



Master Terms for Preliminary Works Agreement

ElectraNet Pty Limited (**ElectraNet**)

and

[Insert Customer's Name] (Customer)

Project Number **[Insert ElectraNet Project Number]**

Project **[Insert Project Name]**

www.electranet.com.au

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THIS AGREEMENT is made on [insert date]

BETWEEN

- (1) **ElectraNet Pty Limited** ACN 094 482 416 of 52-55 East Terrace, Adelaide, South Australia (**ElectraNet**)
- (2) [INSERT] ACN [INSERT] (**Customer**)

RECITALS:

- (A) The Customer has asked ElectraNet to provide the Services from time to time.
- (B) The parties have agreed that the Services are to be provided on the terms and conditions contained in this agreement.

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Affected Party has the meaning set out in clause 11.1.

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 Customer (or both) from time to time; or
- (b) relate to the Facility or the Project or the provision or receipt of any of the Services.

Assumption Change has the meaning set out in clause 4.1(c).

Authorisation means any approval, declaration, authorisation, certificate, consent, exemption, filing, licence, notarisation, 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.

Bank Bill Rate means the 30 day Australian Bank Bill Swap Reference Mid-Rate specified by Reuters Monitor Service page BBSY at or about 10.00 am (Sydney time) on the first Business Day of each calendar month provided that if that rate cannot be so determined, then Bank Bill Rate will mean such equivalent rate as is reasonably determined by ElectraNet at that time to be the "Bank Bill Rate".

Billing Dates means the billing date(s) specified in Item 5 of the Work Order Details.

Break Costs means:

- (a) all break fees, cancellation fees, early termination fees (and any other fees and costs of a similar nature); and
- (b) all other Damages (including as a result of third party claims),

incurred by ElectraNet in connection with the termination or cancellation of any of its contractual commitments or arrangements in relation to the carrying out any part of the Services (including the procurement of any Equipment).

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

CCA means the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law.

Claim 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 agreement), in equity (including breach of an 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.

Confidential Information means all information relating to the disclosing party that is not in the public domain and 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 agreement.

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 at the date of execution of this agreement.

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

Controller has the same meaning as defined in the Corporations Act.

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

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

Customer Group means:

- (a) the Customer and each of its Related Bodies Corporate;
- (b) each contractor and subcontractor of the persons mentioned in paragraph (a) of this definition (other than ElectraNet); and
- (c) each employee, director, officer, agent and contractor of the persons mentioned in paragraphs (a) and (b) of this definition.

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 agreement), 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.

Default Rate means at any time, the Bank Bill Rate, plus 5% per annum.

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 Customer or relates directly or indirectly to the Services, the Facility or the Project.

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 agreement or its performance.

Dispute Notice has the meaning set out in clause 16.1(b).

Documents includes in addition to a document in writing:

- (a) any book, map, plan, graph, email or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatever;
- (d) any disc, tape, soundtrack, computer or device whether of the same kind or any kind whatsoever in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced there from;
- (e) any film (including a microfilm), negative, tape, disc or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced there from; and
- (f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of conveying meaningful information to persons conversant with them.

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

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
- (c) each employee, director, officer, agent and contractor of the persons mentioned in paragraphs (a) and (b) of this definition.

ElectraNet Liability Limit has the meaning set out in clause 15.1.

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.

Equipment means any long lead items of plant or equipment which ElectraNet agrees to order on behalf of the Customer in accordance with this agreement.

ESCOSA means the Essential Services Commission of South Australia.

Estimated Third Party Costs has the meaning set out in clause 9.2(b).

Execution Date means the date of execution of the relevant Work Order as specified in Item 1 of the Work Order Details.

Facility means the Customer's *facility* which is proposed to be connected to ElectraNet's *transmission network* under the terms and conditions contained in the Transmission Connection Agreement in connection with the Project.

Fees and Charges means the fees and charges specified in the Scope as adjusted in accordance with this agreement.

Force Majeure Event means any event or circumstance beyond the reasonable control of the Affected Party and includes without limitation:

- (a) earthquake, flood, landslide, fire or explosion;
- (b) storm, lightning, tempest or other weather events;
- (c) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law or order of any Authority;
- (d) riot, civil disturbance, blockade or acts of terrorism;
- (e) epidemic or pandemic;
- (f) where ElectraNet is the Affected Party:
 - (1) a change in (or a change in the application or interpretation of) an Applicable Law;
 - (2) the repeal of an Applicable Law; or
 - (3) the introduction of an Applicable Law; or
 - (4) 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.

Force Majeure Suspension Period has the meaning set out in clause 11.1(a).

GST Exclusive Consideration has the meaning set out in clause 19(c)(1).

Initial Performance Security means the security (if any) specified in Item 4 of the Work Order Details.

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.

Initial Period has the meaning set out in clause 16.3(a).

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 and includes, as the context requires, any Documents.

Master Terms means this document, incorporating clauses 1 to 20 (inclusive) and any annexures or schedules to this document.

National Electricity Rules or **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).

Notice has the meaning set out in clause 17.1 and **Notify** has a corresponding meaning.

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

Preconditions has the meaning set out in clause 3.1(a).

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 means the project described in Item 2 of the Work Order Details which is proposed to be undertaken by the Customer.

Program means the program for the provision of the Services set out in the Scope of the relevant Work Order (as updated from time to time pursuant to clause 4.3).

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

Representing Party has the meaning set out in clause 20.2.

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*.

Scope means Part 2 of the relevant Work Order.

Services means the services set out in the Scope which are to be provided by ElectraNet to the Customer on the terms and conditions contained in this agreement.

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 reconstruction 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.

Sunset Date means the date set out in Item 7 of the Work Order Details.

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 Related Work Order has the meaning set out in clause 5.2(a).

Technical Matter means a matter referred to in rules 5.4.1(b)(1) to (4) of the NER.

Third Party Costs means all costs reasonably incurred or otherwise committed by or on behalf of ElectraNet in relation to the procurement of Equipment including:

- (a) all costs in connection with the financing, acquisition, construction, delivery, storage, holding or insurance of the Equipment; and
- (b) all deposits, progress payments and payments on delivery or commissioning in relation to the Equipment.

Transmission Connection Agreement or **TCA** means the agreement that may be entered into between ElectraNet and the Customer in relation to the *connection* of the Facility to ElectraNet's *transmission network*.

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

Undertaking means a bank guarantee (or if approved in writing by ElectraNet, an insurance bond) which:

- (a) is unconditional, irrevocable and payable on demand;
- (b) is issued by a bank, insurance company or other financial institution with a Standard and Poor's credit rating (or an equivalent rating from another recognised credit rating agency acceptable to ElectraNet) of AA- (or higher) or such other credit rating approved in writing by ElectraNet in its absolute discretion; and
- (c) specifies a location within Adelaide where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day.

Upfront Payment means the upfront payment (if any) specified in Item 3 of the Work Order Details for payment of the Fees and Charges payable by the Customer to ElectraNet under this agreement.

Work Order means a written order (which is identified as a 'Work Order for Preliminary Works Agreement' or similar) which is issued by ElectraNet and executed by the parties from time to time.

Work Order Details means Part 1 of the relevant Work Order.

1.2 Interpretation

In this agreement, 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) other grammatical forms of words or phrases defined in this agreement will have a corresponding meaning;
- (d) references to persons include their respective administrators, successors, liquidators and permitted assigns;
- (e) headings are for convenience only and do not affect the interpretation of this agreement;
- (f) a reference to a document includes all amendments or supplements to, or replacements or novation of, that document;
- (g) a reference to an annexure, a clause or a schedule is to an annexure, a clause or schedule of this agreement;
- (h) the recitals, annexures and schedules form part of this agreement;

- (i) mentioning anything after the words “include”, “includes”, “including” or “for example” (or similar expressions) does not limit what else is included;
- (j) a reference to an Authority includes any body which is the successor to the administrative responsibilities of that Authority;
- (k) a reference to a period of time (including, without limitation, a year, a month and a day) is to a calendar period;
- (l) a reference to any act of Parliament or to any section or provision of any act of Parliament extends to and includes:
 - (1) any regulations, codes, orders or other instruments made under that act; and
 - (2) any statutory modification, re-enactment or substitution for that act, section or provision;
 - (3) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (m) a reference to “dollars”, “\$”, “AUD” or “A\$” is to the lawful currency of Australia.

2. General

2.1 Agreement framework

- (a) The Services will be provided by ElectraNet pursuant to Work Orders executed between the parties from time to time.
- (b) Upon a Work Order being executed by both parties, a separate and independent agreement (each agreement referred to in these Master Terms as ‘this agreement’) will be formed between the parties, which comprises:
 - (1) the terms of the relevant Work Order (including any documentation attached or incorporated into the relevant Work Order); and
 - (2) these Master Terms.

2.2 Inconsistency

If there is any inconsistency between any of the documents forming part of this agreement, the documents forming this agreement will be interpreted in the following order of priority (in descending order of priority) to the extent of any inconsistency:

- (a) these Master Terms; and
- (b) the relevant Work Order.

2.3 NER definitions and references

In this agreement, unless the context otherwise requires:

- (a) words appearing in italics have the meanings 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.

3. Preconditions

3.1 Preconditions to commencement of Services

- (a) ElectraNet is not obliged to commence providing the Services pursuant to a Work Order until the following conditions precedent have been satisfied or waived in accordance with clause 3.2:
- (1) subject to clause 3.1(b), the Customer has duly executed and returned the relevant Work Order to ElectraNet;
 - (2) the Upfront Payment has been paid to ElectraNet in cleared funds (if applicable); and
 - (3) the Initial Performance Security has been provided to ElectraNet (if applicable),

(Preconditions).

- (b) However, if:
- (1) the Customer has asked ElectraNet in writing to commence providing the Services; and
 - (2) ElectraNet has commenced to provide the Services prior to the date on which the Preconditions in clause 3.1(a)(1) are satisfied or waived in accordance with clause 3.2,

the Customer will be deemed to have agreed to engage ElectraNet to provide those Services in accordance with the terms of this agreement as though the relevant Work Order had been duly executed and returned to ElectraNet by the Customer in respect of such Services and the Precondition in clause 3.1(a)(1) is deemed to have been satisfied.

3.2 Satisfaction and waiver of Preconditions

- (a) The Preconditions are for the sole benefit of ElectraNet, which may decide whether a Precondition has been satisfied (or may waive in writing such Precondition) in its absolute discretion.
- (b) If ElectraNet waives a Precondition in accordance with clause 3.2(a), it may do so on such conditions as it deems necessary.

4. Services

4.1 To be provided by ElectraNet

- (a) ElectraNet will provide the Services to the Customer and the Customer will pay the Fees and Charges to ElectraNet on the terms of this agreement.

- (b) ElectraNet will not be required to perform any works or services which are not expressly included in the Services set out in the Scope.
- (c) If works or services in addition to, or variations to, the Services expressly set out in the Scope:
 - (1) are requested by the Customer; or
 - (2) are required as a result of an assumption set out in the Scope changing or being incorrect or inaccurate in any way,

(Assumption Change),

and are not the subject of another Work Order (including a TCA Related Work Order under clause 5 (if applicable)), the parties will negotiate in good faith, and agree in writing to, a variation of the Scope (including any increase to the Fees and Charges) as soon as reasonably practicable. ElectraNet is not required to provide the additional or varied services until such variation is agreed in writing and signed by both parties.

4.2 Program for performance of Services

- (a) ElectraNet will use its reasonable endeavours to provide the Services in accordance with the Program.
- (b) The Program does not form part of this agreement and is an indicative program only and ElectraNet will not be in breach of this agreement or liable for any Claims or Damages incurred by any member of the Customer Group as a result of a failure by ElectraNet to provide the Services in accordance with the Program however that failure is caused.

4.3 Updated Program

- (a) The Program may be updated from time to time by agreement between the Parties (acting reasonably).
- (b) If the Parties agree to a new Program in accordance with clause 4.3(a), ElectraNet will prepare a new Program and the then current Program will be taken to have been immediately replaced with the new Program at the time the Notice attaching the new Program is provided to the Customer by ElectraNet.

5. Transmission Connection Agreement

5.1 Application of this clause

If the Customer lodges a *connection application* with ElectraNet in relation to the Project, this clause 5 will apply.

5.2 Transmission Connection Agreement

If this clause 5 applies:

- (a) the parties will negotiate in good faith in order to execute a Work Order as soon as reasonably practicable after the date on which the *connection application* is lodged (**TCA Related Work Order**);

- (b) the Scope for a TCA Related Work Order will, among other things, include all services which are necessary to enable a Transmission Connection Agreement to be prepared and executed by the parties and, if required, for ElectraNet to assist the Customer to satisfy any “Preconditions” under the Transmission Connection Agreement (as that term is defined under the Transmission Connection Agreement); and
- (c) the final terms and conditions of the Transmission Connection Agreement will not be deemed to have been agreed by ElectraNet and the Customer or to have created any binding rights or obligations on either of the parties until such time as:
 - (1) the boards of ElectraNet and the Customer have given their final approval to the terms and conditions of the Transmission Connection Agreement; and
 - (2) the Transmission Connection Agreement has been duly executed by both parties.

6. Fees and Charges

6.1 Fees and Charges

- (a) The Customer will pay the Fees and Charges to ElectraNet in accordance with clause 8.
- (b) Where the relevant Work Order specifies:
 - (1) the Fees and Charges are payable on a fixed fee basis then, subject to clause 6.3, the parties agree that the Fees and Charges will be the fixed lump sum fee set out in the Scope; or
 - (2) the Fees and Charges are payable on a time and materials basis, the parties agree that the Fees and Charges will be calculated as the sum of the products ascertained by multiplying the rates and prices set out in the Scope by the corresponding quantities, and clauses 6.2 and 6.3 will not apply.

6.2 Included items - fixed fee only

- (a) This clause 6.2 only applies to this agreement if the Fees and Charges in the relevant Work Order are expressed as being payable on a fixed fee basis.
- (b) The Fees and Charges are inclusive of the following items:
 - (1) time spent by ElectraNet personnel in providing the Services charged at the corresponding rates set out in the Scope;
 - (2) any other items specified in the Scope as items to be provided by ElectraNet charged at the corresponding rates or charges set out in the Scope; and
 - (3) reasonable costs incurred or which may be incurred by ElectraNet in retaining third party suppliers, contractors or consultants in providing any goods, services or assistance in relation to the provision of the Services,

but are not inclusive of any fees or other amounts payable to any Authority in connection with the Services.

6.3 Updated Fees and Charges - fixed fee only

- (a) This clause 6.3 only applies to this agreement if the Fees and Charges in the relevant Work Order are expressed as being payable on a fixed fee basis.
- (b) If there is an Assumption Change and the Assumption Change results in ElectraNet incurring additional costs, ElectraNet will be entitled to an increase in the Fees and Charges as agreed by the parties in a variation pursuant to clause 4.1(c), or if the parties have not agreed to a variation pursuant to clause 4.1(c), as notified by ElectraNet to the Customer by Notice setting out details of the increase to the Fees and Charges.
- (c) The Scope will be taken to have been immediately amended to set out the increased Fees and Charges at the time the parties execute a variation pursuant to clause 4.1(c), or if the parties have not executed a variation pursuant to clause 4.1(c), at the time the Notice attaching the details of the increased Fees and Charges is provided to the Customer in accordance with clause 6.3(b).
- (d) If details of any increased Fees and Charges are provided to the Customer by Notice from ElectraNet under this clause 6.3 and the Customer Disputes the increase to the Fees and Charges, the parties will resolve the Dispute in accordance with clause 16.

7. Acknowledgements and warranties

7.1 Reliance

The Customer acknowledges and agrees that the Services are to be provided for the sole benefit of the Customer and may not be relied upon by any other person without ElectraNet's prior written consent.

7.2 Good electricity industry practice

ElectraNet warrants that the Services will be provided in accordance with *good electricity industry practice*.

7.3 No other warranty as to Services

- (a) Aside from the warranty in clause 7.2 and except as otherwise as expressly set out in this agreement, ElectraNet does not give any warranties or undertakings and has not made any other representations or warranties as to the Services.
- (b) Each party excludes from this agreement, 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 agreement or to the extent that any condition, warranty or term the exclusion of which would:
 - (1) contravene any Applicable Law or general law which imposed or implied it; or
 - (2) cause this clause 7.3 to be void.

8. Invoicing and payment

8.1 Invoicing

- (a) Where Item 6 of the Work Order Details states that the Fees and Charges for the Services are to be payable on a time and materials basis, ElectraNet may issue a tax invoice to the Customer on or about each Billing Date for:
 - (1) its outstanding Fees and Charges for providing the Services as at the Billing Date;
 - (2) any other outstanding charges or costs incurred by ElectraNet in providing the Services as at the Billing Date; and
 - (3) any other amounts payable by the Customer to ElectraNet under this agreement.
- (b) Where Item 6 of the Work Order Details states that the Fees and Charges for the relevant Services are to be payable on a fixed fee basis, ElectraNet may issue invoices as and when specified in Item 9 of the Work Order Details.
- (c) Any inadvertent failure by ElectraNet to invoice at the times specified in this clause 8.1 will not prevent ElectraNet from invoicing the Customer for such amounts at a later date.

8.2 Payment

- (a) The Customer must pay each invoice:
 - (1) by no later than close of business on the 30th day after the issue of the invoice by ElectraNet (or if that day is not a Business Day, on the next Business Day);
 - (2) free and clear of any withholding or deduction for any tax unless required by law; and
 - (3) in cleared funds to a bank account nominated in writing by ElectraNet.
- (b) If applicable, the Customer authorises ElectraNet to apply the Upfront Payment to pay any invoice(s) issued under this agreement as and when such invoices are issued in accordance with this clause 8.

8.3 Interest on outstanding amounts

- (a) The Customer must pay interest on any amount due to ElectraNet under this agreement and not paid by the due date for payment. Such interest will:
 - (1) accrue daily at the Default Rate, for each day the due date until the amount is paid;
 - (2) be payable in arrears on the first Business Day of each calendar month;
 - (3) be calculated on actual days elapsed and a 365 day year; and

- (4) at ElectraNet's discretion, be capitalised on the final Business Day of each calendar month.
- (b) The Customer's obligation to pay the Fees and Charges or any other amount payable under this agreement by the Customer on the due date for payment of those Fees and Charges or that amount will not be affected by this clause 8.3.
- (c) The Customer acknowledges and agrees that the Default Rate is a genuine estimate of the Damage that ElectraNet would likely suffer as a result of the Customer failing to pay any portion of an invoice when due.

9. Equipment

9.1 Application of clause

This clause 9 will only apply where the Services to be provided by ElectraNet under the relevant Work Order expressly includes the procurement of Equipment in Item 14 and a Sunset Date is specified in Item 7 of the Work Order Details.

9.2 Request for early Equipment procurement

- (a) The Customer may ask ElectraNet in writing to procure Equipment at any time if the parties have agreed (in writing) to the specifications of the required Equipment and that the early procurement of such Equipment may expedite completion of the Project.
- (b) After receiving a request from the Customer pursuant to clause 9.2(a), ElectraNet will provide the Customer with an estimate of the Third Party Costs which may be incurred in relation to the procurement of the relevant Equipment (**Estimated Third Party Costs**) as soon as reasonably practicable.
- (c) The Customer must, within 10 Business Days of receiving the information in clause 9.2(b), Notify ElectraNet if it would like to proceed with procuring the relevant Equipment. If no such Notice is given, ElectraNet will not be required to procure the Equipment.
- (d) Subject to clause 9.4, the Customer acknowledges and agrees that it will be liable for all Third Party Costs incurred or otherwise payable by ElectraNet in connection with the procurement of any Equipment in accordance with this clause 9 as and when such Third Party Costs become due and payable.

9.3 Undertaking

- (a) Before ElectraNet will be required to order any item of Equipment under this clause 9, the Customer must provide ElectraNet with an Undertaking as security for the Estimated Third Party Costs in respect of the Equipment.
- (b) An Undertaking provided pursuant to this clause 9.3:
 - (1) must be for an amount equal to the Estimated Third Party Costs;
 - (2) without limiting the irrevocable and unconditional nature of the Undertaking, may be drawn by ElectraNet (including any time after this agreement has been terminated) in accordance with clause 14.4(a)(4); and

- (3) must otherwise be in form and substance acceptable to ElectraNet.

9.4 Deferring Third Party Costs – if Undertaking provided

- (a) If the Customer has provided an Undertaking to ElectraNet in accordance with clause 9.3 and Item 8 of the Work Order Details states that Third Party Costs may be deferred, clauses 9.4(b) and 9.4(c) will apply.
- (b) ElectraNet will, provided that the Customer is not in default of any of its obligations under this agreement, defer all invoices for Third Party Costs payable by the Customer until the earlier of the Sunset Date or the date on which all “Preconditions” under the Transmission Connection Agreement have been satisfied or waived in accordance with the terms of the Transmission Connection Agreement.
- (c) Nothing in clause 9.4(b) above will prevent ElectraNet from issuing invoices under this agreement at any time:
- (1) for other Services completed in accordance with this agreement;
 - (2) for Third Party Costs following a default of any of its obligations under this agreement by the Customer; or
- (d) for Third Party Costs following the Sunset Date.

10. Capitalisation of charges

10.1 Application of clause

This clause 10 will only apply where a TCA Related Work Order has been executed pursuant to clause 5.

10.2 Capitalisation of charges

- (a) The Customer may ask ElectraNet during the negotiation of the Transmission Connection Agreement for all fees, charges and other amounts which have been paid or are payable by the Customer under this agreement pursuant to the TCA Related Work Order (and not including, for the avoidance of doubt, any fees, charges and other amounts payable in connection with any other Work Order) to be capitalised into the charges payable under the Transmission Connection Agreement.
- (b) If the Customer makes such a request, subject to any internal ElectraNet board or other approvals that may be required, ElectraNet may agree to capitalise all amounts which have been paid or are payable to ElectraNet under this agreement pursuant to the TCA Related Work Order into the charges payable under the Transmission Connection Agreement as contemplated by clause 10.2(a).
- (c) ElectraNet may agree or refuse to capitalise amounts as contemplated by this clause 10.2 in its absolute discretion.
- (d) If:
- (1) amounts are capitalised in the charges under a Transmission Connection Agreement as contemplated by this clause 10.2 and that Transmission Connection Agreement has been entered into between the parties; and

- (2) all “Preconditions” contained in that Transmission Connection Agreement are satisfied or waived in accordance with the Transmission Connection Agreement,

ElectraNet will refund to the Customer all amounts which have already been paid by the Customer under this agreement and which have been capitalised in the charges under the Transmission Connection Agreement, within 10 Business Days of the date on which all “Preconditions” contained in the Transmission Connection Agreement are satisfied or waived in accordance with the Transmission Connection Agreement.

- (e) For the avoidance of doubt, all unpaid amounts that are payable by the Customer under this agreement which have not been capitalised in the charges under the Transmission Connection Agreement as contemplated by this clause 10.2, will remain payable by the Customer to ElectraNet in accordance with this agreement.

11. Force majeure

11.1 Effect of a Force Majeure Event

Subject to clause 11.4, if a party is prevented from performing any obligations under this agreement by reason of a Force Majeure Event (**Affected Party**), then:

- (a) the relevant obligations of the Affected Party will be suspended from the time that the Force Majeure Event prevents the performance of such obligations until the time that such obligations are no longer affected by the Force Majeure Event (**Force Majeure Suspension Period**); and
- (b) the Affected Party will have no liability to the other party in respect of the failure to perform such obligations during the Force Majeure Suspension Period to the extent that such failure is caused by the Force Majeure Event.

11.2 Notice and performance

- (a) If a party becomes aware of any matter likely to constitute a Force Majeure Event, that party must promptly give Notice of that matter and all relevant particulars to the other party.
- (b) Within 20 Business Days after the occurrence of a Force Majeure Event, the Affected Party must give the other party Notice of:
 - (1) the full particulars of the Force Majeure Event including the nature and duration of the Force Majeure Event; and
 - (2) the relevant obligations of the Affected Party under this agreement which have been affected.
- (c) If a party receives a Notice under clause 11.2(b), it will be deemed to have accepted the contents of that Notice unless the contents are Disputed by the party receiving the Notice in accordance with clause 16 within 10 Business Days of the Notice being sent.

11.3 No liability for Force Majeure Event

ElectraNet is not liable for, or in connection with, any Damages incurred by any member of the Customer Group arising out of, or in connection with, a Force Majeure Event or the consequences of a Force Majeure Event.

11.4 Payment obligations

The parties agree that this clause 11 will not limit or relieve the Customer from performing its obligation(s) to pay any invoices issued by ElectraNet in connection with this agreement as and when they are due and payable.

12. Intellectual property

12.1 ElectraNet Background IP Materials

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

12.2 Customer Background IP Materials

- (a) ElectraNet acknowledges that it does not own any Intellectual Property Rights in the Customer Background IP Materials.
- (b) The Customer 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 Customer Background IP Materials:
 - (1) 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 agreement or the Documents;
 - (B) provide the Services; and
 - (C) fully enjoy, exploit and further develop the Contract IP Materials; or
 - (2) any other purposes relating to this agreement 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 12.2(b), on and from the second anniversary of the Execution Date, the Customer 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 Customer Background IP Materials for the purpose of tendering for, or negotiating contestable *transmission services* specified in rule 5.2A.4(a) of the NER.

- (d) The Customer acknowledges and agrees that clause 12.2(c) is a consent given by the Customer for the purposes of rule 5.3.8(a1) of the NER.

12.3 Contract IP Materials

- (a) Upon creation, all Contract IP Materials created by or on behalf of ElectraNet in connection with this agreement will vest in ElectraNet free of all encumbrances and the Customer hereby unconditionally assigns to ElectraNet:
 - (1) all Intellectual Property Rights (other than copyright) in the Contract IP Materials, without the need for further assurance; and
 - (2) 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 Customer a non-exclusive, irrevocable, perpetual, royalty free licence to use any Contract IP Materials for the purposes of this agreement.

12.4 Warranties by the Customer

- (a) The Customer represents and warrants to ElectraNet that:
 - (1) the Customer is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use); and
 - (2) is entitled to licence to ElectraNet and the ElectraNet Group in accordance with clause 12.2(b),the Intellectual Property Rights in the Customer Background IP Materials.
- (b) The Customer represents and warrants to ElectraNet that it is able to assign the Intellectual Property Rights in all Contract IP Materials pursuant to clause 12.3.

12.5 Indemnity

- (a) The Customer indemnifies and holds harmless ElectraNet and each other member of the ElectraNet Group against any Damage or Claim arising from:
 - (1) any infringement or alleged infringement of Intellectual Property Rights owned by any third party in respect of any of the Customer Background IP Materials;
 - (2) any breach of the warranties set out in clause 12.4.
- (b) ElectraNet holds the benefit of the indemnity in clause 12.5(a) for itself and on trust for each other member of the ElectraNet Group.

13. Confidentiality

13.1 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.

13.2 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 agreement.
- (b) A party:
 - (1) must not disclose Confidential Information to any person except as permitted by this agreement (including clauses 13.3 and 13.4);
 - (2) must only use or reproduce Confidential Information for the purpose for which it was disclosed or another purpose contemplated by this agreement; and
 - (3) must not permit unauthorised persons to have access to Confidential Information.
- (c) Each party must use all best endeavours:
 - (1) to prevent unauthorised access to Confidential Information which is in the possession or control of that party; and
 - (2) to ensure that any person to whom it discloses Confidential Information observes the provisions of this clause 13 in relation to that information.
- (d) Subject to clauses 13.2(e) and 13.2(f), neither party may make any statement or representation in relation to this agreement (including, in particular, a statement to the effect that the party has entered into this agreement) 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 agreement (including, in particular, a statement to the effect that that party has entered into this agreement) 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) ElectraNet may advertise, publish or release any information, document or article for publication in relation to this agreement in any media if ElectraNet has liaised with the Customer regarding the content of such information, document or article and the Customer has consented to such content (such consent not to be unreasonably withheld or delayed).

13.3 Disclosures required under Applicable Laws

Without limiting any other provision of this clause 13, the Customer consents to ElectraNet using any information concerning the Facility or the Project for the purpose of complying with ElectraNet's obligations under this agreement or any Applicable Law (including the provision of that information to AEMO, the System Controller and any other relevant Authority).

13.4 Other exceptions

Subject to clause 13.5, clause 13.2 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 agreement) 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:
 - (1) an employee or officer of the party or a Related Body Corporate of the party;
or
 - (2) a legal or other professional adviser, auditor or other consultant of the party,
who requires the information for the purposes of this agreement, the NER, or for the purpose of advising the party in relation to those matters;
- (c) **(contractors)**: the disclosure of Confidential Information by the Customer to a contractor engaged in relation to the Facility or by ElectraNet to a contractor engaged in relation to the Services;
- (d) **(consent)**: the disclosure, use or reproduction of Confidential Information with the consent of the party who provided the relevant information;
- (e) **(law)**: the disclosure, use or reproduction of Confidential Information to the extent required by law or by a lawful requirement of:
 - (1) any Authority having jurisdiction over a party or its Related Bodies Corporate;
or
 - (2) any stock exchange having jurisdiction over a party or its Related Bodies Corporate;
- (f) **(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 agreement or the NER or for the purpose of advising a person in relation thereto;
- (g) **(safety)**: the disclosure of Confidential Information to the extent required to protect the safety of personnel or equipment;
- (h) **(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;
- (i) **(response to potential investment query)**: the disclosure, use or reproduction of Confidential Information by or on behalf of ElectraNet to a person:
 - (1) who has received information from the Customer under clause 13.4(h); and

- (2) to the extent reasonably required in order to answer any question by that person concerning the terms and conditions of this agreement;
- (j) **(regulator)**: the disclosure of Confidential Information to the *AER*, *AEMO*, *ESCOSA* or any other Authority having jurisdiction over a party;
- (k) **(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*;
- (l) **(aggregate sum)**: the disclosure, use or reproduction of Confidential Information as an unidentifiable component of an aggregate sum;
- (m) **(profile)**: the publication of a *profile*;
- (n) **(Intellectual Property Rights)**: the disclosure of information necessary or desirable to give effect to the licences of Intellectual Property Rights granted to each party under this agreement;
- (o) **(Connection Applicant)**: the disclosure of any Confidential Information concerning the *connection* of the Facility 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
- (p) **(Applicable Laws)**: the disclosure, use or reproduction of that Confidential Information where required or permitted from time to time under an Applicable Law.

13.5 Undertaking to keep confidential and restrictions on use

- (a) In the case of a disclosure under clause 13.4(b), 13.4(c), or 13.4(h), 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 13.2 and 13.3 and does not use the information for any purpose other than that permitted under clause 13.2(b).
- (b) Notwithstanding anything in this clause 13, but subject to clause 13.5(c), ElectraNet acknowledges and agrees that the data and information provided by the Customer to ElectraNet pursuant to this agreement in relation to the provision of non-contestable services specified under rule 5.2A(a) of the *NER* must not be used by ElectraNet for the purpose of tendering for, or negotiating, *contestable* services specified under rule 5.2A.4(a) of the *NER* in the *connection* process in which that data or information was provided to ElectraNet, or in future *connection* processes, without the consent of the Customer.
- (c) On and from the second anniversary of the Execution Date, the Customer hereby consents to the use of the data and information referred to in clause 13.5(b) for the purpose of tendering for, or negotiating contestable *transmission services* specified in rule 5.2A.4(a) of the *NER*.

14. Suspension and termination

14.1 Suspension of Services

- (a) ElectraNet may immediately suspend performance of any and all Services upon the failure of the Customer to pay an invoice pursuant to clause 8 by the relevant due date.
- (b) ElectraNet will immediately lift any suspension pursuant to clause 14.1(a) if the Customer has paid all outstanding amounts (including any interest accrued under clause 8.3) to ElectraNet.
- (c) ElectraNet is not liable for, or in connection with any Claim (and the Customer is not entitled to make any Claim) arising out of, or in connection with any suspension by ElectraNet pursuant to this clause 14.1.
- (d) The Customer must, to the extent permitted by law, indemnify and hold harmless ElectraNet against any Claims or Damages which ElectraNet may incur arising out of, or in connection with, any suspension by ElectraNet pursuant to this clause 14.1.

14.2 Termination for breach or Solvency Default

- (a) A party may terminate this agreement at any time by Notice to the other party, if:
 - (1) subject to clause 14.2(b), a Solvency Default occurs in relation to the other party; or
 - (2) the other party breaches a term or condition of this agreement and that breach is not remedied within 20 Business Days of receiving a Notice from the other party to remedy that breach.
- (b) The parties agree that to the extent any stay period applies to the termination rights set out in clause 14.2(a)(1) under the Corporations Act or any other Applicable Law, a Notice given under clause 14.2(a) for a Solvency Default of the other party 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.

14.3 Termination for convenience

Either party may terminate this agreement at any time by giving 20 Business Days' Notice to the other party.

14.4 Consequences of Termination

- (a) If this agreement is terminated:
 - (1) 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 the Customer Group (except in the case where a Transmission Connection Agreement has been executed, in which case each party must return the other party's Confidential Information in accordance with the terms of the Transmission Connection Agreement);

- (2) ElectraNet will use its best endeavours to:
 - (A) cancel any contract with a third party supplier, contractor or consultant relating to the provision of the Services; and
 - (B) minimise any costs payable as a result of any such cancellation;
 - (3) the Customer must pay any Break Costs which are payable as a result of ElectraNet terminating a contract with a third party in accordance with clause 14.4(a)(2)(A);
 - (4) the Customer must pay to ElectraNet all outstanding Fees and Charges in connection with the Services to which such termination relates and any other amounts required to be paid by the Customer in accordance with this agreement; and
 - (5) ElectraNet may immediately draw any Undertaking provided by the Customer under this agreement to pay any Third Party Costs which are, or will become, payable in connection with any Equipment that has been ordered.
- (b) Subject to clause 14.4(b), unless expressly stated otherwise in a termination Notice, the termination of this agreement pursuant to this clause 14 will take effect only in relation to the Work Order and Services to which such termination Notice relates and will not otherwise affect or terminate these Master Terms or any other Work Orders.
 - (c) Upon termination of these Master Terms (as opposed to termination of any particular Work Order(s)), all Work Orders will terminate simultaneously with these Master Terms.
 - (d) Despite any other clause of this agreement, all amounts which are payable by the Customer to ElectraNet under this clause 14.4 will be payable upon demand.
 - (e) Nothing in this clause 14.4 will limit either party's right to recover damages from the other party for breach of contract.
 - (f) This clause 14.4 survives termination or expiry of this agreement.

15. Indemnities and limitation of liability

15.1 Maximum liability

ElectraNet's aggregate liability to the Customer and each other member of the Customer Group arising out of or in connection with the Services provided under each Work Order or ElectraNet's related activities will not (to the maximum extent permitted by law) exceed an amount equal to the sum of the Fees and Charges under the relevant Work Order (**ElectraNet Liability Limit**).

15.2 Consequential Loss

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 any member of the Customer Group directly or indirectly arising out of, or in connection with this agreement.

15.3 Commencement of Transmission Connection Agreement

The parties acknowledge and agree that on and from the date on which all “Preconditions” contained in the Transmission Connection Agreement are satisfied or waived in accordance with the Transmission Connection Agreement:

- (a) the Master Terms and each Work Order will immediately terminate;
- (b) all Services already completed under the terms of the Master Terms and each Work Order will be taken to have been completed under the terms of the Transmission Connection Agreement; and
- (c) the Services will form part of the “ElectraNet Connection Work” under the Transmission Connection Agreement.

15.4 Release and hold harmless

- (a) The Customer releases, indemnifies and holds harmless ElectraNet and each other member of the ElectraNet Group in respect of any Claims by any member of the Customer Group or any third party in connection with the Services or this agreement for any Damages:
 - (1) in excess of the ElectraNet Liability Limit set out in clause 15.1;
 - (2) in the nature of Consequential Loss (regardless of the amount) other than as provided in clause 15.2; and
 - (3) for which any other clause of this agreement provides that ElectraNet will not be liable for.
- (b) ElectraNet holds the benefit of the indemnity in clause 15.4(a) for itself and on trust for each other member of the ElectraNet Group.

15.5 Limitation on liability for breach of implied terms

A party’s liability to the other party for breach of any condition, warranty or term implied into this agreement by the CCA is limited to the maximum extent permitted by the CCA.

15.6 Applicable Laws and limitations on liability

This clause 15 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*).

15.7 Effect on insurance policies

The parties acknowledge and agree that this clause 15 does not, and is 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. Dispute resolution

16.1 Notice of Dispute

- (a) If a Dispute arises between the parties, the Dispute must be dealt with in accordance with this clause 16.
- (b) Where a Dispute arises, either party may give a Notice to the other party specifying:
 - (1) the Dispute;
 - (2) particulars of the party's reason for being dissatisfied; and
 - (3) the position that the party believes is correct,**(Dispute Notice).**

16.2 Referral to Independent Engineer under NER

- (a) Where a Dispute is in respect of a Technical Matter, either party may initiate the *Independent Engineer* process pursuant to rule 5.4 of the NER following the issue of a Dispute Notice.
- (b) The costs of any *Independent Engineer*, including any costs incurred by the *Adviser* in performing the functions of the *Adviser* in rule 5.4.4 of the NER will be borne by the party who initiated the process pursuant to rule 5.4 of the NER, unless the *Independent Engineer* or *Adviser* finds in favour of that initiating party, in which case the costs will be borne equally between the parties.

16.3 Negotiation

- (a) Except where clause 16.2 applies, during the 20 Business Day period after a Dispute Notice is given (or longer period agreed in writing by the parties) (**Initial Period**), the parties must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- (b) If the parties are unable to resolve the Dispute within the Initial Period they must within an additional 20 Business Days, either:
 - (1) appoint a mediator to mediate the Dispute; or
 - (2) if they are unable to agree on a mediator refer the Dispute for mediation to a mediator nominated by the Chairman of the Resolution Institute.
- (c) The role of the mediator is to assist in negotiating a resolution of the Dispute. The mediator must not make a decision that is binding on party unless that party has agreed in writing.
- (d) Each party must bear its own costs of resolving a Dispute under this clause and, unless they otherwise agree, they must bear equally the costs of any mediator engaged.

16.4 Litigation

If a Dispute which has been referred to mediation pursuant to clause 16.3 remains unresolved (in whole or in part) after the expiration of 60 Business Days of receipt of the Dispute Notice under clause 16.1, then either party to the Dispute may commence legal proceedings to resolve any unresolved part of the Dispute.

16.5 Suspension of Services

- (a) ElectraNet may immediately suspend performance of the Services upon the Customer (or its representative) providing a Dispute Notice to ElectraNet.
- (b) ElectraNet will immediately lift any suspension pursuant to clause 16.5(a) if the Dispute has been resolved to the satisfaction of ElectraNet.
- (c) ElectraNet is not liable for, or in connection with any Claim (and the Customer is not entitled to make any Claim) arising out of, or in connection with any suspension by ElectraNet pursuant to this clause 16.5.
- (d) The Customer must, to the extent permitted by law, indemnify and hold harmless ElectraNet against any Damages which ElectraNet may incur arising out of, or in connection with, any suspension by ElectraNet pursuant to this clause 16.5.

17. Notices

17.1 Giving of Notices

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

- (a) must be in writing, which includes email and other electronic communications (unless specified in the relevant Work Order);
- (b) signed by the ElectraNet representative as specified in clause 18.1 or the Customer representative as specified in clause 18.2;
- (c) addressed to the person identified in Item 10 or Item 12 of the Work Order Details (as applicable); and
- (d) must be delivered by hand, pre-paid post or electronically by email.

17.2 Timing of receipt

A Notice given to a party in accordance with clause 18.1 will be treated as having been given or 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 second Business Day after posting; and

- (c) if sent electronically:
 - (1) 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
 - (2) 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).

17.3 Addresses and Notice details

A party may change any details relating to that party by Notice to the other party given in accordance with this clause 17.

18. Representatives

18.1 ElectraNet representative

- (a) The person specified in Item 11 of the relevant Work Order Details as the ElectraNet representative will be the Customer's main point of contact for the purposes of this agreement.
- (b) ElectraNet may change the ElectraNet representative by providing the Customer with a Notice in accordance with this clause 18.1 confirming this has occurred and providing the Customer with contact details of the new ElectraNet representative.
- (c) The ElectraNet representative referred to in this clause 18 has the power to bind ElectraNet in the exercise of any of its rights and the carrying out of any of its obligations under or in connection with this agreement.

18.2 Customer representative

- (a) The person specified in Item 13 of the Work Order Details as the Customer representative will be ElectraNet's main point of contact for the purposes of this agreement.
- (b) The Customer may change the Customer representative by providing ElectraNet with a Notice in accordance with this clause 18.2 confirming this has occurred and providing ElectraNet with contact details of the new Customer representative.
- (c) The Customer representative referred to in this clause 18.2 has the power to bind the Customer in the exercise of any of its rights and the carrying out of any of its obligations under or in connection with this agreement.

19. GST

- (a) A word or expression used in this clause 19 which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 19.
- (b) Unless otherwise specified in this agreement as "GST inclusive", any sum payable (or amounts included in the calculation of a sum payable), or in consideration to be

provided, under or in connection with this agreement does not include any amount on account of GST.

- (c) Where any payment to be made by one party (**supplier**) to another party (recipient) under or in accordance with this agreement is subject to GST (other than a supply the consideration for which is specifically described in this agreement as “GST inclusive”):
 - (1) the consideration payable or to be provided for that supply but for the application of this clause (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
 - (2) 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.
- (d) If any payment to be made to a party under or in accordance with this agreement 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 19(c).
- (e) 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 agreement, such tax invoice to be issued no later than 14 days after the supplier receives the consideration for that taxable supply.
- (f) If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this agreement, 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.

20. General

20.1 Governing law and jurisdiction

- (a) This agreement is governed by the laws of South Australia.
- (b) 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 agreement.
- (c) 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.

20.2 Authority to enter into agreement

Each party (in this clause 20.2 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 agreement;
- (b) the Representing Party holds all Authorisations required by Applicable Law to enter into this agreement;
- (c) the Representing Party has entered into this agreement 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 agreement by the Representing Party, and this agreement 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 agreement by the Representing Party does not, and the transactions contemplated by this agreement 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.

20.3 Terms which may operate unfairly

If a contract constituted by this agreement is a 'consumer contract' or 'small business contract' (each as defined in the CCA) and a term of that contract would, but for this clause, be 'unfair' (as defined in section 24(1) of the Australian Consumer Law contained in Schedule 2 to the CCA), ElectraNet may only apply or rely upon that term to the extent that doing so is reasonably necessary to protect ElectraNet's legitimate interests.

20.4 Moratorium legislation

To the full extent permitted by the law, all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects any obligation of a party under this agreement; or
- (b) delays, prevents or prejudicially affects the exercise by a party of any rights under this agreement,

is excluded from this agreement.

20.5 Assignment and disposals

- (a) ElectraNet may assign, novate or otherwise dispose of any of its rights or obligations under this agreement upon providing Notice to the Customer.
- (b) The Customer may not assign, novate or otherwise dispose of any of its rights or obligations under this agreement without the prior written consent of ElectraNet.

20.6 Amendment and waiver

- (a) Unless expressly stated to the contrary in this agreement, these Master Terms or any Work Order 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 agreement, a power or right may only be waived in writing, signed by the party to be bound by the waiver.

20.7 Severance

Any provision of this agreement 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 agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

20.8 Entire agreement

- (a) This agreement 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 agreement.
- (b) Any special conditions or additional terms which the Customer purports to include in this agreement in respect of the relevant Work Order or related Services are excluded.

20.9 No reliance

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

20.10 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 this agreement and the transactions contemplated by it.

20.11 Cost and expenses

The Customer must pay its own costs in connection with the negotiation, preparation and execution of this agreement.

20.12 System Controller

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

20.13 Rights cumulative

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

20.14 Relationship of the Parties

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

20.15 Survival

- (a) If this agreement is terminated or expires, then except where this agreement expressly provides otherwise:
 - (1) the parties are released from their obligations to continue to perform this agreement except the obligations which are expressed to or by their nature, survive termination or expiry;
 - (2) each party retains the rights and Claims it has against the other party for any past breach of this agreement; and
 - (3) the provisions of this agreement survive termination or expiry to the extent necessary to give effect to clause 20.15(a)(1).
- (b) Without limiting clause 20.15(a):
 - (1) any warranties provided by the parties under this agreement; and
 - (2) clauses 9.4, 10.2(e), 12, 13, 14, 15, 16, 17, 18 and 20, survive expiry or the termination of this agreement.

20.16 Survival of indemnities

Without limiting clause 20.15, each indemnity in this agreement is a continuing obligation which survives the termination or expiry of this agreement.

20.17 Non merger

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

20.18 Counterparts

This agreement 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.

Execution

ElectraNet

Signed for and on behalf of **ElectraNet Pty Limited** ACN 094 482 416 by its authorised representative in the presence of:

Signature of witness

Signature of authorised representative

Name (please print)

Name (please print)

Position held

The Customer

Executed by **[INSERT]** ACN **[INSERT]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name (please print)

Name (please print)

Schedule 1 – Form of Work Order



Work Order for Preliminary Works Agreement

Work Order No.

ElectraNet ElectraNet Pty Limited ACN 094 482 416

Customer [insert]

The Customer acknowledges and agrees that:

- (a) this document is a Work Order for the purposes of the Master preliminary works agreement executed by the parties on [date] (**Master Terms**); and
- (b) it has been provided with a copy of the Master Terms, which together with this Work Order, form a separate and independent agreement between the parties listed above.

Unless expressly provided otherwise in this Work Order, the definitions and rules of interpretation in clause 1 of the Master Terms apply to this Work Order.

Part 1 – Work Order Details

Work Order Details	
Item 1 – Execution Date	[insert]
Item 2 – Project	[insert]
Item 3 – Upfront Payment	[insert]
Item 4 – Initial Performance Security	[insert]
Item 5 – Billing Dates	[insert]
Item 6 – Fees and Charges	[insert]
Item 7 – Sunset Date	[insert]
Item 8 – Third Party Costs	[insert, including whether they may be deferred]
Item 9 - Fixed fee payments	[insert invoicing details]
Item 10 – ElectraNet Notice details	<p>Attention: [insert]</p> <p>Address: ElectraNet, 52-55 East Terrace, Rymill Park, Adelaide SA 5000</p> <p>Email address:</p> <p>To: [insert]@electranet.com.au</p> <p>Cc: notices@electranet.com.au</p>

Item 11 – ElectraNet Representative	[insert] [insert]@electranet.com.au
Item 12 – Customer Notice details	[insert]
Item 13 – Customer Representative	[insert]
Item 14 – Equipment	[insert whether work order includes procurement of equipment]

DRAFT

Part 2 – Scope

1. Services to be provided by ElectraNet

1.1 Services

ElectraNet will provide the Services set out in this item 1.

- (a) [insert]

ElectraNet will:

- (1) [insert].

- (a)

1.2 Deliverables

The following deliverables will be provided by ElectraNet in connection with the Services:

- (a) [insert].

2. Reporting

ElectraNet will submit [monthly] reports to the Customer containing the following information:

- (a) progress against the milestones contained in the Program;
- (b) details of all Fees and Charges incurred to date as against the fee estimate provided by ElectraNet in connection with the Services (if any); and [NOTE: DELETE THIS PARAGRAPH FOR FIXED FEE WORK ORDERS]
- (c) any other matters which ElectraNet considers appropriate.

In addition, a program of meetings will be agreed with the Customer based on key milestone or critical decision requirements.

3. Information to be provided by the Customer

Without limiting any other obligation of the Customer under this Work Order (including the obligation of the Customer to perform the work items allocated to the Customer in the Program set out in Table 5-1 by the applicable “target dates for completion”), the Customer must provide the following information to ElectraNet promptly (but, in any case, no later than 5 Business Days) after receiving a request from ElectraNet to do so:

- (a) [INSERT];
- (b) [INSERT]; and
- (c) [INSERT].

4. Work to be completed by the Customer

The Customer will undertake the following works:

- (a) [insert].

5. Program

- (a) ElectraNet will use reasonable endeavours to perform the work items allocated to ElectraNet in the Program set out in Table 5-1 (and which form part of the Services) by the applicable “target dates for completion”.
- (b) The Customer will use reasonable endeavours to perform the work items allocated to the Customer in the Program set out in Table 5-1 by the applicable “target dates for completion”.
- (c) The Program set out in Table 5-1 may be updated from time to time by ElectraNet in accordance with clause 4.3 of the Master Terms.

Table 5-1 – Program

Milestones	Description	Target date for completion	Responsible party
1	[insert]	[insert]	[insert]

6. Fees and Charges

6.1 Fees and Charges

[OPTION 1 – FOR USE WHERE FIXED FEE WORK ORDER REQUIRED - DELETE ENTIRE OPTION 1 IF TIME AND MATERIALS WORK ORDER IS REQUIRED]

- (a) If in Item 6 of the Work Order Details, the Fees and Charges are described as a “fixed fee basis”, this means the Fees and Charges will be a fixed fee of \$[INSERT].
- (b) The Customer may be required to pay Break Costs (if applicable).
- (c) The Fees and Charges may be updated from time to time in accordance with clause 6.3 of the Master Terms.

[END OPTION 1]

[OPTION 2 – FOR USE WHERE TIME AND MATERIALS WORK ORDER IS REQUIRED – DELETE ENTIRE OPTION 2 IF FIXED FEE WORK ORDER IS REQUIRED]

- (a) If in Item 6 of the Work Order Details, the Fees and Charges are described as a “time and materials basis”, this means the Fees and Charges will be calculated as the sum of the products ascertained by multiplying the rates and prices set out in Table 6-1 by the corresponding quantities.
- (b) Subject to Item 6.2 of this Work Order, ElectraNet will provide the Services internally through a Project team with individual roles nominated as set out in Table 6-1.
- (c) ElectraNet may charge the Customer for its reasonable costs at the hourly rates set out in Table 6-1 for the preparation and negotiation of this Work Order.
- (d) All time spent by ElectraNet’s personnel on the Services are to be charged to the Customer based on the hourly rates set out in Table 6-1.

Table 6-1 – Rates of ElectraNet personnel

Role	Hourly rate (ex GST)
Specialist Engineer	[\$INSERT]
Principal Engineer	[\$INSERT]
Legal Counsel	[\$INSERT]
Land Management Advisor	[\$INSERT]
Senior Engineer	[\$INSERT]
Project Engineer	[\$INSERT]
Design Manager	[\$INSERT]
Senior Project Manager	[\$INSERT]
Project Manager	[\$INSERT]
Project Controller	[\$INSERT]
Draftsperson	[\$INSERT]
Project Admin	[\$INSERT]
Estimator	[\$INSERT]
Procurement Specialist	[\$INSERT]

- (e) The rates set out in Table 6-1 will remain firm until the next 30 June following the Execution Date. After the end of this period and subject to paragraph (f) below, ElectraNet may increase the rates set out in Table 6-1 annually by providing notice to the Customer. The new rates will apply immediately upon the relevant Notice being provided to the Customer.
- (f) The rates in Table 6-1 may not be increased by more than 10% annually.

6.2 Third party supplier, contractor and consultants

- (a) The Customer acknowledges that ElectraNet:
- (i) May from time to time need to retain third party suppliers, contractors, and consultants in connection with the Services; and
 - (ii) Has not made an allowance in the Fees and Charges for any costs incurred or which may be incurred by ElectraNet in retaining such third party suppliers, contractors, and consultants in connection with the Services (including legal costs) and such costs are to be paid by the Customer to ElectraNet as a pass-through cost.
- (b) ElectraNet will charge a project management fee of 15% on any amounts passed through to the Customer under this Item 6.2.

[END OPTION 2]

6.3 Fees and amounts payable to any Authority

The Customer acknowledges that ElectraNet has not made an allowance in the Fees and Charges for any fees and amounts payable to any Authority (including without limitation any fees and amounts payable to AEMO or AER) or paid by ElectraNet in connection with the Services and such costs are to be paid by the Customer to ElectraNet as a pass-through cost.

7. Assumptions and exclusions

7.1 Scope is subject to assumptions and exclusions

This Scope has been based upon, and is subject to, the following assumptions and exclusions.

7.2 Assumptions

ElectraNet has assumed that:

- (a) [insert];
- (b) ElectraNet will not be required to provide any Services other than those expressly set out
- (c) the regulatory fees payable by ElectraNet in connection with the Services will not exceed those set out in Table 6-2 [DELETE FOR TIME AND MATERIALS CONTRACTS];
- (d) all information provided by, or on behalf of, the Customer to ElectraNet in connection with the Project and the Services is correct and complete.

7.3 Exclusions

The following are excluded from the Scope of the Services to be provided by ElectraNet:

- (a) [insert];
- (b) anything not expressly included in the Scope of Services.

Part 3 – Execution

Executed as an agreement.

ElectraNet

Signed for and on behalf of **ElectraNet Pty Limited** ACN 094 482 416 by its authorised representative in the presence of:

Signature of witness

Name (please print)

Signature of authorised representative

Name (please print)

Position held

The Customer

Executed by **[INSERT]** ACN **[INSERT]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Name (please print)

Signature of director/secretary

Name (please print)