
TransGrid

TransGrid

[Applicant (ABN XX XXX XXX XXX)]

Customer

Connection Investigation & Negotiation Agreement

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Agreement made at _____ **on** _____

Parties **TransGrid**, a Statutory State owned corporation under the *State Owned Corporations Act 1989 (NSW)* constituted by the *Energy Services Corporations Act 1995 (NSW)*, ABN 19 622 755 774, 201 Elizabeth Streets, Sydney NSW, 2000 ("TransGrid")

[Applicant, Insert address and ABN] ("Customer")

Recitals

- A. The Customer wishes to connect to TransGrid's transmission network and has submitted an application to connect to TransGrid.
- B. The Customer and TransGrid have agreed to enter into this Agreement to record the basis on which TransGrid will provide such services to the Customer.
- C. The Customer has agreed to pay TransGrid for its services as provided in this Agreement.

The parties agree

1. Definitions and interpretation

1.1 Definitions

"Associates" means in relation to a party, that party's officers, employees, authorised agents, subcontractors and professional advisers.

"Customer Project Manager" means the person named as the Customer Project Manager in Schedule 4 or such other person as the Customer may from time to time notify TransGrid is acting as the Customer Project Manager for the time being.

"Date of Commencement" means *[insert date]*

"Default Rate" means the Interest Rate plus a margin of 2.5%.

"Expert" means a person appointed as an expert pursuant to clause 15.

"Fees" means the fees payable by the Customer to TransGrid in accordance with Clause 6 of this Agreement, to be calculated in the manner set out in Schedule 5 of this Agreement

"Financial Year" means the period of 12 months commencing on 1 July in any year and concluding on 30 June in the following year.

"GST" has the meaning given to that term in clause 6.4.

"Insolvency Event" means:

- (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent;
- (b) execution is levied against a person by a creditor;
- (c) notice is given of a meeting of creditors with a view to a corporation entering into a deed of company arrangement;
- (d) a corporation enters a deed of company arrangement with its creditors;
- (e) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to a corporation;

- (f) an application is made to a court for the winding up of a corporation and not stayed within 14 days;
- (g) a winding up order is made in respect of a corporation;
- (h) a corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
- (i) a mortgagee of any property of a corporation takes possession of that property.

"Intellectual Property" includes trade marks, service marks, inventions, patents, designs, copyrights, know-how and trade secrets and all rights and interests or licences to use any of them.

"Interest Rate" means in relation to a day, the rate expressed as an annual percentage which is the average of the bid rate shown at approximately 11:00am on page "BBSW" on the Reuters Screen for bills endorsed by an Australian trading bank for a term equal to 30 days. If TransGrid is unable to determine the average or, in TransGrid's reasonable opinion the rate so calculated becomes inappropriate, unfair or incapable of application, the "Interest Rate" will be the rate reasonably determined by TransGrid to be the appropriate equivalent rate having regard to prevailing market condition.

"NSP" means a Network Service Provider under the Rules.

"Project Description" has the meaning given to that expression in Schedule 2.

"Project Gantt Chart" means the chart in Schedule 3 providing required time-frames for TransGrid to deliver the Services.

"Rules" means the National Electricity Rules.

"Security" means the security specified in clause 8.1 for the amount specified in Schedule 5

"Services" means the services described in Schedule 2A.

"TransGrid Project Manager" means the person named as the TransGrid Project Manager in Schedule 4 or such other person as TransGrid may from time to time notify the Customer is acting as the TransGrid Project Manager for the time being.

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 or instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, 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, without limitation, 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, but not limited to, 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; and
- (n) 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.

1.3 **Headings**

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

2. TransGrid's Obligations

2.1 **Performance of Services**

TransGrid will use reasonable endeavors to provide the Services in accordance with Schedule 2A:

- (i) exercising due care, skill and judgement; and
- (ii) in accordance with relevant professional principles and standards.

2.2 **Subcontracting**

- (a) TransGrid may engage contractors to perform the Services, provided that:
 - (i) TransGrid promptly notifies the Customer upon its engagement of a contractor to perform the Services, and
 - (ii) Following (i) above, TransGrid provides the Customer with details of the hourly or other rates chargeable by the Contractor, and
 - (iii) TransGrid will remain liable for proper performance of the Services.
- (b) Any charges paid by TransGrid to a contractor engaged under this clause 2.2 will be fully recoverable by TransGrid from the Customer on a pass-through basis as a disbursement and will be payable by the Customer under clause 6.2(b) of this

Agreement.

- (c) For the avoidance of doubt, the selection of any contractor engaged by TransGrid pursuant to this clause 2.2 is entirely at the discretion of TransGrid

3. The Customer's Obligations

3.1 Performance of Services

The Customer will use its reasonable endeavors to comply with Schedule 2B:

- (i) exercising due care, skill and judgement; and
- (ii) in accordance with relevant professional principles and standards.

3.2 Subcontracting

The Customer may engage contractors for the purpose of satisfying its obligations under this clause, provided the Customer will remain liable for proper performance of the obligations.

4. Variation to the Services and/or the Project Gantt Chart

- (a) From time to time the TransGrid Project Manager and the Customer Project Manager may agree by writing to vary the Schedule 2A or 2B (Services) and/or Schedule 3 (Project Gantt Chart).
- (b) For the avoidance of doubt, unless agreed in accordance with clause 4(a), any purported variation of Schedules 2A, 2B or 3 will not be valid. The Customer may not delay, suspend or put into abeyance the Services to be performed under this Agreement without obtaining the consent of TransGrid in accordance with clause 4(a) and any purported attempt to do so will constitute a default under this agreement.
- (c) A party must not unreasonably withhold its written agreement to a variation of Schedules 2A, 2B or 3 proposed by the other party.
- (d) The Customer acknowledges that any variation to Schedules 2A or 2B or Schedule 3 agreed by TransGrid at the Customer's request may result in:
 - (i) A significantly altered project plan to complete the Services and/or a significantly delayed projected completion date, as due to other project commitments and limited resources TransGrid may not have the ability to accommodate the Customer's preferred varied project schedule and cannot give the Customer priority over other TransGrid customers and projects.
 - (ii) The expenditure of more overall person-hours on the Services, as irregular and/or non-continuous work schedules may result in decreased efficiency

5. Term

5.1 Term

Subject to earlier termination in accordance with clause 11, this Agreement will be in force for a period of three (3) years from the Date of Commencement.

5.2 New Agreement

If this Agreement expires before the completion of the Services by TransGrid, the parties will use their best endeavors to negotiate in good faith a new agreement under which TransGrid will recommence provision of the Services.

6. Payment Conditions

6.1 Payment

(a) Payment Obligation

The Customer must pay TransGrid:

- (a) Fees calculated in the manner set out in Schedule 5 of this agreement; and
- (b) Any other amounts which are payable by the Customer to TransGrid under this Agreement.

6.2 Invoicing

- (a) Each month, TransGrid will render to the Customer an invoice for its charges for the preceding month calculated in accordance with Schedule 5.
- (b) The Customer must pay to TransGrid the amount stated as payable on any such invoice by direct debit from the Customer's bank account from time to time specified by the Customer for this purpose or such other method as agreed in writing between the parties.
- (c) Payments by the Customer must be made no later than 4pm on the date stated as being the due date on the invoice issued to the Customer, which will not be less than 28 *business days* from the date that TransGrid issues the invoice.

6.3 Contents of invoices

TransGrid will ensure that any invoices rendered under clause 6.2 will be valid for GST purposes and will include, without limitation, the following information:

- (a) **(Charges):** particulars of the charges payable by the Customer under clause 6.1 (including sufficient information in relation to such charges to reasonably enable the Customer to verify the basis of the relevant charge); and
- (b) **(other Amounts):** particulars of any other charge payable by the Customer or amount due to the Customer under this Agreement in respect of the invoice period that applies under clause 6.2(a), including, without limitation, any amounts payable under clauses 6.4, and 6.6 to 6.8 (including sufficient information in relation to such charges to reasonably enable the Customer to verify the basis of the relevant charges).

6.4 GST

- (a) The consideration payable for any supply made or to be made under this Agreement has been calculated initially without regard to, and is exclusive of, any goods and services tax ("GST").
- (b) Provided that the relevant consideration does not already incorporate GST, TransGrid may in addition to any amount of consideration expressed as payable elsewhere in this Agreement, but subject to issuing a valid tax invoice, recover from

the Customer an additional amount on account of GST, such amount to be equal to the amount of TransGrid's liability in respect of such supply and payable to TransGrid at the same time and in the same manner as for the relevant consideration referred to in clause 6.4(a). TransGrid will, at the Customer's expense, take all reasonable steps to assist the Customer in claiming any GST credit or refund available to the Customer under this Agreement.

6.5 Disputed invoices

- (a) In the event of any dispute concerning an invoiced amount the Customer will, within 5 *business days* from the date it received the invoice, notify TransGrid 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 15.
- (d) If, and for so long as, the Customer complies in good faith with the provisions of this clause 6 in relation to any dispute it may have concerning payments of accounts, it will not for that reason alone be in breach of its obligations under clause 6.2.

6.6 Interest on disputed amount

Where, as a result of the determination of a dispute of the nature referred to in clause 6.5, either party (the "**paying 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 15 for the payment of the principal amount.

6.7 Adjustment of invoices

- (a) This clause 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 15, TransGrid will refund to the Customer the amount of the overcharge (if any) and the Customer will pay to TransGrid 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 by the Customer 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.

6.8 **Default interest**

If either party makes default without lawful excuse in the payment of moneys payable under this Agreement on the due date for payment (or, where moneys are payable 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.

7. Customer's Liability for Legal Charges Incurred by TransGrid

7.1 Customer Liable for Legal Charges Incurred by TransGrid

- (a) The Customer is liable for payment, on a full indemnity basis, of all legal charges incurred by TransGrid as a result of or in connection with its obligation to provide Services under this Agreement, provided that:
 - (i) TransGrid promptly notifies the Customer of its engagement of a legal practitioner or law firm to provide legal services to TransGrid as a result of or in connection with TransGrid's obligation to provide Services under this Agreement, and
 - (ii) Following (i) above, TransGrid provides the Customer with details of the hourly or other rates chargeable by the legal practitioner or law firm that is to provide legal services to TransGrid
- (b) For the avoidance of doubt, the selection of any legal practitioner or law firm engaged by TransGrid pursuant to this clause 7.1 is entirely at the discretion of TransGrid

7.2 Basis of Recovery of Legal Charges Incurred by TransGrid

Any legal charges incurred by TransGrid under this clause 7 will be fully recoverable by TransGrid from the Customer on a pass-through basis as a disbursement and will be payable by the Customer under clause 6.1(b) of this Agreement .

8. Contract Security

8.1 Provision of Security

The Customer must provide Security in the amount stated in Schedule 5, to be held as security for the punctual payment by the Customer of amounts due to TransGrid under this Agreement.

8.2 Form of Security

- (a) The Security must be in the form of a bank guarantee issued by a bank or financial institution with a credit rating from Standard & Poors or another ratings agency acceptable to TransGrid of (or equivalent to) A or better
- (b) TransGrid may, at its discretion, approve or disapprove of the form of the guarantee and the financial institution or insurance company giving it.

8.3 **Time for Lodgement of Security**

Security must be lodged within **14 days** of the execution of this Agreement.

8.4 **Conversion of Security**

- (a) If the Customer fails to punctually make a payment due to TransGrid under this Agreement, TransGrid will be entitled to make a claim and to receive payment for any such amount due (including interest calculated in accordance with clause 6.8) from the Security.
- (b) If any claims are made against the Security at any time, the Customer must within a period not exceeding three (3) days, reinstate the Security to the level required by TransGrid in accordance with clause 8.1 and Schedule 5.
- (c) TransGrid will not be liable to the Customer for loss or damages of any nature (whether in negligence or otherwise) occasioned by the exercise in good faith of its right of conversion under clause 8.4 (a)
- (d) TransGrid must, within one *business day* of making a claim against the Security, give notice in writing to the Customer that it has done so.
- (e) Nothing in this clause 8.4 affects TransGrid's obligation to resolve a bona fide dispute under clause 6.5 in accordance with the process set out in Clause 15.

8.5 **Release of Security**

TransGrid must release the Security to the Customer following the earlier of the expiry of this Agreement, completion of the Services or the termination of this Agreement in accordance with clause 11, and provided that:

- (a) The customer has duly paid all amounts owing to TransGrid, and
- (b) In the reasonable opinion of TransGrid, there is no prospect that further payments under this Agreement will become owing to TransGrid by the Customer

8.6 **Nature of Obligation to Provide Security**

Any obligation under this clause 8 to provide or reinstate Security constitutes, for the purposes of clause 9 of this Agreement, an obligation to make a payment required under this Agreement

9. Suspension of Services

9.1 **Right to Suspend**

- (a) If the Customer defaults in the performance of any of its obligations under this Agreement, then:
 - (i) if the Customer has failed to make any payment required under this Agreement on or before the date on which such payment is required to be made then, unless the Customer has given a notice under clause 6.5(a) in respect of that amount and otherwise complied with its obligations under clause 6.5; or
 - (ii) in the case of any default which does not fall within paragraph (i), the Customer does not remedy the default within *5 business days* of

TransGrid giving notice to the Customer of the default,

TransGrid, by notice to the Customer, may suspend the provision of Services to the Customer until such time the default is remedied (including, without limitation, the payment of any interest due under clauses 6.7 or 6.8).

- (b) If TransGrid suspends the provision of Services to the Customer under paragraph (a) above then TransGrid will promptly give notice of that suspension to the Customer.
- (c) Any suspension of the provision of Services under paragraph (a) above will not affect any right TransGrid may have to terminate this Agreement under clause 11.

10. Force Majeure

10.1 Force Majeure

If either party fails to comply with or observe any provision of this Agreement and such failure is caused by one or more of the following events (a "**Force Majeure Event**"):

- (a) **Acts of God etc.:** any event or circumstance occasioned by or in consequence of any acts of God, acts of public enemy, wars, blockades, insurrections, riots, epidemics, animals, aircraft, landslips, landslides, lightning, earthquakes, fires, storms, floods, washouts, geomagnetically induced currents, arrests, restraints of rulers, and civil disturbances;
- (b) **Court Orders etc.:** the binding order of any Court, Tribunal, governmental authority or *NEMMCO* 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;
- (c) **Breakages or Accidents:** breakage or failure of, or an accident to, any plant, equipment or other facility owned or operated by the party invoking this clause 7.1 which occurs notwithstanding that such party has taken all reasonable steps to safeguard against the same;
- (d) **Strikes or Lockouts:** strikes, lockouts or 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; or
- (e) **Other Event or Circumstance:** any other event or circumstance beyond the reasonable control of the party invoking this clause 10.1 (but not including lack of financial means) being such that by the exercise of reasonable care such party could not have prevented such failure,

that failure will not give rise to any cause of action or liability based on breach of the relevant provision of this Agreement to the extent such failure is caused by a Force Majeure Event.

10.2 Notice

If a party becomes aware of 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 of and Mitigation

The party invoking clause 10.1 will:

- (a) **Endeavour to Avoid or Overcome:** use all reasonable endeavours to overcome or avoid the Force Majeure Event;
- (b) **Endeavour to Mitigate:** use all reasonable endeavours to mitigate the effects or consequences of the Force Majeure Event; and
- (c) **Consult:** 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 judgment to the demands of opposing parties.

10.4 **Expiration on Account**

If the Force Majeure Event, or its direct effect or consequence on the operations of either party, is of such magnitude or will be (or it is more probable than not that it will be) of such duration, that after a period of not less than six 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 upon not less than 10 *business days* notice terminate this Agreement. In any such case, however, if the Force Majeure Event passes or it is no longer unreasonable for either party to perform, comply with or observe this Agreement, then this Agreement will again apply.

11. **Termination**

11.1 **Default**

If either party (referred to in this clause 11 as the "**defaulting party**") defaults in the performance of any of its obligations under this Agreement, 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 default that has occurred and requiring the defaulting party to cure the default within 10 *business days* of receipt of that notice (referred to in this clause 11 as the "**rectification period**").

11.2 **Failure to Cure**

If the defaulting party does not cure the relevant default within the rectification period, 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:

- (a) terminate this Agreement by written notice to the defaulting party; and
- (b) 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.

11.3 **Termination for Convenience**

- (a) The Customer at its discretion but acting in good faith may terminate this Agreement by giving 30 days notice in writing to TransGrid.
- (b) TransGrid must cease work on the Services within 30 days of receiving a notice under clause 11.3(a) or sooner as is reasonable taking into account progress against milestones and work already commenced.
- (c) Nothing in this clause 11.3 alters or diminishes any obligation that the Customer has to pay any amount stated as payable on any invoice issued to them by

TransGrid under Clause 6.2 of the Agreement, including for any additional costs payable under clause 6.1(b)

11.4 **Termination Notice**

A termination notice under clauses 11.2, 11.3, 11.5 and 11.6 takes effect on the later of:

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

11.5 **Customer Insolvency**

TransGrid 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 **TransGrid Insolvency**

The Customer may terminate this Agreement at any time by giving TransGrid notice of termination if any Insolvency Event occurs in respect of TransGrid.

11.7 **Obligation to Notify of Insolvency**

If an Insolvency Event occurs with respect to a party, then that party must immediately notify each other party that the 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 12, 13 and 14.

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 each party hereby waives any right which it may otherwise have had) to rescind or terminate this Agreement.

12. **Liability**

12.1 **Limitation of TransGrid's Liability**

To the extent permitted by law, TransGrid and its Associates will not be liable to the Customer for any loss, injury, damage or expense arising from any act or omission of TransGrid or its Associates in relation to this Agreement or the performance or non-performance of any of TransGrid's obligations under it howsoever arising, other than:

- (a) **Direct Loss or Damage:** the direct loss, injury, damage or expense of the Customer (excluding any loss of use, revenue or profit by the Customer 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) caused by TransGrid's failure to comply with, observe or perform any provision of this Agreement; and

- (b) **A Total Amount of Liability:** in respect of such direct loss or damage to the Customer, up to the amount of **[\$XXXXXXX]** for any single event or circumstance of failure described in clause 12.1(a) (and a series of such failures arising from the same event or circumstance will be taken to be a single event or circumstance of failure) and up to the amount of **[\$XXXXXXX]** in respect of all events or circumstances of failure described in clause 12.1(a) occurring in any one Financial Year.

The limitation on TransGrid's and its Associates' liability as provided in this clause 12.1 will apply to any negligent act or omission, fault or cause of TransGrid or its Associates.

12.2 Limitation of the Customer's Liability

To the extent permitted by law, the Customer and its Associates will not be liable to TransGrid for any loss, injury, damage or expense arising from any act or omission of the Customer or its Associates in relation to this Agreement or the performance or non-performance of any of the Customer's obligations under it howsoever arising other than:

- (a) **Payment of the Fees:** any obligation on the Customer to pay the Fees, or any other amounts due under this Agreement (including any applicable interest);
- (b) **Direct Loss or Damage:** the direct loss, injury, damage, or expense of TransGrid (excluding any loss of use, revenue or profit by TransGrid or the amount of damages awarded against TransGrid in favour of, or monies paid by TransGrid by way of settlement to, any third party and any costs or expenses of TransGrid in connection with the same) caused by the Customer's failure to comply with observe or perform any provision of this Agreement; and
- (c) **Total Amount of Liability:** in respect of such direct loss or damage to TransGrid, up to the amount of **[\$XXXXXXX]** for any single event or circumstance of failure described in Clause 12.2(b) (and a series of such failures arising from the same event or circumstance will be taken to be a single event or circumstance of failure) and up to the amount of **[\$XXXXXXX]** in respect of all events or circumstances of failure described in clause 12.2(b) occurring in any one Financial Year.

The limitation on the Customer's and its Associates' liability as provided in this clause 12.2 will apply to any negligent act or omission, fault or cause of the Customer or its Associates.

12.3 No Implied Terms

Subject to the *Trade Practices Act 1974* (Cth) and the express provisions of this Agreement, all warranties, terms and conditions which may be implied by use, statute or otherwise are excluded (to the maximum extent permitted by law).

13. Intellectual Property

13.1 Agreement Grants No Interest

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

13.2 Licence from Customer

In consideration of TransGrid performing the Services the Customer grants a non-exclusive royalty free licence to TransGrid and its Associates to use any Intellectual Property in any material provided by it to TransGrid which is used to perform the Services.

13.3 Indemnity from the Customer

The Customer indemnifies and saves harmless TransGrid and its Associates from loss, damage, liability, costs or expenses which may be suffered or incurred by TransGrid or its Associates arising from or in connection with any actual or alleged infringement by TransGrid or its Associates of Intellectual Property rights of a third party, where, pursuant to this Agreement, such Intellectual Property has been furnished or licensed to TransGrid by the Customer.

13.4 Customer to Co-Operate

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

14. Confidentiality

14.1 General

All information acquired or received by any one party (the "**receiving party**") to this Agreement from the other (the "**disclosing party**") and the fact of the existence of the information will be held and kept confidential by the receiving party, will be used by the receiving party only for the purposes of implementing this Agreement, or complying with the receiving party's obligation under the Rules or, if applicable, the Negotiating Framework, or for the purpose of operating the Customer's Facilities, and will 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 the receiving party may, without such consent, disclose such matters or information:

- (a) **Assignee:** to a bona fide intending assignee of the receiving party upon obtaining a similar undertaking of confidentiality from such intending assignee;
- (b) **Professional Consultants:** to any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants;
- (c) **Banks etc.:** to 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;
- (d) **Under the Rules/Negotiating Framework:** to the extent the receiving party bona fide believes such is required to enable the receiving party to comply with obligations under, or exercise rights under, the Rules or, if applicable, the Negotiating Framework;
- (e) **Public Domain:** to the extent that the same has become generally available to the public other than as a result of an unauthorised disclosure by either party or any of its Associates;
- (f) **Legal Proceedings:** 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; or

- (g) **Statutes etc.:** to the extent the receiving party bona fide believes such is required either by any relevant law or the listing requirements of any recognised stock exchange.

14.2 **Associates**

Each party will be responsible for ensuring that its Associates 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. **Disputes**

15.1 **Rules 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.

15.2 **Other Disputes**

If a dispute arises between the parties under or in relation to this Agreement which is not required by clause 15.1 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**"). 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. To avoid doubt, this clause 15 is not a reference to arbitration.

15.3 **Agreement to Expert**

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. If the parties have not agreed on the person to be appointed within 3 *business days* of a party requiring the dispute to be determined by an Expert then either party may serve a notice nominating a person to be appointed. If the parties do not agree on the person to be appointed within 5 *business days* of the delivery of the notice, then:

- (a) 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 such office) to appoint the Expert; and

- (b) 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 such office) following the first request by a party to make such appointment is the Expert for the purpose of determining the dispute.

15.4 **Expert Determination**

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

15.5 **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 keep confidential information provided by or on behalf of the parties to the Expert;
- (c) 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;
- (d) the Expert must make a draft report available to the parties within 20 *business days* of the reference to the Expert;
- (e) the Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report; and
- (f) the Expert must use its reasonable endeavours to notify the parties of the Expert's determination within 35 *business days* of the reference to the Expert.

15.6 **Expert not liable**

The parties agree that the Expert will not be liable in contract, tort (including negligence) or otherwise for any loss or damage 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 15 (and, if required by an Expert appointed under this clause 15, the parties will enter into an agreement or deed with the Expert agreeing that this clause 15.6 applies and binds them in relation to the matters referred to the Expert).

15.7 **Parties to Provide Information**

The parties must comply with all reasonable requests by an Expert appointed in accordance with this clause 15 for information relating to the matters giving rise to that appointment.

15.8 **Parties Bound by Determination**

On notification by the Expert of the Expert's determination under clause 15.5(f) the parties are bound by that determination.

16. **Entire Agreement**

16.1 **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.

17. Communications and Notices

17.1 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 facsimile to the facsimile number of the addressee; or
- (d) an email whereby receipt is acknowledged by the addressee.

17.2 Addresses , Facsimiles and E-mails

The street address, postal address, phone number, facsimile number and contact for each party to which notices must be sent are as specified in Schedule 6. Any party may at any time by notice given to the other party designate a different person, address or facsimile number. Schedule 6 will be amended to record the revised details. The address and facsimile number of a party must always be an address and facsimile number within Australia.

17.3 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.

17.4 Deemed Receipt

- (a) 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 judgment 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 at the time when the letter containing it would have been delivered in the ordinary course of post.
- (c) A communication sent by facsimile will be deemed to have been received on receipt by the sender of a transmission control report from the dispatching machine showing the relevant pages, the correct destination facsimile machine number and that the transmission was completed.
- (d) An email whereby receipt is acknowledged by the addressee.

If a communication is received on a day which is not a *business day* or after 5.00 pm on a *business day*, it is taken to be received on the next *business day*.

18. Governing Law and Jurisdiction

18.1 Governing Law

This Agreement shall be governed by the law of the State of New South Wales.

18.2 Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of NSW and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

Executed as an agreement

Signed by
an authorised delegate of **TransGrid**
in the presence of:

Signature

Signature of Witness

Name of Witness in full

Signed by
an authorised delegate of *[the Customer]*
in the presence of:

Signature

Signature of Witness

Name of Witness in full

SAMPLE

Schedule 2 A –Services - TransGrid

S2A.1 Summary

The Services to be provided by TransGrid under this Agreement are to comprise:

1. A Project Scoping Report;
2. A Feasibility Study;
3. Draft Performance Standards for the machine type options specified by the Customer, which will **exclude** any consultation with NEMMCO; and
4. A Project Description to describe the use for the Services in the event an eligible Application to Connect is submitted for connection of the Customer's Facilities.

S2A.2 Technical Experts

TransGrid will provide or procure under contract expert technical advice to evaluate and assess the Customer's proposed generator connection, including economic assessment. TransGrid will assess the implications for the TransGrid network and power system of the connection of the proposed generator.

S2A.3 Information Provided by the Customer

[Applicant to supply]

S2A.4 Basis of Connection

The studies shall incorporate the base case assumption the generator will be connected to the TransGrid network at *[Insert location]*.

S2A.5 Scope of Services

S2A.5.1 Project Scoping Report

Based on desk top research TransGrid would prepare a Project Scoping Report to define the requirements for the:

- Switchyard - arrangement
- Line works
- Telecommunications and Remote End Work

There will also be consideration of the upstream augmentation of TG's network to accommodate the *[Customer's Facilities]*.

S2A.5.2 Feasibility Study

The feasibility of the PSR tested on site and peer reviewed by TransGrid's Capital Delivery business units. The Feasibility Study will include indicative capital cost estimates for delivering the Connection. Please note this will not represent the Price for TransGrid to deliver the Connection as this depends on a number of commercial matters that will have to be negotiated with the ultimate Customer.

S2A.5.3 Draft Access Standards

Draft Generator Performance Standards will be prepared on the basis of the Customer Letters at Schedule 1 and supporting data for the generator types of:

- *[Option A];*
- *[Option B, if applicable].*

This process will exclude any consultation with NEMMCO

S2A.5.4 Project Description

The Project Description will describe the use for the Services in the event an eligible Connection Application is submitted. TransGrid will use best endeavors to adopt the processes below to take into account the Connection Services when assessing a future eligible Application to Connect under the NSP Rules requirements. The processes are expected to cover:

- Identifying assumptions used for the Services, owing to insufficient information of the Customer's existing Application to Connect; and
- The assumption validation process required and corresponding lead times to be adopted by TransGrid to use best endeavors to take into account the Services provided under this Agreement.

Where the validation process identifies there has been a departure in:

- Assumptions used for these Services; and
- Actual inputs to be applied to the eligible Application to Connect,

a program will be agreed between TransGrid and the Customer to enable TransGrid to assess the Application to Connect in conformance to the NSP Rules requirements.

Schedule 2 B – Services – The Customer

[To be confirmed]

Schedule 3 – Gantt Chart

[To be confirmed]

Schedule 4 – Customer and TransGrid Project Managers

TransGrid

Street Address	Level 11 201 Elizabeth Street SYDNEY NSW 2000
Postal Address	PO Box A1000 SYDNEY SOUTH NSW 1235
Phone Number	(02) 9284-3000
Facsimile Number	(02) 9284-3050
TransGrid Project Manager	XXXX
Project Manager's E-mail Address	XXXX

Customer

Street Address	XXXX
Postal Address	XXXX
Phone Number	XXXX
Fax Number	XXXX
Customer Project Manager	XXXX
Project Manager's E-mail Address	XXXX

Schedule 5 – Fees

The Services will be carried out by TransGrid specialist officers. In consideration of the provision of the Services, fees will be payable by the Customer under clause 6 of this agreement on a per hour, per person basis in accordance with the following schedule of rates.

S5.1 SCHEDULE OF HOURLY RATES FOR SERVICES

Expert Engineer	\$XXX
Specialist Engineer	\$XXX
Commercial Executive	\$XXX
Engineer	\$XXX
Land Economist	\$XXX
Senior Land Economist	\$XXX
Recovery of expenditure incurred:	Cost plus XX%

Note 1: The above prices are exclusive of GST

Note 2: The above rates apply for work performed by TransGrid prior to 30 June 20XX

Note 3: On the commencement of each calendar year all labour hourly rates will be increased by XX% over the applicable rates for previous calendar year.

TransGrid’s reasonable estimate for this work (not including legal or other disbursements payable) is around \$XXX. This estimate is non-binding and does not affect the Customer’s obligation to pay the full fees owing for the actual work performed by TransGrid. The Customer acknowledges that changing circumstances and unknown variables mean that TransGrid cannot firmly predict the total fees to be paid under this Agreement.

S5.2 AMOUNT OF SECURITY REQUIRED

\$XXXXX

Schedule 6 - Address for Service of Notices

TransGrid

Street Address	Level 11 201 Elizabeth Street SYDNEY NSW 2000
Postal Address	PO Box A1000 SYDNEY SOUTH NSW 1235
Phone Number	(02) 9284-3434
Facsimile Number	(02) 9284-3050
TransGrid's Project Manager	XXXX
Project Manager's E-mail Address	XXXX

Customer

Street Address	XXXX
Postal Address	XXXX
Phone Number	XXXX
Fax Number	XXXX
Customer Project Manager	XXXX
Project Manager's E-mail Address	XXXX