

Project Agreement (Negotiated) – [Project name (Load)]

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] (ABN [Customer ABN])

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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**")

[insert name of Customer, including any trust arrangements] (ABN [insert ABN of Customer]) of [insert address of Customer] (the "**Customer**")

Background

- A. Transgrid is required to *connect* the Customer's Facilities to its Transmission System in accordance with the Rules.
- B. Certain works will need to be completed by Transgrid in order to enable Transgrid to *connect* the Customer's Facilities to its Transmission System.
- C. The Customer has requested Transgrid and Transgrid has agreed to undertake the Connection Work in accordance with the terms and conditions of this agreement.

The parties agree

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears.

"ACCC" means the Australian Competition and Consumer Commission.

"Acceptable Credit Rating" means in respect of an entity, a long term issuer credit rating of:

- (a) at least A- in respect of unsecured obligations of that entity, as rated by Standard & Poor's or the equivalent long term credit rating from Moody's Investors Service or Fitch Ratings; or
- (b) if Standard & Poor's, Moody's Investors Service and Fitch Ratings no longer determines credit ratings, an equivalent rating or better from an internationally recognised credit ratings agency with at least an equivalent reputation.

"Acceptance Tests" has the meaning given to that term in Item 2 of Schedule 2.

"Administration Fee" means:

- (c) in relation to any Preliminary Work (other than any Preliminary Work which is related to obtaining the Easements), an amount equal to 10% of the aggregate of the Sub-Contractor's Costs and the Consultant's Fees for that Preliminary Work;
- (d) in relation to the calculation of any Variation Costs, an amount equal to 10% of the aggregate of the Sub-Contractor's Costs and the Consultant's Fees for that portion of the Connection Work to which those Variation Costs relate;
- (e) in relation to the calculation of the costs referred to in clause 7.12(a)(iii), an amount equal to 10% of the aggregate of the Sub-Contractor's Costs and the Consultant's Fees for accelerating the Connection Work; and
- (f) in relation to the calculation of the costs referred to in clause 16.12(b)(ii), an amount equal to 10% of the aggregate of the Sub-Contractor's Costs and the Consultant's Fees for all Connection Work up to the date of termination; and
- (g) in relation to the calculation of any costs that are reasonably incurred in relation to the undertaking of any Termination Work, an amount equal to 10% of the aggregate of the Sub-Contractor's Costs and the Consultant's Fees for that work.

"AEMC" means the Australian Energy Market Commission.

"AEMO" means the Australian Energy Market Operator.

"AER" means the Australian Energy Regulator.

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

"Approved Bank" means an authorised deposit taking institution (as that term is used in the Banking Act 1959 (Cth)), or other financial institution, either as must be approved by Transgrid.

"Approved Digital Bank Guarantee Platform" means a digital bank guarantee platform approved by Transgrid.

"APRA" means the Australia Prudential Regulatory Authority.

"Asset Stranding Charge" has the meaning given to that term in the Connection Agreement.

"Assignment" has the meaning given to that term in clause 22.1.

"Associates" means, in relation to a person:

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

"Authorisation" means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, declaration, permit, ruling, statutory required policy of insurance, authority or exemption from (and any renewal or variation of any of them), by or with an Authority, including any plans, strategies or protocols required to be approved and implemented under any such Authorisation; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if an Authority intervenes or acts in a way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action,

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

"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.

"Charges" means the charges and other amounts payable by the Customer under the Connection Agreement from time to time.

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

"Commencement Date" means [the Execution Date] / [the date on which the conditions precedent under clause 1A.1(b) have been satisfied in accordance with this Agreement].

[Drafting note: This definition will be updated depending on whether Transgrid has agreed to a 'Notice to Proceed' regime – see clause 1A.]

"Connection Agreement" means the connection agreement entered into between the Customer and Transgrid on or about the Execution Date.

"Connection Assets" means the assets described as such in the Scope of Works.

[Drafting note: This definition may need to be updated depending on the nature of Transgrid's works, including whether Upstream Works (i.e. modifications to the existing Transmission System itself) are required to facilitate the Customer's connection.]

"Connection Point" means a point at which power flowing to or from the Customer's Facilities can be isolated from the *transmission network*, as described in the Connection Agreement.

"Connection Progress Claim Amount" has the meaning given to that term in clause 14.1(b)(ii).

"Connection Progress Claims Previously Paid" means the aggregate of all Connection Progress Claim Amounts paid by the Customer in accordance with clause 14.1.

"Connection Site" means that portion of the Land on which some or all of the Connection Assets are to be constructed and located, as shown in Schedule 4.

"Connection Variation Costs" has the meaning given to that term in clause 14.2(a).

"Connection Work" means:

- (a) all work undertaken by Transgrid and its Associates (whether before or after the Commencement Date) related to the processing of the Customer's *application to connect*, the preparation of Transgrid's offer to connect, and the preparation, negotiation, approval and execution of this agreement, the Connection Agreement, the Scope of Works, any relevant Preliminary Agreements, Easements, Licences and any other document which is required to be prepared under the terms of this agreement or any of the foregoing documents;
- (b) the design, procurement, supply, construction, commissioning and project management by Transgrid and its Associates of the Connection Assets and any other work which is described as being part of the Connection Work in the Scope of Works and includes the Upstream Works and (where applicable) any variations or additions to that work under clause 7.6, 7.9 or 12.1;
- (c) any Preliminary Work (other than Preliminary Work covered by limb (a) above) undertaken by Transgrid and its Associates; and
- (d) anything else done by Transgrid and its Associates in relation to the satisfaction of any Preconditions.

"Consent Deed" has the meaning given to that term in clause 22.8.

"Construction Credit Support" has the meaning given to that term in clause 5.1(a).

"Construction Program" means the program for the performance of the Connection Work set out in Schedule 3 as that program is:

- (a) updated by Transgrid from time to time in accordance with clause 9; and
- (b) adjusted by Transgrid from time to time in accordance with clause 7.8 or 12.1.

"Consultant's Fees" means all costs reasonably and necessarily incurred by Transgrid in relation to the engagement of any consultants, and the provision of any services by those consultants, in relation to the performance of the Connection Work and (where applicable) any Termination Work, excluding any Sub-Contractor's Costs.

"Corrective Action Plan" means a document setting out:

- (a) a feasible, reasonable and practical program to cure a Relevant Default;
- (b) the relevant Cure Period; and
- (c) specifications of tests which are reasonably necessary to show that the Relevant Default has been cured.

"CPA" means the Connection Process Agreement between the parties dated *[insert date]*.

"Credit Support Provider" has the meaning given to that term in clause 5.2.

["Crown Lands" has the meaning given to that term in clause 26.8(a)(i).]

[Drafting note: To be included if there are Crown Land parcels within the Land for which access is required.]

"Cure Period" means in respect of a Relevant Default, the period of time specified in the Corrective Action Plan to:

- (a) cure the Relevant Default; and
- (b) demonstrate such cure to the reasonable satisfaction of the non-defaulting party in accordance with the tests (if any) set out in the Corrective Action Plan.

"Customer's Facilities" means:

- (a) all *facilities* that:
 - (i) will be directly or indirectly *connected* to the Transmission System at the Connection Point;
 - (ii) will be located on the Customer's side of the Connection Point; and
 - (iii) are described in Schedule 1; and
- (b) all plant and equipment related to the *facilities* described in limb (a) above, whether or not owned, controlled or operated by the Customer (including any *dedicated connection assets*),

excluding the Connection Assets.

"Customer's Project" means the project for which the Connection Work will be performed.

"Customer's Representative" means the person described by that title in Schedule 5.

"Customer's Senior Manager" means the person described by that title in Schedule 5.

"Customer's Variation" has the meaning given to that term in clause 7.9(c).

"Customer's Work" means those activities and items of work (other than the Connection Work) identified in the Scope of Works or as otherwise agreed in writing between the Customer and Transgrid which must be undertaken and completed by, on behalf of or for the Customer so that:

- (a) the Connection Work or an identified component of the Connection Work can be completed in accordance with the Scope of Works and Construction Program; and
- (b) the Customer's Facilities can be connected to Transgrid's existing Transmission System via the Connection Assets,

including any work which the Scope of Works states must be undertaken and completed by the Customer in accordance with the Scope of Works and Construction Program so as to allow Transgrid to undertake and complete the Connection Work or an identified component of the Connection Work.

"Customer Variation" has the meaning given to that term in clause 7.9(c).

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

"Date for Practical Completion" means the date on which Practical Completion is scheduled to be achieved as set out in the Construction Program and includes (where applicable) any extension to that date under clause 12.1.

"Date of Final Commissioning" means the date on which Final Commissioning is achieved.

"Date of Practical Completion" means the date on which Practical Completion is achieved.

"Default" means a failure to observe a provision of this agreement.

"Default Notice" has the meaning given to that term in clause 16.1.

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

"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 Transgrid or the Customer or relates directly or indirectly to the design, construction, operation or maintenance of the Transmission System (including the Connection Assets) or the Customer's Facilities.

"Easement Costs" means all costs (if any) incurred by Transgrid and its Associates in relation to obtaining, varying, completing and/or registering the Easements in accordance with clause 26.2 and the Scope of Works (and includes any Third Party Owner's Costs and any Other Expenses in respect of the Easements).

"Easements" means the easements which are required to be granted to, or obtained by, MHC in accordance with clause 26.2.

"Eligible Delay" has the meaning given to that term in clause 12.1(g).

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

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

"Excepted Risk" has the meaning given to that term in clause 7.6(a).

"Excepted Risk Notice" has the meaning given to that term in clause 7.6(b)(viii).

"Excepted Risk Variations" has the meaning given to that term in clause 7.6(b).

"Excepted Risk Variations Proposal" has the meaning given to that term in clause 7.6(b)(xi).

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

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

"Facility Deficiency" has the meaning given to that term in clause 10.3(a)(i).

"Final Commissioning" means that stage after Practical Completion of the Connection Work when the Customer's Facilities are ready to be connected to the Transmission System via the Connection Assets and energised following the successful completion of the joint commissioning and testing process referred to in clauses 7.10 and 10.2.

"Financial Close" means financial close occurring under the Customer's relevant debt and/or equity funding arrangements for the Customer's Project.]

[Drafting note: This definition will be included if the Transgrid has agreed to a 'Notice to Proceed' regime – see clause 1A.]

"Financial Cure Period" has the meaning given to that term in clause 16.5(a).

"Financial Default" means a failure by one party to pay to the other party an amount due to the other party under this agreement at the due time for that payment, including any failure to provide the Construction Credit Support in whole or in part in accordance with clause 5 and Schedule 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.

"Fitch Ratings" means Fitch Ratings Inc.

"Force Majeure Event" has the meaning given to that term in clause 15.1(a).

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

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

"GST Amount" has the meaning given to that term in clause 14.5(d).

"Inclement Weather Conditions" means the presence of climatic conditions by virtue of which it is either not reasonable or not safe for those personnel of Transgrid or its Associates who are exposed to such conditions or the effect of such conditions to continue performing works whilst the same prevail.

"Increased Connection O&M Costs" means the higher costs incurred (or expected to be incurred) by Transgrid in providing any of the Services (as compared to the level of costs which Transgrid would have incurred (or would have expected to incur) in providing the relevant Services if the Relevant Event had not occurred) over the term of the Connection Agreement.

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

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

"Insurance Cover" means the insurance cover Transgrid needs to maintain during the term, as set out in clause 23.1.

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

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

"Land" means the land described in Schedule 4.

"Landowner Agreements" has the meaning given to that term in clause 26.7.

"Latent Conditions" means any physical conditions on the Land affecting the performance of the Connection Work, including man-made objects (for example the presence of other services), the effects of Inclement Weather Conditions, poor soil conditions, rocks or other sub-surface or surface conditions) which differ materially from the conditions which should reasonably have been anticipated by Transgrid as at the Commencement Date, having regard to:

- (a) any information provided by the Customer to Transgrid prior to the Commencement Date;
- (b) Transgrid's preliminary assessment of the surface conditions in relation to the Land prior to the Commencement Date; and
- (c) the assumptions in the Scope of Works.

"Licences" means all licences or approvals to enter and place any Connection Asset or part of a Connection Asset on or over any land or equipment belonging to a third party or Authority (including Crown Lands NSW in respect of any Crown land forming part of the Land), which are necessary to be obtained and held by MHC or Transgrid in order for Transgrid to install, complete and maintain that Connection Asset or that part of that Connection Asset.

"Licence Costs" means all costs reasonably and necessarily incurred by Transgrid and its Associates in relation to:

- (a) acquiring the Licences in accordance with this agreement; and
 - (b) the exercise of MHC's rights under those Licences prior to the Date of Practical Completion,
- and includes any Third Party Owner's Costs and any Other Expenses in respect of the Licences.

"Line Route" means the proposed route of the Easement granted to MHC for the new transmission line as referred to in clause 26.2(a)(i), indicatively shown in Schedule 4.

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

"Modern Slavery" includes any conduct which constitutes modern slavery under any law, including without limitation slavery, human trafficking, servitude, forced labour and forced marriage.

"Modern Slavery Laws" means any of the following:

- (a) the *Modern Slavery Act 2018* (Cth);
- (b) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth); and
- (c) any other Applicable Laws or legal requirements relating to Modern Slavery.

"Moody's Investors Service" means Moody's Investors Service Pty Ltd.

"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 Service Provider" has the meaning given to that term in the Rules.

"Notice to Proceed" means a written notice given by the Customer to Transgrid which directs Transgrid to proceed with the Connection Work and expressly states it is given under clause 1A.2.

"Notice to Proceed Deadline" means the date that is 20 Business Days after the Execution Date, or such later date as may be agreed by the parties in writing.]

[Drafting note: These definitions will be included if Transgrid has agreed to a 'Notice to Proceed' regime – see clause 1A.]

"Operational Credit Support" means the "Credit Support" as defined in the Connection Agreement.

"Other Expenses" means:

- (a) in relation to an Easement, any compensation payable to the relevant Third Party Owner on account of unavoidable damage to crops or loss of use of land caused by the undertaking of the Connection Work in accordance with the Scope of Works (and in particular the Construction Program) and for which compensation has not already been provided for by Transgrid or the Customer;
- (b) in relation to an Easement or a Licence, all registration fees, productions fees, stamp duty and other disbursements which may be payable in relation to the completion and registration of the Easement or Licence, including Third Party Owner's legal costs; and
- (c) in relation to an Easement, the cost of any required remediation in relation to any land owned by a Third Party Owner as a result of the undertaking of the Connection Work in accordance with the Scope of Works,

other than any costs which are already being recovered as Transgrid's Costs, Consultant's Fees, Third Party Owner's Costs, Sub-Contractor's Costs, Administration Fees or Out of Pocket Expenses.

"Other Transgrid Customer" has the meaning given to that term in the Connection Agreement.

"Out of Pocket Expense" means any amount that is:

- (a) payable by Transgrid or its Associates to a third party;
- (b) related to the performance of the Connection Work and (where applicable) any Termination Work; and
- (c) not otherwise being recovered as Consultant's Fees, Sub-Contractor's Costs, Transgrid's Costs, Easement Costs, Licence Costs or Administration Fees,

and includes application fees, registration fees, deposits, break costs, cancellation fees, financing costs, and any other 'out of pocket' expenses which are reasonably incurred by Transgrid in relation to the performance of the Connection Work and (where applicable) any Termination Work.

"Outage Event" means where:

- (a) Transgrid is prevented by an Authority from taking a network outage or is unable to procure an Authority's agreement to take an outage at the time and for the duration proposed by Transgrid;
- (b) an Authority withdraws its agreement to any network outage;
- (c) an Authority requires Transgrid to recall the network elements which are affected by a network outage before the end of the time period which was nominated for that outage; or
- (d) Transgrid determines (acting reasonably and applying *good electricity industry practice*) that a network outage cannot be taken at the time that was originally scheduled for that network outage (including where Transgrid is acting as an Authority for the purposes of this agreement),

other than as a result of a breach of this agreement by Transgrid.

"Payment Commencement Date" has the meaning given to that term in the Connection Agreement.

"Performance Default" means:

- (a) a breach by the Customer of its obligations under this agreement which causes, or is reasonably likely to cause, a material adverse effect to Transgrid; or
- (b) a breach by Transgrid of its obligations under this agreement which causes or is reasonably likely to cause, a material adverse effect to the Customer,

excluding any Financial Defaults.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Practical Completion" means the circumstance where the Connection Work has been completed to the stage where Transgrid has reasonably demonstrated to the Customer that:

- (a) the construction and commissioning of the Connection Assets has been completed in accordance with this agreement (including the Scope of Works), excluding, for the avoidance of doubt, the joint commissioning and testing referred to in clauses 7.10 and 10.2;
- (b) the Connection Assets are, or are capable of, operating and are capable of providing the Services to the Customer for the Customer's Facilities in accordance with the requirements of the Connection Agreement and this agreement; and
- (c) the Connection Assets are fit for their intended purpose as described in this agreement (including the Scope of Works),

as evidenced by the successful completion of the Acceptance Tests in accordance with Item 2 of Schedule 2.

"Preconditions" means the preconditions (if any) set out in Item 3 of Schedule 2.

"Preliminary Agreement" means the CPA [and the Preliminary Works Underwriting Agreement].

[Drafting note: To be included if the parties have agreed a Preliminary Works Underwriting Agreement (PWUA).]

"Preliminary Costs" means all costs reasonably incurred, and all other amounts paid or payable, by Transgrid or its Associates and Related Bodies Corporate prior to the satisfaction of all of the Preconditions, including, in relation to any Preliminary Work and any Connection Work undertaken at Transgrid's discretion under in accordance with clause 2.1(d)(ii), all:

- (a) Sub-Contractor's Costs;
- (b) Consultant's Fees;
- (c) Transgrid's Costs (to the extent that those costs have not already been included within the Sub-Contractor's Costs or the Consultant's Fees);
- (d) Licence Costs;
- (e) Easement Costs;
- (f) Administration Fees;
- (g) Out of Pocket Expenses; and
- (h) any other costs or amounts which are reasonably incurred or are payable by Transgrid, its Associates, or the Customer under or in relation to a Preliminary Agreement,

[including 'Preliminary Costs' (as defined in the PWUA)] but excluding any amount or cost which:

[Drafting note: To be included if the parties have agreed a PWUA.]

- (i) relates to work undertaken prior to the Commencement Date; and

- (j) has been separately invoiced by Transgrid and paid by the Customer under the terms of any Preliminary Agreement.

"Preliminary Excepted Risk Variations Proposal" has the meaning given to that term in clause 7.6(b)(xi).

"Preliminary Work" means anything done by Transgrid and its Associates pursuant to the terms of a Preliminary Agreement.

"Progress Claim" has the meaning given to that term in clause 14.1(a).

"Progress Claim Date" has the meaning given to that term in clause 14.1(a).

"Project" means the design and delivery of the Connection Work in accordance with this agreement.

"Project Consultation Group" has the meaning given to that term in clause 11(a).

["Public Roads" has the meaning given to that term in clause 26.8(a)(ii).]

[Drafting note: To be included if there are Public Road parcels within the Land for which access is required.]

["PWUA" means the agreement between Transgrid and the Customer known as the "Preliminary Works Underwriting Agreement" and dated *[insert date]*.]

[Drafting note: To be included if the parties have agreed a Preliminary Works Underwriting Agreement (PWUA).]

"Rectification Period" has the meaning given to that term in clause 2.1(f).

"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 limb (b) below); and
- (b) otherwise in the case of any party or entity has the meaning given in the *Corporations Act 2001* (Cth), but on the basis that "subsidiary" has the meaning given to Subsidiary in this agreement and that "body corporate" includes a Fund.

"Relevant Authority" means the council of the city, municipality or shire in which the Land is situated and every other governmental, statutory or other authority whose approval must be obtained to the Survey Plan before the Survey Plan may be lodged for registration at NSW Land Registry Services as a deposited plan.

"Relevant Default" has the meaning given to that term in clause 16.2.

"Relevant Event" means:

- (a) any Excepted Risk Variation under clause 7.6;
- (b) any Customer Variation under clause 7.9; or
- (c) any required variation to the Connection Work, the Scope of Works (including a change to the constructional plant or temporary works which are required to undertake the Connection Work), the Construction Program or the manner in which the Connection Work will be undertaken (as compared to the manner referred to in this agreement (including the Scope of Works)) as a result of an Eligible Delay under clause 12.1.

"Representative" means either the Customer's Representative or Transgrid's Representative.

"Required Date" means, in relation to a Precondition, the date set out in Item 3 of Schedule 2 for the satisfaction of that Precondition.

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

"Scope of Works" means the document set out in Item 1 of Schedule 2 and describing the activities and work Transgrid has agreed to undertake in relation to the connection of the Customer's Facilities to the existing Transmission System (including the construction and commissioning of the Connection Assets) as that document is amended from time to time in accordance with clause 7.6, 7.9 or 12.1.

"Security Interest" means any mortgage, charge, lien, pledge, encumbrance, title retention arrangement, assignment, security or other preferential interest including a 'security interest' as defined in the PPSA.

"Senior Managers" means the Customer's Senior Manager and Transgrid's Senior Manager.

"Separate Contractors" means any contractors engaged by the Customer to perform works on the Land concurrently with the execution by Transgrid and its Associates of the Connection Work.

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

"Services Commencement Date" means the Date of Final Commissioning.

"Settled Corrective Action Plan" has the meaning given to that term in clause 16.2(e).

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

"Sub-Contractor's Cost" means all amounts reasonably incurred by Transgrid and payable to its alliance partners, third party suppliers and other contractors of Transgrid in relation to the carrying out of the Connection Work and (where applicable) any Termination Work.

"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.

"Survey Plan" means the plan to be prepared and registered at Land Registry Services NSW identifying each of the Connection Site and Easements to the reasonable satisfaction of Transgrid and MHC, and must specify:

- (a) the final location of the Easements as contemplated by clauses 26.2(a) and 26.2(b); and
- (b) the final location of the Connection Site as contemplated by clause 26.1(b).

"Technical Obligations" means the "Technical Obligations" applying to each party, as set out in the Connection Agreement.

"Term" means the term of this agreement specified in clause 4.

"Termination Work" means all work of the type referred to in clause 16.12(a)(iv).

"Third Party Owner" means any owner of land or equipment over or in relation to which a Licence or an Easement is required for the purposes of undertaking any part of the Connection Work.

"Third Party Owner's Costs" means the final and total amount (if any) paid by Transgrid to the Third Party Owner(s) for the Easements and/or Licences which are acquired by MHC in accordance with this agreement, including any legal costs.

"Transgrid's Costs" means all of Transgrid's internal costs but excluding any Sub-Contractor's Costs, Consultant's Fees, Licence Costs, Easement Costs, Out of Pocket Expenses or Administration Fees, reasonably and necessarily incurred by Transgrid (or a Related Body Corporate) in undertaking any activities associated with the Connection Work and (where applicable) any Termination Work, calculated in accordance with the rates which would have applied to those activities at that time if they had been undertaken under a Preliminary Agreement (or in the case of any Termination Work, under the standard

Transgrid rates applying at that time) but excluding any costs that have been paid or are payable by the Customer to Transgrid under the relevant Preliminary Agreement.

"Transgrid's Representative" means the person described by that title in Schedule 5, or such other person as notified to the Customer in writing by Transgrid.

"Transgrid's Senior Manager" means the person described by that title in Schedule 5, or such other person as notified to the Customer in writing by Transgrid.

"Transmission Network Lease" has the meaning given to that term in clause 22.9.

"Transmission System" means the *connection assets* and *transmission network* 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.

"Updated Schedules" has the meaning given to that term in clause 3(b)(i).

"Upstream Works" means any work which is required to be undertaken by Transgrid in relation to its existing Transmission System in order to facilitate the connection of the Connection Assets and the Customer's Facilities to Transgrid's existing *transmission network*, which work is described in more detail in the Scope of Works.]

[Drafting note: Transgrid to confirm whether Upstream Works are required on a project by project basis. If these are required, there will be consequential amendments throughout this agreement.]

"Validity Date" means the date defined in clause 2.1(n).

"Variation Costs" means an amount (other than any amount in respect of Increased Connection O&M Costs) which is determined under clause 7.6 or 12.1 or agreed in accordance with clause 7.9(e)(i).

"WHS Legislation" means the *Work Health and Safety Act 2011* (NSW), WHS Regulation and any "Codes of Practice" made under those laws, each as amended, replaced or updated from time to time.

"WHS Regulation" means the *Work Health and Safety Regulation 2017* (NSW), as amended, replaced or updated from time to time.

1.2 Rules definitions and references

In this agreement, 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 General interpretation

In this agreement 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 agreement and references to this agreement include any schedule or attachment;
- (b) a reference to this agreement, any other agreement, deed or instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, deed, instrument or provision;
- (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 agreement 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 *Customer* in relation to the Customer's Facilities, even if the Customer is not registered or ceases to be registered as the *Customer* for the Customer's Facilities under the Rules or appoints an intermediary for the Customer's Facilities under clause 2.9.3 of the Rules; and
- (p) a reference to "\$", AUD or dollars is to Australian currency.

1.4 Relationship between Customer and Rules

- (a) The parties acknowledge that the Rules contain certain provisions which are relevant to the operation of this agreement, and which need to be incorporated into this agreement:
 - (i) to enable Transgrid to properly comply with its obligations as a registered *Network Service Provider* and *Primary Transmission Network Service Provider* under the Rules; and
 - (ii) to require the Customer to comply with various technical obligations imposed upon the Customer in relation to the operation of the Customer's Facilities under the Rules.
- (b) For the period while the Customer is not a *Registered Participant*, any provisions of Chapters 4, 5, 7 and 8 of the Rules that set out:
 - (i) rights and obligations of a *Customer* against a *Network Service Provider* and vice versa; and
 - (ii) technical and operational specifications that are relevant to the Customer's Facilities that are the subject of this agreement,

and are required for either of the purposes set out in clause 1.4(a), are incorporated into this agreement mutatis mutandis and any reference to the application of the Rules to the Customer, or the compliance by the Customer with the Rules, under this agreement will be taken to be the application of, or compliance with, those Rules referred to in this clause 1.4(b).
- (c) Any provisions that are incorporated into this agreement under clause 1.4(b) must be read and construed in accordance with the following:
 - (i) references to a *Customer* and analogous terms are to be taken to be references to the Customer as appropriate;

- (ii) references to *Non-Registered Customer*, *Transmission Customer*, *Transmission Network User* and *Network User* are to be taken to be references to the Customer as appropriate;
- (iii) any other terms relevant to the abovementioned terms must be construed accordingly; and
- (iv) to the extent the provision purports to impose an obligation on a party to:
 - A. interact in some manner with a third party;
 - B. comply with a requirement of a third party;
 - C. provide information to a third party; or
 - D. be subject to the jurisdiction of a third party,
 that requirement will have no effect.
- (d) This clause 1.4 does not affect Transgrid's obligation to comply with the Rules as a registered *Network Service Provider* and the Customer's obligation to comply with the Rules, as the case may be, as a *Registered Participant*, a *Non-Registered Customer*, a *Transmission Customer*, a *Transmission Network User* and/or a *Network User*.
- (e) In addition, in order to interpret the above provisions, the following provisions of the Rules apply to the extent necessary to give meaning to any provisions incorporated into this agreement in accordance with clause 1.4(b):
 - (i) Clause 4.1.1;
 - (ii) Clause 5.1.2;
 - (iii) Clause 7.1.1;
 - (iv) Clause 8.1.3;
 - (v) Chapter 9, to the extent that it modifies any provisions incorporated into the agreement in accordance with clause 1.4(b);
 - (vi) Chapter 10; and
 - (vii) any other provisions which are specifically referred to in Chapter 10 and are necessary to give meaning to the definitions set out in Chapter 10.

1.5 Rights of MHC

Where this agreement confers a right on MHC, the Customer agrees that Transgrid holds the benefit of that right, and can exercise and enforce that right, for MHC.

1.6 No double recovery

Despite any other provision of this agreement, where an amount payable by any party under this agreement falls within more than one category of costs recoverable from that party by the other party under this agreement, the latter party will not be entitled to recover under more than one category in respect of the same amount.

1.7 Headings

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

[Drafting note: These clause 1A below will be included if Transgrid agrees to include a 'Notice to Proceed' regime. This regime will need to be updated on a project by project basis to reflect any information which the Customer is required to provide Transgrid as at the date on which a Notice to Proceed is issued and the downstream validity of Transgrid's pricing.]

[1A. NOTICE TO PROCEED]

1A.1 Condition precedent

- (a) Clauses [1, [1A., 4, 8, 17, 18, 19, 20 to 22 (inclusive), 24, 25 and 27] come into force and effect on the Execution Date.
- (b) Subject to clause 1A.1(a), this agreement does not come into force or effect until:
 - (i) a Notice to Proceed has been issued by the Customer in accordance with clause 1A.2; and
 - (ii) the Connection Agreement has been executed by all the parties to that agreement.]

1A.2 Notice to Proceed

- (a) If:
 - (i) the Customer has not given a Notice to Proceed under clause 1A.1(b)(i); or
 - (ii) the Connection Agreement has not been executed by all the parties to that agreement, on or before the Notice to Proceed Deadline, either party may terminate this agreement by serving written notice to the other party.
- (b) If this agreement terminates under clause 1A.2(a), neither party has any liability to the other party as a result of the termination of this agreement. However, the rights and obligations of the parties which accrued before the date of termination (including, for the avoidance of doubt, Transgrid's right to seek compensation of any Preliminary Costs incurred in accordance with the provisions of a Preliminary Agreement or this agreement) are not excluded or reduced.]

2. PRECONDITIONS

2.1 Preconditions

- (a) Each party will:
 - (i) use its reasonable endeavours to satisfy the Preconditions applying to that party as soon as reasonably possible after the Commencement Date (but in any event by no later than the Required Date for the satisfaction of the relevant Precondition); and
 - (ii) notify the other party when it has satisfied a relevant Precondition.
- (b) Each party will provide to the other party such assistance as the other party may reasonably request from time to time in relation to any activity required to be undertaken by that party in order to satisfy any Precondition.
- (c) Except as provided in clauses 2.1(d) and 2.1(e), the requirement for Transgrid to commence to undertake any aspect of the Connection Work will not commence until all of the Preconditions have been satisfied.
- (d) Notwithstanding clause 2.1(c), Transgrid:
 - (i) will continue to undertake any aspect of the Connection Work which forms part of the work referred to in the Preliminary Agreements in accordance with the terms of the Preliminary Agreements; and
 - (ii) may, in its absolute discretion and without prejudice to Transgrid's rights under this agreement, commence to undertake any other aspect of the Connection Work prior to the satisfaction of the Preconditions.
- (e) Without limiting clause 2.1(d)(i), the Preliminary Work will include:
 - (i) the design, planning and costing of the Connection Work as required under the Preliminary Agreements or as agreed in writing between the parties;

- (ii) any activity undertaken by Transgrid in accordance with its obligations under clause 2.1(a) or 2.1(b) in order to satisfy a Precondition;
 - (iii) the entering into of contracts by Transgrid with its contractors and/or suppliers as required under the Preliminary Agreements or as agreed in writing between the parties; and
 - (iv) any other work referred to in a Preliminary Agreement.
- (f) If a Precondition is not satisfied by the Required Date for the satisfaction of that Precondition (despite the party who is specifically stated in Item 3 of Schedule 2 to be responsible for satisfying that Precondition (the **"first party"**) having used all reasonable endeavours to satisfy that Precondition), then the first party must serve a notice on the other party (the **"second party"**) advising that the relevant Precondition has not been satisfied by the Required Date. Upon receipt of that notice, the parties must negotiate and consult to determine whether the relevant Precondition can be or is likely to be satisfied by the first party within 20 Business Days after the date of that notice (the **"Rectification Period"**).
- (g) If the relevant Precondition is not satisfied during the Rectification Period, the parties will enter into good faith negotiations with a view to agreeing a fair and reasonable alternative manner for addressing the concerns of each party in relation to the continued delay in the satisfaction of the relevant Precondition.
- (h) A party may terminate this agreement immediately by giving written notice to the other party if:
- (i) that party has complied with its obligations under this clause 2.1;
 - (ii) the relevant Precondition is still not satisfied after the end of the relevant Rectification Period; and
 - (iii) the parties have been unable to agree upon a fair and reasonable alternative manner for addressing the concerns of each party in relation to the continued delay in the satisfaction of the relevant Precondition within 20 Business Days after commencing negotiations in accordance with clause 2.1(g),

and this agreement will be taken to have terminated on the payment of the Preliminary Costs by the Customer (or when Transgrid exercises its rights under clause 5.3, provided that the exercise of such right fully discharges the Customer's obligation to pay the Preliminary Costs).

- (i) If a Precondition is satisfied after the end of the relevant Rectification Period, but before either of the parties serves a notice under clause 2.1(h), then the parties will cease to have the right under clause 2.1(h) to terminate this agreement for failure to satisfy that Precondition.
- (j) If this agreement is terminated by any party in accordance with clause 2.1(h):
 - (i) the Customer will pay to Transgrid in accordance with clause 2.1(k), that portion of the Preliminary Costs incurred by Transgrid (including any Preliminary Costs which are incurred on or prior to the date of termination but are not payable until after the date of termination and any Preliminary Costs which are incurred after the date of termination despite Transgrid complying with clause 2.1(l)) which exceeds the amount that has already been paid to Transgrid by the Customer at that time; and
 - (ii) Transgrid will refund to the Customer in accordance with clause 2.1(k) that portion of the amount that has been paid to Transgrid by the Customer on account of Preliminary Costs which exceeds the total Preliminary Costs incurred by Transgrid.
- (k) If a notice of termination is given under clause 2.1(h) then:
 - (i) on or before the date being 20 Business Days after the giving of the notice of termination under clause 2.1(h), Transgrid will render to the Customer an invoice setting out its reasonable estimate of the total Preliminary Costs that are still payable by the Customer and

Transgrid must ensure that the invoice will be valid for GST purposes and will include such particulars of the estimated Preliminary Costs payable by the Customer as are available at that time (including all information in relation to such costs that is available at that time to reasonably enable the Customer to verify the basis of the relevant costs);

- (ii) subject to Transgrid providing the information referred to in clause 2.1(k)(i), the Customer must pay Transgrid the amount stated as payable on that invoice by direct credit to the bank account from time to time specified for this purpose by Transgrid or by such other payment method as agreed in writing between the parties;
 - (iii) on or before the date being 120 Business Days after giving the notice of termination under clause 2.1(h), Transgrid will render to the Customer a final invoice setting out the total Preliminary Costs payable by the Customer under this agreement;
 - (iv) Transgrid must ensure that the invoice provided under clause 2.1(k)(iii) will be valid for GST purposes and will include particulars of the total Preliminary Costs payable by the Customer (including sufficient information available at that time in relation to such costs to reasonably enable the Customer to verify the basis of the relevant costs and the total Preliminary Costs payable by the Customer under this agreement);
 - (v) if the amount paid by the Customer to Transgrid on account of Preliminary Costs exceeds the total Preliminary Costs set out in that invoice, Transgrid will refund the excess to the Customer (together with interest on that excess from the date of termination to the date of payment at a rate equal to the Interest Rate calculated on a daily basis) at the same time as Transgrid issues the invoice;
 - (vi) subject to Transgrid providing the information referred to in clause 2.1(k)(iv) if the amount paid by the Customer to Transgrid on account of Preliminary Costs is less than the total Preliminary Costs set out in that invoice, the Customer must pay the shortfall to Transgrid (together with interest on that shortfall from the due date of the invoice to the date of payment at a rate equal to the Interest Rate calculated on a daily basis); the Customer must pay Transgrid the amount stated as payable on that invoice by direct credit to the bank account from time to time specified for this purpose by Transgrid or by such other payment method as agreed in writing between the parties;
 - (vii) payments by the Customer must be made no later than 4:00 pm on the 10th Business Day after the date of an invoice rendered by Transgrid under clause 2.1(k)(i) or clause 2.1(k)(iii);
 - (viii) in the event of any dispute concerning an invoiced amount (including any dispute concerning whether Transgrid has provided information to the Customer which satisfies the requirements of clause 2.1(k)(i) or 2.1(k)(iv)) the Customer must, within 10 Business Days after the date it received the invoice, notify Transgrid in writing identifying the amount in dispute and giving full reasons for the dispute;
 - (ix) even if the Customer notifies a dispute under clause 2.1(k)(viii), the Customer must pay the full amount of the invoice by the due date for payment under clause 2.1(k)(vii); and
 - (x) the dispute will be determined in accordance with clause 20.
- (l) Transgrid must use its reasonable endeavours to minimise the Preliminary Costs by:
- (i) cancelling any orders placed for plant and equipment as soon as possible after the date of termination where that is possible under the terms of those orders;
 - (ii) redirecting any plant or equipment which have already been supplied or orders which cannot be cancelled to other projects (if any) being undertaken by Transgrid (but only where that is reasonably practicable in the circumstances); and

- (iii) ceasing all Preliminary Work or any Connection Work undertaken at Transgrid's discretion in accordance with clause 2.1(d)(ii) (including by instructing all sub-contractors to cease undertaking any Preliminary Work or Connection Work (as applicable)) as soon as possible after the date of termination.
- (m) The parties agree that any Connection Work which was undertaken by Transgrid pursuant to the Preliminary Agreements prior to the Commencement Date will:
 - (i) be taken to have been performed by Transgrid for the purposes of complying with its obligations under this agreement; and
 - (ii) be subject in all respects to the terms and conditions of this agreement.
- (n) If any of the Preconditions have not been satisfied by the earlier of:
 - (i) the date that is 1 month after the applicable Required Date; and
 - (ii) the date being 60 Business Days after the Execution Date,
 or such later date as is agreed between the parties (the **"Validity Date"**), then despite any other provision of this agreement, Transgrid will be entitled to vary the Charges in accordance with clause 7.6 (as if that event was an Excepted Risk which results in a change to the Connection Work of the type referred to in clause 7.6(b)) to reflect any changes that occur after the Validity Date in relation to the terms (including as to price) upon which Transgrid will acquire any plant, equipment or services which will make up the Connection Work.
- (o) Subject to clause 2.1(p), the quantum of Preliminary Costs payable by the Customer under this agreement (including clauses 2.1(j), 2.1(k) and 16.12(b)(i)) will be calculated and paid for under this agreement.
- (p) Any Preliminary Costs incurred in relation to Preliminary Work performed under a Preliminary Agreement that has been separately invoiced by Transgrid and paid by the Customer under the relevant Preliminary Agreement will not be invoiced under this agreement.
- (q) Clauses 2.1(j), 2.1(k), 2.1(l), 2.1(o) and 2.1(p) will survive the termination of this agreement.

3. COMPLETION OF SCHEDULES IN THE CONNECTION AGREEMENT

- (a) The parties agree and acknowledge that the schedules and attachments to the Connection Agreement have been developed on the basis of the information available as at the Execution Date. Once the construction and commissioning of the Connection Work is completed, certain schedules and attachments to the Connection Agreement will be updated to reflect the detailed technical specifications and parameters for the completed Connection Work in accordance with the process set out in clause 3(b), other than [Schedule 1, Schedule 3, Schedule 5, Schedule 7, Schedule 8 and Attachment 1] will not be altered as a result of clause 3(b).
- (b) The process for updating the schedules and attachments to the Connection Agreement is as follows:
 - (i) within 30 Business Days after Practical Completion or such timeframe as may apply under the Rules, Transgrid will provide to the Customer proposed changes to the schedules and attachments to the Connection Agreement (the **"Updated Schedules"**), together with all information which is reasonably required to enable the Customer to verify the detailed technical specifications and parameters for the completed Connection Work;
 - (ii) the Customer may provide comments on the Updated Schedules to Transgrid within 20 Business Days after receiving the Updated Schedules;
 - (iii) if the Customer provides comments under clause 3(b)(ii), the parties will meet to discuss those comments and, to the extent necessary to reflect the detailed technical specifications

and parameters for the completed Connection Work, negotiate in good faith to agree the terms of the Updated Schedules; and

- (iv) if the parties cannot agree the terms of the Updated Schedules within 20 Business Days after receiving the Customer's comments, either party may refer the matter for resolution in accordance with clause 20.
- (c) Each of the Customer and Transgrid will, acting reasonably, and by the Date of Practical Completion, enter into the Operating Protocol (as defined in the Connection Agreement).
- (d) This clause 3 survives the end of the Term.

4. TERM

[This] / [Subject to clause [1A., this] agreement:

- (a) commences on the [Commencement Date] / [Execution Date]; and
- (b) ends on the earlier of:
 - (i) the Services Commencement Date; and
 - (ii) the date that this agreement is terminated in accordance with its terms,

(the "**Term**").

5. CONSTRUCTION CREDIT SUPPORT

5.1 Construction Credit Support

- (a) The Customer must, by the Required Date under Item 3 of Schedule 2, procure that Transgrid is provided with an unconditional and irrevocable bank guarantee in favour of Transgrid that:
 - (i) is for an amount equal to the amount set out in Schedule 2; and

[Drafting note: The amount of the financial bond will be sized to cover the capital value of the Connection Work in addition to the anticipated cost of any Termination Works.]
 - (ii) satisfies the requirements set out in clause 5.2,
 (the "**Construction Credit Support**").
- (b) For the avoidance of doubt, the provision of this Construction Credit Support is one of the Preconditions which the Customer must satisfy under clause 2.1.
- (c) The Customer must ensure that at all times the aggregate undrawn or unclaimed amount of the Construction Credit Support is not less than the amount set out in Schedule 2 (the "**Guaranteed Amount**") from time to time and must provide replacement Construction Credit Support within 5 Business Days after the aggregate undrawn or unclaimed amount of the Construction Credit Support becomes less than the Guaranteed Amount.
- (d) Without limiting Transgrid's rights under this agreement, if the Customer fails to procure that Transgrid is provided with a Construction Credit Support when required under this clause 5.1, Transgrid may immediately cease undertaking the Connection Work (including Preliminary Work) until such time as the Customer provides the outstanding Construction Credit Support.

5.2 Construction Credit Support Requirements

The Construction Credit Support must:

- (a) be issued directly to Transgrid by a bank approved by Transgrid (acting reasonably and having regard to Transgrid's total exposure to that bank) which is an Approved Bank supervised by APRA and carries an Acceptable Credit Rating ("**Credit Support Provider**");
- (b) be issued directly to Transgrid:

- (i) if Transgrid has approved an Approved Digital Bank Guarantee Platform, through an Approved Digital Bank Guarantee Platform; or
- (ii) if Transgrid has not approved or no longer approves any Approved Digital Bank Guarantee Platforms, from a branch located in Australia by the Credit Support Provider;
- (c) is capable of being presented for payment at an office of the Credit Support Provider in Sydney and, if issued through an Approved Digital Bank Guarantee Platform, is also capable of being presented for payment through that Approved Digital Bank Guarantee Platform;
- (d) be in the form of an unconditional and irrevocable bank guarantee on letterhead of the proposed Credit Support Provider reasonably acceptable to Transgrid;
- (e) be duly executed by the Credit Support Provider and delivered unconditionally to Transgrid;
- (f) constitute a valid and binding unsubordinated obligation of the Credit Support Provider to make payment to Transgrid;
- (g) without limiting the application of clause 5.5, be valid for the period commencing on its date of issue and ending no earlier than 6 months after the Date for Practical Completion or such later date as is subsequently agreed in writing by the parties;
- (h) be governed by the laws of a State or Territory in Australia; and
- (i) in all other respects be in a form acceptable to Transgrid (acting reasonably).

5.3 Transgrid's recourse to the Construction Credit Support

- (a) Transgrid has an irrevocable and unconditional right to draw on or claim upon the Construction Credit Support in the following circumstances:
 - (i) the Customer fails to pay any amount to Transgrid under this agreement or the Connection Agreement on the due date for payment (except for any amounts of an invoice in respect of which the Customer has given a disputed invoice notice pursuant to clause 14.6 of this agreement or clause [3.6] of the Connection Agreement, provided it has otherwise complied with its obligations under clause 14.6 of this agreement or clause [3] of the Connection Agreement (as applicable) in respect of those amounts);
 - (ii) the Customer fails to comply with clauses 5.1 or 5.2;
 - (iii) if this agreement is terminated by either party under clause 2.1(h) and the Customer fails to pay any amount due under clause 2.1(k) by the time prescribed for payment of that amount in clause 2.1(k);
 - (iv) if this agreement is terminated by either party under clause 15.4, by Transgrid under clause 16.3, 16.5 or 16.6 or by the Customer under clause 16.9 and the Customer fails to pay any amount due under clause 16.12 by the time prescribed for payment of that amount in clause 16.12;
 - (v) if the Customer fails to procure that Transgrid is provided with a replacement Construction Credit Support when required in accordance with this clause 5.3 or clause 5.6;
 - (vi) if the Customer fails to pay Transgrid any:
 - A. additional Sub-contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses or Administration Fees; or
 - B. increased Connection O&M Costs,
 incurred as a result of Transgrid undertaking a Customer Variation and payable in accordance with this agreement; or

- (vii) if the Customer fails to pay Transgrid its costs associated with an acceleration in accordance with clause 7.12(b).
- (b) Where Transgrid draws or claims upon the Construction Credit Support in accordance with this clause 5.3, Transgrid may draw on the Construction Credit Support up to an amount which is equal to the estimated value of:
 - (i) in the case of any right referred to in clause 5.3(a)(i), (vi) or (vii), any outstanding amount payable by the Customer to Transgrid;
 - (ii) in the case of the right referred to in clause 5.3(a)(ii), the Guaranteed Amount;
 - (iii) in the case of the right referred to in clause 5.3(a)(iii), the Preliminary Costs incurred by Transgrid (including any Preliminary Costs which are incurred on or prior to the date of termination but are not payable until after the date of termination and any Preliminary Costs which are incurred after the date of termination despite Transgrid complying with clause 2.1(l)) at that time which have not already been paid to Transgrid by the Customer;
 - (iv) in the case of the right referred to in clause 5.3(a)(iv), the amount payable by the Customer to Transgrid under clause 16.12; and
 - (v) in the case of the right referred to in clause 5.3(a)(v), the amount of the replacement Construction Credit Support.
- (c) Where Transgrid draws or claims upon the Construction Credit Support, the Customer must procure the issue of further Construction Credit Support within 5 Business Days in the amount drawn or claimed so as to comply with its obligation to maintain aggregate undrawn current and valid Construction Credit Support for the then current Guaranteed Amount.
- (d) The provisions of this clause 5 will survive the termination of this agreement.

5.4 Refund of drawing

If Transgrid has drawn on a Construction Credit Support:

- (a) for an amount which the Customer was not liable to pay or reimburse Transgrid under the terms of this agreement; or
- (b) in excess of an amount for which the Customer was liable to pay or reimburse Transgrid under the terms of this agreement; or
- (c) for an amount described under clause 5.5(b),

then, Transgrid must:

- (d) in the case of a drawing referred to in clause 5.4(a), refund the amount drawn to the Customer; or
- (e) in the case of a drawing referred to in clause 5.4(b), refund the difference between the amount that was drawn and the amount for which the Customer is liable to pay Transgrid; or
- (f) in the case of a drawing referred to in clause 5.4(c), subject to any other rights of Transgrid to retain the amount, refund the amount drawn to the Customer at the time the Customer provides a replacement Construction Credit Support.

5.5 Return of Construction Credit Support

- (a) Subject to Transgrid exercising any rights under this agreement to call on the Construction Credit Support and subject to clause 5.5(b), Transgrid must return the Construction Credit Support to the Customer:
 - (i) if the Payment Commencement Date has occurred, on the date that the Customer provides the Operational Credit Support required under the Connection Agreement, which satisfies the requirements of the Connection Agreement; or

- (ii) if this agreement is terminated before the Payment Commencement Date has occurred, on the date at which the Customer has paid all amounts still owing to Transgrid (or which have been satisfied by recourse to the Construction Credit Support) under this agreement, any Preliminary Agreement and the Connection Agreement (as the case may be).
- (b) In the case of clause 5.5(a)(i), Transgrid will not be required to return the Construction Credit Support to the Customer until the Operational Credit Support required under the Connection Agreement is provided, which satisfies the requirements of the Connection Agreement to Transgrid's reasonable satisfaction. The parties acknowledge and agree that the Construction Credit Support may be used to satisfy, in whole or in part, the requirements of the Connection Agreement in relation to the Operational Credit Support, without prejudice to Transgrid's right to claim such additional Operational Credit Support as it may be entitled to under the Connection Agreement.

5.6 Expiry of the Construction Credit Support

- (a) If a Construction Credit Support is due to expire prior to the date when Transgrid must return that Construction Credit Support under clause 5.5, then not less than 20 Business Days prior to the expiration of the term of the Construction Credit Support (and any replacement Construction Credit Support provided in accordance with this clause 5.6) the Customer must procure that Transgrid is provided with a replacement Construction Credit Support from an issuer as described in clause 5.2(a) and which otherwise complies with clauses 5.1 and 5.2. Transgrid must return any Construction Credit Support being replaced under this clause 5.6(a) in exchange for the replacement Construction Credit Support.
- (b) The Customer agrees that in addition to any other right of Transgrid to draw on any Construction Credit Support, Transgrid may make a drawing on a Construction Credit Support if the obligation to provide a replacement Construction Credit Support in accordance with clause 5.6(a) is not satisfied prior to the date that is 20 Business Days prior to the expiration of the term of the Construction Credit Support, in which event Transgrid may draw the full face value of that Construction Credit Support prior to its expiry and hold that amount as security until such time as the Customer provides a replacement Construction Credit Support.

5.7 Replacement of Digital Credit Support

- (a) Transgrid may at any time, by notice to the Customer, revoke its approval of an Approved Digital Bank Guarantee Platform.
- (b) On receiving a notice under clause 5.7(a) the Customer must procure the immediate issue of replacement Credit Support to Transgrid from an issuer as described in clause 5.2(a) and which otherwise complies with clauses 5.1 and 5.2. Transgrid must return any Construction Credit Support being replaced under this clause 5.7(b) in exchange for the replacement Construction Credit Support.
- (c) The Customer agrees that in addition to any other right of Transgrid to draw on any Construction Credit Support, Transgrid may make a drawing on any Construction Credit Support issued through an Approved Digital Bank Guarantee Platform for which Transgrid has revoked its approval under 5.7(a), in which event Transgrid may draw the full face value of that Construction Credit Support and hold that amount as security until such time as the Customer provides a replacement Construction Credit Support.

6. ACKNOWLEDGEMENTS RELATING TO CONNECTION WORK

6.1 Configuration of the connection

The Customer agrees that it has requested that the configuration for the connection between the Customer's Facilities and the Transmission System comply with the configuration set out in the Scope of Works.

7. PERFORMANCE OF THE CONNECTION WORK

7.1 Customer's responsibilities

- (a) The Customer must:
 - (i) subject to clause 7.9, undertake and complete any component of the Customer's Work which is separately identified in the Scope of Works:
 - A. by the date set out in the Construction Program and/or the Scope of Works for the completion of that component of the Customer's Work; and
 - B. in accordance with the requirements (if any) set out in the Scope of Works for that component of the Customer's Work;

[Drafting note: The Scope of Works and Construction Program will set out the items of the Customer's Work that must be completed and the date by which they must be completed so as to allow Transgrid to complete the Connection Work.]
 - (ii) in undertaking and completing the Customer's Work, exercise due care, skill and judgement and at all times act in accordance with relevant professional principles and standards (including the Rules and *good electricity industry practice*);
 - (iii) provide all information relating to the Customer's Work that is reasonably requested by Transgrid from time to time prior to Practical Completion within 10 Business Days after receiving a written request from Transgrid for that information; and
 - (iv) ensure that the Customer's Facilities comply with Transgrid's technical standards for *facilities* and *plant* that may be directly *connected* to the Transmission System.
- (b) The Customer must provide to Transgrid all information reasonably specified by Transgrid relating to the design of the Connection Assets, the design of the Customer's Facilities and the conditions prevailing on the Land which could reasonably impact on Transgrid's construction of the Connection Assets, such as environmental conditions.
- (c) The Customer must use its reasonable endeavours to comply with its obligations under clause 7.1(b) within 10 Business Days after a request from Transgrid for it to do so.
- (d) The Customer must use its reasonable endeavours to promptly provide any other information, documentation or data reasonably requested by Transgrid in the form reasonably requested by Transgrid.
- (e) Clauses 7.1(b) to 7.1(d) do not limit any information the Customer is required to provide to Transgrid under the Rules.

7.2 Transgrid's responsibilities

- (a) Subject to clauses [1A.,] 2, 12.1 and 15, Transgrid must undertake and complete the Connection Work with due expedition and without delay and in accordance with the Scope of Works and so as to:
 - (i) enable Transgrid to provide the Services to the Customer in accordance with the Connection Agreement;
 - (ii) achieve Practical Completion of the Connection Work by the Date for Practical Completion;
 - (iii) ensure that the Connection Work on the Date of Practical Completion is fit for its intended purpose as specified in the Scope of Works; and
 - (iv) comply in all respects on the Date of Practical Completion with the requirements of this agreement (including the Scope of Works).
- (b) In undertaking and completing the Connection Work, Transgrid must:

- (i) exercise due care, skill and judgement and at all times act in accordance with relevant professional principles and standards (including the Rules and *good electricity industry practice*); and
- (ii) comply with all Applicable Laws and Authorisations.
- (c) Transgrid must provide to the Customer all information reasonably requested by the Customer and relating to the Connection Work, the design of the Connection Assets, and the conditions prevailing on the Land.
- (d) Transgrid must use its reasonable endeavours to comply with its obligations under clause 7.2(c) within 20 Business Days after a request from the Customer for it to do so.
- (e) Clauses 7.2(c) and 7.2(d) do not limit any information Transgrid is required to provide to the Customer under the Rules.

7.3 Standard of care

Transgrid and the Customer must each carry out their responsibilities under this agreement in accordance with:

- (a) all Applicable Laws and Authorisations; and
- (b) *good electricity industry practice*.

7.4 Co-operation

- (a) The parties agree that the implementation and undertaking of the Connection Work, the Customer's Work and various other activities relating to the development of the Customer's Facilities will require:
 - (i) the co-ordination of their respective activities and responsibilities; and
 - (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 and health matters).
- (b) The parties will use their reasonable endeavours to facilitate this co-operation, including by Transgrid and its Associates attending open discussions with the Customer's contractors and sub-contractors.

7.5 Authorisations

- (a) The Customer will be responsible for:
 - (i) obtaining and maintaining at its cost all Authorisations which the Customer is required under Applicable Laws to obtain or hold before the performance of the Customer's Work can commence and be completed;
 - (ii) obtaining and maintaining at its cost all Authorisations which the Customer is required under Applicable Laws to obtain or hold in order to operate the Customer's Facilities;
 - (iii) without limiting clauses 7.5(a)(i) and 7.5(a)(ii), obtaining at its cost the Authorisations identified in paragraphs 1(a) and 1(c) of Item 3 of Schedule 2 (if any) relating to the Connection Work; and
 - (iv) undertaking at its cost the activities identified in paragraphs 1(a) and 1(c) of Item 3 of Schedule 2 in relation to the Connection Work and the Authorisations required for the Connection Work.
- (b) Transgrid will be responsible for:

- (i) obtaining and maintaining all Authorisations which Transgrid is required under Applicable Laws to obtain or hold before the performance of the Connection Work can commence and be completed (excluding any Authorisations identified in paragraph 1(a) or 1(c) of Item 3 of Schedule 2);
 - (ii) undertaking all activities in relation to the Authorisations for the Connection Work (excluding any activities identified in paragraph 1(a) or 1(c) of Item 3 of Schedule 2);
 - (iii) obtaining and maintaining during the Term and the term of the Connection Agreement, all Authorisations which Transgrid is required under Applicable Laws to obtain or hold in order to provide the Services in accordance with the requirements of the Connection Agreement; and
 - (iv) paying all costs associated with the activities referred to in clauses 7.5(b)(i), 7.5(b)(ii) and 7.5(b)(iii), which costs will be recovered from the Customer via the Preliminary Costs, the Charges and/or payments under clause 16.12 (whichever is applicable in the circumstances).
- (c) In this clause 7.5:
- (i) a reference to "approval" by an Authority is a reference to unconditional approval by that Authority or to approval which is given subject to conditions which are acceptable to Transgrid and the Customer (each acting reasonably);
 - (ii) an approval from an Authority will only be treated as:
 - A. received (where the decision to grant the approval has been subject to judicial review or appeal) on the date on which any appeal is dismissed, struck out or withdrawn or all questions raised by any such review or appeal have been finally determined (other than the question of costs); or
 - B. having been obtained and maintained if that Authorisation is still valid as at the date on which substantial work is commenced by Transgrid; and
 - (iii) any dispute concerning the acceptability of conditions referred to in clause 7.5(c)(ii) will be determined in accordance with clause 20 of this agreement.

7.6 Excepted Risks

- (a) In this agreement, "**Excepted Risk**" means the occurrence of any of the following events:
- (i) any Authorisation which was granted to Transgrid or the Customer before the Execution Date or any condition or requirement of an Authorisation which was granted to Transgrid or the Customer before the Execution Date is varied after the Execution Date provided that the variation is not required solely due to, or solely as a result of, a variation to the Connection Work initiated by Transgrid under clause 7.9;
 - (ii) any Authorisation which was granted to Transgrid or the Customer before the Execution Date is made subject to the satisfaction of any condition or requirement after the Execution Date which differ from, or are in addition to, the conditions or requirements attaching to that Authorisation as at the Execution Date provided that the condition or requirement is not required solely due to, or solely as a result of, a variation to the Connection Work initiated by Transgrid under clause 7.9;
 - (iii) a new Authorisation is granted to Transgrid or the Customer after the Execution Date provided that the new Authorisation is not required solely due to, or solely as a result of, a variation to the Connection Work initiated by Transgrid under clause 7.9;
 - (iv) any of the assumptions referred to in the Scope of Works is determined to be incorrect after the Execution Date;

- (v) an event which is defined in the Scope of Works or another clause of this agreement as an "Excepted Risk" occurs after the Execution Date;
- (vi) an Inclement Weather Condition occurs after the Execution Date;
- (vii) a Precondition is not satisfied by the Required Date for satisfaction of that Precondition;
- (viii) any of the Preconditions remain unsatisfied as at the Validity Date;
- (ix) an Applicable Law is varied or introduced after the Execution Date;
- (x) any Latent Conditions are discovered, occur, or are encountered after the Execution Date;
- (xi) a Force Majeure Event occurs after the Execution Date;
- (xii) any failure by the Customer to comply with its obligations under this agreement (including in particular its obligations under clauses 5, 7.1, 22, 26 and any associated exercise of Transgrid's rights under clause 5.1(d));
- (xiii) any delay, obstruction or interference by any Separate Contractor with the Connection Work;
- (xiv) an Outage Event occurs;
- (xv) the Customer, in writing, requests Transgrid (and Transgrid agrees) to undertake a variation to the Connection Work in accordance with clause 7.9 after the Execution Date; or
- (xvi) a claim relating to native title is made under the *Native Title Act 1993* (Cth) or *Local Aboriginal Land Rights Act 1983* (NSW) which impacts the Connection Work (including having regard to the access and land arrangements required to be procured by the Customer as contemplated by clause 26) or there is a discovery of relics or other items of archaeological significance and Transgrid is required to take precautions to prevent their loss, removal or damage,

other than to the extent caused or contributed to by any failure by Transgrid or its Associates to comply with its obligations under this agreement.

- (b) If an Excepted Risk occurs and the occurrence of that Excepted Risk necessitates a change to:
 - (i) the Connection Work, the Scope of Works (including a change to the constructional plant or temporary works which are required to undertake the Connection Work), the Construction Program or the manner in which the Connection Work will be undertaken (as compared to the manner referred to in the Scope of Works); or
 - (ii) the industrial conditions under which the Connection Work will be undertaken,
 and as a result Transgrid is required to:
 - (iii) undertake work in addition to the Connection Work detailed in the Scope of Works before the occurrence of the Excepted Risk;
 - (iv) undertake the Connection Work to a standard which is higher than that referred to in the Scope of Works before the occurrence of the Excepted Risk;
 - (v) undertake the Connection Work in a manner that is different to the manner outlined in the Scope of Works;
 - (vi) utilise additional constructional plant and/or temporary works and/or a different type of constructional plant and/or temporary works (as compared to the type referred to in the Scope of Works) to undertake the Connection Work,

and/or

- (vii) otherwise:

- A. incur any costs in relation to the undertaking of the Connection Work in addition to the costs which would have been incurred but for the occurrence of the Excepted Risk; and/or
 - B. incur (or is expected to incur) any Increased Connection O&M Costs,
- (together "**Excepted Risk Variations**"), then:
- (viii) within 20 Business Days after the date on which Transgrid first became aware that it has or will be affected by the occurrence of the Excepted Risk, Transgrid must notify the Customer of the occurrence of the Excepted Risk (an "**Excepted Risk Notice**"); and
 - (ix) Transgrid must include in that Excepted Risk Notice:
 - A. written notice of the then anticipated impact (if any) of the Excepted Risk on the Date for Practical Completion, to the extent this is ascertainable; and
 - B. any other information and details of actual and/or anticipated impacts or Excepted Risk Variations then known to Transgrid and which Transgrid considers appropriate, acting reasonably;
 - (x) within 10 Business Days after the receipt of an Excepted Risk Notice, the Customer must notify Transgrid in writing whether the Customer disputes any of the matters set out in the Excepted Risk Notice, in which case it must give a notice of dispute in accordance with clause 20.2 within the time specified in this clause 7.6(b)(x). If the parties are unable to resolve the dispute within the period specified in clause 20.2(b), either party may refer the dispute to an Expert in accordance with clause 20;
 - (xi) Transgrid will submit a preliminary indicative proposal to address the Excepted Risk Variations ("**Preliminary Excepted Risk Variations Proposal**") in relation to the Excepted Risk as soon as reasonably practicable after the preliminary cost estimates of the impacts of the Excepted Risk become known to Transgrid (acting reasonably);
 - (xii) within 20 Business Days after the impacts of Excepted Risk are sufficiently known to Transgrid such that it is reasonably practicable for Transgrid to do so, Transgrid must notify the Customer of:
 - A. Transgrid's estimate of the quantum of the additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees that Transgrid will incur as a result of that Excepted Risk;
 - B. Transgrid's proposal to address the Excepted Risk Variations (including any available drawings or technical details);
 - C. a breakdown of the estimated cost of undertaking the proposal referred to in clause 7.6(b)(xii)B (including any delay or disruption costs which may be incurred by Transgrid as a consequence of the change and the quantum of the additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees that Transgrid will incur as a result of the proposal to address the Excepted Risk Variations);
 - D. if Transgrid wishes to recover any Increased Connection O&M Costs, Transgrid's estimate of the quantum of the Increased Connection O&M Costs that Transgrid will incur as a result of that Excepted Risk or undertaking the proposal referred to in clause 7.6(b)(xii)B; and

- E. written notice of the effect (if any) of the proposal referred to in clause 7.6(b)(xii)B on the Construction Program or the Date for Practical Completion and such notice will be deemed to satisfy the notification requirements under clauses 12.1(a) and 12.1(b); and
 - F. any other information which Transgrid considers appropriate, acting reasonably,
- ("Excepted Risk Variations Proposal").**
- (c) Transgrid must, if requested by the Customer, provide such information as the Customer requests (acting reasonably) to enable the Customer to make a proper, complete and timely assessment of the matters set out in any Excepted Risk Notice or an Excepted Risk Variations Proposal.
 - (d) Within 10 Business Days after the receipt of an Excepted Risk Variations Proposal, the Customer must notify Transgrid in writing whether the Customer:
 - (i) accepts all of the matters set out in the Excepted Risk Variations Proposal; or
 - (ii) disputes any of the matters set out in the Excepted Risk Variations Proposal.
 - (e) If the Customer notifies Transgrid that it disputes any of the matters set out in the Excepted Risk Variations Proposal:
 - (i) within the period specified in clause 7.6(d), the Customer must request any additional information (acting reasonably);
 - (ii) within 10 Business Days after that request, Transgrid must provide the requested additional information to the extent that information is reasonably available;
 - (iii) the parties must consult in good faith using reasonable endeavours to resolve the matters for a period of at least 20 Business Days from the end of the period specified in clause 7.6(d) (or such longer period as the parties agree in writing); and
 - (iv) if the matters are not resolved after the end of the period specified in clause 7.6(e)(iii), the Customer must give a notice of dispute in accordance with clause 20.2. If the parties are unable to resolve the dispute within the period specified in clause 20.2(b), the dispute must be determined by an Expert in accordance with clause 20.
 - (f) If Transgrid considers that it is appropriate to do so (acting reasonably), Transgrid may update an Excepted Risk Notice, Preliminary Excepted Risk Variations Proposal or Excepted Risk Variation Proposal from time to time. Any such update will also be an Excepted Risk Notice, Preliminary Excepted Risk Variations Proposal or Excepted Risk Variation Proposal for the purposes of this agreement.
 - (g) Transgrid must take all reasonable steps to mitigate the effect of an Excepted Risk provided that nothing in this clause 7.6(g) obliges Transgrid to:
 - (i) make any change to:
 - A. the Connection Work, the Scope of Works (including a change to the constructional plant or temporary works which are required to undertake the Connection Work), the Construction Program or the manner in which the Connection Work will be undertaken (as compared to the manner referred to in the Scope of Works); or
 - B. the industrial conditions under which the Connection Work will be undertaken;
 - (ii) undertake any additional work (including undertaking any work to a different standard or in a different manner); or
 - (iii) otherwise incur any additional costs,
 unless and until the Customer has:

- (iv) provided written notice approving the taking of such steps at its cost and undertaken to pay such costs in accordance with clause 7.6(i); or
 - (v) accepted the matters set out in the Excepted Risk Notice and Excepted Risk Variations Proposal or the parties have resolved or an expert has determined (in accordance with clause 20) all matters which are in dispute in relation to that Excepted Risk Notice or Excepted Risk Variation Proposal.
- (h) For the avoidance of doubt, provided Transgrid has acted in good faith, Transgrid is entitled to an extension of time in accordance with clause 12.1, for any delay caused (whether in whole or in part) by:
- (i) any failure by the Customer to accept, or delay by the Customer in accepting, the matters set out in the Excepted Risk Notice or Excepted Risk Variations Proposal; or
 - (ii) any dispute between the parties as to any matter in the Excepted Risk Notice or Excepted Risk Variations Proposal,
- as if that delay was itself caused by the occurrence of an Excepted Risk.
- (i) Upon an Excepted Risk Variations Proposal being accepted by the Customer or, if the Excepted Risk Variations Proposal is disputed by the Customer, all relevant disputes in relation to that Excepted Risk Variations Proposal being resolved in accordance with clause 20:
- (i) the Customer must pay the quantum of the additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees that Transgrid will incur as a result of that Excepted Risk, regardless of whether they differ to Transgrid's estimates set out in the Excepted Risk Variations Proposal;
 - (ii) the Connection Work, the Scope of Works (including a change to the constructional plant and/or temporary works which is required to undertake the Connection Work), the Construction Program or the manner in which the Connection Work will be undertaken (as compared to the manner referred to in the Scope of Works) will be varied (in the manner set out in the Excepted Risk Variations Proposal, subject to the resolution of any dispute in accordance with clause 20); and
 - (iii) if the Excepted Risk will result, or will likely result (whether directly or indirectly) in Transgrid incurring any Increased Connection O&M Costs, Transgrid may recover from the Customer such amount as Transgrid reasonably considers is necessary to compensate Transgrid for the Increased Connection O&M Cost.
- (j) The costs which are payable by the Customer under clauses 7.6(i)(i) and 7.6(i)(iii) (if applicable) will be recovered by Transgrid in the manner set out in clause 14.
- (k) A failure by Transgrid to provide a notice within the timeframes provided for in clauses 7.6, 7.9, 12.1 or 14.1 will not of itself invalidate or disentitle Transgrid's claim in respect of an Excepted Risk, Customer's Variation or extension of time other than as set out in clause 12.1(m).

7.7 Failure to agree on the impact

Either party may refer any dispute in relation to clause 7.6 to the dispute resolution procedures set out in clause 20. If, as a result of an Expert's determination under 20.4, the dispute is resolved:

- (a) in Transgrid's favour:
 - (i) any failure by the Customer to accept, or delay by the Customer in accepting, the matters set out in the Excepted Risk Notice and/or Excepted Risk Variations Proposal; and
 - (ii) any referral to the dispute resolution procedures set out in clause 20,
 will be deemed to be an Excepted Risk; or

- (b) in the Customer's favour:
 - (i) any failure by the Customer to accept, or delay by the Customer in accepting, the matters set out in the Excepted Risk Notice and/or Excepted Risk Variations Proposal; and
 - (ii) any referral to the dispute resolution procedures set out in clause 20,
 will be deemed not to be an Excepted Risk.

7.8 Variations to the Construction Program

Transgrid may vary the Construction Program at any time provided that:

- (a) Transgrid has complied with its obligations under clause 7.4; and
- (b) the Date for Practical Completion can only be varied in accordance with clause 12 or by agreement between the parties.

Transgrid must use reasonable endeavours to notify the Customer of any proposed variation to the current Construction Program prior to implementing that variation.

7.9 Variations to the Connection Work

- (a) Without limiting clause 7.6, Transgrid may vary any part of the Connection Work at Transgrid's own expense provided that any such variation will not:
 - (i) derogate from Transgrid's obligations under clause 7.2;
 - (ii) cause the Customer to make any change, variation or modification to the Customer's Facilities, or increase the time to complete the Customer's Facilities;
 - (iii) cause the Customer to be required to obtain or vary any of the Authorisations for the Customer's Facilities; or
 - (iv) cause the cost of the Customer's Work or the operation and maintenance of the Customer's Facilities to increase beyond the costs which would have been incurred if no variation had been made.
- (b) Transgrid must use reasonable endeavours to advise the Customer of any proposed variation to the Connection Work prior to making that variation to the Connection Work.
- (c) The Customer may, at any time prior to Practical Completion, request Transgrid to make a variation to the Connection Work (a "**Customer Variation**") provided that any such variation must be within the general scope of the Connection Work.
- (d) Upon receipt of a request from the Customer under clause 7.9(c), Transgrid will deliver to the Customer (within 20 Business Days after receipt of that request):
 - (i) its estimate of the additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees that Transgrid or its Associates will incur if Transgrid undertakes and completes the Customer Variation;
 - (ii) details of the changes (if any) which Transgrid believes would be required to be made to the Connection Work, the Scope of Works, the Construction Program, the manner in which the Connection Work will be undertaken and/or the terms of this agreement, in order to accommodate the Customer Variation;
 - (iii) where Transgrid considers that the Customer Variation is likely to result in a delay to Practical Completion, details of the period of the expected delay; and
 - (iv) if Transgrid will incur (or is expected to incur) any Increased Connection O&M Costs if Transgrid undertakes and completes the Customer Variation and Transgrid wishes to recover

any Increased Connection O&M Costs, Transgrid's estimate of the quantum of the Increased Connection O&M Costs that Transgrid will incur (or is expected to incur) if Transgrid undertakes and completes the Customer Variation.

- (e) Transgrid and the Customer will endeavour to agree in good faith on:
 - (i) the quantum of additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees that Transgrid or its Associates will incur if Transgrid undertakes and completes the Customer Variation;
 - (ii) the details of the changes (if any) which should be made to the Connection Work, the Scope of Works, the Construction Program, the manner in which the Connection Work will be undertaken and/or the terms of this agreement, in order to accommodate the Customer Variation;
 - (iii) all amendments to this agreement which are reasonably required to accommodate the Customer Variation, including changes to the Date for Practical Completion; and
 - (iv) if clause 7.9(d)(iv) applies, the quantum of the Increased Connection O&M Costs.
- (f) If the parties are unable to agree on the matters referred to in clause 7.9(e) within 20 Business Days after commencing negotiations, the Customer Variation has no effect and neither party may refer that failure to reach agreement for resolution in accordance with clause 20.
- (g) For the avoidance of doubt, Transgrid may vary any part of the Connection Work if that variation is required as a result of the occurrence of an Excepted Risk and the limitations set out in clause 7.9(a) will not apply to a variation which is required as a result of the occurrence of an Excepted Risk.
- (h) If there is a lack of agreement between the parties as to whether a variation sought by Transgrid has properly been classified as resulting from the occurrence of an Excepted Risk, then either party can refer that matter to be determined in accordance with the dispute resolution procedures set out in clause 20 by serving a notice on the other party. The Customer may refer the question as to whether the proposed alteration to the Charges notified under clause 14.2 has been determined in a manner which is consistent with the methodology used by Transgrid to determine the original Charges under the Connection Agreement to Expert determination in accordance with clause 14.3.

7.10 Completion of the Customer's Facilities for commissioning

The Customer must:

- (a) give Transgrid at least 40 Business Days' notice of the date on which the Customer anticipates it will complete; and
- (b) give a notice to Transgrid when it has completed,

the construction and commissioning of the Customer's Facilities to the stage where Transgrid is able to complete the joint commissioning and testing of the Connection Work and the Customer's Facilities in accordance with the requirements set out in the Scope of Works.

7.11 Variations to the Customer's Work

- (a) The Customer must give prior notice to Transgrid of any proposed variation to the Customer's Work that may affect Transgrid's performance of the Connection Work. The Customer may vary any part of the Customer's Work provided that it has provided such notice (if required) and any such variation will not:
 - (i) derogate from the Customer's obligations under clause 7.1;

- (ii) involve a change to the Customer's Facilities or any requirement for the Customer's Facilities identified in the Scope of Works;
 - (iii) cause Transgrid to make any change, variation or modification to the Connection Work or any part of Transgrid's *transmission network*, increase the time to complete the Connection Work, increase the cost to complete the Connection Work or provide the Services, or adversely impact on other *Network Users* or *power system security*; or
 - (iv) require Transgrid to obtain any additional Authorisations or comply with any additional Applicable Laws (including in particular, any additional or modified Authorisations from AEMO).
- (b) If the Customer wishes to make a variation to the Customer's Work not permitted by clause 7.11(a), it must provide details of the proposed variation to Transgrid and may only proceed with the proposed variation with Transgrid's prior written consent (not to be unreasonably withheld).

7.12 Direction to accelerate

- (a) The Customer may at any time (including after Transgrid provides a notice under clause 12.1) request Transgrid to accelerate the Connection Works. Prior to commencing any such acceleration Transgrid must give the Customer:
- (i) confirmation that it will accelerate the Connection Works; or
 - (ii) confirmation that it will not accelerate the Connection Works,
- and where Transgrid provides a confirmation in accordance with clause 7.12(a)(i) that it will accelerate the Connection Works, then it must also provide:
- (iii) an estimate of the costs of taking all such necessary measures or the necessary variation to the Charges to reflect those costs, including in either case, costs or variations for any Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees;
 - (iv) any other information and supporting documentation reasonably required by the Customer to verify the estimated costs; and
 - (v) the method for paying Transgrid its costs associated with the acceleration.
- (b) If the Customer receives a confirmation referred to in clause 7.12(a)(i) and wishes to proceed with the acceleration, the Customer:
- (i) will direct Transgrid to accelerate the Connection Works in writing; and
 - (ii) must pay Transgrid its costs associated with the acceleration in accordance with the method proposed by Transgrid under clause 7.12(a).

7.13 Separate contractors

- (a) Transgrid acknowledges that Separate Contractors will be engaged by the Customer to undertake work on the Land at the same time as Transgrid is performing the Connection Work.
- (b) Transgrid must:
- (i) co-operate with any Separate Contractors, including by Transgrid and its Associates attending open discussions with the Separate Contractors and considering available options for co-ordinating the Connection Work with the works being performed by any Separate Contractors;
 - (ii) not unreasonably obstruct, delay or interfere with Separate Contractor's work provided that nothing in this clause 7.12 will prevent Transgrid from undertaking the Connection Work in accordance with its other rights and obligations under this agreement; and

- (iii) not damage any Separate Contractor's work.
- (c) Without limiting clause 7.6(a)(xiii), the Customer must procure that any Separate Contractors:
 - (i) co-operate with Transgrid including by attending open discussions with Transgrid and its Associates and considering available options for co-ordinating their works with the Connection Work being performed by Transgrid;
 - (ii) not unreasonably obstruct, delay or interfere with the Connection Work; and
 - (iii) not damage the Connection Work.

7.14 Safety and health requirements

(a) General

- (i) Transgrid must:
 - A. in executing the Connection Work, comply with, and require all persons who carry out work for Transgrid while executing the Connection Work to comply with, all Applicable Laws and Authorisations, including, without limitation, WHS Legislation;
 - B. develop, implement and maintain appropriate systems so as to prevent injury or illness to persons or damage to property from electricity on, about or adjacent to the Land and related access routes arising from the Connection Work, so far as is reasonably practicable;
 - C. when reasonably requested by the Customer in writing, provide necessary information to the Customer in relation to any part of Transgrid's health and safety systems and procedures relevant to the Connection Work;
 - D. consult, cooperate and coordinate with the Customer about any matters in relation to which both parties owe a duty under WHS Legislation;
 - E. report any known health or safety risks to the Customer and provide any information in its possession to the Customer that could have a serious or imminent adverse effect on the Customer's Facilities or the Customer's Work being carried out safely or without harm to health;
 - F. provide reasonable assistance to the Customer in the event of a notifiable incident as defined under WHS Legislation or in relation to any safety or health incident required to be notified to an Authority under other Applicable Laws or Authorisations while executing the Connection Work, including the provision of any information and documents reasonably requested and in a timely manner; and
 - G. report to the Customer and procure Transgrid's Associates to report any notifiable safety or health incident as defined under WHS Legislation or in relation to any safety or health incident required to be notified to an Authority under other Applicable Laws or Authorisations arising out of the Connection Work, and if reasonably requested by the Customer, provide within 3 Business Days of the request, information setting out:
 - I. details of the incident; and
 - II. steps taken to prevent a re-occurrence.
- (ii) The Customer must:
 - A. in so far as the Customer's Work may affect the Connection Work or Connection Assets, comply with, and require all persons who carry out work for the Customer while executing the Customer's Work to comply with, all Applicable Laws and Authorisations, including WHS Legislation;

- B. in so far as the Customer's Work may affect the Connection Work or Connection Assets, develop implement and maintain appropriate safety systems so as to prevent injury to persons or damage to property from electricity, so far as is reasonably practicable;
 - C. when reasonably requested by Transgrid in writing, provide necessary information to Transgrid in relation to any part of the Customer's health and safety systems and procedures relevant to the Connection Work or Connection Assets;
 - D. consult, cooperate and coordinate with Transgrid about any matters in relation to which both parties owe a duty under WHS Legislation;
 - E. report any known health or safety risks to Transgrid and provide any information in its possession to Transgrid that could have a serious or imminent adverse effect on the Connection Assets or the Connection Work being carried out safely and without harm to health;
 - F. provide reasonable assistance to Transgrid in the event of a notifiable incident as defined under WHS Legislation or in relation to any safety or health incident required to be notified to an Authority under other Applicable Laws or Authorisations, while executing the Connection Work, including the provision of any information and documents reasonably requested and in a timely manner; and
 - G. report to Transgrid, and procure Customer's Associates to report, any notifiable safety or health incident as defined under WHS Legislation or in relation to any safety or health incident required to be notified to an Authority under other Applicable Laws or Authorisations in relation to the Connection Work or in relation to the Customer's Work that could affect the Connection Work or Connection Assets, and if requested by Transgrid, provide within 3 Business Days of the request, information setting out:
 - I. details of the incident; and
 - II. steps taken to prevent a re-occurrence.
- (iii) Without limiting the parties' respective obligations under clauses 7.14(a) and 7.14(b), a nominated executive of each party will meet to discuss health and safety prior to commencement of any construction activities forming part of the Connection Works or the Customer's Works and at least two other times during the period of construction (unless agreed otherwise), at such time and location reasonably convenient to both parties' respective executives. Such meetings may be held in person or remotely by audio-visual link.

(b) WHS Legislation

- (i) Subject to clauses 7.14(b)(ii) and 7.14(b)(iii):
 - A. the Customer appoints Transgrid as the principal contractor for all construction work forming part of the Connection Work that constitutes a construction project commissioned by the Customer as defined under WHS Legislation;
 - B. Transgrid accepts the appointment and engagement as principal contractor under clause 7.14(b)(i)A;
 - C. the Customer authorises Transgrid to exercise such authority of the Customer as is necessary, including having management and control of the workplace as necessary, to enable Transgrid or its nominee (as applicable) to discharge its responsibilities as the principal contractor under WHS Legislation; and

- D. without limiting Transgrid's obligations under this agreement, Transgrid or its nominee (as applicable) must comply with the duties of a principal contractor under WHS Legislation.
- (ii) Transgrid may notify the Customer that Transgrid will not be engaged as the principal contractor under clause 7.14(b)(i) and instead nominate an Associate of Transgrid to be the principal contractor by delivering to the Customer a principal contractor appointment form in the form set out in Schedule 6, signed by the Associate.
- (iii) If Transgrid gives the Customer a signed principal contractor appointment form under clause 7.14(b)(ii):
 - A. the Customer must engage and appoint the Associate nominated by Transgrid as the principal contractor for all construction work forming part of the Connection Work that constitutes a construction project commissioned by the Customer as defined under WHS Legislation by executing the principal contractor appointment form and returning the form to Transgrid;
 - B. the Customer authorises the Associate appointed as a principal contractor in accordance with clause 7.14(b)(iii)A and Schedule 6 to exercise such authority of the Customer as is necessary, including having management and control of the workplace as necessary, to enable that Associate to discharge its responsibilities as the principal contractor under WHS Legislation;
 - C. Transgrid must require that the Associate appointed as principal contractor complies with the duties of a principal contractor under WHS Legislation; and
 - D. Transgrid acknowledges and agrees that such appointment does not exclude or reduce Transgrid's obligations under clauses 7.14(a) and 7.14(b). For the avoidance of doubt, Transgrid will be responsible for any failure by any Associate appointed as principal contractor under clause 7.14(b)(iii)C to comply with the duties of a principal contractor under WHS Legislation.

8. REPRESENTATIVES

- (a) The parties' Representatives are the persons identified in clause 1.1 of this agreement.
- (b) The parties may from time to time appoint some other person as their Representative in place of the person previously appointed and must give written notice of the name of that person to the other party without delay.
- (c) The Representative of each party represents and acts for that party at all times during the Term.
- (d) All notices, instructions, information and other communications to be given by one party or that party's Representative to the other party must be given to the other party's Representative, except as otherwise provided.

9. CONSTRUCTION PROGRAM

9.1 Construction Program

- (a) A high-level indicative initial Construction Program with key milestones is set out in Schedule 3.
- (b) Transgrid must prepare an updated Construction Program for the Connection Work and provide a copy of the updated Construction Program to the Customer within 30 Business Days after the Commencement Date.
- (c) If Transgrid changes the Construction Program, Transgrid will provide a copy of the amended Construction Program to the Customer within 15 Business Days after such amendment but any change must not derogate from Transgrid's obligations under clause 7.2.

9.2 Co-operation in construction, commissioning and testing

Without limiting clause 7.4, the Customer and Transgrid must use their reasonable endeavours to co-operate with each other in respect of the construction, commissioning and testing of the Connection Work.

10. INSPECTION AND COMMISSIONING

[Drafting note: Transgrid to consider any technical updates to this regime in clause 10 on a project by project basis.]

10.1 Inspection

The Customer and the Customer's Representative may inspect any part of the Connection Work (including any project or design documents) at any time and from time to time by giving 5 Business Days' notice to Transgrid. In exercising its right of inspection under this clause 10.1, the Customer's Representative must be accompanied at all times by Transgrid's Representative or a nominee of Transgrid's Representative and follow the safety requirements and all other reasonable instructions of Transgrid.

10.2 Compliance testing and commissioning

(a) Notwithstanding clause 10.2(d), Transgrid will:

- (i) prior to the initial *connection* of the Customer's Facilities to the Transmission System and following a notice being served to the Customer in accordance with clause 10.2(b)(i), be entitled to inspect and, where necessary, require the Customer to test those parts of the Customer's Facilities that have a direct effect on the Transmission System to satisfy itself that the Customer's Facilities are acceptable for connection and comply in all material respects with the requirements of this agreement and the Connection Agreement (including, in particular, the Technical Obligations); and
- (ii) following the successful completion of the tests referred to in clause 10.2(a)(i), complete the final connection of the Connection Assets to the Customer's Facilities and the final end to end testing of the Connection Assets and the Customer's Facilities in accordance with the requirements fixed under the Scope of Works.

(the "**Final Commissioning**").

(b) Transgrid must:

- (i) give the Customer not less than 2 Business Days' notice of such inspection and any related request for testing of the Customer's Facilities under clause 10.2(a)(i) (provided that Transgrid must not give such a notice until the Customer has provided notice under clause 7.10(b)); and
- (ii) minimise, as far as is reasonably practicable, any disruption to any employee, contractor or sub-contractor of the Customer engaged at the Customer's Facilities arising out of such inspections and testing of the Customer's Facilities.

(c) As soon as reasonably practicable after completion of the tests, Transgrid will notify the Customer of any non-compliance with the terms of this agreement or the Connection Agreement resulting from such tests and provide the Customer with such further information as is reasonably required by the Customer to identify the relevant non-compliance.

(d) Prior to the initial *connection* of the Customer's Facilities to the Transmission System, the parties will each comply with their respective obligations under the Scope of Works and clause 5.8 of the Rules in relation to the commissioning and testing of the Customer's Facilities and the Connection Work so as to ensure that the *connection* of the Customer's Facilities is carried out in accordance with the procedures and timeframes set out in the Scope of Works and clause 5.8 of the Rules, unless the parties agree otherwise.

- (e) Any inspection and testing of the Customer's Facilities by Transgrid in accordance with this clause 10.2 will not relieve the Customer from any liability, responsibility or obligation under this agreement or the Connection Agreement (nor create any obligation or liability on Transgrid) to ensure that the Customer's Facilities are acceptable for *connection* to the Transmission System and comply in all material respects with the requirements of this agreement or the Connection Agreement (including, in particular, the Technical Obligations).

10.3 Non-compliance

- (a) If having regard to *good electricity industry practice*:
 - (i) the Customer's Facilities are not acceptable for connection to the Transmission System because they do not comply in any material respect with the requirements of this agreement and/or the Connection Agreement (including, in particular, the Technical Obligations or any other requirements for the Customer's Facilities identified in the Scope of Works) (a **"Facility Deficiency"**); or
 - (ii) the Facility Deficiency would have a material adverse effect on the Transmission System if the Customer's Facilities were connected to the Transmission System,

then, until the Customer remedies the Facility Deficiency and the Customer's Facilities are acceptable for connection to the Transmission System (because they comply in all material respects with the requirements of this agreement and the Connection Agreement), the Customer's Facilities will not be connected to the Transmission System.
- (b) Where, the Facility Deficiency would not, having regard to *good electricity industry practice*, have a material adverse effect on the Transmission System, Transgrid may permit the connection of the Customer's Facilities to the Transmission System subject to compliance by the Customer with any conditions reasonably required by Transgrid but the Customer must remedy the Facility Deficiency as soon as reasonably practicable and notify Transgrid in writing when that Facility Deficiency has been remedied.
- (c) Transgrid will notify the Customer of any Facility Deficiency as soon as reasonably practicable after becoming aware of the existence of that Facility Deficiency and provide the Customer with such further information as is reasonably required by the Customer to identify the nature and extent of that Facility Deficiency.

10.4 Notifications relating to Practical Completion

Transgrid will give the Customer at least 10 Business Days' notice of the date on which Transgrid anticipates that Practical Completion of the Connection Work will be achieved.

11. PROJECT MEETINGS

- (a) A project consultation group will be established, comprising:
 - (i) Transgrid's Representative and one (1) or more other representative from Transgrid;
 - (ii) the Customer's Representative and one (1) or more other representative from the Customer; and
 - (iii) any third party that Transgrid and the Customer 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 the Transgrid's Representative and the Customer's Representative, 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, who will also be responsible for or appoint someone responsible for taking and circulating meeting minutes.
- (d) The function of the Project Consultation Group is to monitor and receive reports from Transgrid or the Customer and to make recommendations regarding the delivery of the Project.
- (e) Without limiting any other provision of this agreement, 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 agreement; 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.

12. DELAY

12.1 Extensions of time

- (a) If Transgrid becomes aware of any potential or actual delay to the progress of the Connection Work as compared to the rate of progress identified in the Construction Program, Transgrid must, within 20 Business Days after becoming aware of that fact, notify the Customer in writing of the circumstances and (where known) the probable effects of that delay including:
 - (i) Transgrid's best estimate of the length of that delay;
 - (ii) any likely required variation to the Connection Work, the Scope of Works (including a change to the constructional plant or temporary works which are required to undertake the Connection Work), the Construction Program or the manner in which the Connection Work will be undertaken as compared to the manner referred to in this agreement (including the Scope of Works) as a result of that delay; and
 - (iii) where the delay is caused (whether in whole or in part) by the occurrence of an Excepted Risk:
 - A. Transgrid's best estimate at that time of the quantum of the additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees which Transgrid estimates it or its Associates will incur as a result of that delay; and
 - B. if Transgrid will incur (or is expected to incur) any Increased Connection O&M Costs as a result of that delay and Transgrid wishes to recover any Increased Connection O&M Costs, Transgrid's estimate of the quantum of the Increased Connection O&M Costs.
- (b) Within 20 Business Days after serving a notice under clause 12.1(a), Transgrid shall submit a written claim for an extension of time for Practical Completion to the Customer.
- (c) Where the delay continues beyond the 20 Business Day period referred to in clause 12.1(b), Transgrid must continue to submit a written claim for an extension of time for Practical Completion in intervals of the greater of:
 - (i) 20 Business Days after the last date that the previous claim was due; and
 - (ii) 20 Business Days after Transgrid first became aware of any change to the circumstances relating to the delay or that the details included in its previous claim are no longer up to date,

or until the delay has ceased.

- (d) For the avoidance of doubt, a written claim for an extension of time for Practical Completion under clause 12.1(a), 12.1(b) or 12.1(c):
 - (i) must contain Transgrid's best estimate at that time concerning the matters referred to in clause 12.1(a); and
 - (ii) may be subsequently updated by Transgrid providing a further notice in writing to the Customer as further details concerning the relevant delay and the effects of that delay become available.
- (e) Subject to clause 12.1(f), the parties must use their reasonable endeavours to mitigate the impact of that delay on the:
 - (i) achievement of Practical Completion of the Connection Work;
 - (ii) quantum of the additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees and Increased Connection O&M Costs which Transgrid or its Associates will or might incur as a result of that delay; and
 - (iii) extent of any required variation to the Connection Work, the Scope of Works (including a change to the constructional plant or temporary works which are required to undertake the Connection Work), the Construction Program or the manner in which the Connection Work will be undertaken (as compared to the manner referred to in this agreement (including the Scope of Works)) as a result of that delay.
- (f) If a delay is caused (whether in whole or in part) by the occurrence of an Excepted Risk, the parties agree that nothing in clause 12.1(e) will require Transgrid to incur any additional costs which have not been first agreed in accordance with clause 12.1(g) or under the terms of an acceleration proposal which has been agreed in writing by the parties.
- (g) If an Excepted Risk occurs and, as a result, Transgrid will be delayed in achieving Practical Completion (the extent of the relevant delay being the "**Eligible Delay**"), subject to clause 12.1(h), then:
 - (i) the Date for Practical Completion will be extended by the length of the Eligible Delay;
 - (ii) the Customer must pay the quantum of the additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees which Transgrid or its Associates has incurred or will incur as a result of that Eligible Delay;
 - (iii) the Connection Work, the Scope of Works (including a change to the constructional plant or temporary works which are required to undertake the Connection Work), the Construction Program or the manner in which the Connection Work will be undertaken (as compared to the manner referred to in this agreement (including the Scope of Works)) will (subject to clause 7.6, if applicable) be varied to the extent necessary as a result of that delay; and
 - (iv) if, as a result of that delay, Transgrid will incur (or is expected to incur) any Increased Connection O&M Costs, Transgrid may recover from the Customer such amount as Transgrid reasonably considers is necessary to compensate Transgrid for the Increased Connection O&M Cost.
- (h) Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is an Excepted Risk, then to the extent that the delays are concurrent, the delay shall be treated as an Eligible Delay for as long as the delay caused by the Excepted Risk continues.

- (i) In determining whether Transgrid is or will be delayed in achieving Practical Completion, regard will not be had to whether Transgrid can, by committing extra resources or incurring extra costs, make up the time lost.
- (j) The costs which are payable by the Customer under clauses 12.1(g)(ii) and 12.1(g)(iv) (as applicable) will be recovered by Transgrid in the manner set out in clause 14.
- (k) Either party may refer any dispute in relation to this clause 12 to the dispute resolution procedures set out in clause 20. If, as a result of an Expert's determination under clause 20.4, the dispute is resolved:
 - (i) in Transgrid's favour, any failure to reach agreement and any referral to the dispute resolution procedures set out in clause 20 will be deemed to be an Excepted Risk for the purposes of this clause 12.1; or
 - (ii) in the Customer's favour, any failure to reach agreement and any referral to the dispute resolution procedures set out in clause 20 will not be an Excepted Risk for the purposes of this clause 12.1.
- (l) Except as expressly stated in this clause 12.1 and clause 7.6:
 - (i) Transgrid bears all risk of delay and disruption to the progress of the Connection Work; and
 - (ii) Transgrid is not entitled to make any Claims in respect of delay and disruption to the progress of the Connection Work.
- (m) If Transgrid fails to notify the Customer within 20 Business Days after becoming aware that the occurrence of an Excepted Risk has caused an actual delay to the progress of the Connection Work as compared to the rate of progress identified in the Construction Program (with the date on which Transgrid became so aware being the **"Transgrid awareness date"**), Transgrid will not be entitled to make any Claim:
 - (i) in respect of an extension of time under clause 12.1(g) in respect of that portion of the delay:
 - A. commencing on the Transgrid awareness date; and
 - B. ending on the last Business Day (**"Ineligible Delay End Date"**) immediately preceding the date which is 20 Business Days before the date on which Transgrid first gave a notice to the Customer under clause 12.1(a) in respect of that delay, (**"Ineligible Delay"**); and
 - (ii) in respect of costs under clause 12.1(g) associated with that Ineligible Delay but only to the extent that Transgrid or its Associates would not have incurred the relevant additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses, Administration Fees or Increased Connection O&M Costs (as applicable) had Transgrid notified the Customer of the occurrence of the Excepted Risk within 20 Business Days after the Transgrid awareness date.

For the avoidance of doubt, nothing in this clause 12.1(m) limits Transgrid's right to make any Claim in respect of an extension of time or (including any associated costs) under clause 12.1(g) in relation to any portion of the delay which occurs after the Ineligible Delay End Date.

13. ACCESS AND TITLE AND RISK OF CONNECTION ASSETS

13.1 Access

- (a) Subject to clause 13.1(b) and without limiting Transgrid's other rights of access under Applicable Laws, this agreement and the Connection Agreement, the Customer and its Associates will provide Transgrid and its Associates with clear, unhindered and safe access to and over the Land as well as any land to which the Customer or any of its Associates has a right to provide access and that

is within the vicinity of the Land, and any associated access roads for the purpose of Transgrid exercising its rights and performing its obligations under this agreement.

- (b) Without limiting clauses 7.6 and 12.1, Transgrid acknowledges and agrees that its right of access or use under clause 13.1(a):
 - (i) may not be exercised in a manner which:
 - A. prevents the Customer from performing its obligations under this agreement and the Connection Agreement or carrying out its normal operations; or
 - B. is inconsistent with Applicable Laws, Authorisations or requirements of any Authority; and/or
 - (ii) may be restricted or limited:
 - A. by industrial relations or occupational health and safety requirements;
 - B. by the matters set out in clause 7.14; or
 - C. where such access will delay the Customer in the performance of its obligations under this agreement or the Connection Agreement.

13.2 Provisions applying to access

- (a) Except where access is required in cases of emergency, or as otherwise provided for under this clause and subject to clause 7.14, any right of access conferred on Transgrid by this clause 13 must be exercised as follows:
 - (i) where it is reasonably practicable to do so, Transgrid must provide to the Customer reasonable notice that it will be exercising its right of access and set out in the notice the purpose of that access; and
 - (ii) Transgrid must cause as little inconvenience to the Customer and its Associates as is practicable and must observe any reasonable access and safety procedures specified and communicated by the Customer and its Associates (to the extent they are applicable) at all times.
- (b) The right of access conferred on a party by this clause 13 will be in addition to any right of access that either party may have under Applicable Laws.

13.3 Title and risk of Connection Assets

- (a) Title to and risk in the Connection Assets rests with Transgrid or a person nominated by Transgrid at all times.
- (b) Title to and risk in the Customer's Facilities rests with the Customer or a person nominated by the Customer at all times.

14. ADJUSTMENT TO CHARGES AND PAYMENT OBLIGATIONS

14.1 Progress payments of Variation Costs

- (a) To the extent that Transgrid or its Associates incur any additional Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses or Administration Fees:
 - (i) as a result of an Excepted Risk under clause 7.6;
 - (ii) for undertaking or completing the Customer Variation under clause 7.9; or
 - (iii) as a result of an Eligible Delay under clause 12.1,

Transgrid may, at any time and from time to time (a "**Progress Claim Date**") submit to the Customer a claim for payment (a "**Progress Claim**") in accordance with this clause 14.1 for the

value of the work (to the extent it constitutes or is the subject of a claim for Variation Costs) carried out by Transgrid in performance of this agreement up to the Progress Claim Date.

- (b) A Progress Claim must include:
 - (i) a register of all variations claimed and their claimed value and percentage complete (as determined by Transgrid, acting reasonably);
 - (ii) the value of the work (to the extent it constitutes or is the subject of a claim for Variation Costs) carried out by Transgrid in performance of this agreement up to the Progress Claim Date attributable to the Connection Assets (as determined by Transgrid, acting reasonably) less any Connection Progress Claims Previously Paid ("**Connection Progress Claim Amount**"); and
 - (iii) an invoice (which must be valid for GST purposes) for the Connection Progress Claim Amount.
- (c) The Customer must pay the Connection Progress Claim Amount by no later than 4:00 pm on the 10th Business Day after the date of an invoice rendered under clause 14.1(b)(iii).
- (d) The payment of moneys in respect of a Progress Claim is not evidence of the value of work or an admission of liability or that work has been executed satisfactorily but is a payment on account only.

14.2 Adjustment of Connection Agreement for Connection Variation Costs

- (a) As soon as practicable after the Date of Final Commissioning, Transgrid must provide to the Customer a notice setting out:
 - (i) details of the aggregate of any Variation Costs agreed or determined under clause 7.6, 7.9 and/or 12.1 as at that date; plus
 - (ii) details of the aggregate of any Increased Connection O&M Costs agreed or determined under clause 7.6, 7.9 and/or 12.1 as at that date; plus
 - (iii) any outstanding claims under clause 7.6, 7.9 and/or 12.1 as at that date; less
 - (iv) any Connection Progress Claims Previously Paid as at that date, ("**Connection Variation Costs**").
- (b) The notice provided by Transgrid under clause 14.2(a) will also include the:
 - (i) adjustment to the 'Charges' as defined in the Connection Agreement;
 - (ii) adjustment to the 'Asset Stranding Charge' as defined in the Connection Agreement; and
 - (iii) adjustment to the 'Guaranteed Amount' as defined in the Connection Agreement,

such adjustment to be determined by Transgrid by including the Connection Variation Costs in the costs used to determine the Charges, Asset Stranding Charge and Guaranteed Amount in a manner which is consistent with the manner in which the original amounts (as applicable) under the Connection Agreement were determined by Transgrid.
- (c) To the extent that the Connection Variation Costs are:
 - (i) a positive amount, the Customer must pay the Connection Variation Costs to Transgrid;
 - (ii) a negative amount, Transgrid must refund the Connection Variation Costs to the Customer,

in each case, payable by way of an adjustment to the Charges payable to Transgrid under the Connection Agreement as notified in accordance with clause 14.2(b) above.

- (d) Subject to clause 14.3 below, the Connection Agreement will be deemed to have been amended from the Payment Commencement Date to reflect the adjustment notified by Transgrid under clause 14.2(a).

14.3 Disputes regarding the adjustment of the Connection Agreement for Connection Variation Costs

- (a) Notwithstanding anything to the contrary in clause 20, if the Customer refers the question as to whether the proposed alteration to the Charges and other amounts in the Connection Agreement notified under clause 14.2 has been determined in a manner which is consistent with the manner in which the original amounts (as applicable) under the Connection Agreement were determined by Transgrid to Expert determination in accordance with clause 20, the parties agree that:
 - (i) Transgrid will provide full details concerning the methodology used to determine the original Charges, Asset Stranding Charge or Guaranteed Amount (as applicable) under the Connection Agreement to the Expert;
 - (ii) the Expert will be instructed to determine the relevant adjustment using the methodology provided by Transgrid under clause 14.3(a)(i) and the Connection Variation Costs and advise the parties of its decision concerning that adjustment within 20 Business Days after receipt of the information from Transgrid under clause 14.3(a)(i);
 - (iii) the Expert will be instructed not to disclose details concerning the methodology used to determine the original amount under the Connection Agreement but to simply certify that the adjustment to the relevant amount or amounts has been determined by applying that methodology and the Connection Variation Costs;
 - (iv) on notification by the Expert of the Expert's determination under this clause 14.3, the parties will be bound by that determination and the Connection Agreement will be deemed to have been amended from the Payment Commencement Date to reflect the adjustment to the Charges, Asset Stranding Charge or Guaranteed Amount (as applicable);
 - (v) if the relevant adjustment notified by Transgrid under clause 14.2(a) is greater than the applicable adjustment determined by the Expert in accordance with this clause 14.3:
 - A. Transgrid will set off against the future Charges payable by the Customer under the Connection Agreement any excess Charges paid by the Customer, together with interest on that excess at a rate equal to the Interest Rate (as that term is defined in the Connection Agreement) calculated on a daily basis; and
 - B. Transgrid must pay the Expert's costs; and
 - (vi) if the relevant adjustment notified by Transgrid under clause 14.2(a) is equal to or less than the applicable adjustment determined by the Expert in accordance with this clause 14.3:
 - A. to the extent that the Charges notified under clause 14.2(a) are less than the Charges determined under this clause 14.3, the Customer must pay the shortfall to Transgrid, together with interest on that shortfall at a rate equal to the Interest Rate (as that term is defined in the Connection Agreement) calculated on a daily basis; and
 - B. the Customer must pay the Expert's costs.
- (b) For the avoidance of doubt, any alteration to the Charges payable by the Customer in accordance with the notice in clause 14.2(a) (as applicable) must be paid by the Customer in accordance with its obligations under the Connection Agreement until such time as the Charge is either modified:
 - (i) in accordance with this agreement or the Connection Agreement; or
 - (ii) by an Expert in accordance with this clause 14.3.

14.4 Taxes

If:

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

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

- (c) the Customer will ensure that any such deduction or withholding does not exceed the legal minimum and will pay any such tax or other amount required to be deducted or withheld to the relevant taxation or other authority before the date on which penalties apply;
- (d) the amount payable by the Customer under this agreement will be increased to the extent necessary to ensure that, after the making of the relevant deduction, withholding or payment (and in the case of it applying to a Service provided under this agreement or which is payable as a result of entering into or performing this agreement and it is also applicable to Other Transgrid Customers, then the amount must be prorated between the Customer and the Other Transgrid Customers), Transgrid receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount (after allowances for any credit or benefit received by Transgrid as a result of the Customer's deduction, withholding or payment) equal to the amount which Transgrid would have received and so retained had no such deduction, withholding or payment been made unless Transgrid is prohibited under the Rules from receiving such amount; and
- (e) the Customer will deliver to Transgrid, within 5 Business Days after each deduction or withholding is required by law to be made, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made.

14.5 GST

- (a) Unless the context otherwise requires, words and phrases in this clause that have a specific meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) will have the same meaning in this clause 14.5.
- (b) If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (c) Unless otherwise stated, all amounts expressed to be payable under or in connection with this agreement are exclusive of any GST.
- (d) A recipient of a taxable supply under or in connection with this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (the "**GST Amount**"). The recipient must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.
- (e) If an adjustment event occurs in relation to a supply made under or in connection with this agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

- (f) Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another party under this agreement, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus any GST Amount payable under this clause 14.5.
- (g) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (h) If a party has a Claim under or in connection with this agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
- (i) This clause 14.5 will not merge upon completion and will continue to apply after expiration or termination of this agreement.

14.6 Disputed invoices

- (a) In the event of any dispute concerning an invoiced amount the Customer will, within 10 Business Days after the date it received the invoice, notify 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 20.

14.7 Interest on disputed amount

Where, as a result of the determination of a dispute of the nature referred to in clause 14.6, either party has to pay money to the other then, in addition to such payment, interest will be payable thereon from the date the disputed invoice was due until the date the paying party actually pays the other party the relevant amount at a rate equal to the Interest Rate calculated on a daily basis with payment of such interest due on the date agreed between the parties or determined in accordance with clause 20 for the payment of the principal amount.

14.8 Adjustment of invoices

- (a) This clause 14.8 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 24 months after 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 20, 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 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.

14.9 Default interest

If either party fails to pay any amount payable under this agreement on the due date for payment (or, where the amount is 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. This clause 14.9 does not apply to any amount that is permitted to be withheld under clause 14.6.

15. FORCE MAJEURE

15.1 Force Majeure Events

- (a) If either party fails to comply with or observe any provision of this agreement (other than an obligation to make a payment) and that failure is caused by an event or circumstance which is beyond the reasonable control of that party and which that party could not have prevented by the exercise of reasonable care and *good electricity industry practice* (a "**Force Majeure Event**"), that failure will not give rise to any cause of action or liability based on breach of the relevant provision of this agreement.
- (b) Without limiting clause 15.1(a), the following events will be Force Majeure Events to the extent that they satisfy the requirements of clause 15.1(a):
 - (i) **Acts of God etc.:** any event or circumstance occasioned by or in consequence of any acts of God, acts of public enemy, wars, terrorism, blockades, insurrections, riots, rebellion, epidemics, pandemics (including COVID-19), landslips, landslides, lightning strike which damages plant or materials, earthquakes, fires, cyclones, floods, typhoons, geomagnetically induced currents, arrests, restraints of rulers and civil war;
 - (ii) **Applicable Laws:** the compliance by the affected party in good faith with Applicable Laws which are varied or introduced after the Execution Date;
 - (iii) **Directives, court orders etc.:** the binding order or Directive of any court, tribunal or Authority (other than Transgrid) by reason of any cause beyond the control of the party invoking this clause 15.1 and which does not arise from a breach of this agreement by the party invoking this clause 15.1;
 - (iv) **Strikes and lockouts:** strikes, lockouts and other labour disputes other than those solely involving the employees (or employees of contractors and sub-contractors) of the party invoking this clause 15.1;
 - (v) **Power supply failure:** a partial or entire failure of the supply or availability of electricity to the power system, a partial or entire failure of any *Network User* (other than the Customer) to inject electricity into the national grid, or a partial or entire failure of any other person to take electricity;
 - (vi) **Failure or delay of supplier:** a failure or delay by a supplier (being a party with whom the affected party contracts from time to time) of goods and services to provide such goods or services and that failure or delay was caused by a Force Majeure Event (provided that, for the purposes of this clause 15.1(b)(vi), a reference to a 'party' in the definition of Force Majeure Event in clause 15.1(a) is to be construed as a reference to the relevant supplier); and
 - (vii) **Acts of third parties:** acts or omissions by a third party beyond the control of the party invoking this clause 15.1 and its Associates, including an Authority (other than Transgrid) and any Other Transgrid Customer.

15.2 Notice

If a party becomes aware of the existence of, or a serious prospect of, a forthcoming Force Majeure Event, it will notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 15.1, it will notify the other party as soon as reasonably practicable of full particulars of the Force Majeure Event relied upon.

15.3 Avoidance and mitigation

The party invoking clause 15.1 must:

- (a) use all reasonable endeavours to overcome or avoid the Force Majeure Event;
- (b) use all reasonable endeavours to mitigate the effects or consequences of the Force Majeure Event;
- (c) consult with the other party on the performance of the obligations referred to in clauses 15.3(a) and 15.3(b); and
- (d) resume performance of any suspended obligations as soon as possible after the Force Majeure Event ends.

However, nothing in this clause 15.3 will be construed as requiring the party invoking clause 15.1 to settle a strike, lock-out or other industrial disturbance by acceding against its judgment to the demands of opposing parties.

15.4 Termination on account of Force Majeure Event

If the Force Majeure Event or its direct effect or consequence on the operations of either party, is of such magnitude or will be of such duration, that after a period of not less than 12 consecutive months after 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.

16. TERMINATION

16.1 Default

If a Performance Default, occurs then the non-defaulting party may give the defaulting party a notice in writing (a **"Default Notice"**) specifying:

- (a) that the Performance Default has occurred; and
- (b) the particulars of the Performance Default and the circumstances constituting the Performance Default.

16.2 Cure Period

If a Default Notice is given in respect of a Performance Default by either party (a **"Relevant Default"**), then:

- (a) the defaulting party must prepare a draft Corrective Action Plan to the extent that the Performance Default:
 - (i) can be cured, which details the actions to be taken by the party to cure the Performance Default; or
 - (ii) cannot be cured, which details the actions to be taken by the party to mitigate the adverse effects of the Performance Default and to ensure that the Performance Default does not recur,
 and submit it to the non-defaulting party within 10 Business Days after the receipt of the Default Notice;
- (b) the Cure Period specified in the draft Corrective Action Plan 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) cure the Relevant Default; and
 - (ii) demonstrate such cure to the reasonable satisfaction of the non-defaulting party in accordance with tests (if any) set out in the draft Corrective Action Plan;

- (c) the non-defaulting party may comment on the draft Corrective Action Plan submitted to it by the defaulting party and any comments must be provided to the defaulting party within 5 Business Days after receipt of the draft Corrective Action Plan;
- (d) if the non-defaulting party does make any comments on the draft Corrective Action Plan within the period set out in clause 16.2(c), the defaulting party must:
 - (i) incorporate the comments of the non-defaulting party into the draft Corrective Action Plan to the extent they are:
 - A. reasonable;
 - B. consistent with *good electricity industry practice* (including, without limitation, any comments relating to the length of the Cure Period); and
 - C. consistent with that party's obligations under this agreement; and
 - (ii) re-submit the draft Corrective Action Plan to the non-defaulting party, within 5 Business Days after receipt of any comments from non-defaulting party;
- (e) the **"Settled Corrective Action Plan"** will be:
 - (i) if the defaulting party is not required to alter and re-submit the draft Corrective Action Plan under clause 16.2(d), the draft submitted under clause 16.2(a); or
 - (ii) otherwise, the draft Corrective Action Plan submitted under clause 16.2(d)(ii);
- (f) the Cure Period will immediately cease if the defaulting party:
 - (i) ceases to act diligently and in accordance with *good electricity industry practice* to carry out the Settled Corrective Action Plan; and
 - (ii) fails to act diligently and in accordance with *good electricity industry practice* to carry out the Settled Corrective Action Plan despite a notice from the non-defaulting party requesting it to do so; and
- (g) to the extent that Default by the non-defaulting party during the Cure Period has delayed the defaulting party in curing the Relevant Default, provided that the defaulting party has acted diligently and in accordance with *good electricity industry practice* to carry out the Settled Corrective Action Plan, the Cure Period will be extended by such time as is sufficient to allow for the delay caused by the Default by the non-defaulting party.

16.3 Failure to cure

If the defaulting party does not:

- (a) commence to cure the Performance Default (where the Performance Default can be cured) or implement the Settled Corrective Action Plan (where the Performance Default cannot be cured) within 10 Business Days after the Settled Corrective Action Plan applies; or
- (b) where the Performance Default can be cured and the defaulting party has commenced to cure the Performance Default within 10 Business Days after the Settled Corrective Action Plan applies, cure the relevant Performance Default within the Cure Period specified in the Settled Corrective Action Plan,

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:

- (c) terminate this agreement by written notice to the defaulting party; and

- (d) 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.

16.4 Termination notice

A termination notice given by a party under clause [2.1, 15.4, 16.3, 16.5, 16.6, 16.7 or 16.9] will take effect on the later of:

- (a) the time it is given to the other party in accordance with clause 21; and
- (b) the time specified in the notice.

16.5 Financial Default

- (a) If a Financial Default occurs, the non-defaulting party may, without prejudice to any other right, give a notice to the defaulting party specifying the Financial Default and giving the defaulting party 20 Business Days after the date of the notice (the **"Financial Cure Period"**) to cure the Financial Default.
- (b) In curing the Financial Default within the Financial Cure Period, the non-defaulting party may set off any unpaid amount against any payments required to be made to the defaulting party under this agreement.
- (c) If the Financial Default is not cured within the Financial Cure Period, the non-defaulting party may:
 - (i) sue for breach of contract; and/or
 - (ii) terminate this agreement.

16.6 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.

16.7 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.

16.8 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.

16.9 [Termination for convenience

At any time before a Notice to Proceed is issued by the Customer in accordance with clause 1A.2, the Customer may terminate this agreement by written notice to Transgrid.]

[Drafting note: To be included if Transgrid agrees to a Notice to Proceed regime.]

16.10 Survival

Termination or expiry of this agreement for any reason does not affect:

- (a) any rights of any party against another party which:
 - (i) arose prior to the time at which such termination or expiration occurred; and
 - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement occurring prior to the termination or expiration; or
- (b) the rights and obligations of the parties under clauses 1, [[1A.,] 2, 3, 5, 6, 13, 14, 16, 17, 18 and 28.

16.11 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 hereby waive any right which they may otherwise have had) to rescind or terminate this agreement.

16.12 Consequences of termination

- (a) On termination of this agreement by either party under this clause 16, clause 2.1 or clause 15.4:
 - (i) each party must, if requested by the other party, promptly return to the other party any of the other party's confidential information which is in its possession and control as at the date of termination;
 - (ii) Transgrid or a person nominated by Transgrid retains all title in all Connection Assets;
 - (iii) as between Transgrid and the Customer, the Customer retains all title in the Customer's Facilities; and
 - (iv) Transgrid may disconnect, dismantle, decommission and remove any of the Connection Assets and undertake, complete and commission all other work which Transgrid reasonably determines is necessary to allow the Transmission System to operate in accordance with *good electricity industry practice* and the other requirements of Applicable Laws following the removal of the Connection Assets (the "**Termination Work**").
- (b) If this agreement is terminated for any reason (other than where this agreement is terminated by the Customer under clause 16.3, 16.5 or 16.7) the Customer will reimburse to Transgrid:
 - (i) in the case of a termination of this agreement under clause 2.1, all Preliminary Costs incurred by Transgrid in undertaking the Preliminary Work and any Termination Work or Connection Work undertaken at Transgrid's discretion in accordance with clause 2.1(d)(ii); or
 - (ii) in the case of a termination of this agreement for any other reason (other than where this agreement is terminated by the Customer under clause 16.3, 16.5 or 16.7), all Sub-Contractor's Costs, Consultant's Fees, Transgrid's Costs, Licence Costs, Easement Costs, Out of Pocket Expenses and Administration Fees which are incurred by Transgrid or its Associates in undertaking the Connection Work and any Termination Work; and
 - (iii) any other costs reasonably incurred by Transgrid to cease carrying out the Connection Work (as calculated in accordance with Transgrid's standard charging methodology) which are not otherwise being recovered under clause 16.12(b)(i) or 16.12(b)(ii),

within 30 days after receipt from Transgrid of reasonable evidence substantiating the amount of those costs which have been incurred.
- (c) Subject to clause 17, nothing in this clause 16.12 will limit either party's right to recover Damages from the other party for breach of contract.

17. LIABILITY

17.1 No liability for failure to supply

The Customer acknowledges that except as expressly provided in this clause 17, the terms of this agreement do not represent a waiver by Transgrid of, nor an agreement to vary or exclude, any limitation of its liability under section 119 or 120 of the NEL.

17.2 Limitation of Transgrid's liability

- (a) To the extent permitted by law, Transgrid and its Associates will not be liable to the Customer for any Damages or Claims 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, other than:

- (i) **Direct loss or damage:** subject to clauses 17.2(b) and 17.4, the direct loss, injury, damage or expense of the Customer caused by Transgrid's failure to comply with, observe or perform any provision of this agreement; and
- (ii) **Total amount of liability:** subject to clauses 17.2(b) and 17.7, in respect of such direct loss, injury, damage or expense to the Customer referred to in clause 17.2(a)(i):
 - A. up to the amount of \$[•] in aggregate in respect of any single event or circumstance of failure described in clause 17.2(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 17.2(a)(ii)A, up to the amount of \$[•] in aggregate in respect of all events or circumstances of failure described in clause 17.2(a)(i) occurring in any one Financial Year.
- (b) To the extent permitted by law and without limiting the application of clause 17.4:
 - (i) Transgrid and its Associates are not liable for any loss of use, revenue, profit or opportunity by the Customer and its Associates or the amount of any Damages awarded against the Customer in favour of, or monies paid by the Customer by way of settlement to, any third party and any costs or expenses of the Customer in connection with the same; and
 - (ii) for the avoidance of doubt, the limitation on Transgrid's and its Associates' liability as provided in this clause 17.2 will apply to any negligent act or omission, fault or cause by Transgrid and its Associates.

17.3 Limitation of the Customer's liability

- (a) To the extent permitted by law, the Customer and its Associates will not be liable to Transgrid for any Damages or Claims arising from any act or omission of the Customer and its Associates in relation to this agreement or the performance or non-performance of any of the Customer's obligations under it, other than:
 - (i) **Payment of amounts:** any obligation on the Customer to pay the Preliminary Costs under clause 2.1, any amount payable under clause 16.2 and any other amounts (including interest) due under this agreement;
 - (ii) **Direct loss or damage:** subject to clauses 17.3(b) and 17.4, the direct loss, injury, damage or expense of Transgrid caused by the Customer's failure to comply with, observe or perform any provision of this agreement; and
 - (iii) **Total amount of liability:** subject to clauses 17.3(b) and 17.7, in respect of such direct loss, injury, damage or expense to Transgrid referred to in clause 17.3(a)(ii):
 - A. up to the amount of \$[•] in respect of any single event or circumstance of failure described in clause 17.3(a)(ii) 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 17.3(a)(iii)A, up to the amount of \$[•] in respect of all events or circumstances of failure described in clause 17.3(a)(ii) occurring in any one Financial Year.
- (b) To the extent permitted by law and without limiting the application of clause 17.4:
 - (i) the Customer and its Associates are not liable for any loss of use, revenue, profit or opportunity by Transgrid and its Associates or the amount of any 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; and

- (ii) for the avoidance of doubt, the limitation on the Customer's and its Associates' liability as provided in this clause 17.3 will apply to any negligent act or omission, fault or cause by the Customer and its Associates.

17.4 No liability for indirect loss

- (a) Neither party has any liability to the other party, nor will either party be entitled to make any Claims, for any indirect loss.
- (b) For the purpose of this clause 17.4, "**indirect loss**" means:
 - (i) loss that does not arise directly or naturally from the relevant breach; and
 - (ii) any loss of use, revenue, profit or opportunity or pure economic loss, whether or not they arise directly or naturally from the relevant breach.

17.5 Part Financial Year

The limitation of each party's liability described in clauses 17.2(a)(ii) and 17.3(a)(iii) in any Financial Year is to apply for a whole Financial Year. Accordingly:

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

17.6 No implied terms

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

17.7 Exclusions

The limits of liability referred to in clauses 17.2(a)(ii) and 17.3(a)(iii) do not apply to, exempt, limit or restrict in any way the liability of a party in respect of:

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

and any liability of the type or nature referred to in clauses 17.7(a) and 17.7(b) shall not be taken into account for the purposes of calculating whether the limits of liability referred to in clauses 17.2(a)(ii) and 17.3(a)(iii) have been reached or exceeded.

18. CONFIDENTIALITY

18.1 General obligation

All information acquired or received by any one party (the "**receiving party**") from the other party (the "**disclosing party**") in connection with this agreement, the fact of the existence of the information and the terms of this agreement will be held and kept confidential by the receiving party, will only be used by the receiving party for the purposes of implementing this agreement and the Connection Agreement (as applicable), complying with the receiving party's obligations under Applicable Laws or operating the Transmission System or the Customer's Facilities and must not be disclosed by the receiving party to any third party except with the prior consent of the disclosing party and upon such terms as may be stipulated by the disclosing party, provided that this clause 18.1 does not apply to:

- (a) **Assignee or novatee:** disclosure to or use by a bona fide intending assignee or novatee of the receiving party, and its financiers and professional advisers, 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 its Associates;
- (g) **Legal proceedings:** disclosure or use of information in any mediation, adjudication, arbitration, litigation or legal proceeding of any kind arising out of or in connection with this agreement or otherwise in compliance with the order of any Court of competent jurisdiction;
- (h) **Statutes and listing requirements:** disclosure of information that the receiving party bona fide believes is required either by any relevant law or the listing requirements of any recognised stock exchange;
- (i) **Employees:** disclosure of information by the receiving party, or any person to whom the receiving party is permitted to disclose information, to an employee or officer of the receiving party or that person which requires the information for the purposes of this agreement or for the purpose of advising the receiving party in relation to this agreement, and use of the information by that employee for that purpose, provided that the receiving party takes appropriate steps to ensure that such employees keep the information confidential;
- (j) **Safety:** disclosure of information if required to protect the safety of personnel or equipment;
- (k) **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(b)(3), S5.2.4(c) and S5.2.4(d) 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) **Other entities:** in the case of Transgrid, disclosure to or use by any owner or lessee of any assets comprising any part of the Transmission System; and
- (o) **Connection Application Process:** disclosure by Transgrid of the details of special protection schemes and other technical details that apply to the Customer's Facilities 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*.

18.2 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 18.1 will observe and comply with clause 18.1; and
- (b) any person who is not an Associate to whom it discloses confidential information under clause 18.1(a), 18.1(b), 18.1(c), 18.1(d), 18.1(i), or 18.1(k) 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.

18.3 Compulsory disclosure

If a 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 18.1, or otherwise intends to disclose confidential information pursuant to clause 18.1(e), 18.1(g), 18.1(h) or 18.1(j), 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 party (including details of the confidential information to be disclosed and the third party to whom it is to be disclosed).

19. INTELLECTUAL PROPERTY RIGHTS

- (a) All Intellectual Property Rights in information, documents and materials created by Transgrid as a result of and for the purposes of the performance of this agreement will be owned by and vest in Transgrid.
- (b) All Intellectual Property Rights in information, documents and materials created by the Customer as a result of and for the purposes of the performance of this agreement will be owned by and vest in the Customer.
- (c) 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 agreement.
- (d) Transgrid grants to the Customer a non-exclusive royalty free licence for the Term of this agreement to use any Intellectual Property Rights referred to in clause 19(a) for the purpose of the Customer performing this agreement and the Connection Agreement and for the purpose of performing the Customer's Project to the extent the information, documents and materials is required to do so.
- (e) The Customer grants to Transgrid a non-exclusive royalty free licence for the Term of this agreement to use any Intellectual Property Rights referred to in clause 19(b) for any purpose related to the subject matter of this agreement and the Connection Agreement.
- (f) In consideration of Transgrid carrying out the Connection Work, the Customer grants a non-exclusive, royalty free licence for the Term of this agreement to Transgrid and its Associates to use any Intellectual Property Rights in any material provided by it to Transgrid which is used for the purposes of performing this agreement or the Connection Agreement.
- (g) The Customer indemnifies and saves harmless Transgrid and its Associates from any Damages suffered or Claims incurred by Transgrid and its Associates arising from or in connection with any

actual or alleged infringement by Transgrid and its Associates of Intellectual Property Rights of a third party, where, pursuant to this agreement, such Intellectual Property Rights have been furnished or licensed to Transgrid by the Customer and Transgrid is using those Intellectual Property Rights in accordance with such licence.

- (h) Transgrid indemnifies and saves harmless the Customer and its Associates from any Damages suffered or Claims incurred by the Customer and its Associates arising from or in connection with any actual or alleged infringement by the Customer and its Associates of Intellectual Property Rights of a third party, where, pursuant to this agreement, such Intellectual Property Rights have been furnished or licensed to the Customer by Transgrid and the Customer is using those Intellectual Property Rights in accordance with such licence.
- (i) 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 Claims which are brought against Transgrid or its Associates in respect of any such actual or alleged infringement. Transgrid will notify the Customer as soon as practicably possible after the date on which any such Claims become known to Transgrid.
- (j) Transgrid will render all reasonable assistance to and will co-operate with the Customer for the purposes of defending or otherwise in connection with any Claims which are brought against the Customer in respect of any such actual or alleged infringement. The Customer will notify Transgrid as soon as practicably possible after the date on which any such Claims become known to the Customer.

20. DISPUTE RESOLUTION

20.1 Rule disputes

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

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

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

20.2 Other disputes

- (a) If a dispute arises between the parties under or in relation to this agreement which is not required in accordance with clause 20.1 to be resolved in accordance with clause 8.2 of the Rules, either party may give the Senior Manager of the other party a notice specifying the matters in dispute (a "**notice of dispute**").
- (b) If after a period of 15 Business Days after the referral to the Senior Managers in accordance with clause 20.2(a) (unless otherwise extended by the parties), the Senior Managers 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 20 is not a reference to arbitration.

20.3 Agreement to appoint Expert

- (a) If a dispute is to be determined by an Expert then the parties must use their reasonable endeavours to agree to appoint a suitably qualified person to act as the Expert.
- (b) Each party must bear 50% of the costs of the Expert and associated disbursements (including room hire) for the full duration of the Expert's appointment under this clause 20.
- (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 gives a notice under clause 20.2(b), then either party may serve a notice nominating a person to be appointed.

- (d) If the parties do not agree on the person to be appointed within 5 Business Days after the delivery of such notice, then:
 - (i) either party may request the President of the Law Society of New South Wales, from time to time (or in the event that there is no office of such society of that name, the person who in substance carries out the role of 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.

20.4 Expert determination

If any matter must be determined by the Expert in accordance with this clause 20, then the parties to the dispute must continue to perform their obligations under this agreement while the dispute is being resolved.

20.5 Terms of appointment of Expert

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

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

20.6 Expert not liable

The parties agree that the Expert will not be liable in contract, tort (including negligence) or otherwise for any Damages suffered or Claims incurred by a party or any other person as a consequence of any matter or thing done or omitted to be done by the Expert if the matter or thing was done or omitted in good faith for the purposes of carrying out the responsibilities of the Expert as contemplated by this clause 20. If required by an Expert appointed under this clause 20, the parties will enter into an agreement or deed with the Expert agreeing that this clause 20.6 applies and binds them in relation to the matters referred to the Expert.

20.7 Parties to provide information

The parties must comply with all reasonable requests by the Expert appointed in accordance with this clause 20 for information relating to the matters giving rise to its appointment.

20.8 Parties bound by determination

On notification by the Expert of the Expert's determination under clause 20.5(f), the parties are bound by that determination, except in the event of fraud or manifest error.

20.9 Urgent interlocutory relief

This clause 20 does not prevent either party from:

- (a) obtaining, from a court, any injunctive, declaratory or other interlocutory relief that may be urgently required; or
- (b) initiating any legal process immediately prior to the end of any period specified by a relevant law during which legal process or the bringing of an action must be initiated.

21. COMMUNICATIONS AND NOTICES

21.1 Written notices

All communications under or in connection with this agreement must be in writing and must be:

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

21.2 Addresses and emails

- (a) The addressee, street address, postal address, phone number, email address and contact for each party to which notices must be sent are as specified in Schedule 5.
- (b) Any party may at any time by notice given to the other parties, change its notice details specified in Schedule 5.
- (c) The address of a party must always be an address within Australia.

21.3 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.

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

22. ASSIGNMENT AND CHANGE OF CONTROL

22.1 General prohibition of Assignment

Subject to this clause 22, each party's rights and obligations under this agreement are personal to it and neither party may assign, novate or otherwise transfer any of its rights or obligations under this agreement (an "**Assignment**") without the prior written consent of the other party, which may not be unreasonably withheld, delayed or given subject to unreasonable conditions.

22.2 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 agreement; and/or
- (b) where the assignor is the Customer, the assignor does not comply with clause 22.3 (as applicable), provided that it will not be reasonable for the Customer 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).

22.3 Assignment requirements

- (a) The Customer may only Assign its rights and obligations under this agreement if:
 - (i) it is an Assignment of all of the Customer's rights and obligations under this agreement;
 - (ii) the Customer at the same time also assigns, transfers or disposes of (its interest in) the Customer's Facilities and the Connection Agreement, and any Consent Deed contemplated by clause 22.8 to the proposed assignee such that the assignee will at the time the Assignment is effective, be the owner of the Customer's Facilities; and
 - (iii) at the time the Assignment is effective the assignee provides replacement Construction Credit Support that complies with the requirements of this agreement.
- (b) If the Customer proposes to Assign all its rights and obligations under this agreement in accordance with clause 22.3(a) the Customer must:
 - (i) prior to such Assignment, notify the other party that it intends to assign its rights under this agreement;
 - (ii) have the onus of establishing the applicable requirements specified in clause 22.2 or clause 22.3(a) (as relevant) to the reasonable satisfaction of the other party; and
 - (iii) ensure that the proposed assignee:
 - A. 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:
 - I. this agreement; and
 - II. and any Consent Deed contemplated by clause 22.8, including those arising prior to the Assignment and not then performed or discharged;
 - B. obtains all requisite authorisations for the Assignment and assumption;
 - C. procures that Transgrid is provided with the Construction Credit Support; and
 - D. has sufficient financial, technical and legal capacity to own and operate the Customer's Facilities.

22.4 Transgrid Assignment to Related Bodies Corporate

- (a) Transgrid may from time to time, without the Customer's consent, Assign all of its rights and obligations under this agreement to a Related Body Corporate of Transgrid if at the time the Assignment takes effect:
 - (i) Transgrid also assigns, novates or otherwise transfers its rights and obligations under the Connection Agreement and any Consent Deed contemplated by clause 22.8 to the same Related Body Corporate;

- (ii) such Related Body Corporate owns, controls or operates the Connection Assets and holds all Authorisations necessary to do so; and
- (iii) such Related Body Corporate has the legal, financial and technical capacity to perform Transgrid's obligations under this agreement,

provided that such Related Body Corporate must enter into a deed agreeing to be bound by Transgrid's obligations from the novation date and must also enter into a tripartite deed (if any) with the Customer's financiers (or a trustee, agent or representative thereof) substantially in the form required by the Connection Agreement.

- (b) Transgrid must provide the Customer with written notice of an Assignment which occurs pursuant to clause 22.4(a) as soon as practicable after the Assignment.
- (c) Where Transgrid proposes to Assign all of its rights and obligations under this agreement in accordance with clause 22.4(a), the Customer 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.

22.5 Security Interests

- (a) Subject to clauses 22.5(b), 22.5(c) and 25, neither party may grant or permit to exist any Security Interest over its rights under this agreement except with the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- (b) Transgrid may grant Security Interests over its rights under this agreement where such Security Interest is granted to financiers (or any trustee or agent appointed by them) or for the purposes of financing any of Transgrid's business operations.
- (c) The Customer may grant Security Interests over its rights under this agreement where such Security Interest is granted to financiers (or any trustee or agent appointed by them) for the purposes of financing the Customer's Facilities.

22.6 Successors

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

22.7 Change of Control

- (a) For the purpose of this clause 22.7:
 - (i) a **"Change of Control"** occurs if:
 - A. a person; or
 - B. if a person comprises more than one entity, any one of the entities comprising that person,

comes under the Control of a third party who did not Control the person at:

 - C. the Execution Date; or
 - D. in the case of an assignee in accordance with this clause 22, the date the Assignment takes effect; and
 - (ii) **"Control"** has the meaning given to it in section 50AA of the *Corporations Act 2001* (Cth).
- (b) The Customer must give Transgrid prior written notice of any proposed Change of Control of the Customer.
- (c) The Customer must not be the subject of any Change of Control without the prior written consent of Transgrid, such consent not to be unreasonably withheld, delayed or given subject to unreasonable conditions, provided that Transgrid is reasonably satisfied that the Change of Control

will not diminish, fetter, limit or otherwise restrict the ability of the Customer to fulfil its obligations under this agreement.

- (d) The restriction in clause 22.7(c) does not apply in respect of a Change of Control that results from a change of Control of a company listed on a recognised stock exchange ("**listed company**") (other than in the case of a delisting) where the Customer is a listed company or is a wholly owned Subsidiary (directly or indirectly) of a listed company.

22.8 Consent deed

If requested by the Customer's financiers, the parties must, within 5 Business Days after the Customer's notice to Transgrid of such request, execute and deliver to the Customer's financiers a consent deed substantially in the form set out at Attachment 1 ("**Consent Deed**").

22.9 Transfer at expiry or early termination of Transmission Network Lease

- (a) On written notice to the Customer, 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 agreement to MHC (or its nominee) without the Customer's 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.

23. INSURANCE

23.1 Transgrid's insurance

Transgrid must effect and maintain for the Term, appropriate insurance arrangements for:

- (a) workers compensation insurance covering liability to employees under the law of their place of employment and any other place where such employees may be required to provide the Connection Work; and
 - (b) public liability insurance in the amount of \$[20 million] for any one occurrence,
- (collectively the "**Insurance Cover**").

23.2 Inspection of Transgrid's Insurance Cover documentation

Evidence, in the form of certificates of currency, of the Insurance Cover maintained under clause 23.1 will be made available for inspection by the Customer at any time prior to the Date of Practical Completion on reasonable request by the Customer.

23.3 The Customer's insurance

[Drafting note: Transgrid insurance team to review Customer's insurance requirements on a project by project basis and confirm any additional requirements.]

At all times during the Term, the Customer must, at its own expense, secure or cause to be secured and maintain or cause to be maintained in full force the insurance policies specified in Item 4 of Schedule 2.

23.4 Contents of Customer's Insurance Policy Documentation

The Customer will use reasonable endeavours to ensure that each of the insurance policies referred to in clause 23.3 contains an agreement by the insurer that:

- (a) it will not cancel the relevant insurance policy without giving at least 90 days' prior written notice to Transgrid;
- (b) it will not act upon a notice of cancellation given by any other insured as to the interests of Transgrid without the prior written consent of Transgrid;

- (c) no reduction in limits or coverage in the relevant insurance policy will be made without giving at least 90 days' prior written notice to the Customer; and
- (d) all claims for insurance premiums, commissions, levies, stamp duties, charges and other expenses against Transgrid are waived.

23.5 Inspection of the Customer's insurance policy documentation

Evidence, in the form of certificates of currency, of the insurance policies maintained under clause 23.3 will be made available for inspection by Transgrid on reasonable request by Transgrid.

24. MISCELLANEOUS

24.1 Governing law

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

24.2 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 agreement.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any Claims it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 24.2(a).

24.3 Amendments

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

24.4 Waiver

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

24.5 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 agreement.

24.6 Execution and Counterparts

- (a) This agreement 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 agreement, all of which together constitute one agreement.
- (b) Each signatory confirms that its signature appearing in the document, including any such print-out (irrespective of which party printed it), is its personal signature authenticating it.
- (c) A party who has executed a counterpart of this agreement 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 agreement executed by it will not affect the validity of this agreement. 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 agreement electronically, the electronic signature is an effective binding signature, and the electronic document containing it can be an effective electronic counterpart of this agreement. 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 agreement.
- (e) The parties to this document acknowledge and agree that:
 - (i) they consent to the use of the electronic signatures and this agreement proceeding by electronic means; and
 - (ii) they intend to be legally bound by the terms of this agreement on which the electronic signature(s) has been placed.

24.7 No representation or reliance

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

24.8 Indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.
- (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 agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this agreement.

24.9 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.

24.10 Consents

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

24.11 Subcontracting

Transgrid may engage contractors to undertake the Connection Work or any part of the Connection Work, provided that the engagement of such contractors will not release Transgrid from its obligations under this agreement.

24.12 Expenses

Except as otherwise provided in this agreement or a Preliminary Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

24.13 Stamp duties

The Customer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement;
- (b) indemnifies Transgrid against any liability arising from failure to comply with clause 24.13(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.

24.14 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.

24.15 Remedies cumulative

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

24.16 Publicity

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

24.17 Severance

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement 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 agreement or is contrary to public policy.

24.18 No partnership

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

24.19 Inconsistency between agreement and Rules

- (a) If any terms of this agreement are inconsistent with any obligation imposed or right conferred on a *Registered Participant* by Chapter 5 of the Rules and the application of the conflicting terms of this agreement would adversely affect the quality or security of *network service* to other *Network Users*, the provisions of Chapter 5 of the Rules will prevail over the terms of this agreement to the extent of the inconsistency.
- (b) The Customer must comply with the Rules as if it was registered as a *Customer* in relation to the Customer's Facilities.
- (c) If this agreement imposes an obligation on a party and compliance by that party with that obligation would cause that party to breach the Rules then the party need not comply with that obligation to the extent necessary to avoid breaching the Rules.
- (d) Unless expressly provided otherwise in this agreement, the following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency between Applicable Laws, this

agreement, the Connection Agreement and any other agreements relating to the Connection Work and Services between the parties:

- (i) Applicable Laws, including the Rules;
- (ii) Connection Agreement;
- (iii) this agreement; and
- (iv) other agreements between the parties relating to the performance of the Connection Work and/or the provision of the Services.

24.20 Acknowledgement of Rules obligations

The parties acknowledge that, notwithstanding clause 24.19, the Rules include a number of obligations which relate to this agreement and that, except as otherwise expressly provided for, this agreement is not intended to affect such Rules obligations.

25. NO SECURITY INTEREST

- (a) Nothing in this agreement creates, or shall be interpreted as creating, any Security Interest in the Connection Assets.
- (b) The Customer agrees that it will not seek to register, or otherwise assert the existence of any Security Interest in the Connection Assets.

26. TRANSFER OF OWNERSHIP OF THE CONNECTION SITE AND OTHER PROPERTY INTERESTS

[Drafting note: The land arrangements will be updated on a project by project basis.]

26.1 Connection Site

- (a) The Customer must, as soon as reasonably practicable following preparation of any necessary Survey Plans and in any event no later than 3 months before the Date of Practical Completion, at its own cost execute any document and do any act reasonably required by Transgrid (including the payment of any applicable stamp duty, charge or impost), to ensure that legal and beneficial title to the Connection Site is transferred to MHC, free and clear of any Security Interest.
- (b) The Connection Site shall be of sufficient size as determined by Transgrid including a [20]m buffer zone around the Connection Site.
- (c) Failure to comply with clause 26.1(a) shall be deemed a Default for the purpose of clause 16.

26.2 Transgrid Easements

- (a) As soon as reasonably practicable following preparation of any necessary Survey Plans and in any event no later than 3 months before the Date of Practical Completion, the Customer must at its own cost and at no cost to Transgrid grant to MHC (or must do all things necessary to ensure that the following Easements are granted to MHC):
 - (i) a [45]m wide easement for the final Line Route;
 - (ii) a [10]m wide easement from the proposed Connection Site to the nearest public road for the purpose of accessing the Connection Site (which access route is indicatively shown in Schedule 4 and will be agreed between the parties prior to commencing the Connection Work at the Connection Site); and
 - (iii) easements over any track which will be used to gain access to the easements referred to in clauses 26.2(a)(i) and 26.2(a)(ii) (such tracks are indicatively shown in Schedule 4 and will be agreed between the parties prior to commencing the Connection Work at the Connection Site).
- (b) Unless otherwise agreed between the parties:

- (i) it is proposed to use registered Easement Memorandum AJ633767C for the Easement referred to in clause 26.2(a)(i);
 - (ii) it is proposed to use registered Easement Memorandum AJ633766E for each of the Easements referred to in clauses 26.2(a)(ii) and 26.2(a)(iii);
 - (iii) the survey plan(s) referred to in clause 26.5 will be used to define the final location and dimensions for each Easement referred to in clause 26.2(a); and
 - (iv) all Easements are to be registered as easements in gross benefiting MHC as a prescribed authority.
- (c) The Customer must pay to Transgrid all Easement Costs actually incurred by Transgrid. Transgrid will invoice the Customer as and when Easement Costs are incurred. The Customer must pay each invoice issued under this clause within 10 Business Days' after the date of receipt of the invoice.
 - (d) Transgrid must ensure that the invoice provided under clause 26.2(c) is valid for GST purposes and includes particulars of the Easement Costs payable by the Customer (including sufficient information in relation to such costs to reasonably enable the Customer to verify the basis of the relevant costs).
 - (e) If the parties are unable to reach agreement concerning any matter in respect of which the parties are required to reach agreement under this clause 26.2 within 10 Business Days after commencing consultation, then either party may refer this matter to dispute resolution in accordance with clause 20.
 - (f) The Customer acknowledges that it will benefit from construction of the Connection Work and the Customer fully and irrevocably releases Transgrid from, and indemnifies Transgrid in respect of, any Claims for payment of compensation pursuant to the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.
 - (g) For the avoidance of doubt, the area of any easement or access right under this clause 26 will not be limited or affected by the area of any other easement or access right referred to in this clause 26 and areas of multiple easements or access rights may overlap.

26.3 Access right for construction

- (a) Without limiting clauses 13, 26.1 and 26.2, the Customer grants to MHC and Transgrid a non-exclusive right of access to and over the Land (including the Connection Site and Line Route) from the commencement of the Term until the later of:
 - (i) the end of the Term;
 - (ii) the date that legal and beneficial title to the Connection Site is transferred to MHC, free and clear of any Security Interest; and
 - (iii) the date that the Easements that are to be granted to MHC under clause 26.2(a) are granted to MHC (or must do all things necessary to ensure that the following Easements are granted to MHC) under clause 26.2,
 for the purpose of exercising its rights and performing its obligations under this agreement and the Connection Agreement.
- (b) As soon as reasonably practicable following the Commencement Date, the Customer will exercise the applicable option under its Landowner Agreements in respect of the Land which are necessary for the purposes of granting Transgrid and MHC and their respective Associates the rights of access to the Land as contemplated by clause 26.3(a).
- (c) The Customer acknowledges that any delay in granting Transgrid or MHC and their respective Associates access under clause 26.3(a) from the Commencement Date (including as a result of

the Customer's Landowner Agreements or any delays in the granting of the Easements in accordance with this agreement) will constitute an Excepted Risk for the purposes of clause 7.6.

- (d) The Customer acknowledges and agrees that to the extent any Licences and/or the consent of any third party, Authority (such as Crown Lands NSW in respect of any Crown land forming part of the Land), owner, occupier or beneficiary under any registered encumbrance or Security Interest in respect of the Land is required to provide MHC and Transgrid with the access rights contemplated by clause 26.3(a), then the Customer is required to obtain such Licences or consents (including pursuant to a Landowner Agreement as contemplated by clause 26.7) for the benefit of MHC and Transgrid at the cost and risk of the Customer.

26.4 Costs

The Customer must meet all costs, including Easement Costs and Licence Costs, incurred in undertaking any actions, which are required to be undertaken by the Customer, Transgrid or MHC under this clause 26. The Customer indemnifies Transgrid against any liability arising out of any failure to comply with this clause 26.4. Transgrid will invoice the Customer as and when such costs are incurred and the Customer must pay each invoice issued under this clause 26.4 within 10 Business Days after the date on which the invoice is issued by Transgrid.

26.5 Survey procedure

- (a) The parties acknowledge and agree that the plans depicting the Connection Site and the Line Route contained in Schedule 4 generally describe the location of the Connection Site and the Easements.
- (b) As soon as practicable following the Execution Date and in any event no later than [6 months before the Date of Practical Completion], [Transgrid / the Customer] must prepare the Survey Plan for the Connection Site and the Easements in registrable form to enable registration of all relevant instruments (including any transfer granting easement or instrument under section 88B of the *Conveyancing Act 1919* (NSW)) at Land Registry Services NSW.
- (c) [Transgrid / The Customer] will take all reasonable steps to obtain approval for, and lodge for registration, the Survey Plan as soon as reasonably practicable after it receives approval for the Survey Plan and Easements by each Relevant Authority required to approve them, and no later than [4 months before the date of Practical Completion].
- (d) [Transgrid / The Customer] must notify [Transgrid / the Customer] as soon as practicable after the Survey Plan has been registered by NSW Land Registry Services.
- (e) [Transgrid / The Customer] must procure the relevant landowners or beneficiaries of any Security Interest in the relevant Land execute any document reasonably required to register the Survey Plan at Land Registry Services NSW (provided the Survey Plan complies with this agreement).

26.6 Caveats

The Customer does not object to MHC or Transgrid registering with Land Registry Services NSW any caveats it sees necessary pending transfer of the Connection Site or the granting of the Easements.

26.7 Landowner Agreements

Where the Customer has entered into, or it will be necessary for the Customer to enter into, agreements for a lease, easement or construction licence with one or more landowners or Authorities to grant Transgrid or MHC access to the Land as contemplated by this agreement (including clause 26.3(a)), and to acquire the Connection Site, the Easements and any Licences (collectively, the **"Landowner Agreements"**), the Customer must:

- (a) as soon as reasonably practicable following the Execution Date:
 - (i) enter into the Landowner Agreements;

- (ii) nominate MHC, Transgrid or another entity notified by Transgrid or MHC in writing as nominee, entitled to exercise all rights under each Landowner Agreement, including any right to exercise an option to acquire the Connection Site or any of the Easements or Licences; and
- (iii) do all things necessary to procure that MHC is entitled to exercise all of its rights as nominee under each Landowner Agreement, except anything that Transgrid is required to do under this agreement;
- (b) strictly and duly comply with the terms of the Landowner Agreements; and
- (c) not deal with its interests under the Landowner Agreements in any way that may materially prejudice the rights of Transgrid or MHC, including terminating, varying or waiving any right under the Landowner Agreements (unless Transgrid has first provided its written consent).

26.8 [Crown Lands and Public Roads]

- (a) The parties acknowledge and agree that part of the Land includes the following land identified in Schedule 4:
 - (i) land owned and administered by the Minister administering the *Crown Land Management Act 2016* ("**Crown Lands**"); and
 - (ii) public roads whether classified as "State Roads", "Reginal Roads" or "Local Roads" owned or vested in the applicable Authority or Council ("**Public Roads**").
- (b) Despite anything to the contrary in this clause 26:
 - (i) the Customer is responsible for negotiating and procuring from the relevant Authorities any Easements, Licences or other access arrangements required to over any relevant Crown Lands and Public Roads (including for the purposes of access rights for construction under clause 26.3(a)) at its cost; and
 - (ii) any delay in obtaining Easements, Licences or any other access rights in favour of Transgrid or MHC in respect of Crown Lands or Public Roads will constitute an Excepted Risk for the purposes of clause 7.6.]

[Drafting note: This clause will be included where it is known that there are several Crown Land or other Public Road parcels within the Land for which access is required.]

27. CHANGES TO APPLICABLE LAWS OR OTHER CIRCUMSTANCES

27.1 Amendments to this agreement

If, after the Execution Date, an Applicable Law:

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

then subject to clauses 27.2 and 27.3, this agreement will be interpreted (as far as possible) in such a way as to enable compliance with that Applicable Law.

27.2 Negotiation

Despite clause 27.1, if at any time after the Execution Date:

- (a) an Applicable Law is introduced, modified, re-enacted, substituted or commences operation;
- (b) the manner in which an Applicable Law is interpreted or applied materially changes;
- (c) without limiting clause 27.2(a) or 27.2(b), the manner in which an Applicable Law or any Authority regulates how any Charge is to be calculated, varied or applied (or the terms upon which any Services will be provided) materially changes;

- (d) without limiting clause 27.2(a), 27.2(b) or 27.2(c), the activities comprised within or the service standards applying to any Service materially change due to a change in an Applicable Law; or
- (e) without limiting clause 27.2(a), 27.2(b), 27.2(c) or 27.2(d), any other event, circumstance or change occurs which materially affects the way in which any of the Services are provided or either party operates its facilities, provided such event, circumstance or change is the result of a change in an Applicable Law,

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

27.3 Disputes

- (a) If the parties are unable to agree upon any amendment proposed by a party in accordance with clause 27.2 within 28 days after commencing negotiations, either party may refer that dispute for resolution in accordance with clause 20.
- (b) In determining a dispute under this clause 27, the Expert must take into account (amongst other things) the following factors:
 - (i) that the contents of this agreement must be fair and reasonable having regard to the commercial interests of the parties;
 - (ii) that at all times, any Service provided under this agreement must be provided in accordance with *good electricity industry practice*, all Applicable Laws and the other requirements of this agreement; and
 - (iii) that this agreement should be consistent with the prevailing practices and standards in the electricity industry at that time.

28. TRUSTEE'S CAPACITY AND LIABILITY

[Drafting note: To be updated depending on the Customer's corporate structure.]

28.1 Limitation of liability

Despite any other provision of this agreement:

- (a) the Trustee enters into this agreement in its capacity as trustee of the Trust and in no other capacity;
- (b) subject to clause 28.1(d), the recourse of the Customer or any other person to the Trustee in respect of any of the Trustee's obligations and liabilities under or in connection with this agreement is limited to the amount the Trustee actually receives in the exercise of its right of indemnity from the assets of the Trust;
- (c) subject to clause 28.1(d), if the Trustee does not receive all or any part of the money owing to it in connection with the Trustee not complying with any obligation or not paying any liability under or in connection with this agreement because the Trustee cannot obtain that money under the indemnity referred to in clause 28.1(b), the Customer cannot bring proceedings against the Trustee in its personal capacity to recover that money; and
- (d) clauses 28.1(b) and 28.1(c) do not apply to any obligation or liability of the Trustee under or in connection with this agreement to the extent that it is not complied with or paid because the Trustee's right to be indemnified from the Trust assets is reduced because of the Trustee's own fraud or breach of trust.

28.2 Contribution to liability

An act or omission of the Trustee (including acts and omission that result in the Trustee not complying with any obligation or not paying any liability under or in connection with this agreement) does not constitute fraud or breach of trust by the Trustee for the purposes of this clause 28 to the extent to which that act or omission was caused or contributed to by any act or omission of the Customer.

28.3 Trustee warranties

The Trustee warrants to the Customer that, on the Execution Date:

- (a) the relevant Trust has been duly established;
- (b) it is the sole trustee of the relevant Trust;
- (c) it has been validly appointed as trustee of the relevant 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 relevant Trust to enter into this agreement and comply with its obligations under this agreement;
- (e) it has taken all necessary action to authorise the execution of this agreement and performance of its obligations under this agreement (including any authorisation required under the trust deed which establishes the relevant Trust);
- (f) it has a right to be indemnified out of the relevant Trust assets in respect of obligations incurred by it under this agreement except to the extent:
 - (i) the Trustee has acted beyond power or improperly in relation to the relevant 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 relevant Trust; and
- (h) entry into this agreement is a valid exercise of its powers under the trust deed which establishes the relevant Trust for the benefit of the beneficiaries of the relevant Trust.

28.4 Trustee obligations

- (a) The Trustee must not, without the consent of the Customer, do anything which:
 - (i) reduces the Trustee's right of indemnity from the assets of the relevant Trust in respect of the Trustee's obligations under this agreement;
 - (ii) effects or facilitates the termination of the relevant Trust; or
 - (iii) effects or facilitates the resettlement of the assets of the relevant Trust.
- (b) The Trustee must exercise its right of indemnity under the trust deed which establishes the relevant Trust to the assets of the relevant Trust in respect of liabilities it incurs to the Customer under this agreement.

29. ANTI-BRIBERY AND CORRUPTION

Despite any other provision of this agreement, the parties must not engage in, and must ensure that their Associates and Related Bodies Corporate in carrying out any part of the works, obligations or activities under this agreement do not engage in, any fraud, bribery or corruption.

30. MODERN SLAVERY

Each party must:

- (a) comply with the Modern Slavery Laws;
- (b) not engage in any Modern Slavery practices;

- (c) take all steps reasonably necessary to ensure that its Related Bodies Corporate and Subcontractors do not engage in, and its supply chains do not involve, Modern Slavery practices;
- (d) provide all information as may be reasonably required by the other party to comply with its reporting obligations under the Modern Slavery Laws, including in relation to:
 - (i) the party's structure, operations and supply chains;
 - (ii) the risk of Modern Slavery practices in the party's structure (including in respect of its Related Bodies Corporate) and supply chains;
 - (iii) actions taken by the party to assess and address any Modern Slavery risks, including due diligence and remediation processes, and details of the effectiveness of such actions;
 - (iv) policies, codes of conduct, training and procedures in relation to Modern Slavery; and
 - (v) details of consultation with the party's Related Bodies Corporate and Subcontractors; and
- (e) notify the other party as soon as possible after it becomes aware of any actual or potential breach of this clause 30, such notice setting out full details of the actual or potential breach.

Executed as an agreement on the Execution Date.

Each attorney executing this agreements states that he or she has no notice of the revocation or suspension of 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) by its attorneys under power of attorney:

_____ Signature of Attorney	_____ Signature of Attorney
_____ Name and position of Attorney	_____ Name and position of Attorney
_____ Date	_____ Date

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

_____ Signature of Director/Secretary (delete as applicable)	_____ Signature of Director
_____ Name of Director/Secretary	_____ Name of Director
_____ Date	_____ Date

Schedule 1 – Description of the Customer's Facilities

[Drafting note: Transgrid technical team to review and confirm for each project.]

Schedule 2 – Connection Work

[Drafting note: Transgrid technical team to review and confirm on a project by project basis.]

ITEM 1 – SCOPE OF WORKS

1. Connection Assets

[Insert]

2. Upstream Works

[Insert]

3. Assumptions and Exclusions

Each of the following will be an Excepted Risk:

- (a) where Transgrid has made an assumption set out in this Schedule 2, and that assumption proves to be incorrect or the circumstances that arise are different to that assumption;
- (b) Transgrid undertakes any work or scope where such work or scope is stated in this Schedule 2 to be excluded or is stated to be undertaken by the Customer; and
- (c) where Transgrid incurs a cost or expense on account of an item or event where in this Schedule 2 states that no provision or allowance has been made for that item or event.

The scope of works allows for the design, supply, construct, test and commission all plant as listed under this Item 1 and shown in the single line diagram in **[reference to diagram]**.

2.2 Assumptions

Transgrid's works have been assumed as follows:

Assumptions
1
2

2.3 Exclusions

The following exclusions are excluded from the Scope of Works under this agreement and will form part of the Customer's Work or, if undertaken by Transgrid, will be a variation to the Connection Work.

Exclusions
1
2

[Drafting note: List of exclusions to include that all costs incurred by AEMO and any other network service provider(s) (if any) relating to the assessment of the Customer's connection application are excluded, will be payable by the Customer and will be invoiced by Transgrid separately under the Project Agreement.]

ITEM 2 – PRACTICAL COMPLETION PROCEDURES

1. Practical Completion procedures

- (a) In this Item 2 of Schedule 2, "**Acceptance Tests**" means the tests that will be undertaken by Transgrid to demonstrate that Practical Completion has been achieved as described in the Acceptance Tests table (Table 1A) below.
- (b) Transgrid will commission the Connection Work and demonstrate that Practical Completion of the Connection Work has been achieved by carrying out the Acceptance Tests for Practical Completion to prove that all systems, sub-systems and components of the Connection Work operate in accordance with *good electricity industry practice* and the requirements of this agreement.
- (c) The Customer is required to have in place all AEMO approvals and registrations to allow Transgrid to complete the Acceptance Tests.
- (d) Transgrid must give the Customer at least 10 Business Days' notice of the date on which Transgrid anticipates the relevant Acceptance Test will be conducted.
- (e) When Transgrid considers that Practical Completion of the Connection Work has been achieved, Transgrid will:
 - (i) notify the Customer of the planned time for conducting the Acceptance Tests for Practical Completion;
 - (ii) invite the Customer to witness the Acceptance Tests and inspect the Connection Assets; and
 - (iii) following completion of the Acceptance Tests, provide the Customer with a copy of the Acceptance Tests documentation.
- (f) Following the successful completion of the Acceptance Tests for Practical Completion, within 5 Business Days after receipt by the Customer of the Acceptance Test documentation, the Customer must confirm to Transgrid in writing whether, in its opinion (acting reasonably), Practical Completion of the Connection Work has been achieved.
- (g) If any Acceptance Test for Practical Completion is not successfully completed, Transgrid will perform any necessary corrective works and repeat the incomplete Acceptance Tests for Practical Completion as soon as possible.
- (h) An Acceptance Test for Practical Completion will only be taken to have been successfully completed if each party (acting reasonably) confirms that it has been successfully completed.
- (i) Any dispute between the parties under this Item 2 of Schedule 2 will be resolved in accordance with clause 20 of the agreement.
- (j) The Acceptance Tests will not include the joint commissioning tests referred to in clauses 7.10 and 10.2 of this agreement (which joint commissioning tests are detailed in Table 1B below).

Table 1A – Acceptance Tests

Acceptance Tests	Scope	Transgrid Responsibility	Customer Responsibility
Acceptance Test 1	Revenue and Check Metering testing and commissioning for the XXkV/XXkV Substation.	Yes	No
Acceptance Test 2	Communications channel establishment – outbound from	Yes	Ensure all relevant approvals, authorisations

Acceptance Tests	Scope	Transgrid Responsibility	Customer Responsibility
	the XXkV/XXkV substation to Transgrid main communications network		and registrations for which the Customer is responsible, including those from AEMO, are provided to Transgrid in accordance with the commissioning plan, which may be adjusted by Transgrid from time to time.
Acceptance Test 3	SCADA commissioning between XXkV/XXkV substation and Transgrid SCADA master for data originating at the Transgrid substation	Yes	
Acceptance Test 4	Service Voltage Test	Yes	

Table 1B – Joint Commissioning Tests

Joint Commissioning Tests	Scope	Transgrid Responsibility	Customer Responsibility
Joint Commissioning Test 1		SCADA and communications commissioning between the Customer's Facilities and the XXkV substation	Assistance as required
Joint Commissioning Test 2	Connection and commissioning of the outgoing XXkV feeders / XXkV bays	Assistance as required	Yes
Joint Commissioning Test 3			
Joint Commissioning Test 4			

ITEM 3 – PRECONDITIONS

1. Authorisations

- (a) The Customer will be responsible for obtaining (on or before the Required Date for the satisfaction of this Precondition) all Authorisations which the Customer is required under Applicable Laws to obtain or hold before the performance of the Customer's Work can commence and be completed, and without limiting the foregoing the Customer will be responsible for:
 - (i) obtaining all planning consents for the Customer's Work and the Connection Work (including any construction certificates or building occupancy certificates required for those works [, provided that such construction certificates and building occupancy certificates are not Preconditions for the purposes of clause 2 of this agreement]);

- (ii) negotiating and obtaining all native title approvals, cultural heritage approvals and native vegetation approvals for the Customer's Work and the Connection Work;
 - (iii) arranging for and paying the cost of all required monitoring under any approved plans for both the Customer's Work and the Connection Work; and
 - (iv) identifying and satisfying all requirements of the Department of Climate Change, Energy, the Environment and Water and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (including, the development, submission and approval of a management plan by the Department of Climate Change, Energy, the Environment and Water).
- (b) Transgrid will be responsible for:
- (i) obtaining all Authorisations and permits in relation to the performance of the Services and the operation of the Transmission System after Practical Completion of the Connection Work; and
 - (ii) any Authorisations which Transgrid is required under Applicable Laws to obtain or hold in relation to the design, procurement and construction of the Connection Work before the performance of the Connection Work can commence and be completed,
- other than those listed in paragraphs 1(a)(i) to 1(a)(iv) of this Item 3 of Schedule 2. However the obtaining of the approvals for which Transgrid is responsible will not be a Precondition for the purposes of clause 2 of this agreement.
- (c) The Customer will be responsible for any Authorisations which Transgrid is required under Applicable Laws to obtain or hold in relation to the Connection Work which do not fall within the categories of paragraph 1(a) or 1(b) of this Item 3 of Schedule 2.
- (d) In this paragraph 1 of this Item 3 of Schedule 2:
- (i) a reference to "approval" by an Authority is a reference to unconditional approval by that Authority or to approval which is given subject to conditions which are acceptable to Transgrid and the Customer (each acting reasonably);
 - (ii) an approval from an Authority will only be treated as:
 - A. received (where the decision to grant the approval has been subject to judicial review or appeal) on the date on which any appeal is dismissed, struck out or withdrawn or all questions raised by any such review or appeal have been finally determined (other than the question of costs); or
 - B. having been obtained and maintained if that Authorisation is still valid as at the date on which substantial work is commenced by Transgrid;
 - (iii) any dispute concerning the acceptability of conditions referred to in paragraph 1(d)(ii) of this Item 3 of Schedule 2 will be determined in accordance with clause 20 of this agreement; and
 - (iv) the Required Date for the satisfaction of the Precondition set out in paragraph 1(a) of this Item 3 of Schedule 2 is *[insert date]*.
- (e) The Customer must complete each Precondition set out in the table below by the specified Required Date or such later date as the parties agree in writing.

Preconditions to Access to Site - Customer Responsibilities	Required Date for Precondition
<i>[Drafting note: Preconditions to be confirmed on a project by project basis.]</i>	

2. Construction credit support

- (a) The Customer must on or before the Required Date (as may be extended under clause 2.1) for the satisfaction of this Precondition provide an undertaking or guarantee under clause 5.1 of this agreement to Transgrid in the sum of \$[•].
- (b) The Required Date (as may be extended under clause 2.1) for the satisfaction of this Precondition is [10 Business Days] after the Commencement Date.

3. Customer's construction contract and financial close

- (a) The Customer must on or before the Required Date (as may be extended under clause 2.1) for the satisfaction of this Precondition provide evidence to Transgrid's satisfaction (acting reasonably) that:
 - (i) the Customer has entered into a binding contract with a reputable contractor to undertake the engineering, procurement and construction of the whole of the Customer's Project and that all conditions precedent to the operation of that contract have been satisfied including (if applicable) a 'notice to proceed' has been issued by the Customer to the contractor counterparty requiring the contractor to undertake the works under that contract; and
 - (ii) [Financial Close has been reached.]

[Drafting note: This may need to be updated depending on the approach to clause [1A..]

- (b) The Required Date (as may be extended under clause 2.1) for the satisfaction of this Precondition is [[*] months after the date on which a Notice to Proceed has been issued by the Customer to Transgrid in accordance with clause 1A.2(a)].

[Drafting note: This may need to be updated depending on the approach to clause [1A. (in particular, the timeframe for when the Notice to Proceed must be issued).]

ITEM 4 – THE CUSTOMER'S INSURANCE DETAILS

[Drafting note: Transgrid's insurance team to review on a project by project basis.]

Before commencing any Customer's Work, the Customer must effect the following insurance policies:

1. Insurance of employees

The Customer must enter into an insurance policy to insure against liability for death or injury to persons employed by the Customer including liability by statute and at common law (a **"Workers Compensation Insurance Policy"**).

The Workers Compensation Insurance Policy must be in accordance with the *Workers Compensation Act 1987* (NSW) as amended.

2. Property insurance

The Customer must enter into an insurance policy covering any Customer's Work against loss or damage resulting from any cause under this agreement and things in storage off-site and in transit to the site (the **"Works Policy"**).

The Works Policy must be maintained during the Term.

The total insurance cover under the Works Policy must be for an amount not less than the reinstatement value of the Customer's Works.

3. Public liability Insurance

Before any Connection Work on the Project commences, the Customer must effect an insurance policy for public liability insurance cover (a **"Public Liability Policy"**). The Public Insurance Policy must:

- (a) provide cover on an occurrence basis against liability for personal injury and property damage including loss of use of property where such property is damaged; and
- (b) be for an amount in respect of any one occurrence not less than \$[50 million].

4. Comprehensive motor vehicle insurance.

The Customer must enter into an insurance policy covering damage to and arising from the Customer's and its contractors' motor vehicles utilised in the construction of the Customer's Work and/or the Connection Work, as well as third party property damage arising from the Customer's contractors, for an overall minimum amount of \$[20 million].

Schedule 3 – Construction program

[Drafting note: Transgrid technical team to review and confirm on a project by project basis.]

Item	Milestone Event	Responsible Party	Milestone Date (i.e. timing from the date the Customer and Transgrid execute both the Project Agreement and the Connection Agreement)
1.	Customer provides Construction Credit Support		
2.	Date for Practical Completion of the Connection Work		

Schedule 4 – The Land

[Drafting note: Transgrid technical team to review and confirm on a project by project basis.]

The proposed location of the Customer's Project is at **[insert description]**, which is located on the Land defined below.

1. Definition of "Land"

For the purposes of the definition of **"Land"**, the entirety of the [Project Area] described below is included and includes, if applicable, any Crown Lands, Public Roads or land owned or occupied by an Authority. In particular, the Land includes:

- [insert description or lot references]; and
- each of the Connection Site, Line Route and the site of any access tracks required for the purposes of the customer's project including as contemplated by clause 26.2(a).

[Drafting note: Map to be inserted.]

2. Definition of "Connection Site"

For the purposes of the definition of the **"Connection Site"**, the indicative location of that asset site in the Connection Site referred to on the map below. The Connection Site is indicative only based on the design parameters and investigations as at the date of this agreement. The Customer acknowledges that in the course of finalising the design of the asset site, the location of the Connection Site may change if required by Transgrid or MHC (acting reasonably). The parties acknowledge that the location of the Connection Site must be inclusive of a 20m buffer zone around the perimeter of the site, which must remain clear of vegetation for fire management.

[Drafting note: Map to be inserted.]

3. Definition of "Line Route"

For the purposes of the definition of the **"Line Route"**, the indicative location of that line route in the Line Route referred to on the map below. The Line Route is indicative only based on the design parameters and investigations as at the date of this agreement. The Customer acknowledges that in the course of finalising the design of the new [*]kV transmission line, the location of the Line Route may change if required by Transgrid or MHC (acting reasonably).

[Drafting note: Map to be inserted.]

4. [Definition of "Crown Land"

[Drafting note: Map to be inserted.]

5. Definition of "Public Road"

[Drafting note: Map to be inserted.]

6. Indicative location of access routes under clause 26.2

[Drafting note: Map to be inserted. Both the 10m wide access track to the nearest public road and any other easements required to access the final Line Route or access track referred to in clause 26.2(a) should be indicatively depicted below.]

Schedule 5 – Parties contact details

Transgrid

Transgrid's Representative

Name:

Address:

Telephone:

Email:

Transgrid's Senior Manager

Name:

Address:

Telephone:

Email:

The Customer

Customer's Representative

Name:

Address:

Telephone:

Email:

Customer's Senior Manager

Name:

Address:

Telephone:

Email:

Schedule 6– Principal contractor appointment form

PRINCIPAL CONTRACTOR APPOINTMENT

1. [insert Associate's name] has been nominated by Transgrid to be the principal contractor for all construction work forming part of the Connection Work that constitutes a construction project as defined under WHS Legislation located at [insert address] ("**Construction Project**").
2. Pursuant to clause 293 of the *Work Health and Safety Regulation 2017* (NSW), the Customer engages and appoints [insert Associate's name] as the principal contractor for the Construction Project.
3. [insert Associate's name] accepts the appointment as principal contractor.
4. The Customer authorises [insert Associate's name] to exercise such authority of the Customer as is necessary, including having management and control of the workplace as necessary, to enable [insert Associate's name] to discharge its responsibilities as the principal contractor under WHS Legislation.
5. Without limiting any other obligations imposed on [insert Associate's name] under WHS Legislation, [insert Associate's name] will comply with the duties of a principal contractor under WHS Legislation.
6. [insert Associate's name] will notify the Customer in writing as soon as possible if at any point in time it is not able to comply with the duties of a principal contractor.

ACKNOWLEDGEMENT OF APPOINTMENT AS PRINCIPAL CONTRACTOR

[insert Associate's name] ("Appointee")

[insert Customer's name] ("Customer")

Signature of person authorised to sign
on behalf of the Appointee:

Signature of person authorised to sign
on behalf of the Customer

Print name

Print name

Date:

Date:

Attachment 1 – Consent Deed

NSW Electricity Networks Operations Pty Limited as trustee for NSW Electricity Network Operations Trust

[Insert Customer Name]

[Insert Name of Security Trustee/Financier]

Customer Consent Deed – *[Insert Project Name]* Connection Documents

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This Deed is made on

Parties

- 1 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**).
- 2 [Insert name, ACN/ABN and address of Customer] (the **Customer**).
- 3 [Insert name, ACN/ABN and address of Security Trustee] (the **Security Trustee**).

Recitals

- A Transgrid and the Customer are party to the Network Connection Agreement.
- B Transgrid and the Customer are party to the Project Agreement.
- C The Customer has granted a Security Interest in its rights under and interest in the Connection Documents in favour of the Security Trustee under the Security.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Assignment has the meaning given in the Connection Documents or, if not defined in any Connection Documents, means any assignment, novation, sale, disposal, taking over or other transfer of rights and/or obligations under the relevant Connection Document.

Authorised Officer means

- (a) in respect of the Customer, any director or secretary, or any person from time to time nominated as an Authorised Officer by the Customer by a notice to the Security Trustee accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Security Trustee or Transgrid any person whose title or acting title includes the word **Chief, Counsel, Executive, Head, Director, Manager** or **President** or cognate expressions, or any secretary or director, or any lawyer acting for the Security Trustee or Transgrid.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Connection Document means:

- (a) the Network Connection Agreement; or
- (b) the Project Agreement.

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

Default means:

- (a) any breach or event of default (howsoever defined in each Connection Document) by the Customer of any of its obligations under a Connection Document; or
- (b) any other event or circumstance,

which, alone or with the lapse of time or notice or both, would entitle Transgrid to terminate, rescind or suspend the performance of its obligations under a Connection Document or treat it as repudiated.

Enforcing Party means the Security Trustee or any receiver, receiver and manager, administrator, 'controller' (as defined in the Corporations Act), agent, attorney or any person having similar functions, appointed under the Security (including any person acquiring rights upon enforcement of the Security).

Insolvency Event has the meaning given in the Connection Documents.

Network Connection Agreement means the Network Connection Agreement – [Project Name] dated [*] between the Customer and Transgrid.

Power means any right, discretion, power or remedy, whether express or implied. It includes accepting repudiation and granting waivers.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Project Agreement means the Project Agreement – [Project Name] dated [*] between the Customer and Transgrid.

Security means any present or future Security Interest granted by the Customer in its rights under and interest in the Connection Documents by deed dated [*] between the Customer and the Security Trustee.

Security Interest means any mortgage, pledge, lien or charge or any security interest, including any "security interest" as defined in sections 12(1) or (2) of the PPSA, or preferential interest or arrangement of any kind. It includes:

- (a) anything which gives a creditor priority to other creditors with respect to any asset; and
- (b) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

It does not include an interest of the kind referred to in section 12(3) of the PPSA if the transaction concerned does not, in substance, secure payment or performance of an obligation.

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

Transgrid Trustee means the trustee of the Transgrid Trust.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The meaning of terms is not limited by specific examples introduced by including, or for example, or similar expressions.
- (c) Nothing in this Deed is to be interpreted against a party on the ground that the party put it forward.
- (d) The following rules apply unless the context requires otherwise.

- (i) The singular includes the plural and the converse.
- (ii) A gender includes all genders.
- (iii) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (iv) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (v) A reference to a clause or schedule is a reference to a clause of, or schedule to, this Deed.
- (vi) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted substitutes or assigns.
- (vii) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, statutory instrument, code or other thing issued under it.
- (viii) A reference to **writing** includes a facsimile transmission, electronic transmission and any means of reproducing words in a tangible and permanently visible form.
- (ix) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (x) All references to **time** are to Sydney time.

1.3 Document or agreement

A reference to:

- (a) an **agreement** includes a guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
- (b) a **document** includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

1.4 Inconsistency

To the extent that there is an inconsistency between this Deed and a Connection Document, this Deed prevails to the extent of the inconsistency.

1.5 Business Day

If the day on which any act, matter or thing is to be done under or pursuant to this Deed is not a Business Day, the act, matter or thing must be done on or by the next Business Day.

1.6 Effectiveness

This Deed does not come into force or effect until the Project Agreement has been executed and all conditions precedent to its effectiveness have been satisfied.

1.7 Capacity of Transgrid

Despite any other provision of this Deed:

- (a) the Transgrid Trustee enters into this Deed in its capacity as trustee of the Transgrid Trust and in no other capacity;
- (b) subject to clause 1.4(d), the recourse of the Customer or any other person to the Transgrid Trustee in respect of any of the Transgrid Trustee's obligations and liabilities under or in connection with this Deed is limited to the amount the Transgrid Trustee actually receives in the exercise of its right of indemnity from the assets of the Transgrid Trust;
- (c) subject to clause 1.4(d), if the Transgrid Trustee does not receive all or any part of the money owing to it in connection with the Transgrid Trustee not complying with any obligation or not paying any liability under or in connection with this Deed because the Transgrid Trustee cannot obtain that money under the indemnity referred to in clause 1.4(b), the Customer cannot bring proceedings against the Transgrid Trustee in its personal capacity to recover that money; and
- (d) clauses 1.4(b) and 1.4(c) do not apply to any obligation or liability of the Transgrid Trustee under or in connection with this Deed to the extent that it is not complied with or paid because the Transgrid Trustee's right to be indemnified from the Transgrid Trust assets is reduced because of the Transgrid Trustee's own fraud or breach of trust.

1.8 Capacity of Security Trustee

[Insert the Security Trustee limitation of liability clause]

2 Consent and Acknowledgment

2.1 By Transgrid

- (a) Transgrid consents to the creation and existence of the Security and acknowledges that:
 - (i) **(notice)** this Deed constitutes notice to it of the Security;
 - (ii) **(no default)** each of the following will not of itself breach, contravene or constitute a default under the Connection Documents or entitle Transgrid to exercise any right or power under a Connection Document, including the right to terminate, rescind or accept repudiation of, or suspend performance of its obligations under the Connection Documents:
 - (A) the creation or the existence of the Security;
 - (B) the exercise of any Powers under the Security (including by any Enforcing Party) in connection with the Security; or
 - (C) the entry into this Deed by the Customer.
 - (iii) **(enforcement)** at any time after commencement of enforcement of the Security:
 - (A) subject to the terms of this deed, it must continue to duly and punctually perform and observe its duties and obligations and may exercise its rights under the Connection Documents to which it is a party in accordance with the terms of the Connection Documents;
 - (B) an Enforcing Party may, but is not obliged to, exercise all or any of the Powers, and perform all or any of the obligations, of the Customer under the Connection Documents as if it were the Customer to the exclusion of the Customer; and

- (iv) **(not liable)** without limiting the liabilities of the Customer (which continues to be responsible for the performance of its obligations under the Connection Documents), no Enforcing Party will be liable, or taken to have assumed liability or any obligation, for any liability of the Customer under the Connection Documents by reason only of its entry into this Deed, the Security or the exercise in accordance with this Deed or the Security of any of the Customer's Powers under this Deed and the Connection Documents or of any of the Security Trustee's rights or Powers under this Deed or any Security.
- (b) Transgrid agrees that an Enforcing Party may, in the exercise of its Powers under the Security, make an Assignment of the Customer's rights and/or obligations under the Connection Documents, provided that such Assignment is in accordance with the requirements of the Network Connection Agreement. No such Assignment will contravene the Connection Documents or constitute a Default or entitle Transgrid to exercise any Power, including a right of termination, under the Connection Documents. Where an Enforcing Party proposes to make such an Assignment in accordance with this clause, Transgrid must do all such things as may reasonably be required by the Enforcing Party to give effect to such Assignment.

2.2 By the Customer

The Customer is bound by, and shall co-operate in the implementation of, this Deed. It acknowledges that this Deed is only intended to benefit the Security Trustee and Transgrid.

3 Default

3.1 Notification

Transgrid undertakes to the Security Trustee to give to the Security Trustee a copy of any:

- (a) Termination Notice or notice of Default issued by Transgrid to the Customer; and
- (b) material notice or other material documents consequent upon the occurrence of any event contemplated in clause 3.1(a),

promptly (and in any event within 3 Business Days) after it gives such notice to the Customer (as applicable) under the Connection Documents to which it is a party and must provide the Security Trustee with full details of the Default including the nature of the Default, any action which it considers appropriate to remedy the Default or the amount necessary to compensate it for the Default, and any other information which the Security Trustee reasonably requires in relation to the Default and the Customer hereby consent to such disclosure.

3.2 Security Trustee's cure rights

On becoming aware of any Default an Enforcing Party may take steps to remedy, or procure the remedy of, that Default or (where relevant) prevent the occurrence of any Default.

3.3 Enforcement by Transgrid

Despite anything in a Connection Document, Transgrid may not:

- (a) terminate a Connection Document as a result of a Default; or
- (b) otherwise rescind, repudiate or suspend the performance of its obligations under the Connection Documents (other than a right to suspend in accordance with clause [9.1(c)] of the Network Connection Agreement) as a result of a Default,

unless:

- (c) Transgrid has provided the Security Trustee with a copy of the relevant Termination Notice (in the case of a termination) or notice of Default; and
- (d) one of the following applies:
 - (i) if the Default is not an Insolvency Event and is capable of remedy, that Default has not been remedied within:
 - (A) in the case of a financial Default, 10 Business Days; and
 - (B) in the case of a Default other than a financial Default, 20 Business Days, in each case from the later of:
 - (C) the expiry of any applicable cure period under the Connection Documents (or any longer period agreed by Transgrid); and
 - (D) the date of receipt of the Termination Notice or notice of Default by the Security Trustee;
 - (ii) if the Default is not an Insolvency Event and is not capable of remedy, either the effects of the Default on Transgrid have not been overcome to the satisfaction of Transgrid or the Enforcing Party fails to reach agreement with Transgrid (acting reasonably) for the payment of compensation in respect of the Default within 20 Business Days or such longer period agreed by Transgrid (acting reasonably) of the later of:
 - (A) the expiry of any applicable cure period under the Transgrid Connection Documents (or any longer period agreed by Transgrid); and
 - (B) the date of receipt of the relevant Termination Notice or notice of Default by the Security Trustee,

or having agreed such compensation with Transgrid, fails to pay such compensation within 10 Business Days of the time agreed under such agreement.

For the purposes of determining whether Transgrid is acting reasonably under this clause it is acknowledged that monetary compensation may not be sufficient where risk of damage to or instability of Transgrid's network subsists or would reasonably be likely to occur;
 - (iii) if the Default is an Insolvency Event, an Enforcing Party has not entered into possession of the Customer's rights and performed and continues to perform the Customer's obligations under the Connection Documents, within 10 Business Days of the later of:
 - (A) the occurrence of the Insolvency Event; and
 - (B) the date of receipt of the Termination Notice or notice of Default by the Security Trustee; or
 - (iv) the Security Trustee notifies Transgrid that it elects not to take any steps to remedy the Default.

For the avoidance of doubt, this Deed in no way limits Transgrid's ability to draw on any credit support provided to Transgrid in relation to a Connection Document, subject to the terms of the Connection Documents.

3.4 No obligation to remedy

- (a) At the reasonable request of an Enforcing Party, Transgrid must provide information as to any steps it considers appropriate to remedy a Default.
- (b) It is acknowledged that, on enforcement of any Security, any Enforcing Party or other person acting on its behalf may remedy any Default under a Connection Document but that nothing in this Deed or otherwise obliges an Enforcing Party to remedy any such Default.
- (c) An Enforcing Party's cure rights in this clause are in addition to the Customer's cure rights under the Connection Documents.

3.5 Remedy effective

Transgrid acknowledges and agrees that any remedy of a Default or performance of any of the Customer's obligations under and in accordance with a Connection Document effected by an Enforcing Party will be effective as between the Customer and Transgrid (as applicable) to satisfy and discharge the relevant obligation of the Customer to cure the Default, as applicable, to the same extent as if it had been done or effected by the Customer.

3.6 Appointment and rights of Enforcing Party

- (a) Without limiting the rights of the Security Trustee under any Security, following an event that renders a Security enforceable, but subject to this Deed:
 - (i) the Security Trustee may appoint an Enforcing Party to exercise any or all of the Customer's rights or perform some or all of the Customer's obligations under a Connection Document; and
 - (ii) the Security Trustee or any Enforcing Party may make an Assignment in accordance with clause 2.1(b).
- (b) If the Security Trustee has enforced or exercised any of its rights, powers or remedies under any Security (including by appointing an Enforcing Party, exercising its power of sale or commencing proceedings to foreclose), then the Security Trustee must notify Transgrid promptly after it has enforced or exercised its rights, powers or remedies. Where the Security Trustee chooses no longer to exercise its rights, powers or remedies under any Security, it must notify Transgrid and the Customer to that effect.

4 Representations and warranties

Transgrid represents and warrants that:

- (a) **(status)** it is a corporation validly existing under the laws of the place of its incorporation;
- (b) **(corporate power)** it has the corporate power to enter into and perform its obligations under this Deed and the Connection Documents;
- (c) **(authorisations)** it has taken all necessary corporate action to authorise entry into and performance of this Deed and the Connection Documents;
- (d) **(documents binding)** this Deed and the Connection Documents are valid and binding obligations enforceable in accordance with their respective terms;

- (e) **(transactions permitted)** the execution and performance by it of this Deed and the Connection Documents will not breach or result in a contravention of:
 - (i) any law or regulation binding on it; or
 - (ii) its constitution or other constituent documents;
- (f) **(no reliance)** it has not entered into the Connection Documents or this Deed in reliance on, or as a result of, any statement or conduct of any kind by or on behalf of the Security Trustee or any of its respective related bodies corporate, except as expressly set out in this Deed;
- (g) **(no default or breach)** it is not in default or breach under this Deed or the Connection Documents; and
- (h) **(no notice)** it has not received notice of any Security Interest over the rights of the Customer under the Connection Documents, other than the Security.

5 Refinancing

Transgrid agrees and acknowledges that:

- (a) financing secured under the Security may be refinanced in whole or in part from time to time; and
- (b) as soon as reasonably possible following receipt of notice from the Customer in relation to such refinancing, it shall enter into a new deed on substantially the same terms as this Deed, or agree a novation of this Deed, if and to the extent necessary to confer benefits and obligations on incoming financiers (or any security trustee, collateral agent or similar acting on their behalf) equivalent to the benefits and obligations under this Deed.

6 Further security

Any further security or assurance from the Customer or under the Security in favour of an Enforcing Party will be taken to be part of the Security and be governed by this Deed.

7 Severability of Provisions

Any provision of this Deed or the exercise of any Power for the purpose of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate or affect the validity or enforceability of the remaining provisions of this Deed nor the validity or enforceability of that provision in any other jurisdiction.

8 Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) must be in writing signed by an Authorised Officer of the sender (or in the case of an email message, sent from the email address of an Authorised Officer of the sender); and
- (b) will be conclusively taken to be given or made when delivered, received or left at the address, email address or fax number of the recipient shown in the Schedule or to any other address, or fax number or email address which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively

taken to have been received at the commencement of business on the next day on which business is generally carried on in that place.

9 Entire Agreement

This Deed contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

10 Amendment

This Deed may be amended only by another deed executed by the parties in writing.

11 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

12 Assignment by Transgrid

Transgrid may not deal with, sell, assign, transfer, novate or otherwise dispose of, or create or allow to exist any Security Interest over, any of its rights or obligations under the Connection Documents unless:

- (a) it is permitted or not prohibited in accordance with that Connection Document; and
- (b) any applicable assignee or transferee accedes to become a party for the purposes of this Deed or agrees to enter into a new tripartite agreement (in addition to this Deed) on substantially the same terms as this Deed (or as otherwise agreed in writing by the Security Trustee).

13 Assignment by the Security Trustee

- (a) The Security Trustee may assign its rights and/or novate or otherwise transfer its interests under this Deed to any replacement security trustee under the Security provided that the replacement security trustee is a reputable bank, financial institution, or professional security trustee company. Each of Transgrid and the Customer agrees and acknowledges that it will enter into a novation deed (in a form acceptable to the Security Trustee and any replacement security trustee, and in a form acceptable to Transgrid) and any other documentation reasonably required to give effect to the assignment or novation with the replacement security trustee.
- (b) In exercise of its Powers under the Security an Enforcing Party may make an Assignment in accordance with clause 2.1(b). In the event of any such Assignment, Transgrid agrees to enter into a document equivalent to this Deed with the parties to this Deed (other than the Customer) and the assignee or transferee of the Customer's rights and obligations under the Connection Documents.

14 Duty and Costs

The Customer shall reimburse each other party for its costs (including legal fees on a full indemnity basis) arising out of the preparation and execution of this Deed and shall bear any duty (including stamp duty and any fines and penalties) chargeable on this Deed and on any

instruments executed under this Deed. The Customer shall indemnify each other party on demand against any liability for that duty.

15 Termination

This Deed will continue in full force and effect until the date that the Security Trustee notifies Transgrid in writing that the Security Interest has been released (without any prejudice to any rights which accrued prior to the expiration of the term). The Security Trustee will notify each of Transgrid in writing when the Security Interest has been released.

16 Governing Law and Jurisdiction

This Deed is governed by the laws of New South Wales and of the Commonwealth of Australia applying there. To the extent permitted by law, so are all related matters, including any non-contractual matters. The Customer irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

17 Counterparts

This Deed may be executed in any number of counterparts, each executed by one or more parties. A party may do this by executing and electronically transmitting a copy to one or more others or their representative.

18 Electronic execution

A party may sign this Deed electronically, and bind itself accordingly. This will satisfy any statutory or other requirements for this Deed to be in writing and signed by that party. In addition, the intention is to print it out after all parties that are signing electronically have done so, so that any such print-out will also be an executed original counterpart of this Deed. Each signatory confirms that their respective signature appearing in this Deed, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

19 Confidentiality

- (a) Subject to clause 19(b), the Security Trustee and any Enforcing Party must hold confidential and not disclose any documents, records, or information the subject of confidentiality obligations under the Connection Documents in any manner that contravenes the confidentiality obligations under such Connection Documents, without the prior written consent of Transgrid.
- (b) The Customer may discuss with, or disclose to, the Security Trustee, any beneficiary of the Security Trustee, any existing or prospective bona fide financiers for which the Security Trustee is or would be acting as security trustee or any Enforcing Party (in each case, including their respective officers, employees and advisers), documents, records, or information the subject of confidentiality obligations under the Connection Documents provided that such parties are bound by equivalent obligations of confidentiality as described in this clause 19(a).
- (c) Each of Transgrid and the Customer acknowledge and agree that any disclosure to the Security Trustee which is permitted by the terms of this Deed will not contravene the confidentiality obligations under the Connection Documents (or any other relevant agreement between the parties).

Schedule**Notice Details****Transgrid**

Transgrid

Address: Level 1, 180 Thomas Street, Sydney NSW 2000

Email:

Attention: Contracts Manager

Customer*[Insert Customer name]*Address: Email: Attention: **Security Trustee***[Insert name of Security Trustee]*Address: Email: Attention:

Customer Consent Deed – [Insert Project Name] Connection

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

Executed and delivered as a Deed**CUSTOMER**

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **[insert Customer name and ABN/ACN]**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

TRANSGRID

Executed as a deed by **NSW Electricity Networks Operations Pty Limited as trustee for NSW Electricity Network Operations Trust** in accordance with section 126 of the *Corporations Act 2001* (Cth) by its attorneys under power of attorney:

Attorney Signature

Attorney Signature

Name of Attorney

Name of Attorney

Date:

Date:

SECURITY TRUSTEE

[insert preferred Security Trustee signature block or use the below]

Signed Sealed and Delivered for **[insert name of Security Trustee]** by its attorney under power of attorney in the presence of:

Signature of Witness

Signature of Attorney

Name of Witness

Name of Attorney

Annexure A – Diagrams
