

Network Operating Agreement

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| Title | Network Operating Agreement |
| Version | Version 1 (published on 1 July 2018) |
| Purpose | <p>This document has been uploaded onto ElectraNet Pty Limited's (ElectraNet's) website as required by schedule 5.10 of the National Electricity Rules (NER).</p> <p>The NER enables parties other than ElectraNet (being the <i>Primary Transmission Network Service Provider</i> in South Australia) to construct and own <i>contestable IUSA components (IUSA)</i>. When this occurs, the third party which owns the IUSA (the IUSA Provider) is required to enter into a <i>network operating agreement (NOA)</i> with ElectraNet.</p> <p>The NOA provides ElectraNet with access and control over the IUSA, including rights to operate, maintain, augment and alter the IUSA and to provide subsequent <i>Network Users</i> with access to the <i>transmission network</i> via the IUSA. The NOA also includes terms and conditions of the kind set out in clause 5.2A.7 and Part B of schedule 5.6 of the NER.</p> |
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| Further Information | For further information in relation to this document please contact our connections team at: connections@electranet.com.au |



Network Operating Agreement

ElectraNet Pty Limited (**ElectraNet**)

and

[INSERT] (**IUSA Provider**)

[INSERT] Project

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Date

Parties

| | |
|-------------------|---|
| ElectraNet | ElectraNet Pty Limited ACN 094 482 416 of 52-55 East Terrace, ADELAIDE SA 5000 |
|-------------------|---|

| | |
|----------------------|-----------------------------------|
| IUSA Provider | [INSERT] ACN [INSERT] of [INSERT] |
|----------------------|-----------------------------------|

Background

- A The TNU has entered, or will enter, into the TCA in order to *connect* its *facility* to the Transmission System and for ElectraNet to provide certain *transmission services* to the TNU.
- B In order for ElectraNet to provide the *transmission services* under the TCA, ElectraNet will need to access, operate, maintain and control the IUSA owned by the IUSA Provider, which, in accordance with the NER, forms part of (or will form part of) ElectraNet's *transmission network* once completed.
- C This deed sets out the terms on which ElectraNet will access, operate, maintain and control the IUSA.

The Parties agree as follows.

PART 1 - DEFINITIONS, INTERPRETATION AND COMMENCEMENT

1. Definitions and interpretation

1.1 Defined terms

In this deed, unless the context otherwise requires:

Access and Use Rights means the rights of ElectraNet under the NER and this deed to have:

- (a) exclusive and unrestricted access to, and use of, the IUSA; and
- (b) the operation and control of the IUSA, including the right to maintain, alter, replace and augment the IUSA,

as necessary for ElectraNet to perform the Network Operating Functions.

Affected Party has the meaning set out in clause 15.1(a).

Applicable Event of Force Majeure has the meaning set out in clause 15.1(a).

Applicable Laws means the *National Electricity Law*, NER, Electricity Act, Pricing Rules, Transmission Licence, Authorisations, Emissions Requirements and any other legislation, rules, regulations, guidelines, codes, Directives, licence conditions or other regulatory instruments which:

- (a) are directly or indirectly binding on or are expressed to apply to ElectraNet or the IUSA Provider (or both) from time to time; or
- (b) relate to the Transmission System, the IUSA, the TNU's *facility* or the Network Operating Functions.

Associate means in relation to a party, that party's officers, employees, 'associated entities' (as defined in the Corporations Act), authorised agents, suppliers, contractors, subcontractors and professional advisers, and for the avoidance of doubt, ElectraNet is not an Associate of the IUSA Provider.

Authorisation means any approval, declaration, authorisation, certificate, consent, exemption, filing, licence, notarisaton, permit, registration, ruling, statutorily required policy of insurance or waiver (and any renewal or variation of any of them) by or with an Authority.

Authority means:

- (a) any government or regulatory department, body, instrumentality, minister, agency or other authority; or
- (b) the System Controller, *AER*, *AEMO*, *ESCOSA* or any other person exercising an authority granted to it under an Applicable Law.

Business Day means any day except a Saturday, Sunday or public holiday in South Australia.

Change in Applicable Law Event means:

- (a) a change in (or a change in the application or interpretation of) an Applicable Law;
- (b) the repeal of an Applicable Law;
- (c) the introduction of an Applicable Law; or
- (d) a Directive is given by an Authority,

after the Execution Date.

Change of Control means:

- (a) in respect of any person which is a body corporate, a change to the entity or entities which Control that person; or
- (b) in respect of any trust, a change to the entity or entities which Control that trust,

but does not include a change in Control of a company listed on a recognised stock exchange where a Party is such a company or is a wholly owned subsidiary (directly or indirectly of such a company).

Claims includes all claims, demands, actions or proceedings for any Damages, including any such claim by way of indemnity, under contract (including any breach of this deed), in equity (including breach of equitable duty or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including negligence or negligent misrepresentation) or otherwise.

Commencement Date means the date on which ElectraNet provides a Notice to the IUSA Provider in accordance with clause 2.4 confirming that all of the Preconditions have been satisfied or waived in accordance with clause 2.3(a).

Confidential Information means all information relating to the disclosing Party that is by its nature confidential, has been designated as confidential by the disclosing Party or which a receiving Party knows or ought to know is confidential, and includes all trade secrets, know-

how, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, in tangible or intangible form) and includes the terms of this deed.

Connection Agreement means has the meaning as defined in clause 7.10.

Consequential Loss means any:

- (a) indirect or consequential loss, damage, injury or expense;
- (b) loss, damage, injury or expense (whether direct, indirect or consequential in nature) which constitutes or, arises out of, loss of actual or anticipated revenue or profits, loss of, or interruption to, business, loss of production, loss of opportunity, loss of goodwill, loss of contract, loss of anticipated savings or increased costs of working; or
- (c) special, exemplary or punitive damages,

whether or not it was reasonably foreseeable or reasonably within the contemplation of the Parties as at the date of execution of this deed.

Contract IP Materials means all IP Materials created or produced by, or on behalf of, ElectraNet as part of, or in the course of this deed.

Contract Year means:

- (a) the period from the day after the Date of Construction Completion to 30 June following the Date of Construction Completion (**First Contract Year**);
- (b) the period from 1 July preceding the Expiry Date or earlier termination of this deed to the Expiry Date or earlier termination of this deed (**Last Contract Year**); or
- (c) each consecutive period of 12 months after the end of the First Contract Year up until the beginning of the Last Contract Year.

Control has the same meaning as defined in the Corporations Act, with such amendments as are necessary to ensure that the term "entity" as used in that definition is taken to include any trust.

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

Damages includes any liabilities, expenses, losses (including Consequential Losses), damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against a Party) whether arising under contract (including any breach of this deed), in equity (including breach of equitable duty or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including negligence or negligent misrepresentation) or otherwise.

Date of Construction Completion has the meaning given in the TCA.

Defect means any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or defect in the IUSA or any part of the IUSA which, in ElectraNet's reasonable opinion:

- (a) prevents any part of the IUSA from being operated safely, or in accordance with the requirements of the Functional Specifications, a Project Document or Applicable Law; or
- (b) limits ElectraNet's ability to operate any part of the IUSA safely, or in accordance with the requirements of the Functional Specifications, a Project Document or Applicable Law.

Defects Correction Period means the period referred to in Item 8 of Schedule 1.

Directive means any present or future requirement, instruction, direction, condition or order of an Authority (whether formal or informal) which is binding on or expressed to apply to ElectraNet or the IUSA Provider or relates directly or indirectly to the Transmission System, the IUSA or the *facility* of the TNU or Subsequent TNU.

Dispose means assign, novate, transfer, lease, sub-lease, licence or otherwise dispose any legal or equitable estate (either in whole or in part) whether by sale, lease, licence, declaration or creation of trust or otherwise and **Disposal** will have a corresponding meaning.

Disposing Party has the meaning set out in clause 21.2.

Dispute means any dispute or difference of opinion between the Parties or the absence of agreement by the Parties about a matter in connection with this deed or its performance.

ElectraNet means ElectraNet Pty Limited (ACN 094 482 416).

ElectraNet Asset Access Manual means ElectraNet's asset access manual provided by ElectraNet or available online, and as updated from time to time.

ElectraNet Background IP Materials means all IP Materials owned or licensed to ElectraNet and provided by, or on behalf of, ElectraNet to the IUSA Provider for the purposes of this deed, including the ElectraNet Data.

ElectraNet Connection Agreement Termination Event means where the *connection agreements* for all *connections* utilising the IUSA have been terminated by the counterparty to those *connection agreements* due to an ElectraNet default under that those *connection agreements*.

ElectraNet Project Document Default Termination Event means where a Project Document has been terminated by the counterparty to that Project Document due to an ElectraNet default under that Project Document.

ElectraNet Data means any information relating to ElectraNet's business including its operations, facilities, customers, employees, assets, products, sales and transactions, in whatever form the information exists, and includes any:

- (a) database in which data or information is contained;
- (b) documentation or records related to data or information;
- (c) products resulting from the use or manipulation of data or information; and
- (d) copies of any of the above.

ElectraNet Group means:

- (a) ElectraNet and each of its Related Bodies Corporate;
- (b) each contractor and subcontractor of the persons mentioned in paragraph (a) of this definition; and
- (a) each Associate of the persons in paragraphs (a) and (b) of this definition.

ElectraNet Liability Limits has the meaning set out in clause 18.1(a).

Electricity Act means the *Electricity Act 1996* (SA).

Emissions Requirements means any legislation, rules, regulations, codes, Directives, licence conditions or other regulatory instruments which has as one of its purposes the reduction, or limitation of greenhouse gases, reporting greenhouse gas emissions or any related information, trading in greenhouse gas emissions, offsets or other types of greenhouse gas emissions related permits, addressing the effects of climate change, encouraging the generation of renewable energy or the minimisation of the impact on the environment of the electricity industry generally, and includes the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the *National Greenhouse and Energy Reporting Regulations 2008* (Cth).

Encumbrance means any:

- (a) mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement, notice or arrangement having a similar effect including any "security interest" as defined in sections 12(1), (2) or (3) of the PPSA; or
- (b) other arrangement (including any preferential, trust or set-off arrangement) having a similar commercial effect as a grant of security.

ESCOSA means the Essential Services Commission of South Australia.

Event of Force Majeure means any event, circumstance, act or omission (or combination of them) which is beyond the reasonable control of the Affected Party, including:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms and other adverse weather conditions, mudslides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war or terrorism, cyber-attacks or computer viruses, acts of public enemies, riots, civil commotions, protest, malicious damage, sabotage, blockades and revolutions;
- (b) industrial disputes (other than industrial disputes which are limited solely to the Affected Party's employees);
- (c) action or inaction by, or an order, Authorisation, determination, Directive or finding of, a Court, government or Authority including any injunction or a denial, refusal or failure to grant any Authorisation;
- (d) where ElectraNet is the Affected Party, a Change in Applicable Law Event;
- (e) where ElectraNet is the Affected Party, any mechanical or electrical breakdown, or failure of equipment forming part of, the IUSA occurring at any time not attributable to ElectraNet's:
 - (i) negligence; or
 - (ii) breach of its obligations under this deed;
- (f) where ElectraNet is the Affected Party, a failure by a Third Party DCA Provider or the TNU to comply with any obligations contained in the Project Documents;
- (g) any Project Document is terminated, other than as a result of a breach by the Affected Party; or
- (h) a delay of a supplier (being a party with whom the Affected Party contracts from time to time) of goods and services to provide those goods and services, where that supplier is granted an extension of time for the provision of those goods or services due to the occurrence of a force majeure event (or similar event beyond the reasonable control of that supplier) under the terms of its contract with the Affected Party.

Execution Date means the date on which this deed is signed by the last Party to do so.

Expiry Date means the date specified in Item 4 of Schedule 1.

Extended Expiry Date has the meaning set out in clause 2.8(a).

Fair Market Value means the amount for which the IUSA (including any liabilities in relation to the IUSA) could be exchanged in an arms' length transaction on the Option Exercise Date between informed and willing parties, having regard to the condition of the IUSA and the market for such assets.

First Contract Year has the meaning set out in paragraph (a) of the definition of 'Contract Year' in this clause 1.1.

First Party has the meaning set out in clause 2.5(a)(i).

Force Majeure Suspension Notice has the meaning set out in clause 15.1(b).

Force Majeure Suspension Period has the meaning set out in clause 15.2(a).

Functional Specifications means the functional specifications for the IUSA set out in Attachment 1 (being the functional specifications prepared by ElectraNet in relation to the IUSA in accordance with rule 5.3.3(b)(9) of the NER).

Gross Negligence means engaging in conduct which the party in question knew would involve negligence or a breach of a duty of care on its part or where the party had a reckless disregard whether or not the conduct engaged in would involve negligence or a breach of duty of care on its part.

GST Exclusive Consideration has the meaning set out in clause 12.3(b)(i).

Handover Date means the date on which the 'Certificate of Practical Completion' (as defined in the Interface Works Agreement) is provided by ElectraNet to the IUSA Provider in accordance with the Interface Works Agreement.

High Risk Area means an area which is designated from time to time to be unsafe for work by the member of the ElectraNet Group which occupies and controls the IUSA or Land for WHS purposes.

Holding Over Period has the meaning set out in clause 2.8(b).

Independent Expert has the meaning set out in clause 19.2(a).

Intellectual Property Rights means intellectual property and rights including any copyright, trademarks, patents, designs, circuit layout rights, the right to protect confidential information, know-how and trade secrets and any application or right to apply for registration of any of those rights.

Intended Purpose means, in respect of the IUSA or any part of the IUSA (including the Materials and Equipment forming part of the IUSA):

- (a) the purpose stated in this deed or any other Project Document in respect of the IUSA or relevant part of the IUSA; and
- (b) any other purpose as could be reasonably inferred from what is stated in this deed or any other Project Document in respect of the IUSA or relevant part of the IUSA.

Interface Works Agreement means the agreement entitled "Interface Works Agreement" between ElectraNet and the IUSA Provider dated on or about the date of this deed.

IP Materials means material in whatever form, including documents, specifications, designs, plans, reports, studies, products, equipment, information, data, concepts, inventions, processes, formulae, know-how, graphic layouts, images and software.

IUSA means the *contestable IUSA components* identified in Item 3 of Schedule 1 which has the agreed boundaries detailed in the single line diagrams set out in Attachment 2 and includes any alterations, replacements or augmentations to those assets during the Term.

IUSA Provider means the entity stated as the “IUSA Provider” under the “Parties” section on page 1 of this deed.

IUSA Provider Background IP Materials means all IP Materials owned or licensed to the IUSA Provider and provided by, or on behalf of, the IUSA Provider to ElectraNet for the purposes of this deed.

IUSA Provider Group means:

- (a) the IUSA Provider and the TNU and each of their Related Bodies Corporate;
- (b) each contractor and subcontractor of the persons mentioned in paragraph (a) of this definition; and
- (c) each Associate of the persons in paragraphs (a) and (b) of this definition.

IUSA Provider Liability Limits has the meaning set out in clause 18.2(a).

IUSA Work Period means the period commencing on the Execution Date and ending on the Date of Construction Completion.

Land means the land described in Item 1 of Schedule 1, being all land on which the IUSA are to be located.

Last Contract Year has the meaning set out in paragraph (b) of the definition of ‘Contract Year’ in this clause 1.1.

Major Item means an item of Materials and Equipment which in ElectraNet’s reasonable opinion, can only be replaced or repaired, as the case may be, for a capital cost of more than the Passthrough Threshold.

Materials and Equipment means all machinery, plant, equipment, apparatus, materials, parts and any other things supplied by the IUSA Provider forming part of the IUSA, including spare parts.

Minor Item means an item of Materials and Equipment which in ElectraNet’s reasonable opinion, can be replaced or repaired, as the case may be, for a capital cost of less than, or equal to, the Passthrough Threshold.

NER means the “National Electricity Rules” as defined in the *National Electricity Law* set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA).

Network Operating Functions means the functions to be performed by ElectraNet in respect of the IUSA as required by the NER and includes the management, operation and maintenance of the Transmission System (including the Operation and Maintenance Obligations) so as to enable ElectraNet to provide *transmission services* in accordance with all *connection agreements* with the *Network Users* that are *connected* or will be *connected* to the IUSA, all Applicable Laws and *good electricity industry practice*.

Non-financial Obligation means an obligation under this deed other than an obligation to pay or cause to be paid an amount of money.

Notice has the meaning set out in clause 22.1 and **Notify** has a corresponding meaning.

Operation and Maintenance Obligations has the meaning set out in clause 7.1.

Option has the meaning set out in clause 14.1(a).

Option Exercise Date means the date on which the Option is exercised by ElectraNet pursuant to clause 14.1(b).

Option Period means each of the following periods as applicable:

- (a) the period commencing 12 months before the Expiry Date and ending 24 months after the Expiry Date; and
- (b) the period commencing on the Termination Date and ending 12 months after the Termination Date.

Parties means ElectraNet and the IUSA Provider and **Party** means either one of them.

Passthrough Threshold means the amount set out in Item 5 of Schedule 1.

Performance Default has the meaning set out in clause 13.1(c).

Performance Default Cure Date has the meaning set out in clause 13.1(c)(i).

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

PPSR means the Personal Property Securities Register established and governed by the PPSA.

Preconditions means the preconditions set out in Schedule 2.

Pricing Rules means the provisions of Chapter 6A of the NER and (where applicable) a Revenue Decision made in accordance with Chapter 6A of the NER which describes the service being regulated and regulates the manner in which the price payable for the provision of that service by ElectraNet may be determined by ElectraNet from time to time.

Project Document means:

- (a) this deed;
- (b) the TCA (including the operating protocol under the TCA);
- (c) any *connection agreements* with a Subsequent TNU for a Subsequent TNU Facility that is or will be *connected* to ElectraNet's *transmission network* via the IUSA;
- (d) the Interface Works Agreement;
- (e) any Third Party DCA Transmission Connection Agreement (including any operating protocol between ElectraNet and the third party *Dedicated Connection Asset Service Provider*) (if any); and
- (f) any other document which the Parties agree in writing is a Project Document.

Project Document Dispute has the meaning set out in clause 19.10(a).

Project Information has the meaning set out in clause 27.1(a).

Related Body Corporate has the meaning given to that term by the Corporations Act and, for the purposes of this deed also includes a partnership comprised of one or more Related Bodies Corporate.

Related Entity has the meaning given to that term in rule 5.2A.7(f) of the NER.

Repairs and Replacements Schedule means a repairs and replacements schedule which is agreed between the parties (or otherwise binding on the parties) under clause 7.3.

Representing Party has the meaning set out in clause 28.1.

Required Date means, in respect of each Precondition, the corresponding date by which that Precondition must be satisfied as set out in Schedule 2.

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

Routine Maintenance means maintenance of a regular, preventative or minor nature that is performed periodically, during operation, to maintain Materials and Equipment in working order without the need for an *outage*, including inspecting the *IUSA* but does not include any repair or replacement (whether planned or unplanned, including pursuant to clauses 7.4, 7.5 or 7.6) of any Materials and Equipment.

Second Party has the meaning set out in clause 2.5(a)(i).

Solvency Default means, in relation to a Party, the occurrence of any one of the following events in relation to that Party:

- (a) an originating process or application for the winding up of that Party (other than a frivolous or vexatious application) is filed in a court or a special resolution is passed to wind up that Party, and is not dismissed before the expiration of 60 days from service on that Party;
- (b) a receiver, receiver and manager or administrator is appointed in respect of all or any part of the assets of that Party, or a provisional liquidator is appointed to that Party;
- (c) a mortgagee, chargee or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of that Party;
- (d) a mortgage, charge or other security interest granted by that Party is enforced by its holder or becomes enforceable or can become enforceable with the giving of notice, lapse of time or fulfilment of a condition;
- (e) that Party applies for, consents to, or acquiesces in the appointment of a trustee in bankruptcy or receiver of that Party or any of its property;
- (f) a court appoints a liquidator, provisional liquidator, receiver or trustee, whether permanent or temporary, of all or any part of that Party's property;
- (g) a Party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act) in respect of that Party;
- (h) a controller (as defined in the Corporations Act) is appointed in respect of any part of the property of the Party;
- (i) that Party is or states in writing that it is unable to pay its debts when they fall due;
- (j) except to reconstruct or amalgamate while solvent on terms approved by the other Party (which approval will not be unreasonably withheld or delayed), a Party enters into or resolves to enter into a scheme of arrangement, compromise or re-construction is proposed with its creditors (or any class of them) or with its members (or any class of them) or proposes re-organisation, re-arrangement, moratorium or other administration of that Party's affairs; or

(k) that Party is the subject of an event described in section 459C(2) of the Corporations Act.

Subsequent ElectraNet Work Notice has the meaning set out in clause 9.2(a).

Subsequent IUSA Provider Work Notice has the meaning set out in clause 9.3(a).

Subsequent TNU means, in relation to a Subsequent TNU Facility, the owner, operator or controller of that Subsequent TNU Facility.

Subsequent TNU Facility means any *facility* (other than the *facility* under the TCA) which:

- (a) a *Connection Applicant* has requested be *connected* to ElectraNet's *transmission network* (via the IUSA); or
- (b) is *connected* to the Transmission System (via the IUSA),

after the Execution Date. For the avoidance of doubt, where the context requires, it includes any third party *dedicated connection asset*.

Subsequent Work Notice has the meaning set out in clause 9.4(a).

System Controller means the person authorised under an Applicable Law to exercise system control over that part of the *power system* situated in South Australia (and includes a *System Operator* under the NER in relation to that part of the *power system*).

TCA means the *connection agreement* (or *connection agreements*) listed in Item 2 of Schedule 1.

Term has the meaning set out in clause 2.7.

Termination Date means the date on which this deed is terminated in accordance with its terms.

Termination Notice has the meaning set out in clause 2.8(c).

Third Party DCA Transmission Connection Agreement means any agreement so entitled between ElectraNet and any third party *Dedicated Connection Asset Service Provider* (other than ElectraNet or the TNU) in respect of any *dedicated connection assets* required for the purpose of *connecting* the TNU's *facility* and any Subsequent TNU Facility to the Transmission System.

TLC means the Transmission Lessor Corporation as defined in the *Public Corporations (Transmission Lessor Corporation) Regulations 2010* (SA).

TNU means the party (or parties) listed in Item 2 of Schedule 1.

Transmission Licence means the licence issued to ElectraNet under the Electricity Act authorising it to operate a *transmission system* in South Australia.

Transmission Network Connection Point means the point of interface between the IUSA and the *dedicated connection assets* set out in Item 3 of Schedule 1.

Transmission System means the *transmission system* operated by ElectraNet and identified in the Transmission Licence from time to time.

WHS means work, health and safety.

Wilful Misconduct means any act or omission which the party in question knew would be wrongful with the intent to cause harm to the other party or where the party had a reckless

disregard whether or not the conduct engaged in would be wrongful on its part and what its consequences might be.

1.2 NER definitions and references

In this deed, unless the context otherwise requires:

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

1.3 Interpretation

In this deed, unless the context otherwise requires:

- (a) words indicating the singular number include the plural number and vice versa;
- (b) words indicating persons only include natural persons, bodies corporate and unincorporated associations;
- (c) where a party or group is constituted by more than one person, a reference to that party or group is a reference to each of those persons jointly and severally;
- (d) other grammatical forms of words or phrases defined in this deed will have a corresponding meaning;
- (e) references to persons include their respective administrators, successors, liquidators and permitted assigns;
- (f) headings are for convenience only and do not affect the interpretation of this deed;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novation of, that document;
- (h) a reference to an annexure, a clause or a schedule is to an annexure, a clause or schedule of this deed;
- (i) the recitals, annexures and schedules form part of this deed;
- (j) mentioning anything after the words "include", "includes", "including" or "for example" (or similar expressions) does not limit what else is included;
- (k) a reference to an Authority includes any body which is the successor to the administrative responsibilities of that Authority;
- (l) a reference to a period of time (including, without limitation, a year, a month and a day) is to a calendar period;
- (m) a reference to any act of Parliament or to any section or provision in any act of Parliament extends to and includes:
 - (i) any regulations, codes, orders or other instruments made under that act; and
 - (ii) any statutory modification, re-enactment or substitution for that act, section or provision;
- (n) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this deed or any part of it; and

- (o) a reference to “dollars”, “\$”, “AUD” or “A\$” is to the lawful currency of Australia.

1.4 Consideration

In addition to the mutual promises contained in this deed, each Party agrees to pay the other Party A\$10 upon demand as consideration for the other Party entering into and performing its obligations under this deed.

2. Commencement and Term

2.1 Preconditions to commencement

Other than the clauses referred to in clause 2.6, this deed does not commence, and has no force or effect, until each of the Preconditions have been satisfied or waived in accordance with clause 2.3(a).

2.2 Satisfaction of Preconditions

- (a) Each Party will use its best endeavours to satisfy the Preconditions applying to that Party as soon as reasonably possible after the Execution Date but in any event by no later than the Required Date for the satisfaction of the relevant Precondition.
- (b) Each Party will provide to the other Party such assistance as the other Party may reasonably request from time to time in relation to any activity required to be undertaken by that Party in order to satisfy any Precondition.
- (c) Each Party will keep the other Party informed of progress towards satisfaction of the Preconditions applying to that Party and promptly Notify the other Party if it becomes aware that any Precondition has been satisfied or has become incapable of being satisfied.

2.3 Waiver of Preconditions

- (a) A Precondition may only be waived in writing by the Party who has the right to waive the relevant Precondition as set out in Schedule 2.
- (b) If ElectraNet waives a Precondition applying to the IUSA Provider in accordance with clause 2.3(a), it may do so on such conditions as it deems necessary.

2.4 Notice of Commencement Date

ElectraNet must Notify the IUSA Provider of the Commencement Date as soon as reasonably practical after the Preconditions have been satisfied or waived in accordance with clause 2.3(a).

2.5 Failure of Preconditions

- (a) If a Precondition is not satisfied, or waived in accordance with clause 2.3(a), by the Required Date for the satisfaction of that Precondition:
 - (i) the Party who is specifically stated in Schedule 2 to be responsible for satisfying that Precondition (**First Party**) must serve a Notice on the other Party (**Second Party**) advising that the relevant Precondition has not been satisfied by the Required Date; or
 - (ii) if the First Party fails to serve a Notice on the Second Party in accordance with clause 2.5(a)(i), the Second Party may serve a Notice on the First Party advising that the relevant Precondition has not been satisfied by the Required Date.

- (b) Upon receipt of a Notice under clause 2.5(a), the Parties must consult with each other to determine whether the relevant Precondition can be satisfied by the First Party within 5 Business Days from the date of receipt of that Notice (or such longer period as is agreed in writing between the Parties).
- (c) A Party may terminate this deed immediately by giving written Notice to the other Party if:
 - (i) the relevant Precondition is not satisfied after the end of the relevant period referred to in clause 2.5(b); and
 - (ii) the relevant Precondition has not been waived in accordance with clause 2.3(a) before the end of the relevant period referred to in clause 2.5(b).
- (d) If either Party terminates this deed under clause 2.5(c), neither Party will be entitled to any Claim against the other Party under, in respect of, or in connection with, this deed and each Party releases the other Party from any such Claims.

2.6 Clauses not subject to Preconditions

Clauses 1, 2, 5, 10, 11, 12, 13.1(a), 13.2(a), 13.3, 13.4, 13.6, 13.7, 14, 16, 17, 18, 19, 20, 21, 22, 24, 26 and 27 come into full force and effect immediately on the Execution Date.

2.7 Term

Subject to clause 2.6, this deed commences on the Commencement Date and, subject to clause 2.8, ends on the Expiry Date, unless otherwise terminated in accordance with this deed (the **Term**).

2.8 Holding over

- (a) Before the Expiry Date, but not earlier than the date which is 6 months before the Expiry Date, either Party may provide a Notice to the other Party confirming that this Agreement will expire on the Expiry Date.
- (b) If, before the Expiry Date, neither Party has provided a Notice under clause 2.8(a), this deed will remain in full force and effect until this deed expires in accordance with this clause 2.8 or otherwise terminates in accordance with this deed (**Holding Over Period**).
- (c) During the Holding Over Period, either Party may, by providing Notice to the other Party, terminate this deed (**Termination Notice**).
- (d) If a Termination Notice has been provided by a Party pursuant to clause 2.8(c), then this deed will expire on the date which is 6 months after the date the Termination Notice is provided to the other Party, unless this deed otherwise terminates earlier in accordance with this deed.

PART 2 - ACCESS AND USE OF IUSA

3. Access and Use Rights

3.1 Access and Use Rights following Handover Date

- (a) On and from the Handover Date until the end of the Term, the IUSA Provider grants to ElectraNet and its Associates the Access and Use Rights.

- (b) The IUSA Provider acknowledges that the Access and Use Rights are exclusive and unrestricted, and that at all times during the Term:
 - (i) the IUSA Provider (and its Associates) will have no rights of access to the IUSA and no rights to control, operate or maintain the IUSA, unless expressly permitted by this deed; and
 - (ii) the IUSA Provider may not grant any such rights to any other party, as the IUSA will form part of ElectraNet's *transmission network*.

3.2 Acknowledgements by IUSA Provider

- (a) Without limiting clause 3.1, the IUSA Provider acknowledges and agrees that on and from the Handover Date until the end of the Term:
 - (i) ElectraNet has exclusive access to, operation of and control over the IUSA; and
 - (ii) ElectraNet is entitled to treat the IUSA as forming part of ElectraNet's *transmission network* in all respects.
- (b) Without limiting clause 3.1 or 3.2(a) the IUSA Provider acknowledges and agrees that:
 - (i) in exercising the Access and Use Rights, ElectraNet is entitled to:
 - (A) *connect any Transmission Network User* (including the TNU and any Subsequent TNUs) to the IUSA; and
 - (B) *provide transmission services to any Transmission Network User* using the IUSA (including the TNU and any Subsequent TNUs),

in accordance with this deed and Applicable Law; and
 - (ii) nothing in this deed or any other Project Document prevents or limits (or is intended to prevent or limit) ElectraNet from dealing with the IUSA in order to:
 - (A) *connect any Transmission Network User* (including the TNU and any Subsequent TNUs) to the Transmission System; and
 - (B) *provide transmission services to any Transmission Network User* (including the TNU and any Subsequent TNUs),

in accordance with this deed and Applicable Law.
- (c) The IUSA Provider must not, without ElectraNet's prior written consent, amend the terms and conditions of any land access rights that have been reviewed, accepted or approved by ElectraNet as a Precondition under Item 1.4 of Schedule 2.

3.3 Use of IUSA by ElectraNet during the Term

The IUSA Provider acknowledges and agrees that, subject to this deed:

- (a) ElectraNet may, without the IUSA Provider's consent, alter, replace or augment the IUSA during the Term in order to enable ElectraNet to:
 - (i) perform the Network Operating Functions;
 - (ii) perform the Operation and Maintenance Obligations; or
 - (iii) comply with the Project Documents or Applicable Law,

in which case, ElectraNet will provide the IUSA Provider with reasonable details of all works which are to be completed on the IUSA in good faith; or

- (iv) *connect any Transmission Network User (including the TNU and any Subsequent TNUs) to the Transmission System, and provide transmission services to any Transmission Network User (including the TNU and any Subsequent TNUs), in accordance with the NER and all other Applicable Laws, in which case ElectraNet will comply with clause 9; and*
- (b) the IUSA Provider must not access, interfere with, alter, replace or augment any part of the IUSA in any way during the Term other than in accordance with this deed.

3.4 Right of access and inspection for IUSA Provider

The IUSA Provider and its Associates may access and inspect any part of the IUSA from time to time in accordance with clause 8.

4. IUSA Provider warranties

4.1 Warranties and undertakings

The IUSA Provider warrants and undertakes that:

- (a) the IUSA and each part of the IUSA (including the Materials and Equipment forming part of the IUSA) will be of a quality, and constructed in a manner, which ensures:
 - (i) the longevity of the IUSA;
 - (ii) the IUSA can withstand the natural elements and other natural processes which have the potential otherwise to cause the IUSA to develop Defects;
 - (iii) the occurrence of Defects is minimised;
 - (iv) the IUSA complies with all Applicable Laws (including the requirements of the relevant Authorities); and
 - (v) they are compliant with the Functional Specifications, all Applicable Laws and *good electricity industry practice*;
- (b) on the Handover Date, the IUSA (including the Materials and Equipment forming part of the IUSA) will:
 - (i) be free of Defects;
 - (ii) be fit for, and otherwise in accordance with, the Intended Purpose;
 - (iii) comply with the Functional Specifications, all Applicable Laws and *good electricity industry practice*; and
 - (iv) enable ElectraNet to carry out the Network Operating Functions safely, efficiently and otherwise in accordance with all Applicable Laws and *good electricity industry practice*; and
- (c) at any time during the Term, the IUSA Provider:
 - (i) does not (and will not) own, operate or Control a *generating system*;
 - (ii) does not (and will not) own, operate or Control a *facility* utilising electrical energy; and

- (iii) is not (and will not be) a Related Entity of a person who owns, operates or Controls a *generating system* or *facility* utilising electrical energy,

that is *connected* to the IUSA.

4.2 No prejudice

The Parties acknowledge and agree that:

- (a) the inspection, testing or joint commissioning of the IUSA by any member of the ElectraNet Group on or before the Handover Date is to be completed by ElectraNet under the TCA and Interface Works Agreement as prudent owner and operator of ElectraNet's *transmission network*; and
- (b) that such activities are to be completed for the sole benefit of ElectraNet and:
 - (i) must not be relied upon by any member of the IUSA Provider Group for any purpose;
 - (ii) do not limit in any way, the IUSA Provider's liability in relation to the warranties in clause 4.1 or otherwise in connection with this deed; and
 - (iii) do not limit in any way, ElectraNet's rights in relation to Defects contained in clause 6.

5. Title and risk in IUSA

5.1 Title and risk remains with IUSA Provider

- (a) Subject to clause 14, title and ownership in the IUSA remains with the IUSA Provider at all times during the Term.
- (b) On and from the Execution Date and at all times during the Term, the IUSA Provider bears the risk of:
 - (i) loss or damage to the IUSA (including loss or damage caused by ordinary wear and tear); and
 - (ii) Defects in the Materials and Equipment forming part of the IUSA, other than to the extent such loss, damage or Defect was directly caused or contributed to by the negligence of any member of the ElectraNet Group.
- (c) For clarity, clauses 5.1(a) and 5.1(b) applies to any relocations of, and any alterations, replacements or augmentations to, the IUSA during the Term.

5.2 No PPSA security interest

- (a) The Parties agree that nothing in this deed creates an Encumbrance which is registrable on the PPSR and agree that no such Encumbrance is to be registered at any time during the Term.
- (b) If such an Encumbrance is registered by either Party in contravention of clause 5.2(a), the Party that has made the registration must promptly, and in any event within 5 Business Days of a Notice received from the other Party, discharge the registration.

6. Defects

6.1 Remediation of Defects during the Defect Correction Period

- (a) At any time during the Defects Correction Period, if ElectraNet discovers or believes there is a Defect (whether existing at the Handover Date or which becomes apparent before the expiration of the Defects Correction Period), ElectraNet may direct the IUSA Provider in a Notice to promptly rectify the Defect.
- (b) The direction under clause 6.1(a) must identify the Defect and may state:
 - (i) a reasonable date by which the IUSA Provider must complete the rectification work; and
 - (ii) a reasonable date by which the rectification work must commence.

6.2 Time for performing Defect rectification

Subject to ElectraNet's rights under clause 6.3, if the IUSA Provider has been directed by ElectraNet to carry out rectification work under clause 6.1(a), the IUSA Provider must do so:

- (a) as soon as possible (and in any event, by the dates set out in ElectraNet's direction); and
- (b) at times directed by ElectraNet,

subject to ElectraNet granting the IUSA Provider with access to the IUSA.

6.3 Urgent rectification

- (a) ElectraNet may at any time during the Defects Correction Period, determine and Notify the IUSA Provider of any remedial, make safe, protective, repair or other work urgently required on or in relation to the IUSA in order to:
 - (i) maintain *power system security*;
 - (ii) ensure the IUSA operates in accordance with *good electricity industry practice*;
 - (iii) prevent loss, damage or disruption to any part of the IUSA or the Transmission System; or
 - (iv) prevent loss or damage to any property or personal injury or death,as a result of, or in relation to, a Defect.
- (b) If the IUSA Provider receives a Notice pursuant to clause 6.3(a), the IUSA Provider must immediately commence and diligently perform all rectification work identified in that Notice promptly (and in any event, by the time specified in that Notice).

6.4 Failure to remedy Defects

If the IUSA Provider fails to remedy any Defect, the subject of a direction pursuant to clause 6.1 or the subject of a Notice pursuant to clause 6.3:

- (a) in the case of a direction pursuant to clause 6.1, by the time required under clause 6.2; or
- (b) in the case of a Notice pursuant to clause 6.3, by the time required under clause 6.3,

then ElectraNet may, in its absolute discretion, by Notice to the IUSA Provider:

- (c) treat the matter as a Performance Default; and
- (d) remedy the Defect, or any part of it, at the sole expense of the IUSA Provider and the cost of correcting the Defect will be payable by the IUSA Provider under clause 12.2.

PART 3 - OPERATION AND MAINTENANCE OBLIGATIONS

7. Operation and Maintenance Obligations

7.1 Performance of Operation and Maintenance Obligations

On and from the Handover Date and until the end of the Term, ElectraNet will operate the IUSA and perform Routine Maintenance on the IUSA in accordance with:

- (a) the requirements of the Project Documents;
- (b) *good electricity industry practice*;
- (c) Applicable Law; and
- (d) ElectraNet's own maintenance and operational policies and procedures,

(Operations and Maintenance Obligations).

7.2 Maintenance to be provided under TCA

- (a) The IUSA Provider acknowledges that ElectraNet will need to conduct maintenance works and tests from time to time in relation to the IUSA and that these maintenance works and tests may result in de-energisation of the IUSA, *outages* or the interruption, suspension, reduction or limitation of services to the TNU under the TCA.
- (b) ElectraNet will provide notice of maintenance works and tests which are required to be undertaken on the IUSA and details of any *outages* required relating to such maintenance works to the TNU in accordance with the terms of the TCA and will not be required to provide such notice to the IUSA Provider under this deed.
- (c) The ElectraNet Group will not be liable for any Damages suffered by any member of the IUSA Provider Group in connection with the de-energisation of the IUSA or any *outages* or the interruption, suspension, reduction or limitation of services to the TNU under the TCA which are required in order to perform maintenance works and tests on the IUSA from time to time.

7.3 Maintenance records and Repairs and Replacement Schedules

- (a) Within 20 Business Days of a request from the IUSA Provider, which requests may not be made any more than once per calendar year during the Term, ElectraNet will provide to the IUSA Provider:
 - (i) reasonable records of the Routine Maintenance completed, or to be completed on the IUSA during the year in which the request is made; and
 - (ii) an up to date repairs and replacements schedule highlighting any Minor Items and Major Items which require routine repairs and replacements in the future.
- (b) If the IUSA Provider requires any changes to be made to the repairs and replacements schedule provided to the IUSA Provider under clause 7.3(a)(ii):

- (i) such changes must be proposed to ElectraNet in a Notice within 20 Business Days after ElectraNet provides the repairs and replacements schedule to the IUSA Provider under clause 7.3(a);
 - (ii) the Parties must act in good faith to agree and finalise the repairs and replacements schedule within 20 Business Days after the date of the Notice provided by the IUSA Provider to ElectraNet under clause 7.3(b)(i); and
 - (iii) if the Parties are not able to agree and finalise the repairs and replacements schedule within the period mentioned in clause 7.3(b)(ii), the Dispute will be resolved by the Parties in accordance with clause 19.
- (c) If the IUSA Provider does not provide ElectraNet with a Notice under clause 7.3(b)(i) within the 20 Business Day period mentioned in that clause, the repairs and replacements schedule provided under clause 7.3(a) will be taken to be final and binding on the IUSA Provider.

7.4 Repair or replacement of Minor Items

- (a) In addition to the Routine Maintenance of the IUSA and subject to the Defects regime in clause 6, ElectraNet will promptly repair or replace any Minor Items forming part of the IUSA which:
- (i) are included in the most up to date Repairs and Replacements Schedule (as and when required by that schedule); or
 - (ii) otherwise become Defective during the Term regardless of how the Defect is caused.
- (b) The costs of ElectraNet repairing or replacing any Minor Items forming part of the IUSA under clause 7.4(a) will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2.

7.5 Routine repairs and replacements of Major Items

- (a) Before any scheduled repairs or replacements of Major Items forming part of the IUSA (as specified in the most up to date Repairs and Replacements Schedule) occur, ElectraNet will provide the IUSA Provider with a Notice:
- (i) setting out details of the Major Items which are due for repairs or replacements; and
 - (ii) the estimated capital cost of the required repairs or replacements.
- (b) The IUSA Provider must, within 20 Business Days of receiving a Notice from ElectraNet under clause 7.5(a), provide a Notice to ElectraNet confirming that it will either:
- (i) accept the cost of the relevant Major Item repairs or replacements; or
 - (ii) elect to complete the repairs or replacements itself or have the repairs or replacements completed by its own contractor.
- (c) If clause 7.5(b)(i) applies, ElectraNet may repair or replace the relevant Major Items in accordance with the most up to date Repairs and Replacements Schedule and the costs of ElectraNet doing so will be payable by the IUSA Provider to ElectraNet under clause 12.2.
- (d) If clause 7.5(b)(ii) applies, the IUSA Provider must ensure that:

- (i) the relevant repairs or replacements occur in accordance with (and within the timeframes anticipated by) the most up to date Repairs and Replacements Schedule;
 - (ii) the repaired or replaced IUSA components comply with the requirements of the Project Documents (in particular, the standards set out in the Interface Works Agreement) and ensure that when the repairs or replacements are completed, the IUSA is of the same or better standard and quality as it was as at the commencement of this deed; and
 - (iii) clause 8 is complied with by the IUSA Provider and its contractors when undertaking the repairs or replacements.
- (e) If the IUSA Provider (or its contractor) completes any repair or replacement of Major Items under this clause 7.5, all warranties provided by the IUSA Provider under clause 4 will be taken to have been repeated in relation to the IUSA as repaired or replaced.
- (f) If the IUSA Provider:
- (i) fails to provide ElectraNet with a Notice under clause 7.5(b) within the 20 Business Day period referred to in that clause (or such later date as agreed by ElectraNet acting reasonably); or
 - (ii) has provided a Notice under clause 7.5(b)(ii) but fails to commence the relevant repairs or replacements in accordance with the most up to date Repairs and Replacements Schedule (or such later date as agreed by ElectraNet acting reasonably),
- then:
- (iii) the IUSA Provider will be taken to have waived its right to undertake the relevant repairs or replacements;
 - (iv) ElectraNet may, but is not obliged to, carry out the relevant repairs or replacements at the IUSA Provider's cost as if they were repairs or replacements of Minor Items; and
 - (v) the applicable costs of such repairs or replacements will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2.

7.6 Non – routine repairs and replacements of Major Items

- (a) In addition to the Routine Maintenance of the IUSA and subject to:
- (i) the Defects regime in clause 6; and
 - (ii) the exceptions in clause 7.9,
- non-routine repairs or replacements of Major Items forming part of the IUSA will be undertaken in accordance with this clause 7.6.
- (b) ElectraNet will provide the IUSA Provider with Notice promptly after any Major Items forming part of the IUSA become Defective during the Term regardless of how the Defect is caused:
- (i) setting out details of the Major Items which have become Defective; and
 - (ii) the estimated capital cost of the required repairs or replacements.

- (c) The IUSA Provider must, within 10 Business Days of receiving a Notice from ElectraNet under clause 7.6(b), provide a Notice to ElectraNet confirming that it will either:
 - (i) accept the cost of the relevant Major Item repairs or replacements; or
 - (ii) elect to complete the repairs or replacements itself or have the repair or replacement completed by its own contractor.
- (d) If clause 7.6(c)(i) applies, ElectraNet may repair or replace the relevant Major Items and the costs of ElectraNet doing so will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2.
- (e) If clause 7.6(c)(ii) applies, the IUSA Provider must ensure that:
 - (i) the relevant repairs or replacements occur as soon as reasonably practicable;
 - (ii) the repaired or replaced IUSA components comply with the requirements of the Project Documents (in particular, the standards set out in the Interface Works Agreement) and ensure that when the repairs or replacements are completed, the IUSA is of the same or better standard and quality as it was as at the commencement of this deed; and
 - (iii) clause 8 is complied with by the IUSA Provider and its contractors when undertaking the repairs or replacements.
- (f) If the IUSA Provider (or its contractor) completes any repairs or replacements of Major Items under this clause 7.6, all warranties provided by the IUSA Provider under clause 4 will be taken to have been repeated in relation to the IUSA as repaired or replaced.
- (g) If the IUSA Provider:
 - (i) fails to provide ElectraNet with a Notice under clause 7.6(c) within the 10 Business Day period referred to in that clause (or such later date as agreed by ElectraNet acting reasonably); or
 - (ii) has provided a Notice under clause 7.6(c)(ii) but fails to commence the relevant repairs or replacements within 40 Business Days of ElectraNet providing a Notice to the IUSA Provider under clause 7.6(b) (or such later date as agreed by ElectraNet acting reasonably),
 then:
 - (iii) the IUSA Provider will be taken to have waived its right to undertake the relevant repairs or replacements;
 - (iv) ElectraNet may, but is not obliged to, carry out the relevant repairs or replacements at the IUSA Provider's cost as if they were repairs or replacements of Minor Items; and
 - (v) the applicable costs of such repairs or replacements will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2.

7.7 Major loss events

- (a) Despite clauses 7.4 to 7.6 (inclusive), if more than 25% of the Materials and Equipment forming part of the IUSA are damaged or destroyed by a single event, clause 7.6 will not apply, and the entire IUSA must be reinstated by the IUSA Provider

at its own cost, other than to the extent that the relevant event was directly caused or contributed to by the negligence of the ElectraNet Group.

- (b) The IUSA Provider must commence the reinstatement of the IUSA in accordance with clause 7.7(a) as soon as reasonably practicable following the occurrence of the relevant event (and in any event no later than 40 Business Days after the relevant event) and the Parties will act in good faith in order to jointly test and recommission the reinstated IUSA upon completion of the reinstatement.
- (c) If the IUSA is reinstated under this clause 7.7, the Parties agree that this deed (including the warranties in clause 4) will apply in relation to the reinstated IUSA in the same manner as it does in relation to the original IUSA and the Defect Correction Period will be taken to have recommenced upon energisation of the reinstated IUSA.
- (d) If the IUSA Provider does not start to reinstate the IUSA within the timeframe set out in clause 7.7(b):
 - (i) the IUSA Provider will be taken to have waived its right to reinstate the IUSA;
 - (ii) ElectraNet may, at its sole discretion, elect to either:
 - (A) reinstate the IUSA, in which case the all costs incurred by ElectraNet arising out of or in connection with the reinstatement will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2; or
 - (B) terminate this deed upon Notice to the IUSA Provider and the Option Period will commence on the Termination Date.

7.8 Changes to IUSA required by Change in Applicable Law Event

- (a) ElectraNet will promptly update, augment, repair, replace or rectify (**Update**) any Minor Items forming part of the IUSA where required, in ElectraNet's reasonable opinion, as the result of a Change in Applicable Law Event.
- (b) The costs of ElectraNet updating, augmenting, repairing, replacing or rectifying any Minor Items forming part of the IUSA under clause 7.4(a) will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2.
- (c) If, in ElectraNet's reasonable opinion, any updates, augmentations, repairs, replacements or rectifications of Major Items are required as the result of a Change in Applicable Law Event, ElectraNet will provide the IUSA Provider with a Notice:
 - (i) setting out details of the relevant Major Items; and
 - (ii) the estimated capital cost of the required updates, augmentations, repairs, replacements or rectifications.
- (d) The IUSA Provider must, within 20 Business Days of receiving a Notice from ElectraNet under clause 7.8(c), provide a Notice to ElectraNet confirming that it will either:
 - (i) accept the cost of the relevant Major Item updates, augmentations, repairs, replacements or rectifications; or
 - (ii) elect to complete the updates, augmentations, repairs, replacements or rectifications itself or have them completed by its own contractor.
- (e) If clause 7.8(d)(i) applies, ElectraNet may update, augment, repair, replace or rectify the relevant Major Items and the costs of ElectraNet doing so will be borne by the

IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2.

- (f) If clause 7.8(d)(ii) applies, the IUSA Provider must ensure that:
 - (i) the relevant updates, augmentations, repairs, replacements or rectifications occur as soon as reasonably practicable;
 - (ii) the updated, augmented, repaired, replaced or rectified IUSA components comply with the requirements of the Project Documents (in particular, the standards set out in the Interface Works Agreement) and ensure that when the updates, augmentations, repairs, replacements or rectifications are completed, the IUSA is of the same or better standard and quality as it was as at the commencement of this deed; and
 - (iii) clause 8 is complied with by the IUSA Provider and its contractors when undertaking the updates, augmentations, repairs, replacements or rectifications.
- (g) If the IUSA Provider (or its contractor) completes any updates, augmentations, repairs, replacements or rectifications of Major Items under this clause 7.8, all warranties provided by the IUSA Provider under clause 4 will be taken to have been repeated in relation to the IUSA as updated, augmented, repaired, replaced or rectified.
- (h) If the IUSA Provider:
 - (i) fails to provide ElectraNet with a Notice under clause 7.6(d) within the 20 Business Day period referred to in that clause (or such later date as agreed by ElectraNet acting reasonably); or
 - (ii) has provided a Notice under clause 7.8(d)(ii) but fails to commence the relevant updates, augmentations, repairs, replacements or rectifications within 40 Business Days of ElectraNet providing a Notice to the IUSA Provider under clause 7.8(c) (or such later date as agreed by ElectraNet acting reasonably),then, the IUSA Provider will be taken to have waived its right to reinstate the IUSA and ElectraNet may elect to:
 - (iii) complete the required updates, augmentations, repairs, replacements or rectifications, in which case the all costs incurred by ElectraNet arising out of or in connection the required updates, augmentations, repairs, replacements or rectifications will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2; or
 - (iv) terminate this deed upon Notice to the IUSA Provider and the Option Period will commence on the Termination Date.

7.9 Exceptions

Nothing in this deed (including clauses 6 and 7) will prevent ElectraNet from immediately undertaking any works it considers necessary (including following the occurrence of a Defect in any Materials and Equipment forming part of the IUSA or any major loss event of the kind referred to in clause 7.7) to:

- (a) make the IUSA safe, and restore its *transmission network*, including any works required to “bypass” the IUSA; or
- (b) repair or replace any Major Items forming part of the IUSA if other *Network Users* (in addition to the TNU) who use the IUSA are being affected,

in which case:

- (c) ElectraNet may carry out the relevant make safe or bypass works, repairs or replacements at the IUSA Provider's cost as if they were repairs or replacements of Minor Items; and
- (d) the applicable costs of such works will be borne by the IUSA Provider and will be payable by the IUSA Provider to ElectraNet under clause 12.2.

7.10 Disconnection and reduction

- (a) The IUSA Provider acknowledges and agrees that:
 - (i) ElectraNet has, or will have, certain rights under:
 - (A) the TCA; and
 - (B) any *connection agreement* entered into with a Subsequent TNU or any other *Transmission Network User* involving the use of the IUSA, **(Connection Agreements)** and Applicable Laws to *disconnect any facilities* or interrupt, suspend, reduce or limit the provision of any *transmission services* provided from time to time using the IUSA under the Connection Agreements; and
 - (ii) nothing in this deed limits ElectraNet's rights under any Connection Agreement or Applicable Law to *disconnect any facilities* or interrupt, suspend, reduce or limit the provision of any transmission services provided under a Connection Agreement.
- (b) No member of the ElectraNet Group will be liable to any member of the IUSA Provider Group for any Damages incurred or suffered by any member of the IUSA Provider Group (including any third party Claims) as a result of ElectraNet *disconnecting any facilities* or interrupting, suspending, reducing or limiting the provision of any services in accordance with a Connection Agreement or Applicable Law.

8. Access for IUSA Provider and outages

8.1 IUSA Provider Access

- (a) ElectraNet will ensure that members of the IUSA Provider Group are granted access to the IUSA and Land from time to time for the purpose of allowing the IUSA Provider to inspect the IUSA or to complete any works on the IUSA as anticipated or permitted by clauses 6 and 7.
- (b) The IUSA Provider must ensure that before any members of the IUSA Provider Group access the Land, 12 hours' written Notice is provided to ElectraNet, which Notice must contain:
 - (i) names and photo identification of all personnel who will be accessing the IUSA or Land; and
 - (ii) reasonable details of why access is required and the proposed times for access.
- (c) At all times whilst accessing the IUSA or Land under this clause 8.1, the IUSA Provider must ensure that all members of the IUSA Provider Group:

- (i) comply with ElectraNet's reasonable security, WHS and other access directions, policies and procedures;
- (ii) comply with the ElectraNet Asset Access Manual;
- (iii) do not carry out any work in any High Risk Areas;
- (iv) consult in good faith with members of the ElectraNet Group in respect of matters concerning WHS; and
- (v) if required by the member of the ElectraNet Group which occupies and controls the IUSA or Land:
 - (A) wear a valid visitor's pass and be escorted by a representative or safety observer; and
 - (B) are formally inducted before they obtain access to the IUSA or Land.
- (d) Access to the IUSA and Land under this clause 8 will be restricted to the hours of 8:30am to 5:00pm on Business Days and weekends which are not public holidays.
- (e) In exercising its rights under this clause 8, the IUSA Provider must (and procure that the other members of the IUSA Provider Group):
 - (i) comply with all lawful directions of ElectraNet; and
 - (ii) minimise, as far as possible, disruption to ElectraNet or any Associate of ElectraNet.

8.2 Outages for IUSA Provider works

- (a) The IUSA Provider acknowledges and agrees that it must procure the TNU (and use its reasonable endeavours to procure any Subsequent TNU) to book any *outages* with ElectraNet that are required to enable the IUSA Provider or its contractor to complete any works on the IUSA as anticipated or permitted by clauses 6 and 7 in accordance with the Connection Agreements, ElectraNet's reasonable requirements and Applicable Law.
- (b) No member of the ElectraNet Group will be liable to any member of the IUSA Provider Group for any Damages incurred or suffered by any member of the IUSA Provider Group (including any third party Claims) as a result of any delay or failure to obtain *outages* which are required to enable the IUSA Provider or its contractor to any works on the IUSA as anticipated or permitted by clauses 6 and 7.

PART 4 - SUBSEQUENT TNU ACCESS

9. Subsequent TNUs

9.1 Connection of Subsequent TNUs

Without limiting clause 3, the IUSA Provider acknowledges and agrees that ElectraNet may *connect* the *facilities* of Subsequent TNUs to the IUSA and otherwise alter, replace, augment and perform works on the IUSA in order to *connect* Subsequent TNUs to ElectraNet's *transmission network* without the IUSA Provider's consent.

9.2 Subsequent ElectraNet Work Notice

- (a) ElectraNet will provide a Notice to the IUSA Provider as soon as reasonably practicable after it receives an *application to connect* from a *Connection Applicant*

which will require ElectraNet or an Associate of ElectraNet to *connect* the *facility* of a Subsequent TNU to ElectraNet's *transmission network* via the IUSA (**Subsequent ElectraNet Work Notice**).

- (b) The Subsequent ElectraNet Work Notice must contain:
 - (i) reasonable details of any *non-contestable IUSA components* and *contestable IUSA components* (if any) that ElectraNet or its Associates will be required to construct on or adjacent to the IUSA in order to *connect* the *facility* of the Subsequent TNU to ElectraNet's *transmission network* via the IUSA; and
 - (ii) a copy of the *preliminary program* for the *connection* (as amended from time to time) which has been provided by ElectraNet to the *Connection Applicant* as part of the relevant NER *connection* process.

9.3 Subsequent IUSA Provider Work Notice

- (a) Without limiting clause 3.3, the IUSA Provider must provide a Notice to ElectraNet before it enters into a contract which will require the IUSA Provider or an Associate of the IUSA Provider to construct any *contestable IUSA components* on or adjacent to the IUSA in order to *connect* the *facility* of a Subsequent TNU to ElectraNet's *transmission network* via the IUSA (**Subsequent IUSA Provider Work Notice**).
- (b) The Subsequent IUSA Provider Work Notice must contain reasonable details of any *contestable IUSA components* the IUSA Provider or its Associates will be required to construct on or adjacent to the IUSA in order to *connect* the *facility* of the Subsequent TNU to ElectraNet's *transmission network* via the IUSA.

9.4 Agreed process following Subsequent Work Notice

- (a) The Parties must use their best endeavours to agree in good faith as soon as reasonably practicable, and in any event, within 60 Business Days of the date on which a Subsequent IUSA Provider Work Notice or Subsequent ElectraNet Work Notice (**Subsequent Work Notice**) is issued under this clause 9:
 - (i) any changes which are required to this deed or any other Project Document between the Parties as a result of the Subsequent TNU *connection*;
 - (ii) any relocations to Materials and Equipment constituting the IUSA which are required in order to *connect* the Subsequent TNU;
 - (iii) the terms of any required access to the Land and the IUSA which are required to enable the works under the Subsequent Work Notice to be performed; and
 - (iv) the terms of any ongoing tenure arrangements of the Parties relating to all assets which are located, or to be located, on or near the Land.
- (b) Despite any other clause contained in this deed, if the Parties have not agreed and signed formal documentation relating to the matters set out in clause 9.4(a) within the period mentioned in clause 9.4(a) or such later period as reasonably agreed by ElectraNet, then ElectraNet may terminate this deed immediately upon Notice to the IUSA Provider and the Option Period will commence on the Termination Date.

9.5 Outages

- (a) ElectraNet will provide reasonable Notice of any *outages* which are required to the IUSA in order to *connect* a Subsequent TNU to the IUSA and use its best endeavours to keep any such *outages* and other interruptions to a minimum.

- (b) Without limiting clause 7.10(b), no member of the ElectraNet Group will be liable to any member of the IUSA Provider Group for any Damages incurred or suffered by any member of the IUSA Provider Group (including any third party Claims) as a result of *outages* which are required in order to *connect* any Subsequent TNU to the IUSA.

PART 5 - GENERAL OBLIGATIONS

10. Compliance with Applicable Laws

10.1 Compliance

Notwithstanding any other provision of this deed, each Party will comply with the obligations imposed on that Party by any Applicable Law. If such obligations are inconsistent with the obligations of that Party under this deed:

- (a) the provisions of this deed will prevail to the extent permitted by that Applicable Law; and
- (b) otherwise the provisions of that Applicable Law will prevail over the provisions of this deed to the extent of that inconsistency.

10.2 Limitation

Nothing in this deed will limit any right either Party may have under an Applicable Law except to the extent that that right can be limited in accordance with the provisions of that Applicable Law by agreement between the Parties and this deed directly or indirectly limits that right.

11. Insurance

11.1 IUSA Provider insurance

The IUSA Provider must, at its own expense, effect and maintain for the Term, the insurance policies specified in Item 6 of Schedule 1 with insurers of good repute and on terms, both pre-approved by ElectraNet in writing.

11.2 Inspection of IUSA Provider insurance policy documentation

The IUSA Provider will on reasonable request of ElectraNet provide:

- (a) certificates evidencing that the insurance policies required by clause 11.1 have been effected and all premiums have been paid; and
- (b) such other reasonable documentation (but excluding full policy terms) as ElectraNet may require from time to time to confirm that the insurance policies are valid, current and meet the requirements of clause 11.1.

11.3 Failure to effect and maintain insurance

If the IUSA Provider fails to effect or maintain an insurance policy required by clause 11.1, ElectraNet may effect and maintain the insurance policy and recover all costs incurred as a debt immediately due and payable from the IUSA Provider.

11.4 ElectraNet insurance

ElectraNet must effect and maintain during the Term, the insurance policy specified in Item 7 of Schedule 1 with insurers of good repute.

11.5 Inspection of ElectraNet insurance policy documentation

ElectraNet will on reasonable request by the IUSA Provider provide:

- (a) certificates evidencing that the insurance policy required by clause 11.4 has been effected and all premiums have been paid; and
- (b) such other reasonable documentation (but excluding full policy terms) as the IUSA Provider may require from time to time to confirm that the insurance policy is valid, current and meets the requirements of clause 11.4.

PART 6 - CHARGING METHODOLOGY

12. Charging methodology and compensable events

12.1 No charges or fees payable to IUSA Provider by ElectraNet

- (a) The Parties acknowledge and agree that other than payments from the IUSA Provider to ElectraNet under this clause 12, no charges or fees will be payable:
 - (i) by ElectraNet to the IUSA Provider; or
 - (ii) by the IUSA Provider to ElectraNet,relating to:
 - (iii) the granting of the Access and Use Rights by the IUSA Provider to ElectraNet; or
 - (iv) the performance of the Network Operating Functions by ElectraNet.
- (b) ElectraNet will charge the *Transmission Network Users* who are *connected* to the IUSA from time to time, the applicable fees and charges for ElectraNet performing the Network Operating Functions and Routine Maintenance under the terms of their relevant *connection agreements*.

12.2 Payment of compensable amounts plus handling fee

- (a) The IUSA Provider must pay:
 - (i) any amount payable to ElectraNet under this deed (including clauses 6 and 7) (plus any applicable GST);
 - (ii) plus a handling fee of [insert]% on the net amounts payable under clause 12.2(a)(i),within 20 Business Days of the date of receipt of a tax invoice for the relevant amount from ElectraNet.
- (b) Any amounts payable by the IUSA Provider under this clause 12.2 are to be reduced to the extent that any relevant Defect, loss or damage in or to the Materials and Equipment forming part of the IUSA (other than reasonable wear and tear) is directly caused or contributed by the negligence of the ElectraNet Group.

12.3 Goods and services tax

- (a) Unless specifically described in this deed as “GST inclusive”, any sum payable (or amount included in the calculation of a sum payable), or consideration to be provided,

under or in accordance with this deed does not include any amount on account of GST.

- (b) Where any payment to be made by one Party (**supplier**) to another Party (**recipient**) under or in accordance with this deed is subject to GST (other than a supply the consideration for which is specifically described in this deed as “GST inclusive”):
 - (i) the consideration payable or to be provided for that supply but for the application of this clause 12.3 (**GST Exclusive Consideration**) will be increased by, and the recipient will pay to the supplier, an amount equal to the GST payable by the supplier in respect of that supply; and
 - (ii) the recipient must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.
- (c) If any payment to be made to a Party under or in accordance with this deed is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that Party, then the amount of the payment must be reduced by the amount of any input tax credit to which that Party is entitled for that expense or other liability, such deduction to be effected before any increase in accordance with clause 12.3(b).
- (d) The supplier must issue a tax invoice to the recipient in respect of a taxable supply made by the supplier under or in accordance with this deed, such tax invoice to be issued no later than 14 days after the supplier receives the consideration for that taxable supply.
- (e) If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this deed, any Party that becomes aware of the occurrence of that adjustment event must Notify the other Party to that taxable supply as soon as practicable, and all of those Parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the supplier first becomes aware that the adjustment event has occurred.
- (f) A word or expression used in this clause 12.3 which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 12.3.

12.4 ElectraNet not to act as collection agent

The IUSA Provider acknowledges and agrees that in no circumstances will ElectraNet be required to collect fees and charges on behalf of the IUSA Provider (in the capacity as collection agent of the IUSA Provider or otherwise) from the TNU or any Subsequent TNU in respect of the access and use of the IUSA in order to *connect* the TNU or any Subsequent TNU to ElectraNet’s *transmission network*.

PART 7 - TERMINATION, FORCE MAJEURE, LIABILITIES AND INDEMNITIES

13. Termination

13.1 Termination by ElectraNet

ElectraNet may terminate this deed:

- (a) in accordance with clause 2.5(c);

- (b) in accordance with clause 7.7(d), 7.8(h), 9.4(b) or 21.6(a); or
- (c) at any time, if the IUSA Provider has failed to comply with any of its material obligations under this deed (**Performance Default**) and:
 - (i) ElectraNet has given a Notice to the IUSA Provider specifying the particulars of the Performance Default and a reasonable deadline for curing the relevant failure (**Performance Default Cure Date**); and
 - (ii) the IUSA Provider has not remedied the Performance Default by the Performance Default Cure Date or such later date as agreed in writing by ElectraNet acting reasonably.

13.2 Termination by the IUSA Provider

The IUSA Provider may terminate this deed:

- (a) in accordance with clause 2.5(c); or
- (b) by giving ElectraNet 20 Business Days' Notice where:
 - (i) the Transmission Licence or ElectraNet's registration as a *Network Service Provider* under the NER has been terminated; or
 - (ii) ElectraNet ceases to carry on its business as Network Service Provider, other than for the purposes of solvent business reconstruction, reorganisation or amalgamation,

and this deed has not been novated from ElectraNet to TLC or another entity licenced to provide the Network Operating Functions within a reasonable time.

13.3 Termination for Solvency Default

- (a) If a Solvency Default occurs in relation to ElectraNet, the IUSA Provider may terminate this deed by Notice to ElectraNet if this deed has not been novated from ElectraNet to TLC or another entity licenced to provide the Network Operating Functions within a reasonable time after the occurrence of the Solvency Default.
- (b) If a Solvency Default occurs in relation to the IUSA Provider, ElectraNet may terminate this deed by Notice to the IUSA Provider.
- (c) Subject to clause 13.3(d), if a Party gives a termination Notice under clause 13.3(a) or 13.3(b) (as applicable) then this deed will be terminated from the day which is the later of:
 - (i) the day following the day on which the Notice was given; and
 - (ii) the day nominated in the Notice.
- (d) The Parties agree that to the extent any stay period applies to the termination rights set out in this clause 13.3 under the Corporations Act or any other Applicable Law, a Notice given under clause 13.3(a) or 13.3(b) will be deemed to be given and will only take effect from the day after the day on which such stay period under the Corporations Act or any other Applicable Law expires.

13.4 Termination of Project Documents

ElectraNet may terminate this deed immediately by giving Notice to the IUSA Provider in the event that any one or more of the other Project Documents is terminated for any reason.

13.5 Termination of connection agreements

Either Party may terminate this deed immediately by giving Notice to the other Party in the event that all *connection agreements* for all *connections* utilising the IUSA are terminated.

13.6 Consequences of termination

- (a) On termination of this deed by either Party under the events listed in clause 13.1, 13.2, 13.3 and 13.4:
 - (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 must use best endeavours to procure the prompt return of any of the other Party's Confidential Information which is in the possession and control of its Associates; and
 - (ii) ElectraNet may:
 - (A) *disconnect* the IUSA from the Transmission System, dismantle, *decommission* and remove any ElectraNet assets from the Land and undertake any further *decommissioning*, rehabilitation or remediation which ElectraNet considers is required in relation to the Land; and
 - (B) undertake, complete and commission all other work which ElectraNet 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.
- (b) If this deed is terminated for any reason (other than where this deed is terminated by the IUSA Provider under clause 13.2(b) or 13.3(a), where this deed has been terminated by ElectraNet under clause 13.4 due to a Project Document being terminated for an ElectraNet Project Document Default Termination Event or where this deed has been terminated by a Party under clause 13.5 due to an ElectraNet Connection Agreement Termination Event) the IUSA Provider will reimburse ElectraNet for any costs which are incurred by ElectraNet in undertaking the work referred to in clause 13.6(a)(ii) (upon receipt from ElectraNet of reasonable evidence substantiating the amount of costs incurred).
- (c) If ElectraNet exercises its rights under clause 13.6(a)(ii), then until ElectraNet has completed the work referred to in clause 13.6(a)(ii), the IUSA Provider must not in any circumstance dismantle, *decommission*, remove or otherwise deal with the IUSA.
- (d) Nothing in this clause 13.6 will limit either Party's right to recover Damages from the other Party for breach of contract.

13.7 Survival

- (a) This clause 13 survives the termination or expiry of this deed.
- (b) Termination of all or any part of this deed for any reason does not affect the accrued rights and obligations of the Parties.

14. Option to purchase IUSA

14.1 Exercise of Option

- (a) The IUSA Provider grants ElectraNet an exclusive and irrevocable option during the Option Period to purchase the IUSA on the terms set out in this clause 14 (**Option**).

- (b) ElectraNet may exercise the Option at any time during the Option Period by providing a Notice to the IUSA Provider.

14.2 Contract for sale and purchase of IUSA

- (a) If the Option is exercised by ElectraNet under clause 14.1(b), then, on and from the Option Exercise Date the Parties will prepare and execute a contract of the sale and purchase of the IUSA on the following terms:
 - (i) **(title and risk)**: the IUSA Provider will transfer all title and risk in the IUSA to ElectraNet within 60 Business Days of the Option Exercise Date (or such later date as acceptable to ElectraNet);
 - (ii) **(purchase price)**: subject to clause 14.4(b), ElectraNet will pay the IUSA Provider the purchase price for the IUSA, which will be Fair Market Value as determined by an independent valuer reasonably acceptable to the Parties (acting reasonably in all respects);
 - (iii) **(legal fees)**: the Parties will bear their own legal and other professional services fees associated with the transfer; and
 - (iv) **(stamp duty)**: the IUSA Provider will bear all stamp duty costs associated with the transaction.
- (b) If the Parties are unable to reach agreement as to the identity of the independent valuer mentioned in clause 14.2(a)(ii) within 20 Business Days of the Option Exercise Date, either Party may refer the Dispute for resolution in accordance with clause 19.

14.3 Interim access and control

The Parties agree that notwithstanding anything in this deed (including clause 2.8):

- (a) the IUSA Provider will grant, or procure ElectraNet and its Associates continued Access and Use Rights in the IUSA; and
- (b) all risk in the IUSA will remain vested in the IUSA Provider in accordance with this deed,

at all times after the commencement of the Option Period, until the later of:

- (c) the date of completion of the transfer of the IUSA under clause 14.2, if ElectraNet exercises the Option; and
- (d) the date of expiry of the Option Period.

14.4 Preconditions

- (a) Each of the Parties must do all things and sign all documents reasonably necessary to give effect to the transfer of the IUSA anticipated by this clause 14.
- (b) Despite anything to the contrary in this clause 14, ElectraNet will not be required to pay the purchase price for the IUSA to the IUSA Provider until each of the following are satisfied:
 - (i) **(tenure)**: the IUSA Provider has transferred, or procured the transfer, of any interests in the Land obtained by the IUSA Provider as a Precondition to ElectraNet and ElectraNet holds any other interests in the Land as reasonably required by ElectraNet as the owner of the IUSA;

- (ii) **(FIRB Approval)**: ElectraNet has obtained confirmation under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) that there is no objection to the acquisition by ElectraNet of any interest in the Land as set out in clause 14.4(b)(i) and the IUSA, which confirmation must be unconditional or on terms and conditions acceptable to ElectraNet;
- (iii) **(release of security interest)**: the IUSA Provider has provided or has procured and provided to ElectraNet unconditional releases of the IUSA and the associated tenure on the Land from any Encumbrances held by a secured party over the IUSA or the associated Land or both;
- (iv) **(documents of title)**: all documents and or muniments of title relating to the IUSA and any Intellectual Property Rights in the IUSA have been handed over to ElectraNet; and
- (v) **(Intellectual Property Rights)**: ElectraNet is provided with ownership, or unrestricted, perpetual and unconditional rights to use all Intellectual Property Rights associated with the IUSA.

14.5 Survival

This clause 14 survives the termination or expiry of this deed.

15. Applicable Event of Force Majeure

15.1 Notice of Event of Force Majeure

- (a) A Party that becomes aware of any matter likely to constitute an Event of Force Majeure in relation to any of its obligations under this deed (**Affected Party**) which:
 - (i) causes delay in or prevents the performance by the Affected Party of its obligations; and
 - (ii) the Affected Party could not have prevented by the exercise of a standard of care and diligence consistent with the observance of *good electricity industry practice*,

(Applicable Event of Force Majeure), must immediately give Notice to the other Party of:

 - (iii) that fact; and
 - (iv) all relevant particulars relating to that potential Applicable Event of Force Majeure of which it is aware at that time.
- (b) Within 10 Business Days of an Applicable Event of Force Majeure occurring, the Affected Party must give the other Party Notice containing whatever particulars are available at that time of the Applicable Event of Force Majeure, including:
 - (i) its nature and likely duration;
 - (ii) the obligations of the Affected Party affected by the Applicable Event of Force Majeure and the nature and extent of its effect on those obligations; and
 - (iii) the actions taken, or proposed to be taken by the Affected Party to remedy, abate, mitigate or minimise the effects of the Applicable Event of Force Majeure,

(a **Force Majeure Suspension Notice**).

- (c) The Affected Party must Notify the other Party of any changes to the particulars of the Applicable Event of Force Majeure (as compared to those set out in the relevant Force Majeure Suspension Notice) as soon as possible after becoming aware of that change in particulars.
- (d) If a Party receives a Force Majeure Suspension Notice, it will be deemed to have accepted the contents of that Force Majeure Suspension Notice unless the contents are Disputed by the Party receiving the Force Majeure Suspension Notice in accordance with clause 19 within 10 Business Days of the Force Majeure Suspension Notice being sent.

15.2 Suspension of obligations

- (a) Subject to compliance with the notice requirements under clause 15.1, the Non-financial Obligations of the Affected Party will be suspended in whole or in part as the case may require, to the extent that the Affected Party is prevented from performing those Non-financial Obligations by the Applicable Event of Force Majeure, from the time that the Applicable Event of Force Majeure prevents the performance of such Non-financial Obligations until the time that such Non-financial Obligations are no longer affected by the Applicable Event of Force Majeure (**Force Majeure Suspension Period**).
- (b) The Affected Party will have no liability to the other Party in respect of the failure to perform such Non-financial Obligations during the Force Majeure Suspension Period to the extent that such failure is caused by the Applicable Event of Force Majeure.
- (c) Suspension of any Non-financial Obligation pursuant to clause 15.2(a) will not affect any rights or obligations in relation to any other Non-financial Obligations which the Affected Party is not prevented from performing by the Applicable Event of Force Majeure.

15.3 Mitigation

- (a) The Affected Party must, subject to clause 15.3(b), use best endeavours to remedy, abate, mitigate or minimise the effects of the Applicable Event of Force Majeure, and the other Party will co-operate and give such assistance as the Affected Party may reasonably request in connection with the removal and mitigation of the effect of that Applicable Event of Force Majeure.
- (b) Nothing in clause 15.3(a):
 - (i) requires the Affected Party to settle any industrial or labour Dispute otherwise than as the Affected Party in its absolute discretion sees fit or to act in a manner which is contrary to the requirements of any Applicable Law; and
 - (ii) where the Affected Party is ElectraNet, requires ElectraNet to spend money in order to remedy, abate, mitigate or minimise the effects of the Applicable Event of Force Majeure, otherwise than as ElectraNet in its absolute discretion sees fit.

15.4 Cessation or abatement of an Applicable Event of Force Majeure

An Affected Party must:

- (a) give immediate Notice to the other Party of:
 - (i) the cessation of an Applicable Event of Force Majeure the subject of a Force Majeure Suspension Notice; or

- (ii) any abatement in the Applicable Event of Force Majeure which permits the Affected Party to resume performance of the suspended Non-financial Obligation; and
- (b) as soon as reasonably possible after the cessation or abatement of that Applicable Event of Force Majeure, resume performance of the suspended Non-financial Obligation.

16. Warranties, liability and indemnities

16.1 Exclusion of warranties

Subject to clause 16.2 and except as otherwise expressly set out in this deed, ElectraNet does not give any warranties or undertakings, and has not made any representations in relation to the condition, suitability, quality, fitness or safety of the IUSA or the Network Operating Functions to be performed by ElectraNet.

16.2 Exclusion of implied terms

Each Party excludes from this deed, to the maximum extent permitted by Applicable Law or general law, all conditions, warranties and terms implied or imposed by Applicable Law or general law, except for any condition, warranty or term which is expressly set out in this deed or to the extent that any condition, warranty or term the exclusion of which would:

- (a) contravene any Applicable Law or general law which imposed or implied it; or
- (b) cause this clause 16.2 to be void.

16.3 Competition and Consumer Act

A Party's liability to the other Party for breach of any condition, warranty or term implied into this deed by the *Competition and Consumer Act 2010* (Cth) is limited to the maximum extent permitted by that Act.

16.4 Applicable Laws and limitations on liability

This clause 16 and clauses 17 and 18 will apply in addition to (and will not limit) any exclusion from, or limitation on, liability a Party may be entitled to claim the benefit of under an Applicable Law (including without limitation sections 116, 119 or 120 of the *National Electricity Law*).

16.5 Effect on insurance policies

The Parties acknowledge and agree that clauses 16.1, 16.2, 16.3, 16.4, 17 and 18 do not, and are not intended to, limit the entitlement of either Party under any insurance policies or to limit the concept of loss suffered by either Party under those insurance policies.

16.6 Indemnities

- (a) The IUSA Provider, to the extent permitted by law, indemnifies and holds harmless, ElectraNet and each other member of the ElectraNet Group against any Damages or Claims arising under, out of, or in connection with:
 - (i) loss of, or damage to, any real or personal property owned, leased, licensed or controlled by ElectraNet, caused by, arising out of, or in connection with, any activity for which the IUSA Provider or any Associate of the IUSA Provider is directly or indirectly responsible, except to the extent caused or contributed to by ElectraNet or any other member of the ElectraNet Group;

- (ii) loss of, or damage to, any real or personal property of any third party, caused by, arising out of, or in connection with, any activity for which the IUSA Provider or any Associate of the IUSA Provider is directly or indirectly responsible, except to the extent caused or contributed to by ElectraNet or any other member of the ElectraNet Group;
 - (iii) personal injury (which includes illness) or death of any person caused by, arising out of, or in connection with, any activity for which the IUSA Provider or any Associate of the IUSA Provider is directly or indirectly responsible, except to the extent caused or contributed to by ElectraNet or any other member of the ElectraNet Group; and
 - (iv) the Wilful Misconduct, Gross Negligence or fraud of the IUSA Provider or any Associate of the IUSA Provider.
- (b) ElectraNet holds the benefit of the indemnity in clause 16.6(a) for itself and on trust for each other member of the ElectraNet Group.

17. Exclusions of liability

17.1 ElectraNet exclusions of liability

- (a) No member of the ElectraNet Group will be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Damages or Claims of whatever kind suffered or incurred by the IUSA Provider or any Associate of the IUSA Provider arising directly or indirectly out of, or in connection with, any failure by the IUSA Provider or any Associate of the IUSA Provider to design, procure or construct the IUSA in accordance with any Applicable Law, the Functional Specifications or any Project Document (including any liability of the IUSA Provider or any Associate of the IUSA Provider to a third party by means of liquidated damages arising from or in connection with the IUSA, the Network Operating Functions or otherwise).
- (b) Without limiting clause 17.1(a), but subject to clause 17.1(e), no member of the ElectraNet Group will be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Consequential Loss of whatever kind suffered or incurred by the IUSA Provider or any Associate of the IUSA Provider arising directly or indirectly out of, or in connection with, this deed or any other Project Document (including Claims by third parties against the IUSA Provider or any Associate of the IUSA Provider for Consequential Loss).
- (c) The IUSA Provider indemnifies and holds harmless ElectraNet and each other member of the ElectraNet Group against any Claims from the IUSA Provider or any Associate of the IUSA Provider against any member of the ElectraNet Group in respect of:
 - (i) any Damages or Claims of whatever kind suffered or incurred by the the IUSA Provider or any Associate of the IUSA Provider referred to in clause 17.1(a); and
 - (ii) any Consequential Loss of whatever kind suffered or incurred by any member of the IUSA Provider or any Associate of the IUSA Provider referred to in clause 17.1(b).
- (d) ElectraNet holds the benefit of the indemnity in clause 17.1(c) for itself and on trust for each other member of the ElectraNet Group.

- (e) Subject to the ElectraNet Liability Limits referred to in clause 18.1(a), the exclusion of liability for Consequential Loss contained in clause 17.1(b) does not apply to the liability of ElectraNet to the extent that such Consequential Loss is caused by the Wilful Misconduct, Gross Negligence or fraud of ElectraNet or any other member of the ElectraNet Group.

17.2 IUSA Provider exclusions of liability

- (a) Subject to clause 17.2(b), the IUSA Provider will not be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Consequential Loss of whatever kind suffered or incurred by ElectraNet or any Associate of ElectraNet arising directly or indirectly out of, or in connection with, this deed.
- (b) The exclusion of liability for Consequential Loss contained in clause 17.2(a) does not apply to:
 - (i) the liability of the IUSA Provider under clause 12.2;
 - (ii) the liability of the IUSA Provider under the indemnities it provides under clauses 16.6(a)(ii), 16.6(a)(iii) and 25.5(a); or
 - (iii) the liability of the IUSA Provider to the extent that such Consequential Loss is caused by the Wilful Misconduct, Gross Negligence or fraud of the IUSA Provider or any Associate of the IUSA Provider Group (including the liability of the IUSA Provider under the indemnity it provides under clause 16.6(a)(iv)).

18. Limitations of liability

18.1 ElectraNet Liability Limits

- (a) Subject to clauses 17.1 and 18.1(c), ElectraNet's aggregate liability to the IUSA Provider and each other member of the IUSA Provider Group for any Damages and Claims arising directly or indirectly out of, or in connection with, this deed or any other Project Document, will not (to the maximum extent permitted by law) exceed:
 - (i) in respect of the IUSA Work Period, the relevant amount for ElectraNet as specified in Item 9 of Schedule 1 in respect of:
 - (A) each event or circumstance giving rise to such Damages or Claim which occurs during the IUSA Work Period; and
 - (B) all events or circumstances giving rise to such Damages or Claims, in the aggregate, which occur during the IUSA Work Period; and
 - (ii) in respect of each Contract Year, the relevant amount for ElectraNet as specified in Item 9 of Schedule 1 in respect of:
 - (A) each event or circumstance giving rise to such Damages or Claim which occurs during that Contract Year; and
 - (B) all events or circumstances giving rise to such Damages or Claims, in the aggregate, which occur during that Contract Year,

(ElectraNet Liability Limits).

- (b) The IUSA Provider indemnifies and holds harmless ElectraNet against any Claims from any member of the IUSA Provider Group against ElectraNet for any Damages or Claims referred to in clause 18.1(a) to the extent such Claims, when aggregated with

all other Claims in respect of which the ElectraNet Liability Limits apply, exceed any of the applicable ElectraNet Liability Limits.

- (c) The ElectraNet Liability Limits under clause 18.1(a) do not apply to any liability of ElectraNet for or in respect of Claims for Damages caused by the Wilful Misconduct, Gross Negligence or fraud of ElectraNet or any member of the ElectraNet Group (other than such Claims for Damages which are in the nature of Consequential Loss, which are subject to the ElectraNet Liability Limits referred to in clause 18.1(a)).

18.2 IUSA Provider Liability Limits

- (a) Subject to clauses 17.2 and 18.2(b), the IUSA Provider's aggregate liability to ElectraNet arising directly or indirectly out of, or in connection with, this deed will not (to the maximum extent permitted by law) exceed:
 - (i) in respect of the IUSA Work Period, the relevant amount for the IUSA Provider as specified in Item 10 of Schedule 1 in respect of:
 - (A) each event or circumstance giving rise to such Damages or Claim which occurs during the IUSA Work Period; and
 - (B) all events or circumstances giving rise to such Damages or Claims, in the aggregate, which occur during the IUSA Work Period; and
 - (ii) in respect of each Contract Year, the relevant amount for the IUSA Provider as specified in Item 10 of Schedule 1 in respect of:
 - (A) each event or circumstance giving rise to such Damages or Claim which occurs during that Contract Year; and
 - (B) all events or circumstances giving rise to such Damages or Claims, in the aggregate, which occur during that Contract Year,

(IUSA Provider Liability Limits).

- (b) The IUSA Provider Liability Limits under clause 18.2(a)(ii) do not apply to any liability of the IUSA Provider for or in respect of:
 - (i) the liability of the IUSA Provider under clause 13.6(b) and 12.2;
 - (ii) the liability of the IUSA Provider under the indemnities it provides under clauses 16.6(a)(ii), 16.6(a)(iii) and 25.5(a); or
 - (iii) Claims for Damages caused by the Wilful Misconduct, Gross Negligence or fraud of the IUSA Provider or any Associate of the IUSA Provider (including the liability of the IUSA Provider under the indemnity it provides under clause 16.6(a)(iv)).

PART 8 - MISCELLANEOUS

19. Dispute resolution

19.1 First stage dispute resolution

- (a) If a Dispute arises between the Parties a Party may, by Notice, refer the Dispute to resolution in accordance with this clause.
- (b) The Parties will use their best endeavours to resolve the Dispute within a period of 20 Business Days from the service of the Notice under clause 19.1(a).

19.2 Reference to and appointment of Independent Expert

- (a) If the Dispute remains unresolved at the end of the period referred to in clause 19.1(b) then, either Party may require that the Dispute be determined by an independent expert appointed in accordance with clause 19.2(b) (**Independent Expert**).
- (b) The Party wishing to have the Dispute determined by an Independent Expert will give Notice to that effect to the other Party specifying the nature of the Dispute. The Parties will meet and use all best endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 5 Business Days of the Notice, then either Party may refer the matter to *AER* or if *AER* will not or cannot make an appointment, to the chair for the time being of the Resolution Institute (or, if that body no longer exists, then to the chair for the time being of such successor body or association as is then performing the function formerly carried out by the Resolution Institute), to nominate a suitably qualified person to act as the Independent Expert to determine the Dispute.

19.3 Role of Independent Expert

- (a) The Independent Expert will:
 - (i) act as an expert and not as an arbitrator;
 - (ii) have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
 - (iii) not be a former or current employee or representative of either Party or of a Related Body Corporate of either of them; and
 - (iv) disclose fully to the Parties, before being appointed, any interest or duty which may conflict with his or her position.
- (b) Any Party may object to the appointment or continuation in office of a person proposed to be appointed or appointed as the Independent Expert before the expiration of 5 Business Days after that Party became aware of any matter which may reasonably be regarded as an interest or duty which conflicts, or which may conflict, with the functions of the Independent Expert. Upon receipt by the other Party of a Notice of such objection, the Parties must act to remove the Independent Expert.

19.4 Representation and evidence

Each Party:

- (a) may be legally represented at any hearing before the Independent Expert;
- (b) will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute; and
- (c) will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.

19.5 Rules of evidence

The Independent Expert will not be bound by the rules of evidence.

19.6 Power

The Independent Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.

19.7 Determination

- (a) The Independent Expert will make a determination on the Dispute and:
 - (i) will determine what, if any, adjustments may be necessary between the Parties; or
 - (ii) if relevant, determine the amendments required to the terms of this deed.
- (b) The determination of the Independent Expert will be, in the absence of bias or manifest error, final and binding upon the Parties.
- (c) For the avoidance of doubt:
 - (i) if this deed requires the Parties to negotiate in good faith to reach agreement concerning an issue;
 - (ii) the Parties are unable to reach agreement within the time period allowed under this deed; and
 - (iii) the relevant clause of this deed requires that failure to agree to be resolved in accordance with this clause 19,

the Parties agree that the Independent Expert will have the power to resolve that failure to agree by specifying the terms and conditions which should apply between the Parties in relation to that issue.

19.8 Costs

The costs in relation to a determination by the Independent Expert will be dealt with as follows:

- (a) the remuneration of the Independent Expert will be agreed by the Parties, and in default of agreement between the Parties, fixed by the person to whom a Party may refer a matter pursuant to clause 19.2(b);
- (b) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly; and
- (c) the Parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Independent Expert.

19.9 Obligations not suspended

Except as otherwise provided by this deed, no Party is relieved from the performance of an obligation under this deed during investigation and determination of a Dispute by an Independent Expert.

19.10 Disputes under a Project Document

Where a Dispute under this deed relates or is connected to a dispute under a Project Document, the IUSA Provider:

- (a) consents to be joined in any dispute proceedings under the relevant Project Document (**Project Document Dispute**); and
- (b) agrees that it will, insofar as the dispute under the Project Document relates to the same matters to which the Dispute under this deed relate:

- (i) be bound by the settlement or resolution of the Project Document Dispute; and
- (ii) not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution,

irrespective of whether or not the IUSA Provider is joined to the Project Document Dispute.

19.11 Disputes generally

- (a) Neither Party may have recourse to litigation in relation to a Dispute without first having complied with this clause 19.
- (b) This clause 19 does not prevent a Party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

19.12 Survival

This clause 19 survives the termination or expiry of this deed.

20. Change to Applicable Law Event

20.1 Interpretation of deed

- (a) Without limiting clause 7.8, if a Change in Applicable Law Event occurs, then subject to clauses 20.1(b) and 20.2, this deed will be interpreted (as far as possible) in such a way as to enable compliance with that Applicable Law.
- (b) This deed may need to be amended to take into account the effect of any Change in Applicable Law Event as ElectraNet reasonably considers necessary, in which case, the IUSA Provider must negotiate in good faith with ElectraNet to reach agreement on such matters and execute all required documents to give effect to such amendments.

20.2 Disputes

In determining a Dispute relating to a matter arising under this clause 20 (in accordance with clause 19), the Independent Expert will take into account (among other things) the following factors:

- (a) that the contents of this deed must be fair and reasonable having regard to the commercial interests of the Parties;
- (b) that at all times, any Operation and Maintenance Obligations provided under this deed must be provided in accordance with *good electricity industry practice* and the other requirements of this deed and Applicable Law; and
- (c) that this deed should be consistent with the prevailing practices and standards in the electricity industry at that time.

21. Assignment and transfer

21.1 Restriction

- (a) ElectraNet may Dispose of some or all of its rights and obligations under this deed to a Related Body Corporate, or TLC (or a nominee of TLC). If it does so, it must give Notice to the IUSA Provider before that Disposal.

- (b) Other than in the circumstances set out in clause 21.1(a), and subject to clause 21.2, no Party may Dispose of its rights or obligations under this deed to anyone without the prior written consent of the other Party, which consent must not be unreasonably withheld, delayed or made subject to unreasonable conditions.

21.2 Requirements for Disposals

For the purposes of clause 21.1(b), a Party cannot reasonably withhold consent to a Disposal by the other Party (**Disposing Party**), if the person to whom the Disposal is made:

- (a) is a body corporate with substantial assets to which all or a material part of the assets of the Disposing Party are transmitted, transferred or vested as part of a reconstruction of the Disposing Party;
- (b) has, or an Associate of that person has, all licences, registrations and approvals necessary for that person (or an Associate of that person) to operate or control the Disposing Party's *facilities* in accordance with Applicable Law; and
- (c) before the Disposal occurs, executes and delivers to the other Party a deed (in a form and substance satisfactory to the other Party) by which that person agrees to assume obligations (whether arising before or after the Disposal) which are substantially equivalent to the Disposing Party's obligations under this deed.

21.3 Execution of documents

Each Party must do all things and execute all documents as may be required by law or reasonably required by the other Party to effect the Disposals contemplated by this clause 21.

21.4 Change in ownership of the IUSA

- (a) The IUSA Provider must not transfer or Dispose of any interest in the IUSA to a third party without ElectraNet's prior written consent unless ElectraNet consents to novate this deed to that third party at the same time as the transfer or Disposal of the interest in the IUSA takes place, by the third party taking over all the rights and obligations of the IUSA Provider under this deed and the other Project Documents to which the IUSA Provider is a party to.
- (b) ElectraNet will provide its consent to a novation in accordance with clause 21.4(a) and will do all things necessary to give effect to that novation, provided that ElectraNet is satisfied that:
 - (i) the proposed new party is capable of performing the obligations of the IUSA Provider under this deed and the other Project Documents to which it will be a party;
 - (ii) ElectraNet will not suffer a financial prejudice that is not capable of being remedied by provision of a guarantee or some other form of credit support;
 - (iii) ElectraNet's accrued rights under this deed as at the date of the novation will be preserved; and
 - (iv) ElectraNet will not incur any additional risks or costs that could not adequately be compensated for.
- (c) If the IUSA Provider disputes ElectraNet's decision to not agree to a novation, the matter will be resolved in accordance with clause 19.

21.5 Deed of acknowledgement and consent

- (a) The IUSA Provider must not create or permit to exist any security interest, mortgage, charge or Encumbrance over any of its rights under this deed except with the prior written consent of ElectraNet.
- (b) If requested by the IUSA Provider, ElectraNet will act reasonably in negotiating a tripartite deed with any secured party under which ElectraNet consents to the relevant security interest and undertakes to provide notification prior to exercising rights of termination and provide the secured party with step-in rights in respect of this deed, subject to cure of pre-existing breaches, which must be in form and substance satisfactory to ElectraNet.

21.6 Change of Control

- (a) ElectraNet may terminate this deed by Notice to the IUSA Provider where there is a Change of Control in relation to:
 - (i) the IUSA Provider; or
 - (ii) where the IUSA Provider is expressed to be a party to this deed as trustee of a trust, that trust,without obtaining ElectraNet's prior written consent, which consent is not to be unreasonably withheld or delayed.
- (b) The Parties agree that it is not unreasonable for ElectraNet to withhold consent under clause 21.6(a) if ElectraNet is not reasonably satisfied that the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the IUSA Provider to fulfil its obligations under this deed.
- (c) A termination under clause 21.6(a) will be deemed to be a termination of this deed by ElectraNet under clause 13.1(c).

22. Notices

22.1 Giving of Notices

All notices, consents, requests, invoices or other communication required, permitted or appropriate to be given by a Party to the other Party under or in connection with this deed (**Notice**) must be:

- (a) in writing, which includes email and other electronic communications (unless otherwise specified in Schedule 3 for that type of Notice);
- (b) addressed to the person holding the office identified in Schedule 3 for that type of Notice; and
- (c) sent in the manner identified in Schedule 3 for that type of Notice.

22.2 Timing of receipt

A Notice given to a Party in accordance with clause 22.1 will be treated as having been given and received:

- (a) if delivered, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the fourth Business Day after posting; and

- (c) if sent electronically:
 - (i) at the time the sender's computer or other device generates a report confirming that the Notice has been received by the recipient's information system; or
 - (ii) if no such report is generated, 1 Business Day after the date on which the Notice is sent, provided that the sender has not by that time received a delivery failure notification (or similar).

22.3 Addresses and Notice details

A Party may change any details relating to that Party set out in Schedule 3 by Notice to the other Party given in accordance with this clause 22.

23. Provision and use of information

The IUSA Provider will provide to ElectraNet (within 10 Business Days of being requested to do so) any information requested by ElectraNet which:

- (a) concerns the IUSA or the IUSA Provider's operations; or
- (b) is reasonably necessary to enable ElectraNet to:
 - (i) comply with its obligations under any Project Document;
 - (ii) comply with its obligations under any Applicable Law; or
 - (iii) operate, develop, design and plan the Transmission System in accordance with *good electricity industry practice* and the requirements of all Applicable Law.

24. Confidential Information

24.1 Privileged information

Subject to any Applicable Law, a Party is not obliged to provide to the other Party any information which is subject to legal professional privilege.

24.2 Confidential Information to be kept confidential

- (a) Each Party must keep confidential any Confidential Information which comes into the possession or control of that Party or of which the Party becomes aware as a result of the operation of this deed.
- (b) A Party:
 - (i) must not disclose Confidential Information to any person except as permitted by this deed (including clauses 24.3 and 24.4);
 - (ii) must only use or reproduce Confidential Information for the purpose for which it was disclosed or another purpose contemplated by this deed; and
 - (iii) must not permit unauthorised persons to have access to Confidential Information.
- (c) Each Party must use all best endeavours:
 - (i) to prevent unauthorised access to Confidential Information which is in the possession or control of that Party; and

- (ii) to ensure that any person to whom it discloses Confidential Information observes the provisions of this clause 24 in relation to that information.
- (d) Subject to clauses 24.2(e), 24.2(f) and 24.2(g), neither Party may make any statement or representation in relation to this deed (including, in particular, a statement to the effect that the Party has entered into this deed) without the written consent of the other Party which consent will not be unreasonably withheld.
- (e) If a Party makes a statement or representation in relation to this deed (including, in particular, a statement to the effect that that Party has entered into this deed) without the written consent of the other Party, the other Party will be entitled to make a statement or statements in response to the statement made by the Party, clarifying any issues that the other Party may have with the statement made by the Party.
- (f) Despite clauses 24.2(d) and 24.2(e), a Party is entitled to make a statement to the following effect in relation to this deed: *“ElectraNet and [insert] have entered into a conditional network operating agreement in relation to the [insert] substation located [insert]”*.
- (g) ElectraNet may advertise, publish or release any information, document or article for publication in relation to this deed in any media if ElectraNet has liaised with the IUSA Provider regarding the content of such information, document or article and the IUSA Provider has consented to such content (such consent not to be unreasonably withheld or delayed).

24.3 Disclosures required under Applicable Laws

Without limiting any other provision of this clause 24, the IUSA Provider consents to ElectraNet using any information concerning the IUSA, electricity usage, *metering data* and any related or similar information for the purpose of complying with ElectraNet’s obligations under this deed or any Applicable Law (including the provision of that information to AEMO, the System Controller and any other relevant Authority).

24.4 Other exceptions

Subject to clause 24.5, clause 24.2 does not prevent:

- (a) **(public domain)**: the disclosure, use or reproduction of Confidential Information if the relevant information is at the time generally and publicly available other than as a result of breach of confidence by the Party (including a breach of this deed) who wishes to disclose, use or reproduce the information or any person to whom the Party has disclosed the information;
- (b) **(employees and advisers)**: the disclosure of Confidential Information by a Party to:
 - (i) an employee or officer of the Party or a Related Body Corporate of the Party; or
 - (ii) a legal or other professional adviser, auditor or other consultant of the Party, who requires the information for the purposes of this deed, the NER, or for the purpose of advising the Party in relation to those matters;
- (c) **(Project Documents)**: the disclosure of Confidential Information by ElectraNet to a counterparty under any other Project Document as required by ElectraNet in order to comply with its obligations under that Project Document;
- (d) **(contractors)**: the disclosure of Confidential Information by the IUSA Provider to a contractor engaged in relation to the IUSA or by ElectraNet to a contractor engaged in relation to the Operation and Maintenance Obligations;

- (e) (**consent**): the disclosure, use or reproduction of Confidential Information with the consent of the Party who provided the relevant information;
- (f) (**law**): the disclosure, use or reproduction of Confidential Information to the extent required by law or by a lawful requirement of:
 - (i) any Authority having jurisdiction over a Party or its Related Bodies Corporate; or
 - (ii) any stock exchange having jurisdiction over a Party or its Related Bodies Corporate;
- (g) (**Disputes**): the disclosure, use or reproduction of Confidential Information if required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism under this deed or the NER or for the purpose of advising a person in relation thereto;
- (h) (**safety**): the disclosure of Confidential Information to the extent required to protect the safety of personnel or equipment;
- (i) (**potential investment**): the disclosure, use or reproduction of Confidential Information by or on behalf of a Party to the extent reasonably required in connection with the Party's financing arrangements, investment in that Party or a Disposal of that Party's assets or a purchase of that Party's shares;
- (j) (**response to potential investment query**): the disclosure, use or reproduction of Confidential Information by or on behalf of ElectraNet to a person:
 - (i) who has received information from the IUSA Provider under clause 24.4(i); and
 - (ii) to the extent reasonably required in order to answer any question by that person concerning the terms and conditions of this deed;
- (k) (**regulator**): the disclosure of Confidential Information to the *AER*, *AEMO*, *ESCOSA* or any other Authority having jurisdiction over a Party;
- (l) (**reports**): the disclosure, use or reproduction of Confidential Information of an historical nature in connection with the preparation and giving of reports under the NER;
- (m) (**aggregate sum**): the disclosure, use or reproduction of Confidential Information as an unidentifiable component of an aggregate sum;
- (n) (**profile**): the publication of a profile;
- (o) (**Intellectual Property Rights**): the disclosure of Confidential Information necessary or desirable to give effect to the licences of Intellectual Property Rights granted to each Party under this deed;
- (p) (**Connection Applicant**): the disclosure of any Confidential Information concerning the IUSA to a *Connection Applicant* where that information is required in order to negotiate the terms of the *connection agreement* and any other document with the *Connection Applicant*; or
- (q) (**Applicable Laws**): the disclosure, use or reproduction of Confidential Information where required or permitted from time to time under an Applicable Law.

24.5 Undertaking to keep confidential and restrictions on use

In the case of a disclosure under clause 24.4(b), 24.4(c), 24.4(d) or 24.4(i), prior to making the disclosure the Party who wishes to make the disclosure must inform the proposed recipient of the confidentiality of the information and must take appropriate precautions to ensure that the recipient keeps the information confidential in accordance with the provisions of clauses 24.2 and 24.3 and does not use the information for any purpose other than that permitted under clause 24.2(b).

24.6 Continuing rights and obligations

This clause 24 survives the termination or expiry of this deed.

25. Intellectual Property Rights

25.1 ElectraNet Background IP Materials

The IUSA Provider acknowledges that it does not own any Intellectual Property Rights in the ElectraNet Background IP Materials.

25.2 IUSA Provider Background IP Materials

(a) ElectraNet acknowledges that it does not own any Intellectual Property Rights in the IUSA Provider Background IP Materials.

(b) The IUSA Provider hereby grants to ElectraNet a non-exclusive, royalty free, perpetual, irrevocable, worldwide licence (including the right to sub-licence) to (itself or using third party contractors) use, reproduce, modify, adapt and further develop all Intellectual Property Rights in the IUSA Provider Background IP Materials:

(i) to the extent necessary or desirable to enable ElectraNet and the ElectraNet Group to (itself or using third party contractors):

(A) exercise any rights and perform any obligations under this deed or the other Project Documents;

(B) perform the Network Operating Functions; and

(C) fully enjoy, exploit and further develop the Contract IP Materials; or

(ii) any other purposes relating to this deed or any operations of any member of the ElectraNet Group,

except for the purpose of tendering for, or negotiating contestable *transmission services* specified in rule 5.2A.4(a) of the NER.

(c) Notwithstanding the exception contained in clause 25.2(b), on and from the second anniversary of the "Execution Date" of the Interface Works Agreement, the IUSA Provider hereby grants to ElectraNet a non-exclusive, royalty free, perpetual, irrevocable, worldwide licence (including the right to sub-licence) to (itself or using third party contractors) use, reproduce, modify, adapt and further develop all Intellectual Property Rights in the IUSA Provider Background IP Materials (including the Documents) for the purpose of tendering for, or negotiating contestable *transmission services* specified in rule 5.2A.4(a) of the NER.

25.3 Contract IP Materials

(a) Upon creation, all Contract IP Materials created by or on behalf of ElectraNet in connection with this deed will vest in ElectraNet free of all Encumbrances and the IUSA Provider hereby unconditionally assigns to ElectraNet:

- (i) all Intellectual Property Rights (other than copyright) in the Contract IP Materials, without the need for further assurance; and
 - (ii) all copyright in the Contract IP Materials, as an assignment of future property under section 197 of the *Copyright Act 1968* (Cth) and in equity.
- (b) ElectraNet grants to the IUSA Provider a non-exclusive, irrevocable, perpetual, royalty free licence to use any Contract IP Materials for the purposes of this deed.

25.4 Warranties by IUSA Provider

- (a) The IUSA Provider represents and warrants to ElectraNet that:
- (i) the IUSA Provider is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use); or
 - (ii) is entitled to licence to ElectraNet and each member of the ElectraNet Group in accordance with clause 25.2,
- the Intellectual Property Rights in the IUSA Provider Background IP Materials.
- (b) The IUSA Provider represents and warrants to ElectraNet that it is able to assign the Intellectual Property Rights in all Contract IP Materials pursuant to clause 25.3.

25.5 Indemnity

- (a) The IUSA Provider indemnifies and holds harmless ElectraNet and each member of the ElectraNet Group against any Damage or Claim arising from:
- (i) any infringement or alleged infringement of Intellectual Property Rights owned by any third party in respect of any of the IUSA Provider Background IP Materials;
 - (ii) any breach of the warranties set out in clause 25.4.
- (b) ElectraNet holds the benefit of the indemnity in clause 25.5(a) for itself and on trust for each other member of the ElectraNet Group

25.6 Survival

This clause 25 survives the termination or expiry of this deed.

26. Governing law and jurisdiction

26.1 Governing law

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

26.2 Jurisdiction

- (a) The Parties submit to the non-exclusive jurisdiction of the courts of South Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this deed.
- (b) Each Party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

27. Project Information

27.1 Warranties

Without limiting the IUSA Provider's obligations under this deed, the IUSA Provider represents and warrants to ElectraNet that:

- (a) the IUSA Provider has examined and carefully checked:
 - (i) the Functional Specifications;
 - (ii) all relevant ElectraNet Standards; and
 - (iii) all information, data, representations, statements or documents made available by ElectraNet, or any other person whether or not on ElectraNet's behalf, to the IUSA Provider in relation to the IUSA, the Facility, or the Land, (the **Project Information**); and
- (b) the IUSA Provider is satisfied that the Project Information is accurate, suitable, appropriate and adequate for the purposes of entering into the Project Documents and performing its obligations in accordance with this deed.

27.2 Acknowledgements

- (a) The IUSA Provider acknowledges and agrees that neither ElectraNet nor any member of the ElectraNet Group has made or makes any representation, or has given or gives any warranty or guarantee (whether express or implied) or owes any duty of care in relation to the currency, accuracy, suitability, adequacy or completeness of any Project Information.
- (b) The IUSA Provider acknowledges and agrees that:
 - (i) it enters into the Project Documents based on its own:
 - (A) enquiries, investigations, interpretations, deductions, information and determination; and
 - (B) independent evaluation as to the currency, accuracy, suitability, adequacy or completeness of any Project Information; and
 - (ii) it has not and will not rely upon:
 - (A) any Project Information; or
 - (B) any summary of any document or information referred to or incorporated by reference in the Project Information, provided by or on behalf of ElectraNet, or the accuracy, adequacy, suitability or completeness of the Project Information for the purposes of entering into the Project Documents or performing its obligations in accordance with this deed; and
 - (iii) the provision or publication of any Project Information by ElectraNet (or any other person, whether or not on behalf of ElectraNet) will not limit or affect the IUSA Provider's obligations under this Agreement or give rise to any Claim on the part of the IUSA Provider or any member of the IUSA Provider Group.

28. General

28.1 Authority to enter into deed

Each Party (in this clause 28.1 called the **Representing Party**) represents and warrants to the other Party that each of the following statements relating to it is correct:

- (a) the Representing Party is duly constituted and validly existing under the laws of its jurisdiction of incorporation and has full corporate power and authority to enter into, perform and observe its obligations and duties under this deed;
- (b) the Representing Party holds all Authorisations required by Applicable Law to enter into this deed;
- (c) the Representing Party has entered into this deed in its own right and not as trustee of any trust or as an agent or nominee on behalf of any other entity;
- (d) all corporate and other necessary action has been taken to authorise the signing and performance of this deed by the Representing Party, and this deed is a valid and binding agreement of the Representing Party and is enforceable against it, subject to the exercise of judicial discretion and laws concerning insolvency, in accordance with its terms; and
- (e) the entering into of this deed by the Representing Party does not, and the transactions contemplated by this deed will not result in a breach of any Applicable Law or any constituent documents of the Representing Party or any agreement to which the Representing Party is a party.

28.2 Amendment and waiver

- (a) Unless expressly stated to the contrary in this deed, this deed may only be amended or supplemented in writing signed by the Parties.
- (b) The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. Unless expressly stated to the contrary in this deed, a power or right may only be waived in writing, signed by the Party to be bound by the waiver.

28.3 Severance

Any provision in this deed which is invalid, void or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity, voidness or unenforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

28.4 Entire agreement

This deed constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any previous arrangements between the Parties in relation to that subject matter. All representations, communications and prior agreements in relation to that subject matter are merged in and superseded by this deed.

28.5 No reliance

No reliance is to be placed by the IUSA Provider on any representation, promise or other inducement made or given or alleged to be made or given by ElectraNet prior to the Execution Date.

28.6 Further assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the deed and the transactions contemplated by it.

28.7 Cost and expenses

The IUSA Provider must pay its own costs in connection with the negotiation, preparation and execution of this deed.

28.8 System Controller

Nothing in this deed is intended to fetter or constrain ElectraNet in the performance of its functions as a System Controller.

28.9 Rights cumulative

Subject to any provision of this deed to the contrary, the rights and remedies provided in this deed do not exclude any rights or remedies provided by law.

28.10 Relationship of the Parties

- (a) Nothing in this deed gives a Party authority to bind any other Party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a Party in relation to any other party.

28.11 Survival

- (a) If this deed is terminated or expires, then except where this deed expressly provides otherwise:
 - (i) the Parties are released from their obligations to continue to perform this deed except the obligations which are expressed to or by their nature, survive termination or expiry;
 - (ii) each party retains the rights and Claims it has against the other party for any past breach of this deed; and
 - (iii) the provisions of this deed survive termination or expiry to the extent necessary to give effect to clause 28.11(a)(i).
- (b) Without limiting clause 28.11(a):
 - (i) any warranties provided by the Parties under this deed; and
 - (ii) clauses 1, 2.5(d), 11, 13, 16, 17, 18, 19, 22, 24, 25 and 26 and this clause 27, survive expiry or termination of this deed.

28.12 Survival of indemnities

Without limiting clause 28.11, each indemnity in this deed is a continuing obligation which survives the termination or expiry of this deed.

28.13 Non Merger

The indemnities, covenants and warranties and any other provisions of this deed will not merge on completion or termination of this deed unless expressly set out in this deed.

28.14 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. The Parties agree that counterparts may be circulated electronically in PDF format.

Executed as a deed.

Signed for and on behalf of **ElectraNet Pty Limited** by its attorney (who has no notice of the revocation of its power of attorney) in the presence of:

Signature of witness

Name (please print)

Signature of attorney

Name (please print)

Position held

Executed by [INSERT] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Name (please print)

Signature of director/secretary

Name (please print)

Schedule 1 – Agreement details

Table 1-1
Agreement details

| Item | Description |
|--------------------------------------|--|
| Item 1 - Land | [insert] [Drafting Note: Insert details of land on which IUSA will be located.] |
| Item 2 - TCA and TNU | [insert] [Drafting Note: Insert details of initial TCA(s) and TNU(s).] |
| Item 3 - IUSA | IUSA description: [Drafting Note: Insert details of the <i>contestable IUSA components</i> used to connect the IUSA to ElectraNet’s <i>transmission network</i> . Consider IUSA interfaces and how they are to be included here.] Agreed boundaries and physical connections – single line diagram: As set out in Attachment 2. |
| Item 4 - Expiry Date | The Expiry Date will be the day which is on the [insert] anniversary after the Date of Construction Completion. [Drafting Note: Insert the term of the NOA here. The NER requires that the term of the NOA is for a period which is at least equal to term of the longest <i>connection agreement</i> of a member of the initial <i>identified user group</i> for the relevant IUSA.] |
| Item 5 – Passthrough Threshold | A\$[insert]. |
| Item 6 - IUSA Provider Insurance | The IUSA Provider must secure and maintain throughout the Term the insurance policies specified below: (a) an employer’s liability and worker’s compensation insurance to the extent required by law; (b) a public liability policy covering legal liability for damage to real or personal property, death, injury or disease, for not less than \$20 million limit of liability any one occurrence and unlimited in the aggregate; (c) contractor works insurance covering all construction works related to the IUSA (and associated materials) during the construction period; and (d) a property damage or industrial special risks policy for the reinstatement value of the IUSA. |
| Item 7 - ElectraNet insurance | A public liability policy covering legal liability for damage to real or personal property, death, injury or disease, for not less than \$20 million limit of liability any one occurrence and unlimited in the aggregate. |
| Item 8- Defects Correction Period | The period commencing on the Handover Date and ending on the date which is [insert] months after the Handover Date. |
| Item 9 - ElectraNet Liability Limits | (a) For the ElectraNet Liability Limit referred to in clause 18.1(a)(i): the amount specified under [Item 9(a) of Schedule 1] of the Interface Works Agreement. (b) For the ElectraNet Liability Limit referred to in clause 18.1(a)(ii): \$1,000,000 per Contract Year. [Drafting Note: To be aligned with TCA(s) and other Project Documents.] |

| Item | Description |
|---|---|
| Item 10 – IUSA Provider Liability Limits | (a) For the IUSA Provider Liability Limit referred to in clause 18.2(a)(i): \$1,000,000. (b) For the IUSA Provider Liability Limit referred to in clause 18.2(a)(ii): \$1,000,000 per Contract Year. |

Schedule 2 – Preconditions

Table 2-1

Preconditions

[Drafting Note: below is an example only and will be amended on a case by case basis.]

| No | Precondition | Required Date | Party responsible for satisfying | Party with right to waive |
|-----|--|--|----------------------------------|---------------------------|
| 1.1 | <p>Insurance</p> <p>The IUSA Provider has provided ElectraNet with evidence reasonably satisfactory to ElectraNet that all of the insurance policies required to be effected by the IUSA Provider under clause 11 have been effected.</p> | 20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties). | IUSA Provider | ElectraNet |
| 1.2 | <p>Execution of TCA</p> <p>The TCA has been executed by the TNU and ElectraNet, and all preconditions to the TCA (other than any precondition requiring the Preconditions under this deed to have been satisfied or waived) have been satisfied or waived in accordance with the TCA.</p> | 20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties). | IUSA Provider and ElectraNet | ElectraNet |
| 1.3 | <p>Execution of Interface Works Agreement</p> <p>The Interface Works Agreement has been executed by the IUSA Provider and ElectraNet, and all preconditions to the Interface Works Agreement (other than any precondition requiring the Preconditions under this deed to have been satisfied or waived) have been satisfied or waived in accordance with the Interface Works Agreement.</p> | 20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties). | IUSA Provider and ElectraNet | ElectraNet |

| No | Precondition | Required Date | Party responsible for satisfying | Party with right to waive |
|-----|---|--|----------------------------------|---------------------------|
| 1.4 | <p>Land access for Term and Option</p> <p>ElectraNet is satisfied (in its reasonable opinion) that the land access rights in relation to the Land held by the IUSA Provider are:</p> <p>(a) assignable to ElectraNet in an unrestricted manner;</p> <p>(b) suitable for ElectraNet in the event that it exercises the Option;</p> <p>(c) suitable for the future expansion of the IUSA as required to <i>connect</i> Subsequent TNU's to the IUSA; and</p> <p>(d) otherwise acceptable to ElectraNet in all reasonable respects.</p> | 20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties). | IUSA Provider | ElectraNet |
| 1.5 | <p>FIRB Approval</p> <p>ElectraNet has received confirmation under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) that there is no objection to the acquisition by ElectraNet of any interest in the IUSA or the Land (including any Access and Use Rights) which confirmation must be unconditional or on terms and conditions acceptable to ElectraNet.</p> | 20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties). | ElectraNet | ElectraNet |
| 1.6 | <p>FIRB Approval</p> <p>The IUSA Provider has received confirmation under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) that there is no objection to the acquisition by IUSA Provider of any interest in the IUSA or the Land which confirmation must be unconditional or on terms and conditions acceptable to ElectraNet.</p> | 20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties). | IUSA Provider | ElectraNet |

Schedule 3 – Notice details

Table 3-1

Notice details

| Type of Notice | Permitted service method | ElectraNet Description of person to whom Notice must be sent | IUSA Provider Description of person to whom Notice must be sent |
|----------------|--------------------------|---|--|
| All Notices | Written only | <p><u>Attention:</u> Manager, Business Development</p> <p><u>Physical address:</u> ElectraNet 52-55 East Terrace Rymill Park Adelaide SA 5000</p> <p><u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au</p> | <p><u>Attention:</u> [INSERT]</p> <p><u>Physical address:</u> [INSERT]</p> <p><u>Email address:</u> [INSERT]</p> |

Attachment 1 – Functional Specifications

[Drafting Note: IUSA Functional Specification to be attached.]

Attachment 2 – Single line diagrams

[Drafting Note: SLD's to be attached which clearly illustrate:

- physical boundaries between ElectraNet's assets and the IUSA;
- interfaces between the ElectraNet's assets and the IUSA;
- physical boundaries between ElectraNet's site and the Land;
- physical boundaries between the IUSA and the DCA; and
- interfaces between the IUSA and the DCA.]