the amount of the Credit Support if the Dedicated Assets Provider is satisfied that the amount of that Credit Support exceeds the Guaranteed Amount at that time.
- (b) If at any time, the amount of the Credit Support held by the Dedicated Assets Provider is less than the Guaranteed Amount, the Dedicated Assets Provider may request the Customer to provide additional Credit Support for the amount of that shortfall.
- (c) The Customer must provide any additional Credit Support requested within 10 Business Days after the Dedicated Assets Provider's request (which additional Credit Support must satisfy the other requirements of this Schedule 1).

7. GUARANTEED AMOUNT

The Guaranteed Amount for each (remaining) Contract Year in which Credit Support is required, will be notified by the Dedicated Assets Provider in its reasonable determination as soon as possible after Credit Support first becomes required in accordance with paragraph 2 of this Schedule 1.

Schedule 2 – Co-ordination of Outage Plan and maintenance activities

1. DEFINITIONS

For the purpose of this Schedule 2:

"**Firm Date**" means the date specified in the Outage Plan (or such other date as agreed between the parties) after which a Scheduled Outage cannot be changed.

"**Planned Work**" means any Work in relation to:

- (a) the Dedicated Assets, in the case of the Dedicated Assets Provider, which is required to be undertaken by the Dedicated Assets Provider in relation to a Scheduled Outage by the Dedicated Assets Provider and is not Unplanned Work; or
- (b) the Customer's Facilities, in the case of the Customer, which is required to be undertaken by the Customer in relation to a Scheduled Outage by the Customer and is not Unplanned Work.

"**Scheduled Outage**" means any full or partial unavailability of the Dedicated Assets or the Customer's Facilities due to anticipated service and maintenance requirements which:

- (a) is likely to reduce the Agreed Capability at a Connection Point;
- (b) could reasonably be expected to have an effect on the normal operation of the Dedicated Assets or the Customer's Facilities;
- (c) could reasonably be expected to have a material adverse effect on *power system security*;
- (d) could reasonably be expected to have a material adverse effect on power quality on the *power system*; or
- (e) will involve the full or partial unavailability of a *transmission line* directly connected to a Connection Point.

"**Unplanned Work**" means any Work in relation to:

- (a) the Dedicated Assets, in the case of the Dedicated Assets Provider, which the Dedicated Assets Provider considers should be undertaken in order to prevent or deal with an Emergency or as a result of an Emergency; or
- (b) the Customer's Facilities, in the case of the Customer, which the Customer considers should be undertaken in order to prevent or deal with an Emergency or as a result of an Emergency.

2. DEVELOPMENT OF A CO-ORDINATED OUTAGE PLAN

The Dedicated Assets Provider and the Customer will maintain and regularly review a plan setting out their respective Scheduled Outages (an "**Outage Plan**") with the objective of co-ordinating Scheduled Outages for a planning period determined in advance.

The Outage Plan will contain at least the following details:

- (a) a list of proposed Scheduled Outages and the date or dates on which each proposed Scheduled Outage is due to occur;

- (b) where applicable, the Firm Date for the Scheduled Outage;
- (c) the items of plant and equipment that will be out of service or will be partially unavailable during the Scheduled Outage;
- (d) the nature of the service and Work required on the equipment during the Scheduled Outage; and
- (e) the expected total period of time during which equipment taken out of service is expected to be unavailable during the Scheduled Outage.

3. REVIEW OF OUTAGE PLAN

The Dedicated Assets Provider and the Customer will regularly review the Outage Plan and will use their reasonable endeavours to ensure that any changes to the Outage Plan are notified to the other party.

4. RESPONSE TO OUTAGE PLAN

Either party (the "**requesting party**") may notify the other (the "**notified party**") that it wishes the notified party to reconsider the date on which a Scheduled Outage is scheduled to occur provided that the date of the request is prior to the Firm Date specified in the plan for that Scheduled Outage.

The requesting party will include details of:

- (a) its reasons for wanting the dates on which the Scheduled Outage is intended to occur to be revised; and
- (b) its preferred time for the Scheduled Outage.

5. CONSULTATION

Each party agrees to consult with the other following the notification referred to in paragraph 4, in relation to any variation to the Outage Plan. The parties acknowledge that each of them may need to consult with and take account of the views of other parties in relation to when a Scheduled Outage is to occur.

During the consultation process, the notified party will (acting reasonably and in good faith) consider a request from the requesting party to vary the Outage Plan having regard to, without limitation:

- (a) the costs to the notified party of varying the timing of a Scheduled Outage;
- (b) the costs to other affected parties of varying the timing of a Scheduled Outage;
- (c) any requests from other affected parties of the notified party to vary a Scheduled Outage; and
- (d) the difficulties involved in co-ordinating a variation to the Scheduled Outage.

6. NOTICE OF AMENDED OUTAGE

- (a) The notified party will, as soon as practicable after receipt of the requesting parties notice and completion of consultation in accordance with paragraph 5, advise the requesting party of its decision in relation to the request made under paragraph 4 to vary the Scheduled Outage, and where appropriate specify the terms, including any compensation, under which the variation will be made.

- (b) The notified party will not be required to vary the date on which a Scheduled Outage is due to occur unless the requesting party agrees to meet the specified terms.
- (c) Where the parties reach agreement on varying the date on which a Scheduled Outage is due to occur, the notified party will revise the Outage Plan to reflect the varied date on which the Scheduled Outage is to occur.

7. PUBLICATION OF OUTAGE PLAN

Either party may publish the Outage Plan, but must not publish any information that the party reasonably considers to be confidential.

8. NO EFFECT ON RIGHTS

- (a) The parties agree that the existence of the Outage Plan or the inclusion of any Scheduled Outage in the Outage Plan will not affect any right that either of them has under this agreement to take equipment out of service or reduce the Agreed Capability at a Connection Point.
- (b) Without limiting paragraph 8(a), nothing in this Schedule 2 or this agreement will prevent a party immediately carrying out any Unplanned Work in relation to:
 - (i) the Dedicated Assets, in the case of the Dedicated Assets Provider; or
 - (ii) the Customer's Facilities, in the case of the Customer.
- (c) The party needing to undertake any Unplanned Work must notify the other party as soon as possible after it becomes aware of the need to undertake that Unplanned Work.

9. UNDERTAKING OF WORK

Each party will, in carrying out any Planned Work or Unplanned Work:

- (a) diligently carry out that Work and ensure that it is completed in a timely manner; and
- (b) not unreasonably delay or restrict the other party from performing Work which is necessary for that party to perform in order to comply with the requirements of Applicable Laws and *good electricity industry practice*.

10. IMPACT OF MAINTENANCE ON CAPABILITY

- (a) Without limiting paragraph 11 of this Schedule 2, the Customer agrees that: The Dedicated Assets Provider has the right to maintain the Dedicated Assets and undertake other Work in relation to the Dedicated Assets in accordance with:
 - (i) the Dedicated Assets Provider's own maintenance policies and procedures (subject to those policies and procedures complying with *good electricity industry practice*); and
 - (ii) the requirements of this Schedule 2;
- (b) an outage of a part of the Dedicated Assets for the purposes of undertaking any Work may:
 - (i) reduce the power transfer capability of the Dedicated Assets;
 - (ii) reduce the Capacity available for use by the Customer at that time; and/or

- (iii) otherwise interrupt or limit the provision of some or all of the services by the Dedicated Assets Provider to the Customer; and

the Dedicated Assets Provider may disconnect the Customer's Facilities from the Dedicated Assets, or interrupt or limit the provision of any services in relation to the Customer's Facilities, an Interface Point or a Connection Point (including by limiting the transfer of electricity to or from the Customer's Facilities via the Dedicated Assets) for the purposes of undertaking any Work, but only in accordance with the requirements set out in this Schedule 2.

11. INSPECTION AND TESTING UNDER THE RULES

- (a) Each party will comply with:
 - (i) the provisions of clause 5.7 and 5.8 of the Rules; and
 - (ii) the procedures applicable pursuant to this Schedule 2,

in relation to the inspection and testing of the Customer's Facilities and the Dedicated Assets (whichever is applicable in the circumstances) during the Term.
- (b) The Dedicated Assets Provider acting reasonably may require the Customer to conduct (at the Customer's cost) tests to demonstrate that the Customer's Facilities comply with the Customer's Technical Obligations and the other requirements of this agreement and the Rules. The Dedicated Assets Provider may witness such tests.
- (c) The Customer acknowledges that the Dedicated Assets Provider will need to conduct tests from time to time in relation to the Dedicated Assets and that these tests may result in the interruption to or limitation of services to the Customer.
- (d) The Customer will:
 - (i) provide all assistance reasonably requested by the Dedicated Assets Provider in relation to the conduct of these tests; and
 - (ii) not be entitled to make any Claims against the Dedicated Assets Provider in relation to the conduct of these tests and any associated interruption to or limitation of services to the Customer except to the extent that a Claim arises out of or in connection with:
 - A. a breach of this agreement by; or
 - B. a negligent act or omission by,

the Dedicated Assets Provider and its Associates.
- (e) The Customer grants to the Dedicated Assets Provider and its Associates the right to inspect those parts of the Customer's Facilities necessary to enable the Dedicated Assets Provider to give effect to the requirements of this Schedule 2 at any time during the Term.
- (f) The Dedicated Assets Provider will, in performing the tests under this Schedule 2, use reasonable endeavours to minimise the extent of any disruption to the provision of the services and the operation of the Customer's Facilities.

Schedule 3 – [Not used]

Schedule 4 – [Not used]

Schedule 5 – Charges and related terms

1. DEFINED TERMS

In this Schedule 5:

"Annual Connection Fee" means the annual charge for the provision of the services, being:

- (a) for the first Contract Year, the Year 1 Annual Connection Fee determined in accordance with paragraph 4.2 of this Schedule 5; and
- (b) for subsequent Contract Years, the Annual Connection Fee, as adjusted from time to time in accordance with paragraph 4.7 of this Schedule 5.

"Change in Applicable Law Event" means:

- (a) a change in (or a change in the application or interpretation of) an Applicable Law;
- (b) the repeal of an Applicable Law; or
- (c) the introduction of an Applicable Law,

after the date of this agreement to the extent that the change, repeal or introduction directly or indirectly results in the Dedicated Assets Provider incurring higher or lower costs in providing any of the services (as compared to the level of costs which the Dedicated Assets Provider would have incurred in providing the relevant services if that event had not occurred).

"Change in Taxes Event" means:

- (a) a change in (or a change in the application or official interpretation of) a Relevant Tax or the way in which a Relevant Tax is calculated;
- (b) the removal of a Relevant Tax; or
- (c) the imposition of a Relevant Tax,

after the date of this agreement to the extent that the change, removal or imposition directly or indirectly:

- (d) applies to the provision of any of the services by the Dedicated Assets Provider or to goods or services supplied to the Dedicated Assets Provider in respect of the provision of any of the services; and
- (e) results in the Dedicated Assets Provider incurring higher or lower costs in providing the services (as compared to the level of costs which the Dedicated Assets Provider would have incurred in providing the relevant services if that event had not occurred).

"CPI" means the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) published by the Australian Bureau of Statistics, but if there is any suspension or discontinuance of that CPI or if its method of calculation is materially altered, then an index which reflects movements in the cost of living in Australia will be substituted by the parties (but if the parties are unable to agree upon the most appropriate index, then an index will be determined by an actuary appointed by the President for the time being of the Institute of Actuaries of Australia, which determination will be made by the appointee as an expert and not an arbitrator and will be binding on the parties).

"Exchange Rates" means, for a day, each of:

- (a) the spot rate of exchange for the purchase of one United States Dollar with one Australian dollar;
- (b) the spot rate of exchange for the purchase of one Swedish Krona with one Australian dollar;
- (c) the spot rate of exchange for the purchase of one Canadian Dollar with one Australian dollar;
- (d) the spot rate of exchange for the purchase of one South African Rand with one Australian dollar; and
- (e) the spot rate of exchange for the purchase of one Euro with one Australian dollar,

each time as last published on the website of the Reserve Bank of Australia prior to 5pm (Sydney time) on that day.

"FX Adjustment Date" means the Execution Date of the Project Agreement.

"FX Exposed Amounts" means each of the following amounts, in Australian dollars, equivalent to:

- (a) USD 260,300;
- (b) SEK 5,000;
- (c) CAD 35,000;
- (d) ZAR Nil; and
- (e) EURO Nil,

each time at the FX Reference Date, and "FX Exposed Amount" means any of them.

"FX Reference Date" means 27 March 2018.

"Initial Connection Fee" [REDACTED]

"Pass Through Amount" means in relation to a relevant Pass Through Event as set out at paragraph 7 of Schedule 5:

- (a) an amount the Customer is required to pay the Dedicated Assets Provider or the Dedicated Assets Provider is required to pay the Customer (as the case may be); or
- (b) a factor by which an amount the Customer is required to pay the Dedicated Assets Provider is increased or decreased (as the case may be),

as determined pursuant to paragraph 7 of Schedule 5.

"Pass Through Event" means in relation to a service, a Change in Applicable Law Event, a Change in Taxes Event or a Service Standards Event which relates to that service.

"Quarter" and **"Quarterly"** means the period of 3 months commencing on 1 January, 1 April, 1 July or 1 October (as applicable).

"Relevant Tax" means any tax imposed by or payable directly or indirectly to any Authority (including a goods and services tax), but excluding any:

- (a) income tax (or State equivalent income tax), fringe benefits tax or capital gains tax;
- (b) penalties and interest for late payments relating to any tax; or
- (c) any tax that replaces any of the taxes referred to in limbs (a) and (b) above.

"Revenue Decision" means a decision, determination, order or other ruling made by AER in accordance with the terms of the Rules relating to the provision of, and/or the pricing for, any of the services.

"Review Date" means the last day of each Financial Year after the date of this agreement.

"Service Standards Event" means in relation to a service, a decision made by an Authority or any amendment to an Applicable Law after the date of this agreement that has the effect of:

- (a) imposing a set of minimum standards on the Dedicated Assets Provider in respect of that service which is different from the set of minimum standards imposed on the Dedicated Assets Provider in respect of that service as at the date of this agreement;
- (b) requiring the Dedicated Assets Provider to undertake any activity as part of a service in addition to those activities required to be undertaken as part of that service as at the date of this agreement; or
- (c) substantially varying the manner in which the Dedicated Assets Provider is required to undertake any activity forming part of a service as at the date of this agreement,

as a result of which the Dedicated Assets Provider incurs materially higher or lower costs in providing the services (as compared to the level of costs the Dedicated Assets Provider would have incurred in providing the relevant services if that event had not occurred).

"Year 1" means the first Contract Year; **"Year 2"** and so on have a corresponding meaning.

2. INITIAL CONNECTION FEE

The Customer must pay the Initial Connection Fee on the Payment Commencement Date.

3. DEDICATED VARIATION COSTS

- (a) The Customer may, by notice in writing to the Dedicated Assets Provider, elect to either:
 - (i) pay the Dedicated Variation Costs determined under the Project Agreement on the date that is 10 Business Days after the date on which the Customer receives notice of the Dedicated Variation Costs from TransGrid under clause 14.1(a) of the Project Agreement (**Dedicated Variation Costs Payment Date**); or
 - (ii) adjust the Annual Connection Fee for the remaining Term.

- (b) If the Customer has made an election under:
 - (i) paragraph 3(a)(i) of this Schedule 5, it must pay the Dedicated Variation Costs on the Dedicated Variation Costs Payment Date; or
 - (ii) paragraph 3(a)(ii) of this Schedule 5, the Year 1 Annual Connection Fee will be adjusted in accordance with paragraph 4.2 of this Schedule 5.

4. ANNUAL CONNECTION FEE

4.1 Annual Connection Fee

The Customer must pay the Annual Connection Fee for each Contract Year in 12 equal monthly instalments (each a "Monthly Instalment") commencing from the Payment Commencement Date.

4.2 The Year 1 Annual Connection Fee

Subject to paragraph 4.3 of this Schedule 5, the Customer must pay the Year 1 Annual Connection Fee for the first Contract Year of the Term. The Year 1 Annual Connection Fee is calculated as follows:

$$Yr1AnnConFee = Yr1Annuity + PostAdjustAmt$$

$Yr1AnnConFee$ = the Year 1 Annual Connection Fee

$$Yr1Annuity = \text{[REDACTED]} \frac{CPI (new)}{CPI (original)}$$

$CPI (new)$ = the most recently published Quarterly CPI prior to the commencement of Contract Year 1; and

$CPI (original)$ = the most recently published Quarterly CPI for the Quarter immediately prior to the Commencement Date,

provided that if the $Yr1Annuity$ (determined in accordance with the above formula in this paragraph) is less than [REDACTED] $Yr1Annuity$ will remain as [REDACTED]

$$PostAdjustAmt = \text{[REDACTED]} \text{[REDACTED]}$$

$$\sum VOAmt = \text{[REDACTED]}$$

$$FVLandAcqTaxRec = \text{[REDACTED]}$$

$$FVLandAcq = \text{[REDACTED]}$$

$$CompTaxRate = \text{[REDACTED]}$$

$$FXAdjustAmt = \text{[REDACTED]}$$





4.3 Not used

4.4 The Year 1 Monthly Instalment

The Year 1 Monthly Instalment will be calculated as follows:

$$Yr1MonthlyInstal = \text{[Redacted]}$$

For those months where the Year 1 Annual Connection Fee is not finalised by the Dedicated Assets Provider in accordance with the process outlined in paragraph 4.2 of this Schedule 5, the Customer will be required to pay interim monthly instalments for Year 1 (the "**Interim Monthly Instalments**").

4.5 The Year 1 Interim Monthly Instalment

The Year 1 Interim Monthly Instalment will be calculated as follows:

$$Yr1InterimMonthlyInstal = \text{[Redacted]}$$

4.6 The Year 1 Adjustment

Once the Year 1 Annual Connection Fee is finalised by the Dedicated Assets Provider in accordance with the process outlined in paragraph 4.2 of this Schedule 5, an adjustment (the "**Year 1 Adjustment**") will be calculated for those applicable prior months where Year 1 Interim Monthly Instalments had been invoiced (*No.ApplPriorMths*).

The Year 1 Adjustment will be calculated as follows:

$$Yr1Adjust = \text{[Redacted]}$$

The Year 1 Adjustment amount will be increased by an amount for interest. This interest amount will be calculated by multiplying the calculated Year 1 Adjustment by the interest rate the Dedicated Assets Provider applies to connection agreements generally for the period from the Payment Commencement Date to the payment due date for the Year 1 Adjustment.

The first Year 1 Monthly Instalment plus the Year 1 Adjustment (increased by the amount of interest determined above) will be invoiced in the first Billing Period that follows the finalisation of the calculation of the Year 1 Annual Connection Fee by the Dedicated Assets Provider in accordance with the process outlined in paragraph 4.2 of this Schedule 5. The Year 1 Monthly Instalment will then be invoiced for each remaining Billing Period in Year 1.

4.7 Annual Adjustment to Annual Connection Fee

The Annual Connection Fee for each Contract Year after Contract Year 1 (i.e. Contract Year t) will be determined in accordance with the following formula:

[REDACTED]

where:

$$AnConFee_t = [REDACTED]$$

$$AnConFee_{t-1} = [REDACTED]$$

CPI (new) = the most recently published Quarterly CPI prior to the commencement of Contract Year t; and

CPI (original) = the CPI for the Quarter that occurred 12 months prior to the Quarter which is the subject of *CPI (new)*,

provided that if the Annual Connection Fee for Contract Year t (determined in accordance with the above formula in this paragraph) is less than the Annual Connection Fee for the previous Contract Year, the Annual Connection Fee for Contract Year t will remain the same as the Annual Connection Fee for the previous Contract Year.

5. VARIATIONS OF CHARGES AND RECOVERY OF PASS THROUGH AMOUNTS

- (a) The Dedicated Assets Provider may:
- (i) vary the Annual Connection Fee in accordance with the procedures set out in paragraph 4 or paragraph 7 of this Schedule 5;
 - (ii) vary the other Charges (if any) (other than the Initial Connection Fee and the Annual Connection Fee) in accordance with the procedures set out in paragraph 7 of this Schedule 5; and
 - (iii) recover from the Customer in accordance with paragraph 7 of this Schedule 5, any Pass Through Amount which is not otherwise being recovered as a result of the operation of paragraphs 5(a)(i) or 5(a)(ii) of this Schedule 5.
- (b) Any variation to a Charge or other amount in accordance with paragraph 5(a) of this Schedule 5 will not commence to apply until:
- (i) in the case of a variation to the Annual Connection Fee referred to in paragraph 5(a)(i) of this Schedule 5, the first day of the Contract Year following the relevant anniversary of the Payment Commencement Date;
 - (ii) in the case of a variation to the other Charges referred to in paragraph 5(a)(ii) of this Schedule 5, the first day of the Contract Year following the relevant Review Date; and
 - (iii) in all other cases, the commencement of the second Billing Period after the Customer receives a notice from the Dedicated Assets Provider setting out the details of that variation.

6. ASSET STRANDING CHARGE

- (a) The Customer must pay to the Dedicated Assets Provider the Asset Stranding Charge or such lesser amount as may be advised by the Dedicated Assets Provider in accordance with the invoice for payment of the Asset Stranding Charge issued pursuant to clause 9.2(b)(i) or clause 11.10(c) of this agreement (the "**Payment Date**").
- (b) The amount of the Asset Stranding Charge will be determined in accordance with Schedule 7.
- (c) Nothing in this paragraph 6 of this Schedule 5 will limit the Dedicated Assets Provider's right to recover:
 - (i) any amount owing by the Customer under this agreement prior to the Payment Date;
 - (ii) Damages from the Customer in relation to a Non-Financial Default by the Customer; or
 - (iii) any amount which becomes payable under clause 11.10 of the agreement.
- (d) This paragraph 6 of this Schedule 5 survives the termination of this agreement.
- (e) The Customer acknowledges and agrees that if the Customer's obligation to pay any Charges or other amount in accordance with this Schedule 5 is unenforceable for any reason (including because the relevant Charges or other amount is held to be a penalty), the Dedicated Assets Provider may claim general damages from the Customer in relation to the relevant amounts.

7. PASS THROUGH EVENTS

- (a) If a Pass Through Event occurs:
 - (i) the Dedicated Assets Provider may recover from the Customer (either by way of a separate item or credit in each subsequent invoice or by adjusting the Charge for the services), a Pass Through Amount being such amount as the Dedicated Assets Provider reasonably considers is necessary to compensate the Dedicated Assets Provider for the increase in the cost to the Dedicated Assets Provider of providing those services as a result of that Pass Through Event; or
 - (ii) the Dedicated Assets Provider will refund to the Customer (either by way of a separate item or credit in each subsequent invoice or by adjusting the Charge for the services) a Pass Through Amount being such amount as the Dedicated Assets Provider reasonably considers is necessary to compensate the Customer for the decrease in the cost to the Dedicated Assets Provider of providing those services as a result of that Pass Through Event.
- (b) Any dispute between the parties in relation to a Pass Through Amount will be resolved in accordance with clause 13 of the agreement.

8. [NOT USED]

9. UPGRADE WORK

- (a) If, at any time during the Term, the Dedicated Assets Provider determines, acting reasonably, that it is necessary to upgrade or replace the Dedicated Assets as a result of such Dedicated Assets becoming obsolete or reaching the end of their service life (the "**Upgrade Work**") in order to continue to provide the services in accordance with this agreement, the Dedicated Assets Provider may undertake the Upgrade Work and is entitled to charge the Customer for such work.
- (b) Prior to undertaking the Upgrade Work, the Dedicated Assets Provider must provide to the Customer a notice setting out:
- (i) the aggregate of the Sub-Contractor's Costs, Consultant's Fees, the Dedicated Assets Provider's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Project Management Fees (each as defined in the Project Agreement) that the Dedicated Assets Provider anticipates it will incur to undertake the Upgrade Work (the "**Anticipated Upgrade Costs**");
 - (ii) details of the adjustment to the Annual Connection Fee for the remaining Term which the Dedicated Assets Provider determines will result from the Anticipated Upgrade Costs, determined in a manner which is consistent with the manner in which charges under connection agreements are generally determined by the Dedicated Assets Provider at the time; and
 - (iii) the date on which the Anticipated Upgrade Costs must be paid and the date on which the altered Annual Connection Fee takes effect.
- (c) The Customer may elect to either:
- (i) pay the Anticipated Upgrade Costs on the date notified to the Customer under paragraph 9(b)(iii) of this Schedule 5; or
 - (ii) adjust the Annual Connection Fee for the remaining Term.
- (d) If the Customer makes an election under paragraph 9(c)(i) of this Schedule 5, it must pay the actual Sub-Contractor's Costs, Consultant's Fees, the Dedicated Assets Provider's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Project Management Fees (each as defined in the Project Agreement) incurred by the Dedicated Assets Provider on account of undertaking the Upgrade Work.
- (e) If the Customer makes an election under paragraph 9(c)(ii) of this Schedule 5, the Annual Connection Fee will be adjusted for the remainder of the Term and clauses 3.2(c) to 3.2(e) of this agreement will apply to the adjustment of the Annual Connection Fee, except that:
- (i) references to "the manner in which the original Charges under this agreement were determined by the Dedicated Assets Provider" are taken to be references to "the manner in which charges under connection agreements are generally determined by the Dedicated Assets Provider at the time";

- (ii) references to "Dedicated Variation Costs" are taken to be references to "actual Sub-Contractor's Costs, Consultant's Fees, the Dedicated Assets Provider's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Project Management Fees (each as defined in the Project Agreement) incurred on account of undertaking the Upgrade Work"; and
- (iii) clause references to "clause 3.2(a)" will be taken to be clause references to paragraph 9(b) of this Schedule 5.

Schedule 6 – [Not used]

Schedule 7 – Asset Stranding Charge

Nil

Schedule 8 – [Not used]

Schedule 9 – [Not used]

Deed of limitation and exclusion of liability

TransGrid Services Pty Limited (ACN 626 136 865) as trustee for **TransGrid Services Trust** (ABN 94 121 353 950)

Dedicated Assets Provider

[Related Company name] (ABN [Related Company ABN])

Related Company

Date:

PARTIES

TransGrid Services Pty Limited (ACN 626 136 865) as trustee for **TransGrid Services Trust** (ABN 94 121 353 950 of Level 1, 180 Thomas Street, Sydney NSW 2000) ("**Dedicated Assets Provider**")

[Related Company name] (ABN [Related Company ABN]) having its registered office at [Related Company address] (the "**Related Company**")

Recitals

- A. The Dedicated Assets Provider and the Department of Justice Corrective Services (the "**Customer**") are parties to a Dedicated Connection Agreement under which the Dedicated Assets Provider provides services to the Customer in relation to the Customer's Facilities at the Clarence Correctional Centre (the "**Dedicated Connection Agreement**"). A copy of the Dedicated Connection Agreement has been provided to the Related Company.
- B. Among other things, the Dedicated Connection Agreement defines the extent of the Dedicated Assets Provider's liability to the Customer, and contains limitations and exclusions on the Dedicated Assets Provider's liability to the Customer.
- C. The Related Company is, or wishes to become, a Related Company of the Customer as defined in the Dedicated Connection Agreement. As a result of the appointment of the Related Company as a Related Company of the Customer, the Dedicated Assets Provider may, in the absence of this deed, be exposed to liability to the Related Company in relation to matters that would otherwise have been covered by the exclusions and limitations of liability under the Dedicated Connection Agreement.
- D. The Dedicated Connection Agreement provides that the Customer must not appoint a Related Company without first requiring the Related Company to enter into a deed in the form attached to the Dedicated Connection Agreement under which the Related Company agrees to exclusions and limitations on the Dedicated Assets Provider's liability to the Related Company.
- E. Accordingly, the Related Company has agreed to enter into this deed with the Dedicated Assets Provider and has agreed that any liability that the Dedicated Assets Provider and its Associates may incur to the Related Company will be subject to the exclusions and limitations set out in this deed.

Operative provisions

1. TERM

- 1.1 This deed commences on the date on which it has been executed by both parties and continues for so long as the Related Company is a Related Company of the Customer (or any successor or assignee of the Customer) under the Dedicated Connection Agreement or any agreement that replaces the Dedicated Connection Agreement.
- 1.2 The Related Company must immediately notify the Dedicated Assets Provider (at the address for notices set out in the Dedicated Connection Agreement) if the Related Company ceases to be a Related Company of the Customer.

2. CAP ON THE DEDICATED ASSETS PROVIDER'S LIABILITY TO THE RELATED COMPANY

- 2.1 If the Related Company or the Customer (or both) makes any Claim or Claims against the Dedicated Assets Provider and its Associates, then the total combined liability of the Dedicated Assets Provider and its Associates to the Related Company and the Customer arising out of or in connection with any Claim or Claims will be limited to the Contract Year Cap in respect of all events or circumstances occurring in any one Financial Year.

- 2.2 If the Dedicated Assets Provider has paid, or is liable or becomes liable to pay, any amount to the Customer in relation to any Claim that is covered by clause 2.1, that amount will be deducted from the Dedicated Assets Provider's maximum liability to the Related Company under clause 2.1.
- 2.3 The limitation of the Dedicated Assets Provider's liability in any Financial Year of the Contact Year Cap in clause 2.1 is to apply for a whole Financial Year. Accordingly:
- 2.3.1 if the Commencement Date of the Dedicated Connection Agreement does not fall on 1 July, this limitation will be pro-rated on a monthly basis, to reflect the period between the Commencement Date and the start of the following Financial Year; and
- 2.3.2 if the date on which the Dedicated Connection Agreement is terminated does not fall on 30 June, this limitation will be pro-rated on a monthly basis, to reflect the period between the end of the previous Financial Year and the date on which the Dedicated Connection Agreement is terminated.

3. NO LIABILITY FOR CERTAIN TYPES OF LOSS

- 3.1 The Related Company agrees that the Dedicated Assets Provider and its Associates are not liable for any Claims by the Related Company in relation to:
- 3.1.1 any loss that is not Direct Loss; or
- 3.1.2 any loss of use, revenue or profit by the Related Company or the amount of any damages awarded against the Related Company in favour of, or monies paid by the Related Company by way of settlement to, any third party and any resulting costs or expenses of the Related Company.
- 3.2 To the extent permitted by law, the Dedicated Assets Provider and its Associates will have no liability to the Related Company for any Claims arising out of or in connection with any act or omission by the Dedicated Assets Provider and its Associates.
- 3.3 The Related Company and the Dedicated Assets Provider agree that:
- 3.3.1 the actual amount of electricity which can be taken by the Customer's Facilities (via the Dedicated Assets and each Connection Point) from TransGrid's *transmission network* at any point in time will depend upon (amongst other things) the Capacity of TransGrid's *transmission network*, the Agreed Capability at each Connection Point and the Maximum Agreed Demand of the Customer's Facilities at that time;
- 3.3.2 without limiting clause 3.3.1, conditions on or affecting TransGrid's *transmission network* (including constraints caused by other *Customers* taking electricity from TransGrid's *transmission network* in accordance with the terms of the Rules and their respective *connection agreements* with TransGrid) may, at any point in time, limit the actual amount of electricity which can be taken by the Customer's Facilities (via the Dedicated Assets and each Connection Point) from TransGrid's *transmission network* to an amount which is equal to the available Capacity of TransGrid's *transmission network* at that time;
- 3.3.3 the Capacity of TransGrid's *transmission network* to deliver electricity to the Customer's Facilities via the Dedicated Assets and each Connection Point will only be available to be utilised by the Customer and the Related Company on a non-exclusive or "non-firm" basis (i.e. the Customer and the Related Company have no exclusive or "firm" right or entitlement to use all or any part of the available Capacity of TransGrid's *transmission network* in priority to any other *Transmission Network User*); and

- 3.4 The Dedicated Assets Provider and its Associates will have no liability to the Related Company for any Claims arising out of or in connection with any Damages suffered by the Related Company (or any third party with whom the Related Company contracts) as a direct or indirect result of the Customer or the Related Company being unable to take electricity from TransGrid's *transmission network* via the Dedicated Assets and a Connection Point due to any limitation in relation to the Capacity of the TransGrid *transmission network* at that time (including any constraint caused by other *Customers* taking electricity from TransGrid's *transmission network* in accordance with the terms of the Rules and their respective *connection agreements*).
- 3.5 To the extent permitted by law, all warranties, terms and conditions in relation to the provision of the services under the Dedicated Connection Agreement that may be implied by use, statute or otherwise are excluded and the Related Company may not make any Claims against the Dedicated Assets Provider in relation to any such matter.
- 3.6 If at any time, the Dedicated Assets Provider has the right to suspend or limit the provision of services under the Dedicated Connection Agreement but has not exercised that right then, during any period when the Dedicated Assets Provider is entitled to suspend or limit the provision of services but continues to provide any such services (the "**Continuation Period**"), the Dedicated Assets Provider will have no liability to the Related Company for any Claims arising out of or in connection with:
- 3.6.1 the provision of the services by the Dedicated Assets Provider during the Continuation Period;
or
- 3.6.2 any failure by the Dedicated Assets Provider during the Continuation Period to comply with an obligation under the Dedicated Connection Agreement relating to the provision of the services.

4. DEFINITIONS

- 4.1 In this deed:
- 4.1.1 "**Claims**" means all claims, actions, disputes, proceedings, losses, liabilities, costs or expenses whether arising in contract, tort (including breach of statutory duty and negligence), equity or otherwise arising out of or in connection with:
- (a) the connection of the Customer's Facilities to the Transmission System via the Dedicated Assets under the Dedicated Connection Agreement or the Rules;
- (b) the provision of services that are directly or indirectly related to the Customer's Facilities, under the Dedicated Connection Agreement or the Rules;
- (c) the Dedicated Assets; or
- (d) any other matter that is directly or indirectly related to the Dedicated Connection Agreement or the services.
- 4.1.2 "**Direct Loss**" means direct loss, injury, damage or expense of the Related Company that is caused by the Dedicated Assets Provider's failure to comply with, observe or perform any provision of the Dedicated Connection Agreement;
- 4.1.3 "**Customer**" has the meaning given to that term in recital A.
- 4.1.4 "**Dedicated Connection Agreement**" has the meaning given to that term in recital A.
- 4.1.5 "**Continuation Period**" has the meaning given to that term in clause 3.6.
- 4.1.6 capitalised terms that are not defined in this deed have the meaning set out in the Dedicated

Connection Agreement;

4.1.7 references to clauses are references to clauses of this deed unless the context otherwise requires; and

4.1.8 italicised terms have the meaning set out in the Rules.

4.2 The definition of Related Company set out in the Dedicated Connection Agreement is the following:

"Related Company" means any entity (other than the Customer) which suffers Damages or incurs Claims as a direct or indirect result of electricity being taken or not being taken from TransGrid's *transmission system* by the Customer's Facilities (or any part of it) at a Connection Point, in accordance with the services to be delivered by the Dedicated Assets Provider under this agreement.

5. MISCELLANEOUS

5.1 No acknowledgment of liability

This deed does not constitute an acknowledgement that the Dedicated Assets Provider and its Associates owe any duty of care to the Related Company or that the Dedicated Assets Provider and its Associates will have any liability to the Related Company, or would have any such liability in the absence of this deed.

5.2 National Electricity Law

Except as expressly provided in this deed, the terms of this deed do not represent a waiver by the Dedicated Assets Provider of, nor an agreement to limit or exclude, any limitation of the Dedicated Assets Provider's liability under sections 119 or 120 of the NEL.

5.3 Governing law and jurisdiction

Each party irrevocably submits to the non-exclusive jurisdiction of the courts located in New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed. Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within this clause.

5.4 Severability

Each provision of this deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this deed in the relevant jurisdiction, but the rest of this deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

5.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, all of which together constitute one deed. A party who has executed a counterpart of this deed may exchange that counterpart with another party by faxing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that other party the executed counterpart so exchanged by fax, but delay or failure by that party to so deliver a counterpart of this deed executed by it will not affect the validity of this deed.

Executed as a Deed.

Each attorney executing this agreements states that he or she has no notice of the revocation or suspension his or her power of attorney.

SIGNED for and on behalf of **TransGrid Services Pty Limited** (ACN 626 136 865) as trustee for **TransGrid Services Trust** (ABN 94 121 353 950) by its attorneys under power of attorney dated:

Signature of Attorney

Name and position of Attorney

SIGNED for and on behalf of **[Related Company name]** (ABN [Related Company ABN]) by its duly authorised officer in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director/Secretary (delete as applicable)

Name of Director/Secretary

Signature of Attorney

Name and position of Attorney

Signature of Director

Name of Director

Attachment 2 – Not used

Attachment 3 – Operating Protocol

The Dedicated Assets Provider and the Customer, acting reasonably and in good faith, will agree on an operating protocol by the Date of Practical Completion (as defined in the Project Agreement).

Attachment 4 – Customer's Accepted Access and Safety Protocols

The Customer, acting reasonably and in good faith, will provide to the Dedicated Assets Provider the access and safety protocols by the Date of Practical Completion (as defined in the Project Agreement).

Attachment 5 – Dedicated Assets Provider's Accepted Third Party Requirements and Access and Safety Protocols

The Customer and the Dedicated Assets Provider, acting reasonably and in good faith, will develop the Dedicated Assets Provider's accepted third party requirements and access and safety protocols by the Date of Practical Completion (as defined in the Project Agreement).

Attachment 6 – Third Party Property Accepted Requirements and Access and Safety Protocols

The Customer and the Dedicated Assets Provider, acting reasonably and in good faith, will develop accepted third party requirements and access and safety protocols by the Date of Practical Completion (as defined in the Project Agreement).