

## Summary

This document comprises the Network Operating Agreement template.  
TransGrid publishes this information under clause 5.2A.5 of the National Electricity Rules.

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## Document Control

<b>Date of issue</b>	July 2018	<b>Update</b>	Initial version
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## Disclaimer and important notice

This document and the information in it is for general guidance only and may be subsequently updated or amended.



**TransGrid**

# **Network Operating Agreement**

**[Insert customer project name]**

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

[Subtitle]  
ABN Insert

[Date]

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## AGREEMENT MADE AT SYDNEY

**PARTIES**                    **NSW Electricity Networks Operations Pty Ltd** (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**")

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

### Background

- A. TransGrid is required to operate, maintain and control the Shared Assets as the *Primary Network Service Provider* under the Rules.
- B. The Shared Assets have been constructed by the Shared Assets Provider and commissioned under the Construction Coordination Deed and the Project Agreement and handed over to TransGrid to operate, maintain and control under the Construction Coordination Deed and this agreement.
- C. The Shared Assets will form part of TransGrid's *transmission network* in all material respects.
- D. This agreement is the *network operating agreement* required between the Shared Assets Provider as a *third party IUSA owner* and the *Primary Transmission Network Service Provider* in accordance with clause 5.2A.7 the Rules.

### 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**" has the meaning given to that term in clause 3.1(a).

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

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

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

"**Annual Fee**" means the fee payable by the Shared Assets Provider as set out in Schedule 4 to TransGrid for the provision of Routine Services.

"**Applicable Laws**" means the ESA, the NEL, the Rules and any other legislation, rules, regulations, codes, Directives, licence conditions or other regulatory instruments which are directly or indirectly binding on or are expressed to apply to TransGrid or the Shared Assets Provider and relate to the Shared Assets, the performance of the O&M Services or the provision or receipt of any of the O&M Services (and for the avoidance of doubt includes any Emissions Requirements).

"**APRA**" means the Australia Prudential Regulatory Authority.

"**Associates**" means, in relation to a party:

- (a) each of that party's holding companies (as defined in the *Corporations Act 2001* (Cth)), Subsidiaries or Related Bodies Corporate;

[Optional Footer Text]

- (b) each of that party's sub-contractors, including the Construction Contractor;
- (c) all officers, employees, authorised agents, (sub-)contractors and professional advisers engaged or employed by or on behalf of that party and any person or entity referred to in limbs (a) and (b) above; and
- (d) any other person engaged or employed by or on behalf of the party in the performance of the Shared Assets work.

**"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; 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 the 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.

**"Billing Period"** means:

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

**"Business Day"** means any day other than:

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

**"Charges"** means the charges and other amounts payable under clause 7 of this 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.

**"Collateral Warranty"** means a collateral deed, in a form approved by TransGrid, pursuant to which the Construction Contractor gives warranties in respect of the Shared Assets in favour of TransGrid.

**"Commencement Date"** means the date on which the last party executes this agreement.

"**Completion Date**" has the meaning given to the term in clause 16.3(d).

"**Connection Agreement**" means the connection agreement entered into between the TransGrid, the Customer and [the Dedicated Asset Provider] on or about the date of this agreement.

"**Connection Applicant**" has the meaning given to that term in clause 10.1(b).

"**Connection Point**" means an agreed point or points of *supply* as defined in the Connection Agreement.

"**Construction Contractor**" means the contractor engaged by the Shared Assets Provider to carry out design, procurement, supply, construction, commissioning, and project management for the Shared Assets work.

"**Construction Coordination Deed**" means the construction coordination deed between TransGrid, the Shared Assets Provider, the Customer and [the Dedicated Assets Provider] dated on or about the date of this agreement.

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

"**Contract Year Cap**" means the amount equal to the annual [Routine O&M Charge set out in Schedule 4].

"**Controlled Records**" means, in relation to a party, the records specified in respect of that party in Item 5 of Schedule 5.

"**Credit Support**" has the meaning set out in clause 3.2.

"**Customer**" means the Customer under the Connection Agreement, being the original member of the initial *identified user group* connecting to the *transmission network* through the Shared Assets.

"**Customer's Facilities**" has the meaning given to that term in the Connection Agreement.

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

"**Dedicated Asset Provider**" means [insert].

"**Defects Rectification Works**" means the work undertaken by TransGrid in accordance with clause 6.4(c)(iii) as described in Item 4 of Schedule 3.

"**Defaulting Party**" has the meaning given to that term in clause 15.1(a)(i).

"**Default Rate**" means the Interest Rate plus a margin of 2.0%.

"**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 Shared Assets Provider or relates directly or indirectly to the design construction, operation or maintenance of the *transmission system* or Shared Assets.

"**Emergency Works**" has the meaning given to that term in clause 6.4(c)(ii).

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

**"Encumbrances"** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power, and title retention of flawed deposit arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority, or advantage over creditors including any right of set-off;
- (c) profit à prendre, easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgement, or any agreement to create any of them or allow them to exist.

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

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

**"Fair Market Value"** means the lesser of:

- (a) Tax Written Down Value of that asset as at that immediately preceding 31 December on the date of the Purchase Option exercise; and
- (b) the fair market value of that asset as at that immediately preceding 31 December on the date of the Purchase Option exercise.

**"Financial Cure Period"** has the meaning given to that term in clause 15.1(a)(i).

**"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.

**"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.

**"Force Majeure Event"** has the meaning given to that term in clause 11.1(a).

**"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 7.5(d).

**"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 5.

**"Linked Dispute"** has the meaning given to that term in clause 19.3(a).

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

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

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

**"New Capital Works"** has the meaning give to that term in clause 10.2(a).

**"NOA Services Commencement Date"** means the date when the Shared Assets have passed all commissioning tests under the Construction Coordination Deed and operational control of the Shared Assets has transferred to TransGrid under clause 6.1 of this agreement and clause 9 of the Construction Coordination Deed.

**"Non-Financial Cure Period"** has the meaning given to that term in clause 15.1(a)(ii).

**"Non-Financial Default"** means:

- (a) a breach by the Shared Assets Provider of its obligations under this agreement which causes, or is reasonably likely to cause, a material adverse effect to TransGrid in the performance of its obligations under this agreement, which includes the Shared Assets Provider's refusal of or obstruction to TransGrid undertaking Defects Rectification Works or Emergency Works; 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 Shared Assets Provider in the performance of its obligations under this agreement,

other than a Financial Default.

**"Non-Routine Capital Works"** has the meaning given to that term in clause 6.4(c)(i).

**"Non-Routine Capital Works Schedule"** means the non-routine capital works replacement schedule that TransGrid will undertake, as set out in Item 2 of Schedule 3.

**"O&M Services"** means Routine Services, Non-Routine Maintenance Services and Non-Routine Capital Works, Emergency Works and Defects Rectification Works provided by TransGrid to the Shared Assets Provider under this agreement.

**"Other TransGrid Customer"** means any person other than the Shared Assets Provider who has equipment connected to the *transmission system* or to whom TransGrid provides *transmission services* from time to time during the Term.

**"Performance Scheme Loss"** means any loss reasonably incurred or revenue reasonably foregone by TransGrid under the AER's *service target performance incentive scheme* or any direct replacement of amended scheme that is attributable to or caused by the Shared Assets Provider's breach of this agreement.

**"Project Agreement"** means the project agreement for the [insert project name] entered into between TransGrid and the Customer on or about the date of this agreement under which TransGrid will design, construct and commission the non-contestable assets to connect the Customer's Facilities.

**"Purchase Option"** has the meaning given to that term in clause 16.2.

**"Rectification Plan"** has the meaning given to that term in clause 15.1(a)(ii).

**"Related Body Corporate"** means:

- (a) in the case of TransGrid, means NSW Electricity Networks Assets Pty Limited (ACN 609 169 922) as trustee for the NSW Electricity Networks Assets Trust and each of their respective related bodies corporate (within the meaning of paragraph (b) below); and
- (b) otherwise in the case of any 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 for collective investment of its members, a trust or a partnership.

**"Renewal Offer"** has the meaning given to that term in clause 2.2(a).

**"Routine Services Program"** means the routine maintenance and capex program that TransGrid will undertake, as set out in Schedule 2.

**"Routine Services"** means the services that TransGrid provides to the Shared Assets Provider under clause 6.3(a) in accordance with Routine Services Program.

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

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

**"Senior Managers"** means the Shared Assets Provider's Senior Manager and TransGrid's Senior Manager.

**"Shared Assets"** means the *identified user shared asset* described in Schedule 1 which are used to *connect* the Customer's Facilities to the *transmission network*, which, under the terms and conditions of this agreement, forms part of TransGrid's *transmission network*.

**"Shared Assets Provider Caused Event"** means any one or more of the following:

- (a) a latent defect in the Shared Assets that could not have been reasonably discovered by TransGrid during the testing, commissioning or handover processes under the Construction Coordination Deed;

- (b) the Shared Assets Provider fails to pay for or approve (as relevant) Defects Rectification Works, Emergency Works and/or Non-Routine Capital Works such that TransGrid is unable to undertake those works;
- (c) an error, defect, omission, deficiency, non-conformity, fault, failure, malfunction or discrepancy in the *detailed design* of the Shared Assets such that it causes or is reasonably likely to cause:
  - (i) a material adverse effect to TransGrid in the performance of its obligations under this agreement; or
  - (ii) damage to TransGrid's *transmission system*; and
- (d) damage to the Shared Assets and/or TransGrid's *transmission system* arising out of or in connection with the Shared Assets Provider or its representatives' acts or omissions while on the site of the Shared Assets.

**"Specific Maintenance Schedule"** means the specific maintenance schedule that TransGrid will undertake, as set out in Item 1 of Schedule 3.

**"Specific Maintenance Services"** has the meaning given to that term in clause 6.3(b).

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

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

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

**"Tax Written Down Value"** means:

- (a) in relation to a depreciating asset (other than capital works), its adjustable value; or
- (b) in relation to any other asset, its cost base.

The terms used in this definition have the meanings given to them in section 995-1 of the *Income Tax Assessment Act 1997* (Cth) as in force as at the Commencement Date.

**"Term"** means the term of this agreement specified in clause 2.

**"Tripartite Agreement"** means the tripartite agreement between TransGrid, Shared Assets Provider and Shared Assets Provider's financiers.

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

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

## 1.2 NER 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, schedule or attachment is a reference to a recital, clause or paragraph of or schedule or attachment to this agreement and references to this agreement include any schedule or attachment;
- (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; and
- (o) a reference to "\$", AUD or dollars is to Australian currency.

### 1.4 Relationship between Shared Assets Provider 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:

[Optional Footer Text]

- (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 Shared Assets Provider to comply with various technical obligations imposed upon the Shared Assets Provider in relation to the operation of the *IUSA* under the Rules.
- (b) For the period that the Shared Assets Provider is not a *Registered Participant* (or exempted by the AER from having to be a *Registered Participant*), any provision of Chapters 4, 5, 7 and 8 of the Rules that set out:
- (i) rights and obligations of an *identified user shared asset* owner as against a *Network Service Provider* (or vice versa); or
  - (ii) technical or operational specifications that are relevant to the Shared Assets that are the subject of this agreement,

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

- (c) Any provisions that are incorporated into this agreement under sub-clause (b) must be read and construed in accordance with the following:
- (i) references to an *identified user shared asset* owner or analogous terms are to be taken to be references to the Shared Assets Provider as appropriate;
  - (ii) references to *third party IUSA* owner are to be taken to be references to the Shared Assets Provider as appropriate;
  - (iii) references to *Network Service Provider* or analogous terms are to be taken to be references to TransGrid;
  - (iv) any other terms relevant to the abovementioned terms must be construed accordingly; and
  - (v) 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) In addition, in order to interpret the above provisions, the following provisions of the Rules apply to the extent necessary to give meaning to any provisions incorporated into the agreement in accordance with sub-clause (b) above:
- (i) Clause 4.1.1;
  - (ii) Clause 5.1A.1 and 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 sub-clause (b) above;
- (vi) Chapter 10; and
- (vii) any other provisions which are specifically referred to in Chapter 10 and are necessary to give meaning to the definitions set out in Chapter 10.

## 1.5 Rights of MHC

Where this agreement confers a right on MHC, the Shared Assets Provider agrees that TransGrid holds the benefit of that right, and can exercise and enforce that right, for MHC.

## 2. TERM

### 2.1 Term

This agreement:

- (a) commences on the Commencement Date; and
- (b) ends on the earlier of:
  - (i) the date on which there is no *connection agreement* between TransGrid and any person where the Shared Assets are used to provide for that *connection*; and
  - (ii) the date that this agreement is terminated in accordance with its terms.

### 2.2 Renewal of agreement

- (a) If there is or will be an extension of the Connection Agreement or a new Connection Agreement, TransGrid must offer the Shared Assets Provider an extension of this agreement for an equivalent term to the extended or new Connection Agreement and advise of any changes in Charges payable under this agreement (**Renewal Offer**).
- (b) The Shared Assets Provider must provide its written notice of its acceptance of the Renewal Offer within 30 Business Days of its receipt. If the Shared Assets Provider does not provide written notice within 5 Business Days of receipt of the Renewal Offer, the Shared Assets Provider is deemed to have accepted the Renewal Offer.
- (c) If the Shared Assets Provider does not accept the Renewal Offer, the Shared Assets Provider is not prevented from requesting a new *network operating agreement* under the Rules.

## 3. CREDIT SUPPORT

### 3.1 Acceptable credit rating

- (a) For the purposes of this clause 3, an entity will have an "**Acceptable Credit Rating**" if at all times it holds a long term issuer credit rating of at least A- in respect of unsecured obligations of the entity, as rated by Standard & Poor's (Australia) Pty Limited ("**Standard & Poor's**") or its equivalent by other rating agencies as may be agreed by TransGrid acting reasonably.

[Optional Footer Text]

- (b) If, in TransGrid's reasonable opinion, the methods by which Standard & Poor's or the relevant rating agency determine credit ratings materially change or that organisation no longer determines credit ratings then TransGrid may, from time to time, in its discretion determine a credit rating for the relevant entity for the purposes of this clause 3.

### 3.2 Credit Support

- (a) The Shared Assets Provider must, within 10 Business Days of the NOA Services Commencement Date, provide TransGrid credit support in TransGrid's favour that:
  - (i) is issued by a bank or a financial institution approved by TransGrid (acting reasonably) which is an Approved Deposit-taking Institution supervised by the Australia Prudential Regulatory Authority ("**APRA**") and carries an Acceptable Credit Rating;
  - (ii) is issued from a branch located in Australia by the entity described in clause 3.2(a)(i);
  - (iii) is in the form of an unconditional and irrevocable bank guarantee reasonably acceptable to TransGrid;
  - (iv) is duly executed by the credit support provider and delivered unconditionally to TransGrid;
  - (v) constitutes a valid and binding unsubordinated obligation of the credit support provider to make payment to TransGrid; and
  - (vi) permits drawings or claims by TransGrid to an amount which is not less than the amount determined in accordance with Item 3 of Schedule 5,(the "**Credit Support**").
- (b) Without limiting TransGrid's rights under this agreement, if the Owner fails to provide Credit Support when required and in accordance with clause 3.2(a), TransGrid may immediately cease providing O&M Services until such time the Owner provides the outstanding Credit Support.

### 3.3 Amount of Credit Support

If the Shared Assets Provider has been required to procure the Credit Support, the Shared Assets Provider must ensure that at all times the aggregate undrawn or unclaimed amount of Credit Support is not less than the amount determined in accordance with Item 3 of Schedule 5 from time to time (the "**Guaranteed Amount**").

### 3.4 Drawings on Credit Support

- (a) TransGrid has an irrevocable and unconditional right to draw on the Credit Support in the following circumstances:
  - (i) if this agreement is terminated by either party under clause 11.4, by TransGrid under clause 15.2 and the Shared Assets Provider fails to pay the amount due under clause 15.6;
  - (ii) if the Shared Assets Provider fails to pay Charges under clause 7;
  - (iii) if the Shared Assets Provider fails to provide a replacement Credit Support when required in accordance with clause 3.8; and
  - (iv) if the Shared Assets Provider fails to comply with clause 3.3.

[Optional Footer Text]

- (b) Where TransGrid has a right to draw on the Credit Support in accordance with this clause 3.4, TransGrid may draw on the Credit Support up to an amount which is equal to the estimated value of:
  - (i) in the case of the right referred to in clause 3.4(a)(i), the amount payable by the Shared Assets Provider to TransGrid under clause 15.6;
  - (ii) in the case of the right referred to in clause 3.4(a)(ii), the amount payable by the Shared Assets Provider to TransGrid under clause 7; and
  - (iii) in the case of the right referred to in clause 3.4(a)(iii), the amount of the replacement Credit Support.
- (c) Where TransGrid draws or claims upon any Credit Support, the Shared Assets Provider must procure the immediate issue of further Credit Support in the amount drawn or claimed so as to comply with its obligation to maintain aggregate undrawn current and valid Credit Support for the then current Guaranteed Amount.
- (d) The provisions of this clause 3.4 will survive the termination of this agreement.

### **3.5 Changes in amount of Credit Support**

- (a) TransGrid agrees to reduce the amount of the Credit Support if TransGrid is satisfied that the amount of that Credit Support exceeds the Guaranteed Amount at that time.
- (b) If at any time, the amount of the Credit Support held by TransGrid is less than the Guaranteed Amount, TransGrid may request the Shared Assets Provider to provide additional Credit Support for the amount of that shortfall.
- (c) The Shared Assets Provider must provide any additional Credit Support requested within 10 Business Days after TransGrid's request (which additional Credit Support must satisfy the other requirements of this clause 3).

### **3.6 Refund of drawing**

If TransGrid has drawn on a Credit Support:

- (a) for an amount which the Shared Assets Provider was not liable to pay or reimburse TransGrid under the terms of this agreement; or
- (b) in excess of an amount for which the Shared Assets Provider was liable to pay or reimburse TransGrid under the terms of this agreement,

then, TransGrid must:

- (c) in the case of a drawing referred to in clause 3.5(a), refund the amount drawn to the Shared Assets Provider; or
- (d) in the case of a drawing referred to in clause 3.5(b), refund the difference between the amount that was drawn and the amount for which the Shared Assets Provider is liable to pay TransGrid.

### 3.7 Return of Credit Support

TransGrid must return the Credit Support referred to in clause 3.2 to the Shared Assets Provider within 10 Business Days of the full discharge of the Shared Assets Provider's obligations under this agreement, to the extent not drawn in accordance with this agreement.

### 3.8 Expiry of Credit Support

- (a) If any Credit Support is due to expire prior to the date when TransGrid must return that Credit Support under clause 3.7, then 20 Business Days prior to the expiration of the term of that Credit Support (and any replacement of that Credit Support in accordance with this clause) the Owner must provide to TransGrid a replacement Credit Support from an issuer described in clause 3.2 on the same terms as the Credit Support it replaces.
- (b) The Owner agrees that in addition to any other right of TransGrid's to draw on any Credit Support, TransGrid may make a drawing on a Credit Support if the obligation to provide a replacement Credit Support under clause 3.8(a) is not satisfied prior to the expiry of the Credit Support, in which event TransGrid may draw the full face value of that Credit Support prior to its expiry and hold that amount as security until such time as the Owner provides a replacement Credit Support.

## 4. INTERFACES

### 4.1 Interface boundaries

- (a) The parties agree that the boundary between the Shared Assets from the *transmission network* is as it is set out in the diagram in Schedule 1.
- (b) The Shared Assets Provider owns all those components that form the Shared Assets and TransGrid owns all those components that form part of the *transmission network* from the boundary identified in the diagram in Schedule 1 and the parties must update the diagram in Schedule 1 promptly following any modification or augmentation of the Shared Assets under either clauses 6.4 or 10.2.

### 4.2 Interface and integration

- (a) TransGrid is responsible for the effective interface and integration between the Shared Assets and the *transmission network* and will do all that is reasonably necessary to ensure effective interface and integration.
- (b) The Shared Assets Provider agrees to do all that is reasonably requested by TransGrid (including providing information about the Shared Assets and third party contractors where applicable) to ensure that TransGrid can undertake its responsibilities for the interface between the Shared Assets and *transmission network* under clause 4.2(a).

## 5. SHARED ASSETS PROVIDER REPRESENTATIONS AND WARRANTIES

- (a) The Shared Assets Provider represents and warrants that:
  - (i) it does not own, operate or control a *generating system*;
  - (ii) it does not own, operate or control a *facility* utilising electricity *energy*; and
  - (iii) it is not a related entity of a person owning, operating or controlling a *generating system* or *facility* utilising electricity *energy*;

[Optional Footer Text]

that is *connected* to the Shared Assets.

- (b) The Shared Assets Provider must promptly notify TransGrid if it no longer meets any of the warranties set out in clause 5(a).
- (c) In clause 5(a)(iii), **related entity** means, in relation to an entity, an entity that controls or is controlled by, that first mentioned entity and in this clause 5(c):
  - (i) **entity** has the meaning given in the *Corporations Act 2001* (Cth) subject to section 64A of the *Corporations Act 2001* (Cth) not applying to such meaning; and
  - (ii) **control** has the meaning given in the *Corporations Act 2001* (Cth).

## 6. OPERATION AND MAINTENANCE SERVICES

### 6.1 Handover of operational control of the Shared Assets

The conditions for handover of operational control of the Shared Assets to TransGrid are the satisfaction of all commissioning and testing under the Construction Coordination Deed, to the satisfaction of TransGrid acting reasonably.

### 6.2 TransGrid's responsibilities

- (a) The Shared Assets Provider agrees that TransGrid has the right and obligation to control, operate and maintain the Shared Assets under the Rules.
- (b) On and from the NOA Services Commencement Date, TransGrid must maintain and operate (or ensure that its Related Body Corporate and third party contractors will maintain and operate) the Shared Assets through the provision of O&M Services in accordance with:
  - (i) Applicable Laws;
  - (ii) requirements of the Rules;
  - (iii) *good electricity industry practice*; and
  - (iv) relevant *Australian Standards*.

### 6.3 Routine Services

- (a) On and from the NOA Services Commencement Date, TransGrid will undertake Routine Services for the Shared Assets in accordance with its Routine Services Program as set out in Schedule 2 for which the Shared Assets Provider will pay the Annual Fee.
- (b) In addition to the Routine Services undertaken by TransGrid in accordance with clause 6.3(a), the Shared Assets Provider may request that TransGrid undertake particular maintenance activities as provided in the Specific Maintenance Schedule set out in Item 1 of Schedule 3 (**Non-Routine Maintenance Services**).
- (c) If the Shared Assets Provider requests particular maintenance activities as provided in the Specific Maintenance Schedule in accordance with clause 6.3(b), the Shared Assets Provider must pay TransGrid separately the fees identified for each of those activities in the Specific Maintenance Schedule in addition to the payment of the Annual Fee.

## 6.4 Capital Works Replacement

- (a) The parties agree that TransGrid has the right to alter, replace and augment the Shared Assets to the extent required to perform its obligations under the Connection Agreement with the Customer and any *connection agreement* for a new *connection* entered into by TransGrid under clause 10.2.
- (b) The Shared Assets Provider will provide all information reasonably requested by TransGrid in relation to the Shared Assets to allow TransGrid to carry out its rights and obligations under clause 6.4(a).
- (c) In addition to the capital works undertaken by TransGrid as part of the Routine Services in accordance with clause 6.3(a):
  - (i) the Shared Assets Provider may request that TransGrid undertake particular capital works replacement as provided in the Non-routine Capital Works Schedule set out in Item 1 of Schedule 3 (**Non-Routine Capital Works**);
  - (ii) TransGrid may undertake works without the Shared Assets Provider's prior approval if works are needed immediately to repair damage to the Shared Assets, which are necessary to ensure its continued function and prevent further harm and damage to the broader *transmission network* (**Emergency Works**). All Emergency Works must be undertaken in accordance the Emergency Works Schedule set out in Item 3 of Schedule 3; and
  - (iii) TransGrid may undertake Defects Rectification Works following discussion and agreement with the Shared Assets Provider in accordance with the Defects Rectification Works Schedule set out in Item 4 of Schedule 3.
- (d) If the Shared Assets Provider requests Non-Routine Capital Works in accordance with clause 6.4(c)(i) or TransGrid undertakes Emergency Works or Defects Rectification Works in accordance with clauses 6.4(c)(ii) and 6.4(c)(iii), the Shared Assets Provider must pay TransGrid separately the fees identified for each of those activities in the Non-routine Capital Works, Emergency Works and Defects Rectification Works Schedules, in addition to the payment of the Annual Fee.

## 7. PAYMENT FOR SERVICES

### 7.1 Amount of charges

- (a) The Shared Assets Provider must pay to TransGrid any charges payable under this agreement and any other amount which is payable by the Shared Assets Provider from time to time under Schedule 4 in accordance with the requirements of that Schedule 4 (**Charges**).

### 7.2 Invoicing

- (a) TransGrid will render to the Shared Assets Provider within 10 Business Days of the end of each Billing Period an invoice for the Charges payable under this clause 7 in relation to that Billing Period or a previous Billing Period.
- (b) The Shared Assets Provider must pay TransGrid the amount stated as payable on any such invoice by direct credit to the bank account from time to time specified for this purpose by TransGrid or such other method as agreed in writing between the parties.
- (c) Payments by the Shared Assets Provider must be made no later than 4:00pm on the 10<sup>th</sup> Business Day after the date of the invoice rendered by TransGrid under the clause 7.2.

[Optional Footer Text]

### 7.3 Contents of invoices

TransGrid will ensure that any invoices rendered under clause 7.2 will be valid for GST purposes and will include without limitation the following information:

- (a) **Charges:** particulars of the Charges payable by the Shared Assets Provider or amounts due to the Shared Assets Provider under clause 7.1 (including sufficient information in relation to such Charges and other amounts to reasonably enable the Shared Assets Provider to verify the basis of the relevant charges or other amount);
- (b) **Other amounts:** particulars of any other Charges payable by the Shared Assets Provider in respect of the invoice period that applies under clause 6.2, including any amounts payable under clauses 7.4, 7.5, 7.7, 7.8 and 7.9 (including sufficient information in relation to such charges to reasonably enable the Shared Assets Provider to verify the basis of the relevant charges); and
- (c) **Rules information:** any information required to be provided in invoices under clause 6A.27.2 of the Rules.

### 7.4 Taxes

If:

- (a) the Shared Assets Provider 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 law to make any payment, on account of a tax, duty, levy, impost or other charge or in the nature of any such thing on or in relation to any amount received or receivable by it under this agreement or in relation to any O&M Services provided under this agreement or which is payable as a result of entering into or performing this agreement (other than income tax),

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

- (c) the Shared Assets Provider 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 Shared Assets Provider under this agreement will be increased to the extent necessary to ensure that, after the making of the relevant deduction, withholding or payment, 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 Shared Assets Provider'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 Shared Assets Provider 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.

## 7.5 GST

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

## 7.6 Disputed invoices

- (a) In the event of any dispute concerning an invoiced amount the Shared Assets Provider will, within 10 Business Days from the date it received the invoice, notify TransGrid in writing identifying the amount in dispute and giving full reasons for the dispute.
- (b) The Shared Assets Provider will pay the full amount of any portion of the invoice which is not in dispute.

[Optional Footer Text]

- (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 19.
- (d) If, and for so long as, the Shared Assets Provider complies in good faith with the provisions of this clause 7, it will not, for that reason alone be in breach of its obligations under clause 7.2 as a result of failing to pay any portion of an invoice which is in dispute

### **7.7 Interest on disputed amount**

Where, as a result of the determination of a dispute of the nature referred to in clause 7.6, 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 19 for the payment of the principal amount.

### **7.8 Adjustment of invoices**

- (a) This clause 7.8 applies if:
  - (i) the Shared Assets Provider has been overcharged or undercharged in any form whatsoever;
  - (ii) the Shared Assets Provider has actually paid the invoices containing such overcharge or undercharge; and
  - (iii) the overcharge or undercharge is in relation to an invoice dated within the preceding 12 months from the date of discovery of the overcharge or undercharge.
- (b) Within 20 Business Days after the overcharge or undercharge (as the case may be) has been discovered and the amount of the overcharge or undercharge has been agreed by the parties or determined pursuant to the provisions of clause 19, TransGrid will refund to the Shared Assets Provider the amount of the overcharge (if any) and the Shared Assets Provider 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.

### **7.9 Default interest**

- (a) If either party fails to pay any amount payable under this agreement on the due date for payment (or, where the amount is upon demand, upon such demand being made) then interest will be payable on the amount unpaid from the due date for payment until actual payment, at a rate equal to the Default Rate, calculated on a daily basis. This clause 7.9 does not apply to any amount that is permitted to be withheld under clause 7.6.
- (b) Interest payable under paragraph (a) which is not paid when due for payment may be added to the overdue amount at the end of each month. Interest is payable on the increased overdue amount at the Default Rate calculated on a daily basis.

## 8. DEFECTS

### 8.1 Shared Assets Provider warranties

The Shared Assets Provider warrants that:

- (a) it has reviewed and understands TransGrid's obligations to provide *connection services* to the Customer under the Connection Agreement and under the Rules;
- (b) it will design and carry out the Shared Assets works in a manner that will allow TransGrid to discharge its obligations and responsibilities under the Rules;
- (c) the Shared Assets works have been carried out in accordance with Applicable Law, requirements of the Rules, *good electricity industry practice* and relevant *Australian Standards*;
- (d) the Shared Assets complies with the agreed technical and other specifications set out in the Construction Coordination Deed; and
- (e) the Shared Assets are fit for its intended purpose.

## 9. ACCESS, TITLE AND RISK OF ASSETS

### 9.1 Shared Assets forms part of the transmission network

- (a) The Shared Assets Provider agrees that TransGrid is entitled to treat the Shared Assets as forming part of its *transmission network* in all material respects; and
- (b) TransGrid in its absolute discretion may use the Shared Assets to provide *transmission services* to any *Transmission Network User* in accordance with the Rules.

### 9.2 Easements and TransGrid access rights

- (a) On and from the NOA Services Commencement Date and during the Term, the Shared Assets Provider must at its own cost and at no cost to TransGrid, ensure that MHC or another nominee of TransGrid is granted any easement which is required by TransGrid for securing a permanent right to access the Shared Assets.
- (b) The easements granted under clause 9.2(a) will identify the access route agreed between the parties and be otherwise on terms reasonably acceptable to TransGrid.
- (c) Subject to clause 9.2(b), and without limiting TransGrid's other rights of access under this agreement, the Shared Assets Provider will provide TransGrid (and its Associates) with clear, unhindered and safe access to and over the Land and any associated access roads for the purpose of undertaking the O&M Services.

### 9.3 Shared Assets Provider access

- (a) The Shared Assets Provider agrees that TransGrid and its Associates has unrestricted use of and right of access to the Shared Assets for any purpose related to:
  - (i) the provision of O&M Services under this agreement;
  - (ii) any *connection agreements* related to the Shared Assets; and
  - (iii) TransGrid's responsibilities and rights and the Rules as it relates to the Shared Assets.

[Optional Footer Text]

- (b) The Shared Assets Provider may on reasonable written notice to TransGrid inspect the Shared Assets.
- (c) In exercising access right under clause 9.3(b), the Shared Assets Provider's authorised officers must comply with all of TransGrid's directions, including following relevant health and safety policies and procedures, industry practice in relation to the security, facilities and systems.
- (d) The Shared Assets Provider's access right under clause 9.3(b) may be restricted or limited:
  - (i) by industrial relations or occupational health and safety requirements; or
  - (ii) where such access will delay TransGrid in the performance of its obligations under this agreement, the Construction Coordination Deed, the Connection Agreement and/or the Project Agreement.

## 10. OTHER CONNECTIONS

### 10.1 New connections

- (a) The Shared Assets Provider agrees that TransGrid has the right to *connect* other persons to the Shared Assets in accordance with the Rules.
- (b) If TransGrid receives an *application to connect* to the Shared Assets from a third party (**Connection Applicant**), TransGrid will provide the Shared Assets Provider with written notice of the *connection* enquiry and consult with the Shared Assets Provider in respect of the *connection*.
- (c) TransGrid must consider the Shared Assets Provider's comments (if any) in relation to the *application to connect* and, acting reasonably will take into account the Shared Assets Provider's comments in preparing a response to the *connection* enquiry.
- (d) Subject to clause 10.1(c), TransGrid has absolute discretion as to its offer to *connect* to the Connection Applicant.

### 10.2 Capital works to Shared Assets for new connection

- (a) If the *connection* to the Shared Assets by the New Connection Applicant requires incremental capital that are *non-contestable IUSA components (New Capital Works)*, TransGrid will consult with the Shared Assets Provider in relation to the functional specifications and detailed design of the New Capital Works.
- (b) Unless otherwise agreed with the Shared Assets Provider and the Connection Applicant, TransGrid will recover the costs of providing functional specifications, detailed design and construction of the New Capital Works from the Connection Applicant.
- (c) All New Capital Works built under this clause 10.2 will form part of the Shared Assets and will be operated and maintained by TransGrid under the terms of this agreement.

### 10.3 Cost sharing

- (a) If there is a new *connection* made under this clause 10 to the Shared Assets, costs of the O&M Services under this agreement will be shared with the Connection Applicant in accordance with those principles set out in Schedule 5.11 of the Rules, using the most appropriate cost allocation methodology determined by TransGrid in consultation with the Connection Applicant and the Shared Assets Provider.

- (b) TransGrid will rebate the Shared Assets Provider those amounts recovered by TransGrid from the Connection Applicant's for its share of the costs of the O&M Services referred to in clause 10.3(a), on a monthly basis.
- (c) Nothing in this clause 10 will increase the Charges payable by the Shared Assets Provider under this agreement.

#### 10.4 Access and assistance

The Shared Assets Provider must provide TransGrid with all information and assistance reasonably requested by TransGrid so as to enable TransGrid to connect the Connection Applicant to the Shared Assets and carry out its obligations under this clause 10.

### 11. FORCE MAJEURE

#### 11.1 Force Majeure

- (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 11.1(a), the following events will be Force Majeure Events to the extent that they satisfy the requirements of clause 11.1(a):
  - (i) **Acts of God etc:** any event or circumstance occasioned by or in consequence of any acts of God, acts of public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, animals, aircraft, landslips, landslides, lightning, earthquakes, fires, storms, floods, washouts, geomagnetically induced currents, arrests, restraints of rulers, and civil disturbances;
  - (ii) **Applicable Laws:** the compliance by the affected party in good faith with Applicable Laws;
  - (iii) **Directives, Court Orders etc:** the binding order or Directive of any Court, Tribunal, Authority (other than TransGrid) by reason of any cause beyond the control of the party invoking this clause 11.1 and which does not arise from a breach of this agreement by the party invoking this clause 11.1;
  - (iv) **Breakages or accidents:** breakage or failure of, or an accident to, any plant, equipment or other facility owned or operated by the party invoking this clause 11.1;
  - (v) **Strikes or Lockouts:** strikes, lockouts or other labour disputes other than those solely involving the employees (or employees of contractors and sub-contractors) of the party invoking this clause 11.1;
  - (vi) **Power supply failure:** a partial or entire failure of the supply or availability of electricity to the power system, a partial or entire failure of any *Generator* or *Market Network Service Provider* to inject electricity into the national grid, or a partial or entire failure of any other person to take electricity;

- (vii) **Failure of supplier:** a failure by a supplier (being a party with whom the affected party contracts from time to time) of goods and services to provide such goods or services by reason of any event, circumstance, act or omission, or combination of them, which is beyond the reasonable control of that supplier;
- (viii) **Delay of supplier:** a delay by a supplier (being a party with whom the affected party contracts from time to time) of goods and services to provide those goods or services, where that supplier is entitled under the terms of its contract with the affected party to claim an extension of time for the provision of those goods or services; and
- (ix) **Acts of third parties:** acts or omissions by a third party beyond the control of the party invoking this clause 11.1 and its Associates including an Authority (other than TransGrid) any Other TransGrid Customer.

## 11.2 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 11.1, it will notify the other party as soon as reasonably practicable of full particulars of the Force Majeure Event relied upon.

## 11.3 Avoidance and Mitigation

The party invoking clause 11.1 will:

- (a) use its reasonable endeavours to overcome or avoid the Force Majeure Event;
- (b) use its reasonable endeavours to mitigate the effects or consequences of the Force Majeure Event; and
- (c) consult with the other party on the performance of the obligations referred to in clauses 11.3(a) and 11.3(b).

However, nothing in this clause 11.3 will be construed as requiring the party invoking clause 11.1 to settle a strike, lock-out or other industrial disturbance by acceding against its judgment to the demands of opposing parties.

## 11.4 Termination on account of Force Majeure Event

- (a) Subject to clause 11.4(b), if the Force Majeure Event or its direct effect or consequence on the operations of either party, is of such magnitude, or will be (or it is more probable than not that it will be) of such duration, that after a period of not less than 12 consecutive months from the date of the commencement of the Force Majeure Event, it is unreasonable in all the circumstances for either party to perform, comply with or observe this agreement, that party may, upon not less than 10 Business Days' notice, terminate this agreement.
- (b) Clause 11.4(a) will not apply to a Force Majeure Event which prevents or limits either party from performing any obligation under this agreement if the Shared Assets Provider:
  - (i) notifies TransGrid that it does not want this agreement to terminate as a result of that Force Majeure Event; and
  - (ii) continues to pay the Charges and (where relevant) complies with its other obligations under this agreement.

## 12. INSURANCE

### 12.1 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 O&M Services; and
- (b) public liability insurance for a minimum amount of \$50 million for any one claim.

(collectively the "**Insurance Cover**").

### 12.2 Inspection of TransGrid's Insurance Cover Documentation

- (a) Evidence of the Insurance Cover maintained under clause 12.1 will be made available for inspection by the Shared Assets Provider at any time prior to the NOA Services Commencement Date on reasonable request by the Shared Assets Provider.
- (b) TransGrid will also, on reasonable request by the Shared Assets Provider, provide:
  - (i) certificates evidencing that the Insurance Cover required by clause 12.1 has been effected and all premiums have been paid; and
  - (ii) such other reasonable documentation as the Shared Assets Provider may require from time to time to confirm that the Insurance Cover is valid, current and meets the requirements of clause 12.1.

### 12.3 The Shared Assets Provider's Insurance

- (a) At all times during the Term, the Shared Assets Provider 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 1 of Schedule 5.
- (b) To the extent possible, the insurance policies referred to in clause 12.3(a) must cover TransGrid as a named insured.

### 12.4 Contents of Shared Assets Provider's Insurance Policy Documentation

The Shared Assets Provider will use reasonable endeavours to ensure that each of the insurance policies referred to in clause 12.3(a):

- (a) contains an agreement by the insurer that:
  - (i) it waives all rights of subrogation in relation to the claims between the insureds;
  - (ii) it will not cancel the relevant insurance policy without giving at least 90 days' prior written notice to TransGrid;
  - (iii) 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;
  - (iv) 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 Shared Assets Provider; and

[Optional Footer Text]

- (v) all claims for insurance premiums, commissions, levies, stamp duties, charges and other expenses against TransGrid are waived;
- (b) includes a cross liability provision to the effect that the relevant insurance policy applies to the parties as separate insureds and will not be avoided or otherwise affected by any indemnity given under this agreement; and
- (c) insures the interest of TransGrid up to the limits of the relevant insurance policy regardless of any non-disclosure or misrepresentation by the Shared Assets Provider or any breach or violation by the Shared Assets Provider of any warranties, declarations or conditions contained in the relevant insurance policy.

## **12.5 Inspection of the Shared Assets Provider's Insurance Policy Documentation**

- (a) Evidence of the insurance policies maintained under clause 12.3 will be made available for inspection by TransGrid on reasonable request by TransGrid.
- (b) The Shared Assets Provider will also on reasonable request of TransGrid provide:
  - (i) certificates evidencing that the insurance policies required by clause 12.3 have been effected and all premiums have been paid; and
  - (ii) such other reasonable documentation as TransGrid may require from time to time to confirm that the insurance policies are valid, current and meet the requirements of clause 12.3.

## **12.6 Reinstatement**

- (a) If the Shared Assets are substantially destroyed (whether by a Force Majeure Event or otherwise) and the Shared Assets Provider elects not to use the proceeds of the Shared Assets Provider's Insurance to repair, reinstate and replace the Shared Assets, the Shared Assets Provider must provide notice to TransGrid of its election; and
- (b) TransGrid may terminate this agreement by written notice within 10 Business Days' receipt of notice received under clause 12.6(a).

## **13. INFORMATION AND RECORDS**

- (a) Each party must produce and maintain the Controlled Records for which it is responsible in accordance with this clause 13. The Controlled Records must contain the information reasonably specified by TransGrid from time to time.
- (b) Each party must ensure that:
  - (i) it holds a complete and up to date copy of the Controlled Records for which it is responsible; and
  - (ii) the information contained in the Controlled Records is kept up to date and accurate.
- (c) Each party must maintain a register of the Controlled Records which details:
  - (i) all of the Controlled Records for which it is responsible;
  - (ii) the nature of any amendments made to those Controlled Records pursuant to clause 13(b); and

- (iii) the date on which any amendments made to those Controlled Records came into effect.
- (d) Each party (the "**first party**") must provide the other party with:
  - (i) a copy of the Controlled Records for which the first party is responsible;
  - (ii) a copy of the register referred to in clause 13(c); and
  - (iii) prior to the date on which any amendment it makes to any Controlled Records for which it is responsible comes into effect, a copy of the amendment to be made together with a notice specifying the parts of the Controlled Records which are to be amended.

## 14. SUSPENSION OF SERVICES

### 14.1 Right to suspend

- (a) If the Shared Assets Provider does not pay any part of an invoice rendered by TransGrid on or before the day on which such invoice is due for payment under clause 7.2 or has failed to make any other payment required under this agreement on or before the date on which such payment is due then, unless the Shared Assets Provider has given a notice under clause 7.6(a) in respect of that amount and otherwise complied with its obligations under clause 7.6, TransGrid, by notice to the Shared Assets Provider, may suspend or limit the provision of the O&M Services to the Shared Assets Provider until such time as payment is made.
- (b) Subject to clause 14.1(c), TransGrid may suspend or limit the provision of the O&M Services to the Shared Assets Provider if the Shared Assets Provider commits a Non-Financial Default and the Shared Assets Provider has not:
  - (i) provided to TransGrid a plan to rectify the Non-Financial Default within 10 Business Days of TransGrid notifying the Shared Assets Provider of the existence of the Non-Financial Default, which rectification plan must specify a reasonable date (taking into account the nature of the Non-Financial Default and the requirements of all Applicable Laws and *good electricity industry practice*) by which the Non-Financial Default will be remedied by the Shared Assets Provider;
  - (ii) commenced to remedy the Non-Financial Default within 10 Business Days after providing the rectification plan to TransGrid under clause 14.1(b)(i); or
  - (iii) remedied the Non-Financial Default by the date specified in the rectification plan provided to TransGrid under clause 14.1(b)(i).
- (c) Nothing in clause 14.1(b) will limit TransGrid's right (without notice to the Shared Assets Provider) to suspend or limit the provision of O&M Services to the Shared Assets Provider if TransGrid considers that the Non-Financial Default by the Shared Assets Provider could cause any risk of damage, loss or injury to any person or property.
- (d) Any suspension or limitation of the provision of Services under clauses 14.1(a), (b), (c) will not affect any right TransGrid may have to terminate this agreement under clause 15.
- (e) The giving, or failure to give, by TransGrid of notice under clause 14.1(a) will not affect any right TransGrid may have to be paid interest under clause 7.9 as a result of the Shared Assets Provider's failure to pay any part of an invoice.

### 14.2 Shared Assets Provider required to comply

[Optional Footer Text]

The suspension or limitation of the O&M Services by TransGrid in accordance with clause 14 will not affect any obligation that the Shared Assets Provider has to pay TransGrid for Services notwithstanding that, as a result of the suspension or limitation, TransGrid has ceased to provide such O&M Services to the Shared Assets Provider.

### 14.3 No liability

If at any time, TransGrid has the right to suspend or limit the provision of Services under clause 14 but has not exercised such right then, during any period when TransGrid is entitled to suspend or limit the provision of O&M Services but continues to provide any such O&M Services (the "**Continuation Period**"), TransGrid will have no liability to the Shared Assets Provider for any Damages suffered or Claims incurred in relation to:

- (a) the provision of the O&M Services by TransGrid during the Continuation Period; or
- (b) any failure by TransGrid during the Continuation Period to comply with an obligation under this agreement relating to the provision of the O&M Services.

### 14.4 Subject to Tripartite Agreement

Despite any other provision in this agreement, all rights and obligations arising out of or in connection with suspension under this clause 14 are subject to the terms and conditions of the Tripartite Agreement such that the Tripartite Agreement prevails to the extent of any inconsistency between this agreement and the Tripartite Agreement.

## 15. TERMINATION

### 15.1 Default

- (a) If either party (referred to in this clause 15 as the "**Defaulting Party**") commits:
  - (i) a Financial Default, then the party not in default (referred to in this clause 10 as the "**Non-Defaulting Party**") may give the Defaulting Party a notice specifying the Financial Default that has occurred and requiring the Defaulting Party to cure the Financial Default within 5 Business Days of receipt of that notice ("**Financial Cure Period**"); and
  - (ii) a Non-Financial Default, the non-defaulting party may give the defaulting party a notice specifying the Non-Financial Default that has occurred and requiring the Defaulting Party to provide to the non-defaulting party a plan to rectify the Non-Financial Default ("**Rectification Plan**").
- (b) The Rectification Plan must be provided within 10 Business Days after receiving the default notice and must specify a reasonable date by which the Non-Financial Default will be remedied ("**Non-Financial Cure Period**").
- (c) The Non-Financial Cure Period must be the shortest period of time that could reasonably be expected to allow the Defaulting Party, acting diligently and in accordance with *good electricity industry practice*, sufficient time to:
  - (i) remedy the relevant default; and
  - (ii) demonstrate such remedy to the reasonable satisfaction of the Non-Defaulting Party in accordance with tests (if any) set out in the Rectification Plan.

[Optional Footer Text]

## 15.2 Failure to cure

- (a) In the case of Financial Default if the Defaulting Party does not cure the relevant Financial Default within the Financial Cure Period in clause 15.1(a)(i), then the Non-Defaulting Party may in addition to any other rights and remedies under this agreement, exercise any or any combination of the following remedies:
  - (i) terminate this agreement by written notice to the Defaulting Party; and
  - (ii) exercise all available legal and equitable remedies including, but not limited to, suing for compensation or seeking order for declaration, injunctive relief or damages or such other orders or relief as the Non-Defaulting Party may think appropriate.
- (b) In remedying 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) Without prejudice to any other rights of the Non-Defaulting Party, the Defaulting Party must pay the Non-Defaulting Party interest on the amount which is the subject of a Financial Default (plus any accrued interest compounding daily) at the Default Rate from the date when payment is due until the Finance Default is remedied.
- (d) In the case of Non-Financial Default, if the Defaulting Party does not:
  - (i) commence to remedy the Non-Financial Default within 10 Business Days after providing the Rectification Plan under clause 15.1(a)(ii); or
  - (ii) cure the relevant Non-Financial Default within the Non-Financial Cure Period specified in clause 15.1(a)(ii),

then the Non-Defaulting Party may, in addition to any other rights and remedies under this agreement exercise any or any combination of the following remedies:

- (iii) terminate this agreement by written notice to the Defaulting Party; and
- (iv) exercise all available legal and equitable remedies including, but not limited to, suing for compensation or seeking orders for declaration, injunctive relief or damages or such other orders and relief as the Non-Defaulting Party may think appropriate.

## 15.3 Termination notice

A termination notice under clause 15.2 takes effect on the later of:

- (a) the time it is given to the Defaulting Party in accordance with clause 20; and
- (b) the time specified in the notice.

## 15.4 Survival

Termination 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 3, 7, 9, 15, 17 and 18.

### 15.5 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 it may otherwise have had) to rescind or terminate this agreement.

### 15.6 Consequences of termination

- (a) On termination of this agreement by either party under clauses 11.4, 12.6, and 15:
  - (i) each party must 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; and
  - (ii) TransGrid may *disconnect*, dismantle, *decommission* and remove any of the Shared 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 *disconnection*, dismantling, *decommissioning* or removal of the Shared Assets referred to under this clause 15.6(a)(ii). .
- (b) If TransGrid commences to *disconnect*, dismantle and *decommission* and remove the Shared Assets in accordance with clause 15.6(a)(ii):
  - (i) other than where TransGrid is the Defaulting Party, the Shared Assets Provider must reimburse TransGrid for any costs which are directly and necessarily incurred by TransGrid in undertaking that work (upon receipt from TransGrid of reasonable evidence substantiating the amount of costs incurred); and
  - (ii) other than where TransGrid is the Defaulting Party, the Shared Assets Provider must reimburse TransGrid for any other costs reasonably incurred by TransGrid to cease carrying out the O&M Services (as relevant and calculated in accordance with TransGrid's standard charging methodology) which are not otherwise being recovered under clause 15.6(b)(i).
- (c) Nothing in this clause 15.6 will limit either party's right to recover Damages from the other party for breach of contract.

### 15.7 Cross termination

TransGrid may terminate this agreement with immediate effect by:

- (a) giving notice to the Shared Assets Provider upon the termination of the Project Agreement on or before the Date of Practical Completion as defined in the Project Agreement, without prejudice to the clauses 16.10 and 16.12 of the Project Agreement and clauses 15.4 and 15.6, which remain in full force and effect; and/or
- (b) giving notice to the Shared Assets Provider upon the termination of the Connection Agreement, without prejudice to clauses 12.8 and 12.10 of the Connection Agreement and clauses 15.4 and 15.6, which remain in full force and effect.

## 15.8 Subject to Tripartite Agreement

Despite any other provision in this agreement, all rights and obligations arising out of or in connection with this clause 15 are subject to the terms and conditions of the Tripartite Agreement such that the Tripartite Agreement prevails to the extent of any inconsistency between this agreement and the Tripartite Agreement.

## 16. OWNERSHIP AND OPTION TO PURCHASE

### 16.1 Ownership

The parties agree that the Shared Assets are owned by the Shared Assets Provider through the Term and the Shared Assets includes those alterations, replacements and augmentations carried out by TransGrid on the Shared Assets under clauses 6.4 and 10.2.

### 16.2 Purchase option

In consideration of the payment of ten dollars (receipt of which is acknowledged), the Shared Assets Provider grants to TransGrid or its nominee an option to purchase some or all (at TransGrid's option) of the Shared Assets and Land from the Shared Assets Provider at Fair Market Value (for that portion of the Shared Assets and the Land it elects to purchase) at the end of the Term (**Purchase Option**). The Purchase Option may be exercised by TransGrid on behalf of itself or its nominee (including the MHC).

### 16.3 Exercise of purchase option

- (a) TransGrid may exercise the Purchase Option by giving the Shared Assets Provider a written notice of its exercise at any time within [30] Business Days after the expiry of the Term or earlier termination of this Agreement.
- (b) TransGrid must specify in the notice given under clause 16.3(a), the assets comprising the Shared Assets which is subject of the exercise of the Purchase Option except that TransGrid must purchase the relevant Land if it exercises the Purchase Option.
- (c) The Purchase Option lapses if it is not exercised before 5:00pm on the date 30 Business Days after the expiry of the Term.
- (d) If TransGrid validly exercises the Purchase Option under clause 16.3(a), then subject to clause 16.4 and satisfying the conditions in clause 16.3(e) and (f) the Shared Assets Provider agrees to sell and TransGrid agrees to buy the Shared Assets and Land, 3 months after the date of the exercise of the Purchase Option under clause 16.3(a) (**Completion Date**).
- (e) If TransGrid validly exercises the Purchase Option under clause 16.3(a), the Shared Assets Provider must:
  - (i) promptly sign all documentation provided to the Shared Assets Provider by TransGrid to effect the transfer of the Shared Assets and Land on an "as is where is" basis. Any transfer of Land will be in accordance with all the standard requirements for sale and purchase of land in New South Wales and requirements under the *Conveyancing Act 1919* NSW;
  - (ii) deliver or procure the delivery to TransGrid of any relevant documents of title in the Shared Assets Provider's possession with respect to the Shared Assets and relevant Land;
  - (iii) procure the release and discharge of all Encumbrances over all or any of the right, title and interest in the Shared Assets and Land;

[Optional Footer Text]

- (iv) assign or grant to TransGrid an irrevocable, non-exclusive, perpetual, royalty-free licence to use, any intellectual property rights in any design and other information required for the use of the Shared Assets;
- (v) provide a register of all contracts that are necessary for the operation and full enjoyment of the Shared Assets or cannot be separated from the Shared Assets to TransGrid, and assign all of the Shared Assets Provider's rights under, benefits of, interests in and burdens under all contracts as are nominated by TransGrid. The Shared Assets Provider must prepare novation contracts in respect of each these nominated contracts and use reasonable endeavours to have these executed by the relevant counterparties prior to the Completion Date; and

(vi) provide all other reasonable assistance required by TransGrid,

to enable TransGrid to exercise its rights or perform its obligations under the Purchase Option.

- (f) As between TransGrid and the Shared Assets Provider, TransGrid is liable for all stamp duty liabilities associated with the exercise of the Purchase Option.

#### 16.4 Transmission Network Lease and MHC approval

It is a condition of the sale and purchase of the Shared Assets under this clause 16 that:

- (a) The Transmission Network Lease has expired or has been terminated by the parties to the Transmission Network Lease; and
- (b) MHC has approved the exercise by TransGrid of the option to purchase by TransGrid at the Fair Market Value agreed for the Shared Assets.

### 17. LIABILITY

#### 17.1 No liability for failure to supply

The Shared Assets Provider 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 sections 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 Shared Assets Provider 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 clause 17.2(b) and clause 17.5, the direct loss, injury, damage or expense of the Shared Assets Provider caused by TransGrid's failure to comply with, observe or perform any provision of this agreement; and
  - (ii) **Total amount of liability:** subject to clause 17.2(b), in respect of such direct loss, injury, damage or expense to the Shared Assets Provider referred to in clause 17.2(a)(i), when aggregated with any liability of TransGrid arising from or in connection with the Connection Agreement:

- 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 the Contract Year Cap in aggregate in respect of all events or circumstances of failure described in clause 17.2(a)(i) occurring in any one Contract Year.
- (b) To the extent permitted by law and without limiting clauses 17.2(a) and 17.5:
- (i) TransGrid and its Associates are not liable for any loss of use, revenue or profit by the Shared Assets Provider or its Associates or the amount of any Damages awarded against the Shared Assets Provider in favour of, or monies paid by the Shared Assets Provider by way of settlement to, any third party and any costs or expenses of the Shared Assets Provider 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 of TransGrid and its Associates.

### 17.3 Limitation of the Shared Assets Provider's liability

- (a) To the extent permitted by law, the Shared Assets Provider and its Associates will not be liable to TransGrid for any Damages or Claims arising from any act or omission of the Shared Assets Provider or its Associates in relation to this **agreement** or the performance or non-performance of any of the Shared Assets Provider's obligations under it howsoever arising other than:
- (i) **Payment under this agreement:** any obligation on the Shared Assets Provider to pay any Charges under clause 6.1 and any other amounts (including interest) due under this agreement;
  - (ii) **Indemnities:** any obligation on the Shared Assets Provider to indemnify TransGrid in accordance with clause 17.4;
  - (iii) **Direct loss or damage:** subject to clause 17.3(b) and clause 17.5, the direct loss, injury, damage or expense of TransGrid caused by the Shared Assets Provider's failure to comply with observe or perform any provision of this agreement; and
  - (iv) **Total amount of liability:** subject to clauses 17.3(b), in respect of such direct loss, injury, damage or expense to TransGrid, up to the amount of:
    - A. up to the amount of \$[\*] in respect of any single event or circumstance of failure described in clause 17.3(a)(iii) 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)(iv)A, up to the amount of \$[\*] in respect of all events or circumstances of failure described in clause 17.3(a)(iii) occurring in any one Contract Year.
- (b) To the extent permitted by law and without limiting clauses 17.3(a) and 17.5 but subject to clause 17.4:

- (i) The Shared Assets Provider and its Associates are not liable for any loss of use, revenue or profit by TransGrid, or the amount of Damages awarded against TransGrid in favour of, or monies paid by TransGrid by way of settlement to, any third party and any costs or expenses of TransGrid in connection with the same; and
- (ii) for the avoidance of doubt, the limitation on the Shared Assets Provider's and its Associates' liability as provided in this clause 17.3 will apply to any negligent act or omission, fault or cause of the Shared Assets Provider and its Associates.

#### 17.4 Shared Assets Provider indemnity

- (a) Despite clause 17.3, the Shared Assets Provider will indemnify and keep TransGrid up to the amount of \$[\*] in any one Contract Year for all loss (including Performance Scheme Loss), injury, damage and expense suffered by TransGrid arising out of or in connection with:
  - (i) Shared Assets Provider Caused Events;
  - (ii) Claims by third parties arising out of or in connection with Shared Assets Provider Caused Events; and
  - (iii) personal injury or death caused by the Shared Assets Provider's acts or omissions.
- (b) The Shared Assets Provider's liability under this indemnity in clause 17.4 is reduced proportionately to the extent TransGrid's negligent acts or omissions have caused or contributed to such loss (including Performance Scheme Loss), injury, damage and expense.

#### 17.5 No liability for indirect loss

- (a) Subject to clause 17.4, neither party has any liability to the other party, nor will either party be entitled to make any Claim, for any indirect loss.
- (b) For the purpose of this clause 17.5, **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.

#### 17.6 Part Contract Year

The limitation of each party's liability described in clauses 17.2(a)(ii) and 17.3(a)(iv) in any Contract Year is to apply for a whole Contract Year. Accordingly, the applicable liability caps shall be pro-rated for any part Contract Years.

#### 17.7 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 provision 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).

### 18. CONFIDENTIALITY

#### 18.1 General

[Optional Footer Text]

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, the Construction Coordination Deed, Connection Agreement, the Project Agreement, 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 the receiving party may, without such consent, disclose such matters or information:

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

- (l) **Potential Investment:** disclosure, use or reproduction of information by or on behalf of the receiving party to the extent reasonably required in connection with the receiving party's financing arrangements, investment in that party or a disposal of that party's assets, or the disposal or transfer of any issued shares in relation to that party or the issuance of any new shares in relation to that party; or
- (m) **Related entities:** in the case of TransGrid, any owner or lessee of any assets comprising any part of the *transmission system*.

## 18.2 Associates

Each party will be responsible for ensuring that its Associates who are at any time in possession of confidential information of a kind referred to in clause 18.1 will observe and comply with clause 18.1 and will accordingly be responsible for the acts or omissions of the same.

## 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 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).

## 18.4 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 Shared Assets Provider as a result of and for the purposes of the performance of this agreement will be owned by and vest in the Shared Assets Provider.
- (c) All Intellectual Property Rights which exist prior to the Commencement Date shall not be subject to any change in ownership as a result of the operation of this agreement.
- (d) TransGrid grants to the Shared Assets Provider a perpetual, non-exclusive royalty free licence to use any Intellectual Property Rights referred to in clause 18.4(a) for any purpose related to the subject matter of this agreement.
- (e) The Shared Assets Provider grants to TransGrid a perpetual, non-exclusive royalty free licence to use any Intellectual Property Rights referred to in clause 18.4(b) for any purpose related to the subject matter of this agreement.
- (f) In consideration of TransGrid carrying out the O&M Services, the Shared Assets Provider grants a non-exclusive, royalty free licence 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.
- (g) The Shared Assets Provider indemnifies and saves harmless TransGrid and its Associates from Damages suffered or Claims incurred by TransGrid or its Associates arising from or in connection with any actual or alleged infringement by TransGrid or its Associates of Intellectual Property Rights of a third party, where, pursuant to this agreement, such Intellectual Property has been furnished or licensed to TransGrid by the Shared Assets Provider.

[Optional Footer Text]

- (h) The Shared Assets Provider 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 which are brought against TransGrid or its Associates. TransGrid will notify the Shared Assets Provider as soon as practicably possible after the date on which any such Claims become known to TransGrid.

## 19. DISPUTE RESOLUTION

### 19.1 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.

### 19.2 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 19.1 to be resolved in accordance with clause 8.2 of the Rules, then 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 19.1(a) 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 19 is not a reference to arbitration.

### 19.3 Linked dispute

- (a) A dispute under this document will be a linked dispute where:
  - (i) it affects the entitlements and/or obligations of the Customer; or
  - (ii) the outcome of that dispute could affect the entitlements and/or obligations of the Customer, under the Construction Coordination Deed, Project Agreement or Connection Agreement ("**Linked Dispute**").
- (b) If a party to this agreement:
  - (i) issues a notice of dispute to the other person; or
  - (ii) receives a notice of dispute from the other person,relating to a Linked Dispute under clause 19.2, it must send a copy of that notice of dispute to the Customer.

- (c) If the Customer elects to join the dispute on the terms of this clause 19, the parties agree that a Linked Dispute will be resolved collectively and that each of the Customer, the Shared Assets Provider and TransGrid has the right to:
  - (i) participate in resolving the dispute under clause 19.2(b);
  - (ii) make written submissions; and
  - (iii) participate in further legal proceedings,in relation to a Linked Dispute.
- (d) If a party provides information or documents relevant to a Linked Dispute, it must at the same time provide the information and documents to the Customer, the Shared Assets Provider and TransGrid (as relevant).

#### **19.4 Agreement to appoint Expert**

If a dispute is to be determined by an Expert then the parties must use their reasonable endeavours to agree to appoint a suitably qualified person to act as the Expert. If the parties have not agreed on the person to be appointed within 3 Business Days of a party requiring the dispute to be determined by an Expert then either party may serve a notice nominating a person to be appointed. If the parties do not agree on the person to be appointed within 5 Business Days of the delivery of such notice, then:

- (a) each party to the dispute must equally bear the costs of the Expert and associated disbursements (including room hire) for the full duration of the Expert's appointment under this clause 19.4;
- (b) 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
- (c) 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.

#### **19.5 Expert Determination**

If any matter must be determined by the Expert in accordance with this clause 19, then the parties to the dispute must continue to perform their obligations under the agreement while the dispute is being resolved.

#### **19.6 Terms of Appointment of Expert**

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

- (a) the Expert must consult with the parties concerning the matters under dispute;
- (b) the Expert must make a draft report available to the parties within 20 Business Days of their appointment;
- (c) the Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;

- (d) the Expert must keep confidential, information provided by or on behalf of the parties to the Expert;
- (e) the Expert may investigate the matters under dispute and make inquiries in relation to them, and take the advice of any other person the Expert wishes (subject to the other person providing a confidentiality undertaking); and
- (f) the Expert will use its reasonable endeavours to notify the parties of the Expert's determination within 35 Business Days of the reference to the Expert.

### **19.7 Expert not liable**

The parties agree that the Expert will not be liable in contract, tort (including negligence) or otherwise for 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 19. If required by an Expert appointed under this clause 19, the parties will enter into an agreement or deed with the Expert agreeing that this clause 19.6 applies and binds them in relation to the matters referred to the Expert.

### **19.8 Parties to Provide Information**

The parties must comply with all reasonable requests by the Expert appointed in accordance with this clause 19 for information relating to the matters giving rise to its appointment.

### **19.9 Parties Bound by Determination**

On notification by the Expert of the Expert's determination under clause 19.5(f) the parties are bound by that determination, except in the existence of fraud or manifest error.

### **19.10 Urgent Interlocutory Relief**

This clause 19 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.

## **20. COMMUNICATIONS AND NOTICES**

### **20.1 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.

## 20.2 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) The address of a party must always be an address within Australia.

## 20.3 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.

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

## 21. CHANGE TO APPLICABLE LAW OR OTHER CIRCUMSTANCES

### 21.1 Amendments to this agreement

If, after the Commencement Date, an Applicable Law:

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

then subject to clauses 21.2 and 21.3, this agreement will be interpreted (as far as possible) in such a way as to enable compliance with that Applicable Law.

### 21.2 Negotiation

Despite clause 21.1, if at any time after the date of this agreement, there is:

- (a) an Applicable Law is introduced, modified, re-enacted, substituted or commences operation;
- (b) the manner in which an Applicable law is interpreted or applied, materially changes;

- (c) without limiting clauses 21.2(a) or (b), the manner in which an Applicable Law or any Authority regulates how any Charge is to be calculated, varied or applied (or the terms upon which any Maintenance Work or Capital Works Replacement will be provided) materially changes;
- (d) without limiting clauses 21.2(a) or (b), the activities comprised within or the service standards applying to any Maintenance Work or Capital Works Replacement materially change due to a change in an Applicable law; or
- (e) without limiting clauses 21.2(a) or (b), any other event, circumstance or change occurs which materially affects the way in which Maintenance Work or Capital Works Replacement are provided or TransGrid operates the Shared Assets, provided that event, circumstance or change occurs as a 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 under this agreement, the parties must consider and negotiate in good faith any specific amendments 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 immediately prior to that change, event or circumstance.

### 21.3 Disputes

- (a) If the parties are unable to agree upon an amendment proposed by a party in accordance with clause 21.2 within 28 days of commencing negotiations, either party may refer that dispute for resolution in accordance with clause 19.
- (b) In determining a dispute arising under this clause 21, 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 O&M Services 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.

## 22. ASSIGNMENT AND CHANGE OF CONTROL

### 22.1 Assignment of Interests

- (a) The Shared Assets Provider may not assign, transfer or dispose of its ownership interest in the Shared Assets to any other person unless it:
  - (i) also assigns or transfer its rights and obligations under this agreement to that person; and
  - (ii) TransGrid provides its prior written consent to that assignment or transfer (which will not be unreasonably withheld if the proposed assignee can demonstrate on reasonable grounds that it has the financial and technical capacity to fulfil the Shared Assets Provider's obligations under this agreement).
- (b) Either party may assign or transfer their rights and obligations under this agreement to a Related Body Corporate without the other party's consent if:

[Optional Footer Text]

- (i) the proposed assignee or transferee first executes and delivers a deed in favour of the remaining party under which it undertakes to perform and assume the obligations and liabilities of the assigning party under this agreement; including those arising prior to the assignment and not then performed or discharged; and
- (ii) where the assigning party is the Shared Assets Provider:
  - A. the proposed assignee will be transferred ownership of the Shared Assets; and
  - B. the proposed assignee will be assigned or transferred the Shared Assets Provider's rights and obligations under the Construction Coordination Deed between the Shared Assets Provider, Customer and [TransGrid] which relates to the Shared Assets.
- (c) Where a party proposes to assign, novate or otherwise transfer any of its rights or obligations under this agreement in accordance with clause 22, the other party must do all such things and sign all such documents as may be required by law or reasonably required by the assigning party (to give effect to such assignment, novation or transfer).

## 22.2 Security Interests

- (a) Subject to clause 22.2(b) and clause 24, neither party is permitted to create 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 this agreement where such Security Interest is granted to financiers for the purposes of financing any of TransGrid's business operations.

## 22.3 Successors

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

## 22.4 Change of Control

- (a) For the purposes of clauses 22.4(b) and 22.4(c) below:
  - (i) a "**Change of Control**" occurs if the Shared Assets Provider comes under the Control of a third party who did not Control the Shared Assets Provider at the commencement of this agreement;
  - (ii) "**Control**" has the meaning given to it in section 50AA of the *Corporations Act 2001* (Cth); and
  - (iii) if the Shared Assets Provider comprises more than one entity, this clause applies if a Change of Control occurs in respect of any one of the entity comprising the Shared Assets Provider.
- (b) The Shared Assets Provider must give TransGrid prior written notice of any proposed Change of Control of the Shared Assets Provider.
- (c) The Shared Assets Provider 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 satisfied (acting reasonably) that the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the Shared Assets Provider to fulfil the obligations under this agreement.

## **22.5 Transfer at expiry or early termination of Transmission Network Lease**

- (a) On written notice to the Shared Assets Provider, 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 assign, novate or transfer all of its rights and obligations under this agreement to MHC (or its nominee) without the Shared Assets Provider's consent.
- (b) Such assignment, novation or transfer will be effected by written notice from TransGrid to the Shared Assets Provider, irrespective of whether the parties execute an assignment or novation deed.

## **23. MISCELLANEOUS**

### **23.1 Governing law**

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

### **23.2 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 claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (a) of this clause.

### **23.3 Amendments**

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

### **23.4 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.

### **23.5 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.

## 23.6 Counterparts

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

## 23.7 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.

## 23.8 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.

## 23.9 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.

## 23.10 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.

## 23.11 Sub-Contracting

TransGrid may engage contractors to undertake the O&M Services or any part of the O&M Services, provided that the engagement of such contractors will not release TransGrid from its obligations under this agreement.

## 23.12 Expenses

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

[Optional Footer Text]

### 23.13 Stamp duties

The Shared Assets Provider:

- (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 23.13(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.

### 23.14 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.

### 23.15 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.

### 23.16 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.

### 23.17 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.

### 23.18 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.

### 23.19 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.

[Optional Footer Text]

- (b) 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.
- (c) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency between Applicable Laws, this agreement and other agreements relating to the O&M Services between the parties:
  - (i) Applicable Laws, including the Rules;
  - (ii) this agreement;
  - (iii) Connection Agreement;
  - (iv) Construction Coordination Deed; and
  - (v) other agreements relating to the O&M Services.

### 23.20 Acknowledgement of Rules obligations

The parties acknowledge that, notwithstanding clause 23.19, 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.

### 23.21 Acknowledgement of System Operator function

The Shared Assets Provider acknowledges that TransGrid is currently a *System Operator* and may at some time in the future be a *System Operator* or a service provider to AEMO appointed under clause 4.3.3 of the Rules (a "**service provider**"). The Shared Assets Provider agrees that, notwithstanding any other term of this agreement, no action taken by TransGrid, or any failure by TransGrid to act, in its capacity as a *System Operator* or a service provider will represent a breach of this agreement or a failure to provide any O&M Service to the Shared Assets Provider under this agreement.

## 24. PERSONAL PROPERTY SECURITIES ACT

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

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling the party benefitted by the Security Interest ("**Benefitted Party**") to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Benefitted Party; or
- (c) enabling the Benefitted Party to exercise rights in connection with the Security Interest,

in each case at the Benefitted Party's cost and for the purpose of the PPSA.

## 25. TRUSTEE'S CAPACITY AND LIABILITY

### 25.1 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 25.1(d), the recourse of the Shared Assets Provider or any other person to the Trustee in respect of any of the Trustee's obligations and liabilities under or in connection with this 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 25.1(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 25.1(b), the Shared Assets Provider cannot bring proceedings against the Trustee in its personal capacity to recover that money; and
- (d) clauses 25.1(b) and 25.1(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.

### 25.2 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 27 to the extent to which that act or omission was caused or contributed to by any act or omission of the Shared Assets Provider.

**Signed** as an agreement

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

SIGNED for and on behalf of NSW Electricity Networks Operations Pty Limited ACN 609 169 959 as trustee for NSW Electricity Networks Operations Trust ABN 70 250 995 390 by its attorneys under registered power of attorney Book 4728 no 681:

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name and position of Attorney

\_\_\_\_\_  
Name and position of Attorney in full

**Executed** by [insert] in accordance with section 127 of the Corporations Act 2001:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary (delete as applicable)

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

## Schedule 1– Shared Assets description and asset boundaries

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[Insert]

[Optional Footer Text]

## Schedule 2 – Routine Services Program

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[Insert]

[Optional Footer Text]

## Schedule 3 – Maintenance and Capital Works Schedules

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ITEM 1 – Non-Routine Maintenance Schedule

[Insert]

ITEM 2 – Non-Routine Capital Works Schedule

[Insert]

ITEM 3 – Emergency Works Schedule

[Insert]

ITEM 4 – Defects Rectification Works Schedule

[Insert]

[Optional Footer Text]

## Schedule 4 – Charges

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[Insert]

[Optional Footer Text]

## Schedule 5 – Agreement details

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### ITEM 1 – Insurance

Before the [ ], the Shared Assets Provider must effect the following insurance policies:

#### Insurance of employees

The Shared Assets Provider must enter into an insurance policy to insure against liability for death or injury to persons employed by the Shared Assets Provider including liability by statute and at common law ("Workers Compensation Insurance Policy"). The Employee Insurance Policy must be in accordance with the *Workers Compensation Act 1987* (NSW) as amended.

#### Property Insurance

The Shared Assets Provider must enter into an insurance policy covering the Shared Assets from all property damage (including machinery breakdown) covering all buildings, machinery, stock, fixtures, fitting and all other property forming part of the Shared Assets so as to provide full replacement costs of the Shared Assets if appropriate on a reinstatement as new basis ("**Property Insurance**").

The Property Insurance must cover all the Shared Assets Provider's employees and contractors employed by the Shared Assets Provider from time to time in relation to the Shared Assets for their respective rights, interests and liabilities. The Property Insurance must be maintained during the Term.

The total insurance cover under the Property Insurance must be for an amount not less than [Sum to be agreed].

#### Public liability Insurance

Before [ ], the Shared Assets Provider must effect an insurance policy for public liability insurance cover ("Public Liability Policy"). The Public Insurance Policy must:

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

#### Comprehensive Motor Vehicle Insurance.

The Shared Assets Provider must enter into an insurance policy covering damage to and arising from the Shared Assets Provider's and its contractors motor vehicles utilised in the construction of the Shared Assets for a minimum of \$20 million.

### ITEM 2 – The Land

[insert details]

### ITEM 3 – Credit Support

If the Shared Assets Provider has been required to procure the Credit Support, the Shared Assets Provider must ensure that at all times the aggregate undrawn or unclaimed amount of Credit Support is not less than the amount set out in the table below from time to time (the "**Guaranteed Amount**")

[Optional Footer Text]

Contract Year	Guaranteed Amount (\$m)
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	
22.	
23.	
24.	
25.	

[Optional Footer Text]

## ITEM 4 – Representatives and Senior Managers

### TransGrid

#### TransGrid's Representative

Name:

Address:

Telephone:

Email:

#### TransGrid's Senior Manager

Name:

Address:

Telephone:

Email:

### The Shared Assets Provider

#### Shared Assets Provider's Representative

Name:

Address:

Telephone:

Email:

#### Shared Assets Provider's Senior Manager

Name:

Address:

Telephone:

Email:

[Optional Footer Text]

## ITEM 5 – Controlled Records

### CONTROLLED RECORDS

Item	Record Description	Responsibility	Format	Classification
1			Paper or Electronic	Controlled
2			Paper or Electronic	Controlled
3			Paper or Electronic	Controlled

[Optional Footer Text]

[Optional Footer Text]