

Construction Coordination Deed – [Project name (Generator)]

NSW Electricity Networks Operations Pty Limited ACN 609 169 959 as trustee for NSW
Electricity Networks Operations Trust ABN 70 250 995 390 trading as Transgrid

[Customer name] (ABN [Customer ABN])

[Shared Assets Provider name] (ABN [Shared Assets Provider ABN])

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DEED MADE AT SYDNEY ON [DATE]

PARTIES **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**")

[Customer name] (ABN [Customer ABN]) of [Customer address] (the "**Customer**")

[Shared Assets Provider name] (ABN [Shared Assets Provider ABN]) of [Shared Assets Provider address] (the "**Shared Assets Provider**")

BACKGROUND

- A. The Customer has requested to connect the Customer's Facilities to the New South Wales transmission network.
- B. To facilitate the connection, Transgrid will design, construct and commission the Connection Assets and the Shared Assets Provider will design, construct and commission the Shared Assets.
- C. The parties agree to coordinate and interface their respective works under this deed.

The parties agree**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

The following definitions apply unless the context requires otherwise:

Applicable Laws means the *Electricity Supply Act 1995* (NSW), the NEL, the Rules and any other legislation, rules, regulations, codes, Directives, licence conditions or other regulatory instruments which are directly or indirectly binding on or are expressed to apply to Transgrid, the Shared Assets Provider, or the Customer and relate to the Transmission System, the Customer's Facilities, the Shared Assets or the performance of the Project Work (and for the avoidance of doubt includes any Emissions Requirements).

Assignment has the meaning given to that term in clause 19.1 and the terms "Assign", "assignor" and "assignee" will have corresponding meanings.

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 contractors and sub-contractors;
- (c) all officers, employees, authorised agents, (sub-)contractors and professional advisors engaged or employed by or on behalf of that party and any person or entity referred to in limbs (a) and (b) above; and
- (d) any other person engaged or employed by or on behalf of the party in the performance of its obligations under this deed.

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.

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.

Commencement Date means the 'Commencement Date' (as that term is defined in the Project Agreement).

Commissioning Plan has the meaning given in clause 9.1(a).

Commissioning Tests has the meaning given in clause 9.1(c).

Connection Assets means the assets to be designed, constructed and commissioned or modified by Transgrid to *connect* the Customer's Facilities to the *transmission network*, and is described or shown as such in Schedule 1.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer's Facilities means [insert description of Customer's facilities].

Default means a breach by a party of its obligations under this deed which causes, or is reasonably likely to cause, a material adverse effect to another party in the performance of its obligations under this deed.

Defect means the Shared Assets Work, or any part thereof (or other matter or thing relating to the Shared Assets Work) that is not in accordance with the requirements of this deed, including any defect, fault, error, omission, inaccuracy or discrepancy.

Design Certificate has the meaning given in clause 7.4.

Design Documentation means all designs, drawings, plans, reports, specifications or models, (whether in any three-dimensional, printed or electronic format) prepared for the purposes of constructing and commissioning the Shared Assets.

Detailed Design Documentation has the meaning given in clause 7.1(a).

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 a party or which relates directly or indirectly to the Project.

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, off sets 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).

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

Expert means an independent expert engaged for the purpose of resolving a dispute under this deed.

Final Design Documentation means all Design Documentation which has been submitted to Transgrid for review and either approved by Transgrid or for which the review process for all design stages for such Design Documentation has otherwise been completed in accordance with clause 7.2.

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

Fit For Purpose means to meet the purposes, objectives, functions and requirements stated in, or reasonably inferable from, the [Functional Specifications and Schedule 1 of this deed].

Force Majeure Event means an event or circumstance which is beyond the reasonable control of the party claiming force majeure and which that party could not have prevented by the exercise of reasonable care and *good electricity industry practice*, including:

- (a) act of God, lightning strike which damages plant or material, flood, fire, earthquake, fire, cyclone, geomagnetically induced current, landslips, landslide;
- (b) strike, lockout or other labour difficulty; and
- (c) act of public enemy, war (declared or undeclared), terrorism, blockade, rebellion, riot, insurrection, epidemic, pandemic (including COVID-19), restraints or rulers and civil war.

Functional Specifications has the meaning given in clause 7.1(b)(i).

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.

MHC means Electricity Transmission Ministerial Holding Corporation ABN 19 622 755 774.

National Electricity Law or **NEL** means the 'National Electricity Law' set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA) as it applies to New South Wales.

Network Connection Agreement means the connection agreement for the [insert Customer project name] entered into between Transgrid, the Shared Assets Provider and the Customer on or about the date of this deed.

Network Operating Agreement means the Network Operating Agreement between Transgrid and the Shared Assets Provider dated on or about the date of this deed.

Project means the design, construction and commissioning of the Connection Assets and the Shared Assets to facilitate the *connection* of the Customer's Facilities to the Transmission System.

Project Agreement means the project agreement for the [insert Customer project name] entered into between Transgrid and the Customer on or about the date of this deed.

Project Consultation Group has the meaning given in clause 4(a).

Project Work means, in respect of a party, that party's work in developing the relevant assets as follows:

- (a) Transgrid, the Connection Assets;
- (b) the Shared Assets Provider, the Shared Assets; and
- (c) the Customer, the Customer's Facilities,

and where the context requires, it means the work in respect of all of these assets.

Related Body Corporate means:

- (a) in the case of Transgrid, NSW Electricity Networks Assets Pty Limited (ACN 609 169 922) as trustee for the NSW Electricity Networks Assets Trust and each of their respective related bodies corporate (within the meaning of paragraph (b) below); and
- (b) otherwise in the case of any entity or party has the meaning given in the *Corporations Act 2001* (Cth), but on the basis that 'subsidiary' has the meaning given to Subsidiary in this deed and that 'body corporate' includes a trust, a partnership, a body corporate or similar vehicle that is used for collective investment by investors or members.

Review Period means 20 Business Days from the date Transgrid receives Design Documentation for review from the Shared Assets Provider or such other period as expressly specified in this deed.

Rules means the 'National Electricity Rules' as defined in the National Electricity Law.

Security Interest has the meaning given in clause 21.

Senior Managers means the persons described as a party's Senior Manager in Schedule 2.

Shared Assets means the assets to be designed, constructed and commissioned by the Shared Assets Provider, and operated and maintained by Transgrid under the Network Operating Agreement, and are described or shown as such in Schedule 1.

Shared Assets Commissioning Commencement Date means the date on which the commissioning, testing and acceptance of the Shared Assets Work under clause 9 is scheduled to commence.

Shared Assets Commissioning Plan has the meaning given in clause 9.1(a).

Shared Assets Program has the meaning given in clause 5(a).

Shared Assets Work means all work undertaken by the Shared Assets Provider and its Associates relating to the design, procurement, supply, construction and commissioning of the Shared Assets.

Site means [insert].

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.

Term means the period referred to in clause 1.4.

Technical Standards means all mandatory standards and codes and any other appropriate Australian standards or codes or any applicable international standards and codes current as at the Execution Date.

Transmission System means the *connection assets* and *network assets* used by Transgrid to provide *transmission services*.

Trust means the NSW Electricity Networks Operations Trust (ABN 70 250 995 390).

Trustee means the trustee of the Trust.

WHS Legislation means any applicable legislation relating to work health and safety, including the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2017* (NSW).

1.2 NER Definitions and References

In this deed, unless the context otherwise requires:

- (a) words appearing in italics have the meaning assigned to them from time to time by the Rules; and
- (b) if a word in italics is no longer defined in the Rules, it will have the meaning last assigned to it by the Rules until the parties otherwise agree.

1.3 Interpretation

In this deed unless the contrary intention is specifically expressed:

- (a) a reference to a recital, clause, paragraph, limb, schedule or attachment is a reference to a recital, clause or paragraph, limb of or schedule or attachment to this deed and references to this deed include any schedule or attachment;
- (b) a reference to this deed, 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;
- (c) 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;

- (d) a reference to a thing (including an amount) is a reference to the whole and each part of it;
- (e) the singular includes the plural and vice versa;
- (f) the word "person" includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, an unincorporated association and any authority;
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) a reference to one gender includes all genders;
- (i) 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;
- (j) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (k) a reference to a month is a reference to a calendar month;
- (l) a reference to time is a reference to Sydney time;
- (m) if a word or phrase is specifically defined in this deed other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (n) mentioning anything after include, includes or including does not limit what else might be included;
- (o) 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 *Generator* in relation to the Customer's Facilities, even if the Customer is not registered or ceases to be registered as the *Generator* 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
- (p) a reference to "\$", AUD or dollars is to Australian currency.

1.4 Consideration

In consideration of each other party entering into this deed, each party agrees to pay each other party the sum of \$1 and acknowledges having received valuable consideration for entering into and performing this deed from each other party.

2. TERM

- (a) Subject to clause 2(b), this deed:
 - (i) commences on the Commencement Date; and
 - (ii) ends on the earlier of:
 - A. the date of termination or expiry of the Project Agreement; and
 - B. the date that this deed is terminated in accordance with its terms,
- (b) Clauses 1, 2, 14, 15 and 17 to 22 (inclusive) come into force and effect on the Execution Date.

3. PROJECT RESPONSIBILITIES

The parties agree and acknowledge that:

- (a) Transgrid will design, construct, commission and own or lease the Connection Assets in accordance with the Project Agreement;

- (b) the Shared Assets Provider will design, construct, commission and own the Shared Assets; and
- (c) the Customer will design, construct, commission and own the Customer's Facilities.

4. PROJECT MEETINGS

- (a) A project consultation group will be established, comprising:
 - (i) Transgrid's Representative and one (1) other representative from Transgrid;
 - (ii) the Customer's Representative and one (1) other representative from the Customer;
 - (iii) the Shared Assets Provider's Representative and one (1) other representative from the Shared Assets Provider; and
 - (iv) any third party that the parties agree to be appointed as a member of the project consultation group,
 (the **Project Consultation Group**).
- (b) The Project Consultation Group will meet monthly, or as otherwise agreed by members of the Project Consultation Group, at a venue reasonably convenient to the members of the Project Consultation Group.
- (c) Transgrid will appoint a chair for each Project Consultation Group meeting.
- (d) The functions of the Project Consultation Group are to:
 - (i) receive updates and reports from each party;
 - (ii) monitor the progress of the Project;
 - (iii) consider interface issues between the carrying out of each party's Project Work;
 - (iv) discuss issues regarding the delivery of the Project; and
 - (v) attend to any other matters relating to the Project and interface between each party's Project Work.
- (e) Without limiting any other provision of this deed, nothing which occurs during a Project Consultation Group meeting or as part of the process for such meetings (including anything agreed by the Project Consultation Group at such meetings) will:
 - (i) relieve any party of its obligations, or constitute a waiver or a variation of any party's rights or obligations under this deed; or
 - (ii) be construed as a direction, instruction, variation or notice to do or not to do anything,
 and the parties confirm that all discussions, debates, disagreements and resolutions on any matters raised at these meetings are only for the purpose of satisfying the objectives as agreed by the Project Consultation Group.

5. PROGRAMS

- (a) The Shared Assets Provider must provide to Transgrid the delivery program for the design and construction of the Shared Assets (the **Shared Assets Program**) within 15 Business Days after the Execution Date.
- (b) If any changes are subsequently made to the Shared Assets Program, the Shared Assets Provider must provide a copy of the amended Shared Assets Program to Transgrid within 10 Business Days after such amendment.
- (c) The Shared Assets Provider must provide regular updates to Transgrid on its progress against the Shared Assets Program.

6. COORDINATION

- (a) The parties agree and acknowledge that the undertaking of the Project and various other activities relating to the development of the Customer's Facilities will require:
 - (i) the coordination of their respective activities and responsibilities;
 - (ii) the establishment of an effective interface between their respective contractors and sub-contractors (including the co-ordination of program details, technical issues and safety matters); and
 - (iii) the parties to undertake work on sites that are adjacent to each other or on the same site as each other.
- (b) During the Term, each party must, having regard to clause 6(a), use reasonable endeavours to:
 - (i) coordinate and interface the performance of its work with the performance of the work of the other parties;
 - (ii) take into consideration the other parties' work (including key points of interface and interaction) in scheduling and carrying out its work;
 - (iii) perform its work in a manner so as to minimise any interference with or disruption to the work of each other party, having regard to delivery programs and other information and progress updates provided by the other parties;
 - (iv) liaise with the other parties on key milestone and completion dates, including any changes to those dates,
 - (v) keep the other parties informed on the progress of its works and any changes to its works which may affect another party;
 - (vi) take reasonable precautions to not cause damage to another party's work or plant and equipment; and
 - (vii) work together to resolve any issues or conflicts in relation to the obligations in this clause 6 in good faith.

7. DESIGN OF THE SHARED ASSETS

7.1 Development of the Shared Assets Design

- (a) The Customer and the Shared Assets Provider acknowledge that the Customer has provided to Transgrid the detailed design of the Shared Assets components (**Detailed Design Documentation**).
- (b) The Shared Assets Provider must further progressively develop the design of the Shared Assets components to the Final Design Documentation:
 - (i) in accordance with and in satisfaction of the requirements of the functional specification provided by Transgrid under clause 5.3.3(b)(9) of the Rules (**Functional Specifications**);
 - (ii) by the dates specified in and in accordance with the Shared Assets Program;
 - (iii) in accordance with all Applicable Laws (including the Rules), Technical Standards and *good electricity industry practice*; and
 - (iv) so that the Shared Assets, when constructed, will be Fit For Purpose.
- (c) The Customer and the Shared Assets Provider each warrant to Transgrid that the Final Design Documentation:
 - (i) is consistent with and in satisfaction of the requirements of the Functional Specifications; and

- (ii) does not unreasonably inhibit the capacity for future expansion of the Shared Assets or preclude the possibility of future *connections* to the Shared Assets.

7.2 Review of Shared Assets Design

- (a) Throughout the development of the Design Documentation, the Shared Assets Provider must give Transgrid and Transgrid's nominees regular opportunity to review, comment on and monitor the development of the Design Documentation.
- (b) At a minimum, the Shared Assets Provider must submit the Design Documentation for review and comment by Transgrid at the end of each design stage specified in the Shared Assets Program.
- (c) Transgrid may review the Design Documentation to determine whether the Shared Assets Provider is complying with this deed and give the Shared Assets Provider comments and recommendations regarding the Design Documentation, provided that such comments and recommendations are limited to matters related to compliance with this deed.
- (d) If Transgrid makes any comments or recommendations regarding the Design Documentation in accordance with clause 7.2(c), the Shared Assets Provider must, to the extent those comments and recommendations are necessary for compliance with this deed, rectify the non-compliance and resubmit the relevant Design Documentation for review by Transgrid at its cost.
- (e) The Shared Assets Provider may not proceed to the next design stage of the Shared Assets until the previous design stage has been completed and either:
 - (i) Transgrid has approved the Design Documentation for that design stage; or
 - (ii) the relevant Review Period has lapsed.
- (f) The Shared Assets Provider may not proceed to the construction (including procurement and manufacture) of any of the Shared Assets components until the review process for all design stages under this clause 7.2 relating to the Shared Assets has been completed and the Final Design Documentation relating to the Shared Assets has been completed.

7.3 Effect of review by Transgrid

The parties acknowledge and agree that:

- (a) Transgrid is not obliged to and does not assume or owe any duty of care to the Shared Assets Provider or the Customer to review, provide comments or recommendations, or approve any Design Documentation pursuant to this clause 7;
- (b) Transgrid is not bound to check the Design Documentation for compliance with the requirements of this deed; and
- (c) the review, comment, recommendation, acceptance, approval of Design Documentation, or lack thereof, by Transgrid:
 - (i) do not affect, reduce or relieve the Shared Assets Provider from its obligations and liabilities under this deed or at law;
 - (ii) do not prejudice Transgrid's rights against the Shared Assets Provider under this deed or at law;
 - (iii) shall not be evidence that any obligation of the Shared Assets Provider has been performed in accordance with this deed; and
 - (iv) will not give rise to any Claim on the part of the Shared Assets Provider or the Customer.

7.4 Design certificate

The Design Documentation:

- (a) if required by law, must be certified by the Shared Assets Provider at its cost and countersigned by the Shared Assets Provider's independent design verifier; and
- (b) must, if the Transgrid reasonably requires by notice in writing to the Shared Assets Provider, be certified by Transgrid's independent design verifier at the cost of Transgrid,

in either case as:

- (c) being appropriate for construction in accordance with this deed; and
- (d) complying with this deed, including the Functional Specification,

(the **Design Certificate**) and any such Design Certificate must accompany the Design Documentation submitted in accordance with clause 7.2.

7.5 Defects in Design Documentation

Without limiting any rights that Transgrid may have to damages or otherwise in respect of any Defects at Law, if Defects are found in the Design Documentation, the Defects and the Shared Assets affected by such Defect must be promptly rectified at the Shared Assets Provider's cost, despite any receipt, review, comment, suggestion, consent or approval (or failure to receive, review, approve, comment, suggest, consent or approve) by Transgrid under this clause 7.

8. CONSTRUCTION AND INSPECTION

8.1 Construction of Shared Assets

- (a) The Shared Assets Provider must construct (including procure and manufacture) the Shared Assets components:
 - (i) in accordance with and in satisfaction of the requirements of the Functional Specifications and the Final Design Documentation;
 - (ii) by the dates specified in and in accordance with the Shared Assets Program;
 - (iii) in accordance with all Applicable Laws (including the Rules and WHS Legislation), Technical Standards and *good electricity industry practice*; and
 - (iv) so that the Shared Assets, when constructed, will be Fit For Purpose.
- (b) The Shared Assets Provider warrants that:
 - (i) it has reviewed and understands Transgrid's obligations to provide *connection services* to the Customer under the Network Connection Agreement and under the Rules; and
 - (ii) it will carry out the Shared Assets Work in a manner that will allow Transgrid to discharge its obligations and responsibilities under the Rules and the Network Connection Agreement.

8.2 Inspection of Shared Assets

- (a) Transgrid may inspect, examine and test any part of the Shared Assets Work at reasonable times for the purposes of determining whether the Shared Assets Provider is complying with this deed (**Inspection**) by giving 5 Business Days' prior notice to the Shared Assets Provider.
- (b) At a minimum, the Customer and the Shared Assets Provider must notify and invite Transgrid to carry out an Inspection at the end of each procurement and construction stage specified in the Shared Assets Program.
- (c) Following receipt of the notice, Transgrid must either carry out the Inspection without unreasonable delay, or promptly notify the Shared Assets Provider that it does not intend to carry out such activities.

- (d) The Shared Assets Provider must, upon request, provide Transgrid with copies of all inspection and testing certificates and data sheets related to the examination, inspection and testing of the Shared Assets components.
- (e) The Customer and the Shared Assets Provider must give Transgrid or its nominee full access to the relevant parts of the Site to enable Transgrid to carry out Inspections and the Shared Assets Provider must provide all facilities necessary for the Inspection of all of Shared Assets components.
- (f) Without limiting any rights that Transgrid may have to damages or otherwise in respect of any Defects at law, if any Shared Assets components fail any examination, inspection or testing, are or are otherwise found to be Defective:
 - (i) Transgrid will provide details of the non-compliance (where Transgrid has identified the Defect); and
 - (ii) the Shared Assets Provider must promptly rectify the Defect or remedy the cause of the failure (as the case may be) at its cost and ensure that the relevant component complies with this deed.
- (g) Any identified non-compliance with this deed must be rectified by the Shared Assets Provider at its cost.
- (h) Shared Assets Provider may not proceed to the next procurement or construction stage of the Shared Assets until the previous stage has been completed and either:
 - (i) Transgrid has Inspected and approved the Shared Assets Work for that procurement or construction stage; or
 - (ii) Transgrid has notified the Shared Assets Provider that it does not intend to carry out Inspection for that stage.

8.3 Effect of Inspection by Transgrid

The parties acknowledge and agree that:

- (a) Transgrid is not obliged to and does not assume or owe any duty of care to the Shared Assets Provider or the Customer to inspect, examine, test or approve any part of the Shared Assets Work pursuant to this clause 8;
- (b) Transgrid is not bound to check the Shared Assets Work for compliance with the requirements of this deed; and
- (c) the inspection, examination, testing or approval of the Shared Assets Work, or lack thereof, by Transgrid:
 - (i) do not affect, reduce or relieve the Shared Assets Provider from its obligations and liabilities under this deed or at law;
 - (ii) do not prejudice Transgrid's rights against the Shared Assets Provider under this deed or at law;
 - (iii) shall not be evidence that any obligation of the Shared Assets Provider has been performed in accordance with this deed; and
 - (iv) will not give rise to any Claim on the part of the Shared Assets Provider or the Customer.

8.4 Factory acceptance test documentation

- (a) For each plant and equipment component of the Shared Assets that the Shared Assets Provider procures, the Shared Assets Provider must ensure that:
 - (i) the component has successfully passed all factory acceptance tests in accordance with all applicable Technical Standards and *good electricity industry practice*; and

- (ii) Transgrid is provided with all factory acceptance test reports and documentation from the manufacturer evidencing the successful passing of the factory acceptance tests, before it is integrated with other Shared Assets Work or affixed to the Site.
- (b) The Shared Assets Provider must procure that Transgrid and any persons nominated by Transgrid (including any technical consultants or independent engineers) have the right to attend such factory acceptance testing if Transgrid gives at least [] Business Days' prior notice that it wishes to attend any factory acceptance testing.

8.5 No limitation of common law rights

Nothing in this clause 8 or clause 9 will affect or reduce any rights that Transgrid may have under this deed or at law in respect of any Defects or affect, reduce or relieve the Shared Assets Provider from its obligations and liabilities under this deed or at law.

9. SHARED ASSETS COMMISSIONING AND TESTING

9.1 Commissioning Plan

- (a) The Shared Assets Provider must develop a plan and program for the commissioning, testing and acceptance of the Shared Assets Work (**Shared Assets Commissioning Plan**).
- (b) The Shared Assets Provider must provide to Transgrid the Shared Assets Commissioning Plan at least 3 months before the scheduled commencement of commissioning of the Shared Assets Work.
- (c) The Shared Assets Commissioning Plan must contain all necessary commissioning and testing activities required to determine whether each Shared Assets component satisfies the requirements of the Functional Specifications and Final Design Documentation (**Commissioning Tests**).

9.2 Commissioning and testing

- (a) The parties agree and acknowledge that:
 - (i) the commissioning and testing under this clause 9 will be undertaken prior to the commencement of commissioning and testing under clauses [7.10] and [10.2] of the Project Agreement; and
 - (ii) before commissioning of the Shared Assets, Transgrid is required under the Rules to ensure that the Shared Assets are built to the standards specified in the Functional Specifications.
- (b) The Shared Assets Provider must give to Transgrid not less than 10 Business Days' prior notice of the date and time at which the Shared Assets Provider will be ready to carry out any Commissioning Tests, and details of the Commissioning Tests activities that will be undertaken.
- (c) The Shared Assets Provider must carry out the Commissioning Tests of the Shared Assets Work:
 - (i) in accordance with the Shared Assets Commissioning Plan;
 - (ii) in accordance with all Applicable Laws (including the Rules and WHS Legislation), Technical Standards and good electricity industry practice; and
 - (iii) so as to determine whether each Shared Assets component satisfies the requirements of the Functional Specifications; and
- (d) Transgrid and any persons nominated by Transgrid (including any technical consultants or independent engineers) will be entitled to attend such commissioning and testing as described in clause 9.2(c).
- (e) The Shared Assets Provider must provide Transgrid with a report of the results of any Commissioning Tests in a form agreed between them, including a copy of any data relating to such commissioning and testing.

- (f) If Transgrid considers the Shared Assets Provider has failed to satisfactorily complete a Commissioning Test, Transgrid:
 - (i) must notify the Shared Assets Provider of that fact within 30 Business Days of receipt of the Shared Assets Provider's report under clause 9.2(e); and
 - (ii) may, acting reasonably, instruct the Shared Assets Provider to carry out additional tests, re-tests or require further inspection, but may not impose additional or increased criteria to be satisfied by such additional testing.
- (g) Without limiting clauses 8.2 and 8.3, at any time after the date notified by the Shared Assets Provider under clause 9.2(b), Transgrid is entitled to inspect, test and carry out Commissioning Tests in respect of the Shared Assets to satisfy itself that the Shared Assets are acceptable for connection and comply in all material respects with the requirements of this deed. Transgrid will give the Shared Assets Provider not less than 2 Business Days' prior notice of such inspection and testing and will minimise, as far as is reasonably practicable, any disruption to the Shared Assets Provider in carrying out such inspection and testing.
- (h) The Shared Assets Provider agrees that neither the carrying out of commissioning and testing nor the attendance or non-attendance by Transgrid or any other nominated persons nor the issuance of any test report, or other information pursuant to clause 9.2(f) will affect, reduce or relieve the Shared Assets Provider from its obligations and liabilities under this deed or at law.

9.3 Failure to pass Commissioning Tests

If the Shared Assets or any part of them fails to pass any Commissioning Tests or inspection and testing activities carried out by Transgrid under clause 9.2(g), or is otherwise found to be Defective during commissioning and testing:

- (a) Transgrid will provide details of the non-compliance (where Transgrid has identified the Defect);
- (b) the Shared Assets Provider must promptly rectify the Defect or remedy the cause of the failure (as the case may be) at its cost and ensure that the relevant component complies with this deed;
- (c) the Shared Assets Provider must repeat and report on the results of the relevant Commissioning Tests in accordance with clause 9 until the Defect or failure is rectified and the relevant Commissioning Tests are passed.

9.4 Transfer of operational control

- (a) Upon the passing of all Commissioning Tests for the Shared Assets and the passing of any inspection and testing activities carried out by Transgrid under clause 9.2(g) in relation to the Shared Assets to the satisfaction of Transgrid acting reasonably:
 - (i) operational control of the Shared Assets passes from the Shared Assets Provider to Transgrid; and
 - (ii) Transgrid will operate and maintain the Shared Assets under and in accordance with the Network Operating Agreement.
- (b) The Shared Assets Provider must ensure Transgrid is given the full benefit of any manufacturers' warranties on and from the date operational control of the Shared Assets is passed to Transgrid under clause 9.4(a).

10. PROVISION OF SHARED ASSETS INFORMATION

- (a) The Customer must ensure Transgrid is provided with, at least [•] Business Days before the Shared Assets Commissioning Commencement Date, all information reasonably required by Transgrid to properly provide operation and maintenance services for the life of the Shared Assets, including:
 - (i) details of their construction;

- (ii) instructions for operation and maintenance; and
 - (iii) health and safety and asset management manuals.
- (b) Without limiting clause 10(a), the Customer must ensure Transgrid is provided with, at least [•] Business Days before the Shared Assets Commissioning Commencement Date:
 - (i) (as built documents) a complete set of 'as built' drawings and records of the execution of the Shared Assets, showing the exact as built locations, sizes and details of the Shared Assets as executed;
 - (ii) (operation and maintenance manuals) operation and maintenance manuals, instructions and mechanical equipment, data books and any other manuals specified in [Schedule 1] which must:
 - A. be in sufficient detail and contain all information that is necessary or desirable for the start up, operation, maintenance, dismantling, reassembling, adjustment and repair of the Shared Assets;
 - B. be based on suppliers' and manufacturers' instructions and recommendations and Technical Standards; and
 - C. include the information set out in [Schedule 1].
- (c) Without limiting and to the extent not already permitted under clause 15 and clause 16, Transgrid may use all information, documents and materials provided to it by the Customer under this clause for the purposes of carrying out the Project, the performance of this deed and exercising any of its rights and satisfying its obligations under the Rules.

11. PAYMENT FOR SERVICES PROVIDED BY TRANSGRID

The Customer agrees and acknowledges that it is responsible for the payment of the services provided by Transgrid under this deed (including Design Documentation review under clause 7, inspection of Shared Assets under clause 8 and testing and commissioning of Shared Assets under clause 9) under and in accordance with the terms of the Project Agreement and Network Connection Agreement.

12. FORCE MAJEURE

12.1 Force Majeure Event

If a party fails to comply with or observe any provision of this deed (other than an obligation to make a payment) and that failure is caused by a Force Majeure Event, the affected obligation will be suspended while the Force Majeure Event continues and that failure will not give rise to any cause of action or liability based on breach of the relevant provision of this deed.

12.2 Notice of Force Majeure

- (a) If a party becomes aware of the existence of, or a serious prospect of, a forthcoming Force Majeure Event, it will notify the other parties as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 12.1, it will notify the other parties as soon as reasonably practicable of full particulars of the Force Majeure Event relied upon.
- (b) The notice must:
 - (i) specify the obligations the notifying party cannot perform;
 - (ii) fully describe the Force Majeure Event;
 - (iii) estimate the time during which the Force Majeure Event will continue; and

- (iv) specify the measures proposed to be adopted to remedy or mitigate the Force Majeure Event.

12.3 Avoidance and Mitigation

- (a) The party invoking clause 12.1 must:
 - (i) use all reasonable endeavours to overcome or avoid the Force Majeure Event;
 - (ii) use all reasonable endeavours to mitigate the effects or consequences of the Force Majeure Event;
 - (iii) consult with the other parties on the performance of the obligations referred to in clauses 12.3(a)(i) and 12.3(a)(ii); and
 - (iv) resume performance of any suspended obligations as soon as possible after the Force Majeure Event ends.
- (b) However, nothing in this clause 12.3 will be construed as requiring the party invoking clause 12.1 to settle a strike, lock-out or other industrial disturbance by acceding against its judgment to the demands of opposing parties.

12.4 Remedy of Force Majeure

The party that is prevented from carrying out its obligations under this deed as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

12.5 Mitigation

The party that is prevented from carrying out its obligations under this deed as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by a party as a result of its failure to carry out its obligations under this deed.

13. DEFAULT AND TERMINATION

13.1 Default Notice

- (a) If a party (referred to in this clause 13 as the **Defaulting Party**) commits a Default, an affected non-defaulting party may give the Defaulting Party a notice specifying the Default that has occurred and requiring the Defaulting Party to provide to the affected non-defaulting parties a plan to rectify the Default (**Rectification Plan**).
- (b) The Rectification Plan must be provided within 10 Business Days after receiving the default notice and must specify a reasonable date by which the Default will be remedied (**Cure Period**).
- (c) The Cure Period must be the shortest period of time that could reasonably be expected to allow the Defaulting Party, acting diligently and in accordance with good electricity industry practice, sufficient time to:
 - (i) remedy the relevant Default; and
 - (ii) demonstrate such remedy to the reasonable satisfaction of the affected non-defaulting parties in accordance with tests (if any) set out in the Rectification Plan.
- (d) The Defaulting Party must act diligently and in accordance with *good electricity industry practice* to remedy the relevant Default in accordance with the Rectification Plan.

13.2 Failure to Cure

- (a) If the Defaulting Party does not:
 - (i) provide the Rectification Plan to the affected non-defaulting parties within 10 Business Days after receiving the default notice under clause 13.1(b);

- (ii) commence to remedy the Default within 10 Business Days after providing the Rectification Plan under clause 13.1(a); or
 - (iii) remedy the relevant Default within the Cure Period specified in clause 13.1(b),
- then the affected non-defaulting parties may, in addition to any other rights and remedies under this deed exercise any or any combination of the following remedies:
- (iv) suspend the performance with its obligations under this deed until such time as the Default is remedied; and
 - (v) 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.

13.3 Termination

- (a) Subject to clause 13.3(b), none of the parties will have any right to terminate this deed.
- (b) This deed will terminate automatically upon the termination of:
 - (i) the Network Operating Agreement;
 - (ii) the Project Agreement; or
 - (iii) the Network Connection Agreement.

13.4 Survival

Termination of this deed 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 deed occurring prior to the termination or expiration; or
- (b) the rights and obligations of the parties under clauses [13, 14, 15, 16, 17 and 22].

13.5 Consequences of termination

- (a) On termination of this deed under clause 13.3(b) each party must promptly return to each other party any of that other party's confidential information which is in its possession and control as at the date of termination.
- (b) Nothing in this clause 13 will limit a party's right to recover Damages from another party for breach of contract.

14. LIABILITY

14.1 Limitation of Transgrid's Liability

- (a) To the extent permitted by law, Transgrid and its Associates will not be liable to the other parties for any Damages or Claims arising from any act or omission of Transgrid or its Associates in relation to this deed or the performance or non-performance of any of Transgrid's obligations under it, other than:
 - (i) **Direct loss or damage:** subject to clause 14.1(b) and clause 14.3, the direct loss, injury, damage or expense of a party caused by Transgrid's failure to comply with, observe or perform any provision of this deed; and
 - (ii) **Total amount of liability:** subject to clause 14.1(b) and 14.6, in respect of such direct loss, injury, damage or expense to all parties referred to in clause 14.1(a)(i), when aggregated with any liability of Transgrid arising from or in connection with the Project Agreement:

- A. up to the amount of \$[•] in aggregate in respect of any single event or circumstance of failure described in clause 14.1(a)(i), or single event or circumstance giving rise to a liability of Transgrid arising from or in connection with the Project Agreement, occurring during the Term (and a series of acts or omissions arising out of or in connection with the same event or circumstance will be taken to be a single event or circumstance); and
 - B. notwithstanding clause 14.1(a)(ii)A, up to the amount of \$[•] in aggregate in respect of all events or circumstances of failure described in clause 14.1(a)(i), and all events or circumstances giving rise to a liability of Transgrid arising from or in connection with the Project Agreement, occurring in any one Financial Year.
- (b) To the extent permitted by law and without limiting clauses 14.1(a) and 14.3:
- (i) Transgrid and its Associates are not liable for any loss of use, revenue, profit or opportunity by any party or the amount of any Damages awarded against a party in favour of, or monies paid by a party by way of settlement to, any third party and any costs or expenses of a party in connection with the same; and
 - (ii) for the avoidance of doubt, the limitation on Transgrid's and its Associates' liability as provided in this clause 14.1 will apply to any negligent act or omission, fault or cause of Transgrid and its Associates.

14.2 Limitation of Liability of Customer and Shared Assets Provider

- (a) To the extent permitted by law, the Customer, Shared Assets Provider and their respective Associates will not be liable to Transgrid for any Damages or Claims arising from any act or omission of theirs or their respective Associates in relation to this deed or the performance or non-performance of any of their obligations under it, other than:
- (i) **Direct loss or damage:** subject to clause 14.2(b) and clause 14.3, the direct loss, injury, damage or expense of Transgrid caused by their failure to comply with, observe or perform any provision of this deed; and
 - (ii) **Total amount of liability:** subject to clause 14.2(b) and 14.6, in respect of such direct loss, injury, damage or expense of Transgrid referred to in clause 14.2(a)(i):
 - A. up to the amount of \$[•] in aggregate in respect of any single event or circumstance of failure described in clause 14.2(a)(i) occurring during the Term (and a series of acts or omissions arising out of or in connection with the same event or circumstance will be taken to be a single event or circumstance); and
 - B. notwithstanding clause 14.2(a)(ii)A, up to an amount of \$[•] in aggregate in respect of all events or circumstances of failure described in clause 14.2(a)(i) occurring in any one Financial Year.
- (b) To the extent permitted by law and without limiting clauses 14.2(a) and 14.3:
- (i) the Customer and the Shared Assets Provider are not liable for any loss of use, revenue, profit or opportunity by Transgrid or the amount of any Damages awarded against Transgrid in favour of, or monies paid by a party by way of settlement to, any third party and any costs or expenses of Transgrid in connection with the same; and
 - (ii) for the avoidance of doubt, the limitation on the Customer, Shared Assets Provider and their Associates' liability as provided in this clause 14.2 will apply to any negligent act or omission, fault or cause of the Customer, Shared Assets Provider and their Associates.

14.3 No liability for indirect loss

No party has any liability to the other parties, nor will a party be entitled to make any Claim, for any indirect loss. For the purpose of this clause, indirect loss means:

- (a) loss that does not arise directly or naturally from the relevant breach; and
- (b) any loss of use, revenue, profit or opportunity or pure economic loss, whether or not they arise directly or naturally from the relevant breach.

14.4 Part Financial Year

The limitation of Transgrid's liability described in clause 14.1(a)(ii) and the limitation of the Customer's and Shared Assets Provider's liability described in clause 14.2(a)(ii) in any Financial Year is to apply for a whole Financial Year. Accordingly:

- (a) if the Execution Date does not fall on 1 July, the limitations will be pro-rated on a monthly basis, to reflect the period between the Execution Date and the start of the following Financial Year; and
- (b) if the date on which this deed is terminated or expires does not fall on 30 June, the limitations 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 deed is terminated or expires.

14.5 No Implied Terms

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

14.6 Exclusions

The limits of liability referred to in clause 14.1(a)(ii) and 14.2(a)(ii) 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 another 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 14.6(a) and 14.6(b) shall not be taken into account for the purposes of calculating whether the limits of liability referred to in clauses 14.1(a)(ii) and 14.2(a)(ii) have been reached or exceeded.

14.7 Indemnity

- (a) The Customer and Shared Assets Provider will jointly indemnify and keep indemnified Transgrid for all loss, injury, damage and expense suffered by Transgrid arising out of or in connection with personal injury or death caused by any of their acts or omissions.
- (b) Transgrid will indemnify and keep indemnified the Customer and Shared Assets Provider for all loss, injury, damage and expense suffered by them arising out of or in connection with personal injury or death caused by any of Transgrid's acts or omissions.
- (c) Each party's liability under this indemnity in this clause 14.7 is reduced proportionately to the extent the indemnified party's negligent acts or omissions have caused or contributed to its loss, injury, damage and expense.

15. CONFIDENTIALITY

15.1 General

All information acquired or received by any one party (the "receiving party") from another party (the "disclosing party") in connection with this deed, the fact of the existence of, and the terms of this deed

will be held and kept confidential by the receiving party, will only be used by the receiving party for the purposes of implementing this deed, the Network Operating Agreement, the Project Agreement or the Network Connection Agreement (as applicable), complying with the receiving party's obligations under Applicable Laws or operating the Transmission System, the Customer's Facilities or Shared Assets 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 15.1 does not apply to:

- (a) **Assignee or novatee:** disclosure to or use by a bona fide intending assignee or novatee of the receiving party upon obtaining a similar undertaking of confidentiality from such intending assignee or novatee;
- (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 or is otherwise bound by confidentiality obligations to the disclosing party;
- (c) **Professional consultants:** disclosure to or use by any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants (which may include professional obligations of confidentiality);
- (d) **Banks etc.:** disclosure to or use by any bank or financial institution from whom the receiving party is seeking to obtain finance or their professional advisers, upon obtaining a similar undertaking of confidentiality from such bank or institution or professional advisers;
- (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 a party or 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 deed 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 requires the information for the purposes of this deed or for the purpose of advising the receiving party in relation to this deed, 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) **Financing, investment or disposal:** 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 existing or proposed financing arrangements, an existing or proposed investment in that party or a disposal of that party's assets, or the actual or proposed disposal or transfer of any issued shares in relation to that party or the issuance of any new shares in relation to that party upon obtaining a similar contractual undertaking of confidentiality;
- (l) **Modelling:** disclosure, use or reproduction by Transgrid 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*, but

not including information provided in accordance with clauses S5.2.4(a), (b)(5) and (b)(6) of the Rules;

- (m) **Compliance:** disclosure by Transgrid 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;
- (n) **Related entities:** in the case of:
 - (i) Transgrid, disclosure to or use by any owner or lessee of any assets comprising any part of the Transmission System; or
 - (ii) any party, disclosure to or use by Transgrid or the Shared Assets Provider but only to the extent that such disclosure or use is necessary for the purposes of the operation of the Shared Assets;
- (o) **Transgrid:** disclosure to or use by Transgrid for the purposes of the Network Operating Agreement;
- (p) **Shared Assets Provider:** disclosure to or use by the Shared Assets Provider for the purposes of a Network Operating Agreement to which the Shared Assets Provider is a party; and
- (q) **Connection Application Process:** Transgrid may disclose the details of special protection schemes and other technical details that apply to the Customer's Facilities or the Shared Assets to other Network Service Providers and connection applicants for the purposes of the connection application process set out in Chapter 5 of the Rules where that disclosure is in accordance with *good electricity industry practice*

15.2 Associates and other persons

Each party will be responsible for ensuring that:

- (a) its Associates who are at any time in possession of confidential information of a kind referred to in clause 15.1 will observe and comply with clause 15.1; and
- (b) any person who is not an Associate to whom it discloses confidential information under clause 15.1(a), 15.1(b), 15.1(c), 15.1(d), 15.1(i), 15.1(k), 15.1(n), 15.1(o) or 15.1(p) is aware of the confidential nature of the information and must ensure that such persons hold that information in confidence,

and will accordingly be responsible for the acts or omissions of such persons.

15.3 Compulsory Disclosure

If a party to this deed 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 15.1 or otherwise intends to disclose confidential information pursuant to clause 15.1(e), 15.1(g), 15.1(h), 15.1(i), 15.1(l) or 15.1(m) to a third party, then, to the extent that it is legally able to do so, that party must give notice thereof as soon as is reasonably practicable to the other parties (including details of the confidential information to be disclosed and the third party to whom it is to be disclosed).

16. INTELLECTUAL PROPERTY RIGHTS

- (a) All Intellectual Property Rights in information, documents and materials created or provided by a party for the purposes of the performance of this deed will be owned by and vest in that party.
- (b) All Intellectual Property Rights which exist prior to the Execution Date shall not be subject to any change in ownership as a result of the operation of this deed.
- (c) Each party grants to each other party a perpetual, irrevocable, non-exclusive, royalty free licence to use any Intellectual Property Rights referred to in clause 16(a) for the purposes of carrying out the Project or the performance of this deed.

- (d) Each of the Customer and the Shared Assets Provider:
 - (i) indemnify and save 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 deed, such Intellectual Property has been furnished or licensed to Transgrid by the Customer or the Shared Assets Provider; and
 - (ii) 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 which are brought against Transgrid or its Associates in respect of any such actual or alleged infringement which are brought against Transgrid or its Associates. Transgrid will notify the Customer or the Shared Assets Provider (as applicable) as soon as practicably possible after the date on which any such actions, proceedings, costs, claims or demands become known to Transgrid.

17. DISPUTE RESOLUTION

17.1 Rules Disputes

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

- (a) relates to the obligations of any 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.

17.2 Other Disputes

- (a) A reference in this clause 17 to a party or parties refers only to those parties that are involved in the relevant dispute.
- (b) If a dispute arises between the parties under or in relation to this deed which is not required in accordance with clause 17.1 to be resolved in accordance with clause 8.2 of the Rules, a party may give the Senior Manager of the other parties a notice specifying the matters in dispute (a **notice of dispute**).
- (c) If after a period of 15 Business Days after the referral to the Senior Managers in accordance with clause 17.2(a) (unless otherwise extended by the parties), the Senior Managers have not been able to resolve the dispute then any party may, by notice in writing to the other parties, require the dispute to be determined by an Expert. To avoid doubt, this clause 17 is not a reference to arbitration.

17.3 Agreement to Appoint an 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 to the dispute must bear an equal portion of the costs of the Expert and associated disbursements (including room hire) for the full duration of the Expert's appointment under this clause 17.3.
- (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 any 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 after the delivery of such notice, then:

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

17.4 Expert Determination

If any matter must be determined by the Expert in accordance with this clause 17, then the parties to the dispute must continue to perform their obligations under this deed while the dispute is being resolved.

17.5 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 of 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; and
- (f) the Expert will use its reasonable endeavours to notify the parties of its determination within 35 Business Days of the reference to the Expert.

17.6 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 17 (and if required by an Expert appointed under this clause 17, the parties will enter into an agreement or deed with the Expert agreeing that this clause 17.6 applies and binds them in relation to the matters referred to the Expert).

17.7 Parties to Provide Information

The parties must comply with all reasonable requests by the Expert appointed in accordance with this clause 17 for information relating to the matters giving rise to its appointment.

17.8 Parties Bound by Determination

On notification by the Expert of the Expert's determination under clause 17.5(f) the parties are bound by that determination, except in the existence of fraud or manifest error.

17.9 Urgent Interlocutory Relief

This clause 17 does not prevent any 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.

18. COMMUNICATIONS AND NOTICES

18.1 Written Notices

All communications under or in connection with this deed must be:

- (a) in writing;
- (b) addressed to the relevant party in accordance with the address details provided in Schedule 3;
- (c) signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (d) delivered or posted by prepaid post to the address, sent to the email address of, the addressee in accordance with Schedule 3.

18.2 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.

18.3 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 in electronic form will be deemed to have been received when the addressee's email system logs the email message as having been received.
- (d) If a communication is received on a day which is not a Business Day or after 5.00 pm local time where it is received on a Business Day, it is taken to be received on the next Business Day.

19. ASSIGNMENT

19.1 General prohibition of Assignment

Subject to this clause 19, each party's rights and obligations under this deed are personal to it and no party may assign, novate or otherwise transfer any of its rights or obligations under this deed (an **Assignment**) without the prior written consent of each other party, which may not be unreasonably withheld, delayed or given subject to unreasonable conditions.

19.2 Withholding consent

A party (a "**continuing party**") may only withhold its consent to an Assignment by another 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 deed; and/or
- (b) the assignor does not comply with clause 19.3 (as applicable),

provided that it will not be reasonable for any party to withhold its consent to the Assignment by Transgrid to a proposed assignee which has been or will at the time the Assignment is effective be registered as a Network Service Provider in respect of a substantial part of the Transmission System (which in any case must include the Connection Assets).

19.3 Assignment requirements

- (a) The Customer and Shared Assets Provider may only Assign its rights and obligations under this deed if:
 - (i) it is an Assignment of all of its rights and obligations under this deed;
 - (ii) in the case of an Assignment by the Customer, at the same time it also assigns, transfers or disposes of (its interest in) the Customer's Facilities, and its rights and obligations under the Project Agreement and the Network Connection Agreement to the proposed assignee.
 - (iii) in the case of an Assignment by the Shared Assets Provider, at the same time it also assigns, transfers or disposes of (its interest in) the Shared Assets and its rights and obligations under the Network Connection Agreement, Network Operating Agreement and this deed to the proposed assignee.
- (b) If the Customer or the Shared Assets Provider proposes to Assign all its rights and obligations under this deed in accordance with clause 19.3(a), the Customer or Shared Assets Provider (as applicable) must:
 - (i) prior to such Assignment, notify each other party that it intends to assign its rights under this deed;
 - (ii) have the onus of establishing the applicable requirements specified in clause 19.2 (as relevant) to the reasonable satisfaction of each other party; and
 - (iii) ensure that the proposed assignee enters into a deed in form and substance satisfactory to Transgrid under which the proposed assignee assumes all of the obligations and liabilities of the assignor under this deed including those arising prior to the Assignment and not then performed or discharged.

19.4 Transgrid Assignment to Related Bodies Corporate

- (a) Transgrid may from time to time, without the other parties' consent, Assign any or all of its rights or obligations under this deed to a Related Body Corporate of Transgrid if at the time the Assignment takes effect Transgrid also assigns, novates or otherwise transfers its rights and obligations under the Project Agreement, the Network Connection Agreement, the Network Operating Agreement to the same Related Body Corporate.
- (b) Transgrid must provide each other party with written notice of an Assignment which occurs pursuant to clause 19.4(a) as soon as practicable after the Assignment.
- (c) Where Transgrid proposes to Assign any of its rights or obligations under this deed in accordance with clause 19.4(a), each other party must do all such things and sign all such documents as may be required by law or reasonably required by Transgrid to give effect to such Assignment.

19.5 Security Interests

- (a) Subject to clause 19.5(b) and 19.5(c), no party is permitted to create or permit to exist any Security Interest over its rights under this deed except with the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).
- (b) Transgrid may grant Security Interests over this deed where such Security Interest is granted to financiers (or any trustee or agent appointed by them) for the purposes of financing any of Transgrid's business operations.
- (c) The Customer may grant Security Interests over its rights under this deed where such Security Interest is granted to financiers (or any trustee or agent appointed by them) or for the purpose of financing any of the Customer's Facilities.

19.6 Successors

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

19.7 Transfer at expiry or early termination of Transmission Network Lease

- (a) On written notice to the other parties, Transgrid may on and from the expiry or early termination of the lease between MHC as lessor and NSW Electricity Networks Assets Pty Limited as trustee of the NSW Electricity Network Assets Trust as lessee dated 16 December 2015 ("**Transmission Network Lease**") assign, novate or transfer all of its rights and obligations under this deed to MHC (or its nominee) without the other parties' consent.
- (b) Such assignment, novation or transfer will be effected by written notice from Transgrid to each other party, irrespective of whether the parties execute an assignment or novation deed.

20. MISCELLANEOUS

20.1 Governing Law

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

20.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of 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.
- (b) 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 paragraph (a) of this clause.

20.3 Amendment

This deed may only be amended by another deed executed by all of the parties to this deed.

20.4 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 deed 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 deed.
- (b) Any waiver or consent given by any party under this deed 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 deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

20.5 Further acts and documents

Each party must promptly do all 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 deed.

20.6 Execution and Counterparts

- (a) This deed as well as modifications to it may be executed electronically (including by electronic signature or by email of a signed document in PDF or scanned format) 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 agreement.
- (b) Each signatory confirms that their signature appearing in the document, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

- (c) A party who has executed a counterpart of this deed may exchange that counterpart with another party by emailing 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 email, 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. The parties agree and intend that such an exchange by email in PDF or scanned format shall bind the party so signing with the same effect as though the signature were an original signature.
- (d) Where a person signs this deed electronically, the electronic signature is an effective binding signature, and the electronic document containing it can be an effective electronic counterpart of this deed. In addition, the person intends that any print-out of the signature by a party will also constitute an effective original signature, so that the print-out will also be an executed original counterpart of the deed.
- (e) The parties to this document acknowledge and agree that:
 - (i) they consent to the use of the electronic signatures and the deed proceeding by electronic means; and
 - (ii) they intend to be legally bound by the terms of the deed on which the electronic signature(s) has been placed.

20.7 No Representation or Reliance

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

20.8 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

20.9 Entire Agreement

To the extent permitted by law, this deed 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 deed.

20.10 Consents

A consent required under this deed from a party may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

20.11 Sub-Contracting

Transgrid may engage contractors to perform its obligations under this deed, provided that the engagement of such contractors will not release Transgrid from its obligations under this deed.

20.12 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

20.13 Stamp Duties

The Customer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnifies Transgrid against any liability arising from failure to comply with clause 20.13(a), including any liability to reimburse any other party for such amounts; and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

20.14 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy. Failure by a party to exercise, or a delay in exercising a right, power or remedy does not prevent its exercise.

20.15 Remedies cumulative

The rights, powers and remedies provided in this deed are cumulative with and are not exclusive of the rights, powers or remedies provided by law independently of this deed.

20.16 Publicity

A party may not make press or other announcements or releases relating to this deed and the transactions the subject of this deed without the approval of the other parties 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.

20.17 Severance

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

20.18 Relationship between the parties

Nothing contained or implied in this deed creates any partnership, agency or trust between the parties, and no party has any authority to bind another party in any way.

20.19 Inconsistency between deed and Rules

- (a) If any terms of this deed 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 deed 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 deed to the extent of the inconsistency.
- (b) If this deed 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.
- (c) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency between Applicable Laws, this deed and other agreements relating to the Project:
 - (i) Applicable Laws, including the Rules;
 - (ii) Network Connection Agreement;
 - (iii) Project Agreement;

- (iv) this deed;
- (v) Network Operating Agreement; and
- (vi) other agreements relating to the Project.

20.20 Acknowledgement of Rules obligations

The parties acknowledge that, notwithstanding clause 20.19, the Rules include a number of obligations which relate to this deed and that, except as otherwise expressly provided for, this deed is not intended to affect such Rules obligations.

21. PERSONAL PROPERTY SECURITIES ACT

If a party determines that this deed (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) (**PPSA**) (or any similar legislation) (**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 (**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.

22. TRUSTEE'S CAPACITY AND LIABILITY

22.1 Limitation of Liability

Despite any other provision of this deed:

- (a) The Trustee enters into this deed in its capacity as trustee of the Trust and in no other capacity;
- (b) subject to clause 22.1(d), the recourse of the Customer. Shared Assets Provider or any other person to the Trustee in respect of any of the Trustee's obligations and liabilities under or in connection with this deed 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 22.1(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 deed because the Trustee cannot obtain that money under the indemnity referred to in clause 22.1(b), the Customer or the Shared Assets Provider cannot bring proceedings against the Trustee in its personal capacity to recover that money; and
- (d) clauses 22.1(b) and 22.1(c) do not apply to any obligation or liability of the Trustee under or in connection with this deed 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.

22.2 Contribution to Liability

An act or omission of Transgrid (including acts and omission that result in Transgrid not complying with any obligation or not paying any liability under or in connection with this deed does not constitute fraud or breach of trust by Transgrid for the purposes of this clause 22 to the extent to which that act or omission was caused or contributed to by any act or omission of the Customer or the Shared Assets Provider.

22.3 Trustee warranties

The Trustee warrants to each other party that, on the Execution Date:

- (a) the Trust has been duly established;
- (b) it is the sole trustee of the Trust;
- (c) it has been validly appointed as trustee of the Trust and no action has been taken, or to its knowledge has been proposed, to remove it as trustee of the Trust;
- (d) it has power under the trust deed which establishes the Trust to enter into this deed and comply with its obligations under this deed;
- (e) it has taken all necessary action to authorise the execution of this deed and performance of its obligations under this deed (including any authorisation required under the trust deed which establishes the Trust);
- (f) it has a right to be indemnified out of the Trust assets in respect of obligations incurred by it under this deed except to the extent:
 - (i) the Trustee has acted beyond power or improperly in relation to the Trust; or
 - (ii) as a result of the Trustee's fraud or breach of trust;
- (g) no action has been taken, or to its knowledge has been proposed, to terminate the Trust; and
- (h) entry into this deed is a valid exercise of its powers under the trust deed which establishes the Trust for the benefit of the beneficiaries of the Trust.

22.4 Trustee obligations

The Trustee must not, without the consent of each other party, do anything which:

- (a) reduces the Trustee's right of indemnity from the assets of the Trust in respect of the Trustee's obligations under this deed;
 - (i) effects or facilitates the termination of the Trust; or
 - (ii) effects or facilitates the resettlement of the assets of the Trust.
- (b) The Trustee must exercise its right of indemnity under the trust deed which establishes the Trust to the assets of the Trust in respect of liabilities it incurs to another party under this deed.

Executed as a deed on the Execution Date

Each attorney executing this deed 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 **NSW Electricity Networks Operations Pty Limited** (ACN 609 169 959) as trustee for **NSW Electricity Networks Operations Trust** (ABN 70 250 995 390) in accordance with section 126 of the *Corporations Act 2001* (Cth) in accordance with section 126 of the *Corporations Act 2001* (Cth) by its attorneys under power of attorney:

_____ Signature of Attorney	_____ Signature of Attorney
_____ Name and position of Attorney (BLOCK LETTERS)	_____ Name and position of Attorney (BLOCK LETTERS)
_____ Date	_____ Date

Executed for and on behalf of **[Customer Name]** (ABN [Customer ABN]) in accordance with section 127 of the *Corporations Act 2001* (Cth):

_____ Signature of Director	_____ Signature of Director / Company Secretary
_____ Name of Director	_____ Name of Director / Company Secretary
_____ Date	_____ Date

Executed for and on behalf of **[Shared Assets Provider]** (ABN [Shared Assets Provider ABN]) in accordance with section 127 of the *Corporations Act 2001* (Cth):

_____ Signature of Director	_____ Signature of Director / Company Secretary
_____ Name of Director	_____ Name of Director / Company Secretary
_____ Date	_____ Date

Schedule 1 – Technical Details

[Drafting note: To be updated and confirmed on a project by project basis, including information required to be provided to Transgrid prior to the Shared Assets Commissioning Commencement Date.]

1. Connection Assets

[Insert]

2. Shared Assets

[Insert]

Schedule 2 – Senior Managers

[Drafting note: To be updated and confirmed on a project by project basis.]

Schedule 3 – Address Details

[Drafting note: To be updated and confirmed on a project by project basis.]