

Transmission Connection Agreement – Generator and Battery

Title	Transmission Connection Agreement – Generator and Battery
Version	Version 4 (published on 28 September 2022)
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 requires ElectraNet and each <i>Transmission Network User (TNU)</i> to enter into a transmission <i>connection agreement (TCA)</i> containing the terms and conditions upon which the TNU’s <i>facility</i> will be <i>connected</i> into the South Australian <i>transmission network</i> (including those terms and conditions set out in Part A of schedule 5.6 of the NER).</p> <p>This TCA may be used for the <i>connection</i> of generation and/or battery facilities into the South Australian <i>transmission network</i>.</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



Transmission Connection Agreement

ElectraNet Pty Limited (**ElectraNet**)

and

[INSERT] (**TNU**)

[INSERT] Project

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Date

Parties

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

TNU [INSERT] ACN [INSERT] of [INSERT]

Background

- A The TNU has submitted an *application to connect* to ElectraNet, requesting ElectraNet to make an offer to *connect* the Facility to the Transmission System and for ElectraNet to provide the Services to the TNU.
- B In order to *connect* the Facility to the Transmission System and provide the Services, it will first be necessary to undertake the Connection Work.
- C This Agreement sets out the terms on which the Connection Work will be undertaken and the Services will be provided.

The Parties agree as follows.

PART 1 - DEFINITIONS, INTERPRETATION AND COMMENCEMENT

1. Definitions and interpretation

1.1 Defined terms

In this Agreement, unless the context otherwise requires:

Acceptable Credit Rating means:

- (a) a credit rating of BBB+ or higher from Standard and Poor's (or an equivalent rating from another recognised credit rating agency acceptable to ElectraNet); or
- (b) such other alternative credit rating or requirement as may be acceptable to ElectraNet (in its absolute discretion).

Affected Party has the meaning set out in clause 26.1(a).

Agreed Capability means, in relation to the Entry Point, the maximum capability in MVA:

- (a) to export electricity from the Facility into ElectraNet's *transmission network* at the Entry Point as set out in Item 3 of Schedule 3; or
- (b) to import electricity from ElectraNet's *transmission network* at the Entry Point as set out in Item 3 of Schedule 3.

Applicable Event of Force Majeure has the meaning set out in clause 26.1(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 TNU (or both) from time to time; or
- (b) relate to the Transmission System, the Connection Assets, the Facility, the Connection Work or the provision or receipt of any of the Services.

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:

- (a) any Third Party IUSA Provider is an Associate of the TNU (and not an Associate of ElectraNet);
- (b) any Third Party DCA Provider is an Associate of the TNU (and not an Associate of ElectraNet); and
- (c) any Third Party DNA Provider is an Associate of the TNU (and not an Associate of ElectraNet),

and for the avoidance of doubt, ElectraNet is not an Associate of the TNU.

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 Period means:

- (a) where clause 21.1(a) applies, each calendar month (whether whole or part) commencing on the day following the Sunset Date to the day preceding the First Billing Period (each a **Sunset Billing Period**);
- (b) the period from the Date of Construction Completion to the end of the calendar month in which the Date of Construction Completion occurred (**First Billing Period**);
- (c) the period from the first day of the month preceding the Expiry Date or the Termination Date to the Expiry Date or the Termination Date (**Last Billing Period**); and
- (d) each calendar month after the end of the First Billing Period up until the beginning of the Last Billing Period.

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

Boundary Point means, in respect of a DNA, the *boundary point* specified in the [Scope of Works].

Capacity means, at any time, the actual *power transfer capability* of ElectraNet's *transmission network* to deliver electrical power to, or receive electrical power at, the Transmission Network Connection Point as determined by AEMO or ElectraNet (as the case may be) in accordance with the requirements of the NER and after taking into account (among other things):

- (a) the actual state or condition of ElectraNet's *transmission network* at that time;
- (b) any variation in the *loading level* of ElectraNet's *transmission network* since the Execution Date as notified by ElectraNet to AEMO from time to time;
- (c) any *augmentations, extensions, additions or modifications* made to ElectraNet's *transmission network* (including the Network Assets) since the Execution Date to accommodate:
 - (i) the *connection* of additional *Transmission Network Users' facilities* to ElectraNet's *transmission network* (including, in particular, Subsequent TNU Facilities); or
 - (ii) any variations in the *loading level*; and
- (d) the rating of ElectraNet's *transmission elements* as notified by ElectraNet to AEMO from time to time.

Capital Charge means the annual recovery of expenditure costs, financing costs and allowance for risk and return on investment as identified in Item 2 of Schedule 1.

Change Event means:

- (a) any event, circumstance, act or omission (or combination of them) beyond ElectraNet's reasonable control, including:
 - (i) where any assumption referred to in the Scope of Works changes or is determined to be incorrect or inaccurate;
 - (ii) where a Latent Condition is encountered in the performance of the ElectraNet Connection Work;
 - (iii) where an Energisation Precondition is not satisfied by the Date for Construction Completion or the Date for Practical Completion;
 - (iv) any delay in the completion of the Connection Work to the extent the delay was caused by an event beyond ElectraNet's reasonable control;
 - (v) any variation to the ElectraNet Connection Work to the extent the variation was requested by the TNU or caused by a variation to the TNU Connection Work or an event beyond ElectraNet's reasonable control (including as agreed under clause 4.2);
 - (vi) any variation to the TNU Connection Work (including as agreed under clause 4.2);
 - (vii) any failure by the TNU to comply with its obligations under Applicable Law, the Technical Obligations or the ElectraNet Standards;
 - (viii) any manufacturing defect in any plant or equipment incorporated into the ElectraNet Assets to the extent the manufacturing defect was beyond ElectraNet's reasonable control;

- (ix) an event described under clause 10.2;
- (x) an event described under clause 14.6(d);
- (xi) where the TNU directs ElectraNet to procure and hold any Critical Spare Parts pursuant to clause 15.6(a);
- (xii) where there is any adverse impact to the *Distribution Network Service Provider's network* as a result of the Facility's *connection* to the *transmission network*;
- (xiii) any failure of the Third Party IUSA to be designed or constructed in accordance with the Functional Specifications or the Detailed Design;
- (xiv) any failure of the Third Party DNA to be designed or constructed in accordance with the Functional Specifications or the Detailed Design;
- (xv) any failure by a party (other than ElectraNet) to comply with its obligations under a Project Document;
- (xvi) without limiting paragraph (xiv), the Third Party IUSA Provider fails to comply with the terms of the IUSA Interface Works Agreement or IUSA Network Operating Agreement or pay any money to ElectraNet when due and payable in accordance with the terms of the IUSA Interface Works Agreement or IUSA Network Operating Agreement;
- (xvii) without limiting paragraph (xiv), the Third Party DNA Provider fails to comply with the terms of the DNA Interface Works Agreement or DNA Network Operating Agreement or pay any money to ElectraNet when due and payable in accordance with the terms of the DNA Interface Works Agreement or DNA Network Operating Agreement;
- (xviii) any delay caused by a failure of the commissioning quality management plan (known as the "CQMP") being agreed with the Third Party IUSA Provider in accordance with the IUSA Interface Works Agreement;
- (xix) delay caused by a failure of the commissioning quality management plan (known as the "CQMP") being agreed with the Third Party DNA Provider in accordance with the DNA Interface Works Agreement;
- (xx) where the Third Party IUSA Provider's work under the IUSA Interface Works Agreement or the Third Party DCA Provider's work in respect of the DCA or the Third Party DNA Provider's work under the DNA Interface Works Agreement is not ready for commissioning when the ElectraNet Connection Work has reached that stage;
- (xxi) a Project Document (other than this Agreement) is terminated as a result of a breach of that Project Document by a party other than ElectraNet or a "Solvency Default" (as defined under that Project Document) in relation to a party other than ElectraNet;
- (xxii) ElectraNet receives an invoice from AEMO for AEMO reviewing or considering the *performance standards* relating to the Facility or undertaking other activities relating to the Facility and such costs are not recoverable by ElectraNet under the Preliminary Works Agreement;
- (xxiii) AEMO requires additional *protection systems* or *control systems* to be designed and constructed by ElectraNet after the Execution Date; or

- (xxiv) the occurrence of any event which is determined by the *AER* under the Pricing Rules to be a “pass through event” for the purposes of amending the *revenue cap* applying to *prescribed transmission services* provided by ElectraNet during a *regulatory control period*; and
 - (xxv) any amounts becoming payable by the TNU to ElectraNet under clause 27.7; and
- (b) where ElectraNet exercises its option under:
- (i) the IUSA Network Operating Agreement or IUSA Interface Works Agreement to purchase the Third Party IUSA and any associated assets; or
 - (ii) the DNA Network Operating Agreement or DNA Interface Works Agreement to purchase the Third Party DNA and any associated assets.

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 in Taxes Event means:

- (a) a change in (or a change in the application or official interpretation of) a Relevant Tax or the way in which a Relevant Tax is calculated;
- (b) the removal of a Relevant Tax; or
- (c) the imposition of a Relevant Tax,

after the Execution Date to the extent that the change, removal or imposition directly or indirectly applies to the performance of the ElectraNet Connection Work or provision of any of the Services by ElectraNet or to goods or services supplied to ElectraNet in respect of the provision of any of the Services.

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).

Charge means any one or more of the Entry Charge, the Metering Charge, any applicable Prescribed Charge and the Capital Charge.

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 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.

Codes of Practice means any 'approved code of practice' as defined in the *Work Health and Safety Act 2012* (SA).

Commencement Date means, subject to clause 2.5(f)(iii), the date on which ElectraNet provides a Notice to the TNU in accordance with clause 2.4 confirming that all of the Preconditions have been satisfied or waived in accordance with clause 2.3(a).

Communication Assets means the assets described as such in the Scope of Works and includes any assets which are installed during the Term in place of any of those assets and any refurbishment of or additions to those assets during the Term.

Compensable Amount means the amount the TNU is required to pay ElectraNet or ElectraNet is required to pay the TNU (as the case may be), as determined in accordance with clause 22.2.

Compensable Amount Direct Payment Limit means the amount set out in Item 11 of Schedule 1.

Compensable Event has the meaning set out in clause 22.1(a).

Competent Contractor means an experienced and competent design and construction contractor of the highest skill and quality, with particular experience in the electricity transmission industry in Australia.

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 Agreement.

Connection Assets means the Network Assets, the Communication Assets and the ElectraNet DCA. For the avoidance of doubt, a reference to Connection Assets does not include any Third Party DCA.

Connection Point means the *connection point* for the Facility referred to in the Performance Standards for the Facility. Unless specified otherwise in the Scope of Works, the Connection Point is the same as the Transmission Network Connection Point.

Connection Work means the ElectraNet Connection Work and the TNU Connection Work.

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

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.

Construction Completion means in relation to the ElectraNet Connection Work, that stage in the ElectraNet Connection Work when the Construction Completion Criteria have been satisfied, except for Minor Outstanding Items.

Construction Completion Criteria are set out in the Scope of Works.

Consultant's Fees means all costs incurred by ElectraNet in relation to the engagement of any consultants, and the provision of any services by those consultants, in relation to the performance of ElectraNet Connection Work and the performance of the Services but does not include Sub-Contractor's Costs.

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 Agreement.

Contract Year means:

- (a) the period from 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 the Termination Date to the Expiry Date or the Termination Date (**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.

Corporate Guarantee has the meaning set out in clause 20.1(b)(ii).

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

CPI means the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) published by the Australian Bureau of Statistics or, if there is any suspension or discontinuance of that CPI or if its method of calculation is materially altered, an index which reflects movements in the cost of living in Australia as substituted by ElectraNet.

Critical Spare Parts has the meaning set out in clause 15.6(a).

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.

Date for Construction Completion means the later of:

- (a) the date on which the TNU first serves a Notice on ElectraNet under clause 3.10; and
- (b) the date specified in Item 1 of Schedule 2,

or where the Date for Construction Completion has been extended in accordance with clause 5.3 or clause 31, the date resulting from that extension.

Date of Construction Completion means the date on which Construction Completion is achieved.

Date for Practical Completion means the date which is [20 Business Days] after the later to occur of:

- (a) the Date of Construction Completion; and
- (b) the date upon which ElectraNet receives a Notice from the TNU under clause 3.10,

or where the Date for Practical Completion has been extended in accordance with clause 5.3 or clause 31, the date resulting from that extension.

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

DCA means the *dedicated connection asset* used to *connect* the Facility (through the IUSA and, if applicable, the DNA) to ElectraNet's *transmission network*, including any Third Party DCA if applicable.

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

Defect means any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or defect in the ElectraNet Connection Work or any part of the ElectraNet Connection Work which is not in accordance with the requirements of this Agreement.

Delay Period has the meaning set out in clause 5.1(a).

Detailed Design means, where a Third Party IUSA is used to transfer electricity from the Facility to ElectraNet's *transmission network*, the detailed design for the Third Party IUSA containing each of the items listed in the second row of the table in rule 5.2A.4(a) (*Detailed design for IUSA*) of the NER.

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 TNU or relates directly or indirectly to the Services or the design, construction, operation or maintenance of the Transmission System, the Connection Assets or the Facility.

Dispose means assign, novate, transfer, lease, sub-lease, licence or otherwise dispose of 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 33.2.

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 Agreement or its performance.

Disputed Amount has the meaning set out in clause 23.3(a).

DNA means the *designated network asset* between the Boundary Point and the Connection Point that forms part of ElectraNet's *transmission network* and are used to *connect* the Facility (through the DCA, if applicable).

DNA Interface Works Agreement means, where Third Party DNA forms part of ElectraNet's *transmission network*, the agreement so entitled between ElectraNet and the Third Party DNA Provider which is not the Transmission Network User.

DNA Network Operating Agreement means, where Third Party DNA forms part of ElectraNet's *transmission network*, the agreement between ElectraNet and the Third Party DNA Provider for the access, operation, maintenance and control of the Third Party DNA by ElectraNet following the Date of Practical Completion.

Early Termination Amount means the amount determined pursuant to Item 12 of Schedule 1.

Easement means any easement or option to take an easement granted in favour of ElectraNet by the TNU or any Land Owner over the Land or a portion of the Land on which the Connection Assets are located or to be located.

Easement Costs means all costs incurred by ElectraNet or its Associates in relation to any Easement, which costs will be determined in accordance with Item 6 of Schedule 1.

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

ElectraNet Assets means the Connection Assets excluding any Third Party IUSA and Third Party DNA. For the avoidance of doubt, a reference to ElectraNet Assets does not include any Third Party DCA.

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

ElectraNet Connection Work means the Work described as the 'ElectraNet Connection Work' in the Scope of Works and includes any variations or additions to that work in accordance with this Agreement.

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 DCA means the *dedicated connection assets* identified in the Scope of Works used to *connect* the Facility to ElectraNet's *transmission network* which are to be owned and operated by ElectraNet.

ElectraNet DNA means the DNA identified in the Scope of Works used to *connect* the Facility to ElectraNet's *transmission network* which is to be owned and operated by ElectraNet.

ElectraNet DNA Services means the DNA services to be provided by ElectraNet (if any) as set out in Item [7] of Schedule 3.

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 Associate of the persons in paragraphs (a) and (b) of this definition.

ElectraNet Liability Limits has the meaning set out in clause 29.1(a).

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 Standards means all standards, guidelines and policies of ElectraNet which apply to all *Network Users* and are provided or published by ElectraNet from time to time, including without limitation, the "ElectraNet Switching Manual" and the "State Industry Switching Manual".

ElectraNet's Costs means the amount determined from time to time in accordance with Item 4 of Schedule 1.

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

Emergency means the actual or imminent occurrence of an event which in any way poses or has the potential to pose a threat to *power system security* or the safety of persons, or may lead to damage to the Transmission Network, the Connection Assets, the Facility or any other equipment or property.

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).

Energisation Precondition means each *energisation* precondition set out in clause 9.4.

Entry Charge means the amount determined in accordance with Item 2 of Schedule 1, as adjusted in accordance with this Agreement.

Entry Point means the point of interface between:

- (a) the Connection Assets and the Facility; or
- (b) if Third Party DCA are used to *connect* the Facility to ElectraNet's *transmission network*, the Connection Assets and the Third Party DCA,

as may be further described in the Scope of Works.

Entry Services has the meaning set out in Item 2 of Schedule 3.

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 Connection Assets occurring at any time not attributable to ElectraNet's:
 - (i) negligence; or
 - (ii) breach of its obligations under this Agreement;

- (f) where ElectraNet is the Affected Party, a failure by a Third Party DCA Provider, Third Party IUSA Provider or Third Party DNA Provider to comply with any obligation contained in any Project Document;
- (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 Agreement is signed by the last Party to do so.

Expiry Date means the date specified in Item 1 of Schedule 3.

Facility means the TNU's *facility* and related equipment and assets described in the Scope of Works proposed to be constructed, owned and operated by the TNU and *connected* directly or indirectly to the Transmission System.

Financial Cure Period has the meaning set out in clause 25.1(b)(i).

Financial Default has the meaning set out in clause 25.1(b).

FIRB Act means the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and any regulations, rules or policies which are issued pursuant to that statute.

FIRB Approval means a written notice or notices under the FIRB Act provided to ElectraNet by or on behalf of the Treasurer of the Commonwealth of Australia confirming that they do not have any objections to the relevant transactions, which notice or notices are to be provided on an unconditional basis or on such conditions as may be reasonably acceptable to ElectraNet.

First Billing Period has the meaning set out in paragraph (b) of the definition of 'Billing Period' in this clause 1.1.

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 26.1(b).

Freehold Transfer means any freehold transfer of land in favour of ElectraNet by the TNU or any Land Owner over the land or a portion of the land on which the Connection Assets are located or to be located.

Freehold Transfer Costs means all costs incurred by ElectraNet or its Associates in relation to any Freehold Transfer, which costs will be determined in accordance with Item 6 of Schedule 1.

Functional Specifications means, where Third Party IUSA are used to *connect* the Facility to ElectraNet's *transmission network*, or Third Party DNA is to form part of the ElectraNet *transmission network*, the functional specifications for the Third Party IUSA or Third Party DNA (as applicable) set out in Annexure B (being the functional specifications prepared by ElectraNet in relation to the Third Party IUSA or Third Party DNA 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 23.6(b)(i).

Independent Expert has the meaning set out in clause 31.3(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.

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 *identified user shared assets* used to *connect* the Facility to ElectraNet's *transmission network*, including via a DNA, as specified in the Scope of Works, including any Third Party IUSA and any assets which are installed during the Term in place of any of those assets and any refurbishment of or additions to those assets during the Term.

IUSA Interface Works Agreement means, where Third Party IUSA are used to *connect* the Facility to ElectraNet's *transmission network*, the agreement so entitled between ElectraNet and a Third Party IUSA Provider which is not the Transmission Network User.

IUSA Network Operating Agreement means, where Third Party IUSA are used to *connect* the Facility to ElectraNet's *transmission network*, the agreement between ElectraNet and the Third Party IUSA Provider for the access, operation, maintenance and control of the Third Party IUSA by ElectraNet following the Date of Practical Completion.

Land means the land described in Item 4 of Schedule 2, being all land on which the ElectraNet Connection Work is to be completed and the Connection Assets are to be located.

Land and Equipment Access Rules means the Land and Equipment Access Rules in Schedule 4.

Land Owner means the owner of any land over or in relation to which a Lease, Freehold Transfer, Licence or Easement is required by ElectraNet for the purposes of undertaking any part of the ElectraNet Connection Work, performing the Services or locating the Connection Assets.

Last Billing Period has the meaning set out in paragraph (c) of the definition of 'Billing Period' in this clause 1.1.

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

Latent Conditions means any natural or artificial conditions around, on or under the surface of the Land including rocks, contamination, artefacts, collapsing soil, ground water, underground cables or other services.

Lease means any lease or option to take a lease granted in favour of ElectraNet by the TNU or any Land Owner over the land or a portion of the land on which the Connection Assets are located or to be located.

Lease Costs means all costs incurred by ElectraNet or its Associates in relation to any Lease, which costs will be determined in accordance with Item 6 of Schedule 1.

Licences means any licence (including any access or construction laydown licence) granted in favour of ElectraNet by the TNU or any Land Owner over any land which is required for the purpose of ElectraNet completing the ElectraNet Connection Work.

Licence Costs means all costs incurred by ElectraNet or its Associates in relation to any Licence, which costs will be determined in accordance with Item 6 of Schedule 1.

Liquidated Damages has the meaning set out in clause 5.1(b).

Maximum Permitted Output means, in relation to the Facility, the amount in MW set out in Item 3 of Schedule 3.

Metering Charge means the amount specified in Item 8 of Schedule 1, as adjusted in accordance with this Agreement.

Metering Services means the services specified in Item 4 of Schedule 3.

Minor Outstanding Item means in relation to the ElectraNet Connection Work:

- (a) any Defect that does not prevent Practical Completion from being achieved; or
- (b) any work that the Parties agree is a Minor Outstanding Item.

Mutual Hold Harmless Deed has the meaning set out in clause 30(b).

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)*.

NER Dispute means any Dispute between the Parties under or in relation to this Agreement:

- (a) with respect to the application of the NER; or
- (b) in relation to which the dispute resolution regime provided for in rule 8.2 of the NER otherwise applies.

Network Assets means the assets described as such in the Scope of Works and includes any assets which are installed during the Term in place of any of those assets and any refurbishment of or additions to those assets during the Term and includes the IUSA and DNA, but excludes the Communication Assets and DCA.

Network Event means a change in the way or rate at which a charge for the use of an interstate *network* or *interconnector* is calculated, or the removal or imposition of such a charge after the Execution Date.

Non-Compliance has the meaning set out in clause 14.5(a).

Non-financial Obligation means an obligation under this Agreement other than an obligation to pay or cause to be paid an amount of money or to provide an Undertaking or Corporate Guarantee under clause 20.

Notice has the meaning set out in clause 34.1 and **Notify** has a corresponding meaning.

Operating Protocol means the operating protocol in the form set out in Annexure C.

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

Performance Default has the meaning set out in clause 25.1(c).

Performance Default Cure Date has the meaning set out in clause 25.1(c)(i).

Performance Standard means the *performance standards* registered with AEMO from time to time for the Facility (which initial performance standards are set out in full in Item 2.3 of Schedule 5).

Planned Work means all Work in relation to the Facility or the Transmission System (including the Connection Assets) other than Unplanned Work.

Prescribed Charge means any *Participant* fee or charge payable by the TNU from time to time in respect of any *prescribed common transmission services, prescribed TUOS services* or generator access services (or similar) as determined by ElectraNet using prices and calculation procedures fixed by ElectraNet from time to time in accordance with the requirements of the Pricing Rules or if those Pricing Rules cease to directly regulate the amount that can be charged, the fair and reasonable charge determined by ElectraNet.

Practical Completion means in relation to the ElectraNet Connection Work, that stage in the ElectraNet Connection Work when the Practical Completion Criteria have been satisfied, except for Minor Outstanding Items.

Practical Completion Criteria are set out in the Scope of Works.

Preconditions means the preconditions set out in Item 3 of Schedule 2.

Preliminary Work means anything done by ElectraNet or its Associates before the Commencement Date pursuant to the terms of the Preliminary Works Agreement, including all work related to and anything else done by ElectraNet or its Associates in relation to the processing of the TNU's *application to connect*, the preparation of ElectraNet's offer to *connect*, the satisfaction of all Preconditions and the preparation, negotiation, approval and execution of the Preliminary Works Agreement, this Agreement, the Project Documents, the Scope of Works, the Operating Protocol, any Easements, Leases, Freehold Transfer or Licences and any other document which is required to be prepared under the terms of this Agreement or any of the documents listed above.

Preliminary Works Agreement means the agreement between the Parties that is described as such in Item 1 of Schedule 1.

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.

Program of Works means the indicative program for the performance of the ElectraNet Connection Work set out in the Scope of Works (as updated by ElectraNet from time to time in accordance with clause 2.5, 3.5 or 5.3).

Project Document means:

- (a) this Agreement (including the Operating Protocol);
- (b) if the Network Assets include a Third Party IUSA:
 - (i) the IUSA Network Operating Agreement; and
 - (ii) the IUSA Interface Works Agreement;
- (c) if the Network Assets include a Third Party DNA:
 - (i) the DNA Network Operating Agreement; and
 - (ii) the DNA Interface Works Agreement;

- (d) if Third Party DCA are used to *connect* the Facility to the Network Assets, the Third Party DCA Transmission Connection Agreement (including any operating protocol between ElectraNet and the Third Party DCA Provider); and
- (e) any other document which the Parties agree in writing is a Project Document.

Project Information has the meaning set out in clause 40.1(a).

Project Management Fee has the meaning set out in Item 7 of Schedule 1.

Qualifying Event has the meaning set out in clause 22.1(a).

Recording Party has the meaning set out in clause 38.1.

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.

Related Company has the meaning set out in clause 30(e).

Relevant Tax means any tax imposed by or payable directly or indirectly to any Authority (including a goods and services tax), but excluding any:

- (a) income tax (or State equivalent income tax), fringe benefits tax or capital gains tax;
- (b) payroll tax;
- (c) stamp duty, financial institutions duty, bank accounts debits tax or similar taxes and duties;
- (d) penalties and interest for late payments relating to any tax; or
- (e) any tax that replaces any of the taxes referred to in paragraphs (a) to (d) of this definition.

Representing Party has the meaning set out in clause 41.1.

Required Date means, in respect of each Precondition, the corresponding date by which that Precondition must be satisfied as set out in Item 3 of 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*.

SCADA System means supervisory control and data acquisition system.

Scope of Works means the document described as such and set out in Annexure A to this Agreement.

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

Services means any of the Entry Services, the Metering Services, ElectraNet DNA Services or other services agreed by the Parties in writing from time to time, and **Service** means any one of them.

Service Standards Event means, a decision made by an Authority or any amendment to an Applicable Law after the Execution Date that has the effect of:

- (a) imposing a set of minimum standards on ElectraNet in respect of the ElectraNet Connection Work or the Services which is different from the set of minimum standards

imposed on ElectraNet in respect of the ElectraNet Connection Work or the Services as at the Execution Date;

- (b) requiring ElectraNet to undertake any activity as part of the ElectraNet Connection Work or the Services in addition to those activities required to be undertaken as part of the ElectraNet Connection Work or the Services as at the Execution Date; or
- (c) substantially varying the manner in which ElectraNet is required to undertake any activity forming part of the ElectraNet Connection Work or the Services as at the Execution Date.

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.

Sub-Contractor's Costs means all amounts incurred by ElectraNet and payable to its contractors or third party suppliers in relation to the carrying out of the ElectraNet Connection Work and the performance of the Services.

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) which is *connected* or is proposed to be *connected* to the Network Assets after the Execution Date.

Sunset Billing Period has the meaning set out in paragraph (a) of the definition of 'Billing Period' in this clause 1.1.

Sunset Date means [insert hard date which would be the original Date for Construction Completion] or such other date as agreed in writing between the Parties.

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*).

Target Outage Window means the targeted window detailed in Item 5 of Schedule 2 for any *outages* required in order to complete the Connection Work as extended or amended in accordance with clause 3.9.

Technical Obligations means in relation to:

- (a) ElectraNet and the Transmission System, the requirements set out in Schedules S5.1a and S5.1 of the NER from time to time as those requirements are fixed or modified by any *derogations* in force under the NER or by Item 1 of Schedule 5;
- (b) the TNU and the Facility, the Performance Standards and the other standards and requirements set out in or determined in accordance with Item 2 of Schedule 5; and
- (c) a Party, any other requirements or standards (in addition to those referred to in paragraphs (a) and (b) above) set out in, or published by any Authority under, any Applicable Laws (including, in particular, Schedule S5.1a of the NER) that relate to the performance or operation of, or a service provided by, that Party's *facilities* (as those requirements are modified by any derogations in force under that Applicable Law at that time or the provisions of this Agreement).

Term has the meaning set out in clause 2.8.

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

Third Party Assets means:

- (a) the Third Party IUSA;
- (b) the Third Party DCA; and
- (c) the Third Party DNA

Third Party DCA means any *dedicated connection asset* constructed and owned by a party other than ElectraNet or the TNU used to transfer electricity between the Facility and the Network Assets. If applicable, such assets are detailed in the Scope of Works.

Third Party DCA Provider means the third party (other than ElectraNet or the TNU) engaged by the TNU to own any Third Party DCA.

Third Party DCA Transmission Connection Agreement means the connection agreement between ElectraNet and the Third Party DCA Provider for the provision of *connection services* in relation to any Third Party DCA by ElectraNet.

Third Party DNA means the DNA constructed and owned by a party other than ElectraNet used to transfer electricity between the Facility (via the DCA, if applicable) and the Boundary Point, as detailed in the Scope of Works.

Third Party DNA Provider means the third party (other than ElectraNet) engaged by the TNU to own any Third Party DNA.

Third Party DNA Work means those activities and items of work performed by a Third Party DNA Provider which is described as 'Third Party DNA Work' in the Scope of Works and which forms part of the TNU Connection Work.

Third Party IUSA means any *contestable IUSA components* constructed and owned by a party other than ElectraNet used to transfer electricity between the Facility and ElectraNet's *transmission network*. If applicable, such assets are detailed in the Scope of Works.

Third Party IUSA Provider means the third party (other than ElectraNet) engaged by the TNU to own any Third Party IUSA.

Third Party IUSA Work means those activities and items of work performed by a Third Party IUSA Provider which is described as 'Third Party IUSA Work' in the Scope of Works and which forms part of the TNU Connection Work.

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

TNU means the entity stated as the "TNU" under the "Parties" section on page 1 of this Agreement.

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

TNU Connection Work means those activities and items of work described as the 'TNU Connection Work' in the Scope of Works. For the purposes of this Agreement, TNU Connection Work includes any Third Party IUSA Work, Third Party DNA Work and any work in relation to the Third Party DCA.

TNU Group means:

- (a) the TNU and each of its Related Bodies Corporate and Related Companies;
- (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.

TNU Liability Limits has the meaning set out in clause 29.2(a).

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:

- (a) if there is a DNA, the point of interface between the DNA and the DCA; or
- (b) if there is no DNA, the point of interface between the IUSA and the DCA,

as described in the Scope of Works.

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

Undertaking means an unconditional and irrevocable performance undertaking provided as a Precondition or otherwise in accordance with clause 20 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;
- (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; and
- (d) otherwise complies with the requirements of clause 20.

Undertaking Amount means the amount of security to be provided by the TNU to ElectraNet as set out in Item 10 of Schedule 1 for an Undertaking Period.

Undertaking Period means, each period set out in Item 10 of Schedule 1 for which the TNU is required to provide security to ElectraNet in accordance with clause 20.

Undertaking Provision Date means the date by which the TNU is required to provide security for each Undertaking Period as set out in Item 10 of Schedule 1 or as otherwise required by clause 20.

Unplanned Work means any Work in relation to a Party's *facilities* which that Party considers should be undertaken in order to prevent or deal with an Emergency or as a result of an Emergency.

Variation Request has the meaning set out in clause 4.3(a).

WHS Legislation means the *Work Health and Safety Act 2012 (SA)*, *Work Health and Safety Regulation 2012 (SA)* and any approved Codes of Practice, as amended from time to time.

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.

Work means:

- (a) in respect of ElectraNet, the installation, construction, commissioning, *augmentation*, *extension*, removal, inspection, testing, undertaking of repairs and undertaking of maintenance of the Transmission System, including any work that is undertaken by ElectraNet in order to *connect* another *Transmission Network User's facility* (including a Subsequent TNU's Facility) to the Transmission System after the Execution Date; and
- (b) in respect of the TNU, the installation, construction, commissioning, *augmentation*, *extension*, removal, inspection, testing, undertaking of repairs and undertaking of maintenance of the Facility or any of the other *facilities* of the TNU.

1.2 NER definitions and references

In this Agreement, unless the context otherwise requires:

- (a) words appearing in italics have the meaning assigned to them from time to time by the 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 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) 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 Agreement 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 Agreement;
- (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 Agreement;
- (i) the recitals, annexures and schedules form part of this Agreement;
- (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 Agreement or any part of it; and
- (o) a reference to “dollars”, “\$”, “AUD” or “A\$” is to the lawful currency of Australia.

1.4 Relationship between TNU and NER

- (a) The TNU must comply with its obligations as a *Registered Participant* under the NER.
- (b) The TNU must, where it is not a *Registered Participant*, comply with the NER as if it were a *Registered Participant*, for the purposes of this Agreement.
- (c) To the extent that the TNU takes electricity from the *Transmission Network* at the Transmission Network Connection Point, the TNU must comply with the relevant

obligations imposed on a *Customer* under the NER whether or not the TNU is registered as a *Customer* or a *Generator*.

- (d) During any period in which the TNU is not a *Registered Participant*, any provisions of the NER (other than Chapter 3) that set out:
- (i) rights or obligations of a *Customer* or a *Generator* as against a *Network Service Provider*,
 - (ii) rights of a *Network Service Provider* as against a *Customer* or a *Generator*, or
 - (iii) technical or operational specifications that are relevant to the Facility,

are incorporated into this Agreement and any reference to the application of the NER to the TNU, or compliance by the TNU with the NER in this Agreement will be taken to be a reference to the application of, or compliance with, those provisions of the NER that have been incorporated into this Agreement as referred to in this clause 1.4(d).

1.5 References to Third Party IUSA, Third Party DNA and Third Party DCA

In this Agreement, references to:

- (a) Third Party IUSA, Third Party IUSA Work, Third Party IUSA Provider, IUSA Network Operating Agreement and IUSA Interface Works Agreement will only apply where any IUSA used for the *connection* are to be owned by a party other than ElectraNet;
- (b) Third Party DNA, Third Party DNA Work, Third Party DNA Provider, DNA Network Operating Agreement and DNA Interface Works Agreement will only apply where any DNA used for the *connection* are to be owned by a party other than ElectraNet; and
- (c) Third Party DCA, Third Party DCA Provider and Third Party DCA Transmission Connection Agreement will only apply where any DCA used for the *connection* are to be owned by a party other than ElectraNet or the TNU.

2. Commencement and Term

2.1 Preconditions to commencement

Other than the clauses referred to in clause 2.6, this Agreement 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 Item 3 of Schedule 2.
- (b) If ElectraNet waives a Precondition applying to the TNU 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 TNU 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 Item 3 of 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 Agreement 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 a Precondition is satisfied or waived in accordance with clause 2.3(a), after the end of the relevant period referred to in clause 2.5(b), but before either Party serves a Notice under clause 2.5(c), then the Parties will cease to have the right under clause 2.5(c) to terminate this Agreement for failure to satisfy that Precondition.
- (e) If:
 - (i) a Precondition has not been satisfied by the relevant Required Date; and
 - (ii) the delay in satisfying the Precondition by the relevant Required Date causes, or will cause, an increase in the cost of performing the ElectraNet Connection Work or providing the Services (including any increase in the cost of performing the ElectraNet Connection Work or providing the Services arising out of or in connection with a change in the terms and conditions upon which ElectraNet will or is able to procure any plant, equipment or services relating to the ElectraNet Connection Work or the Services) or a delay in performing the ElectraNet Connection Work (or both),

then ElectraNet will be entitled to claim, by Notice to the TNU, an increase in the Charges and an adjustment to the Date for Construction Completion and the Program of Works in respect of such increase in cost and delay to the ElectraNet Connection Work, respectively.

- (f) If ElectraNet issues a Notice under clause 2.5(e):
 - (i) the Parties will negotiate in good faith a deed of amendment documenting the amendments to this Agreement necessary to give effect to the increase in the Charges and the adjustment to the Date for Construction Completion and the Program of Works contemplated under clause 2.5(e);
 - (ii) ElectraNet will not be required to commence the ElectraNet Connection Work until such time as the Parties have agreed and executed the deed of amendment to this Agreement contemplated under clause 2.5(f)(i); and
 - (iii) the Commencement Date will be the later of:
 - (A) the date on which ElectraNet provides a Notice to the TNU in accordance with clause 2.4 confirming that all Preconditions have been satisfied or waived in accordance with clause 2.3(a); and
 - (B) the date on which ElectraNet provides a Notice to the TNU confirming that the Parties have agreed and executed the deed of amendment to this Agreement contemplated under clause 2.5(f)(i).
- (g) If the Parties are unable to agree and execute the deed of amendment to this Agreement contemplated under clause 2.5(f)(i) within 20 Business Days of ElectraNet issuing a Notice under clause 2.5(e), then either Party may terminate this Agreement by providing a Notice to the other Party.
- (h) Subject to clause 2.5(i), if either Party terminates this Agreement under clause 2.5(c) or clause 2.5(g), neither Party will be entitled to any Claim against the other Party under, in respect of, or in connection with, this Agreement and each Party releases the other Party from any such Claims.
- (i) If either Party terminates this Agreement under clause 2.5(c) or clause 2.5(g), the TNU must pay all amounts owing to ElectraNet under the Preliminary Works Agreement.

2.6 Clauses not subject to Preconditions

Clauses 1, 2, 16, 17, 20, 25.1(a), 25.2(a), 25.2(d), 25.3, 25.4, 25.5, 25.7(e), 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39 and 40 come into full force and effect immediately on the Execution Date.

2.7 Preliminary Work

- (a) This clause 2.7 applies if the Parties entered into a Preliminary Works Agreement prior to the Commencement Date.
- (b) The Parties acknowledge and agree that, despite anything to the contrary contained in the Preliminary Works Agreement:
 - (i) the Preliminary Works Agreement will immediately terminate on the Commencement Date;
 - (ii) on and from the Commencement Date, all Preliminary Work already completed under the terms of the Preliminary Works Agreement will be taken to have been completed under the terms of this Agreement; and

- (iii) the Preliminary Work will form part of the ElectraNet Connection Work on and from the Commencement Date.

2.8 Term

Subject to clause 2.6, this Agreement commences on the Commencement Date and, subject to clause 25.7, ends on the Expiry Date, unless otherwise terminated earlier in accordance with this Agreement (the **Term**).

PART 2 - CONNECTION WORK

3. Performance of the Connection Work

3.1 ElectraNet Connection Work

- (a) ElectraNet will undertake and complete the ElectraNet Connection Work in accordance with the Scope of Works and so as to:
 - (i) enable ElectraNet to provide the Services to the TNU in accordance with the requirements of this Agreement as and from the Date of Practical Completion;
 - (ii) achieve Construction Completion of the ElectraNet Connection Work by the Date for Construction Completion;
 - (iii) achieve Practical Completion of the ElectraNet Connection Work as soon as reasonably possible after the Date of Construction Completion but in any event by no later than the Date for Practical Completion; and
 - (iv) comply in all respects with the requirements of this Agreement (including the Scope of Works).
- (b) In undertaking and completing the ElectraNet Connection Work, ElectraNet will:
 - (i) act in accordance with *good electricity industry practice*; and
 - (ii) comply with all Applicable Laws.

3.2 TNU Connection Work

The TNU must:

- (a) ensure that each component of the TNU Connection Work is completed:
 - (i) by the date set out in the Scope of Works (if any) for the completion of that component of the TNU Connection Work (or if the Scope of Works does not set out such date, before the Date for Construction Completion); and
 - (ii) in accordance with the requirements (if any) set out in the Scope of Works for that component of the TNU Connection Work;
- (b) ensure that the TNU Connection Work is performed with due care, skill and judgement and at all times act in accordance with relevant professional principles and standards (including the NER and *good electricity industry practice*); and
- (c) provide all information relating to the TNU Connection Work as reasonably requested by ElectraNet from time to time prior to the Date of Practical Completion within 5 Business Days of receiving a written request from ElectraNet for that information.

3.3 Land access

- (a) The Parties acknowledge and agree that:
 - (i) all Easement Costs and Licence Costs in respect of Easements and Licences obtained prior to the Execution Date or as a Precondition are included in the Entry Charge as at the Execution Date;
 - (ii) the Lease Costs in respect of Leases and Freehold Transfer Costs in respect of Freehold Transfers obtained prior to the Execution Date or as a Precondition are not included in the Entry Charge and the TNU must pay to ElectraNet all Lease Costs and Freehold Transfer Costs as and when they become due and payable by ElectraNet; and
 - (iii) all Lease Costs and Freehold Transfer Costs which are payable by the TNU in accordance with clause 3.3(a)(ii) may be invoiced by ElectraNet under clause 23.1 and will be payable by the TNU in accordance with clause 23.2.
- (b) If during the Term, ElectraNet reasonably requires any land access rights (including any Lease, Freehold Transfer, Licence or Easement) over land on which the Connection Assets are located or to be located in addition to any such rights obtained prior to the Execution Date or as a Precondition:
 - (i) the TNU will cooperate with ElectraNet in good faith in order to grant such rights to ElectraNet or to procure any Land Owner to grant such rights to ElectraNet;
 - (ii) the TNU must pay to ElectraNet all Easement Costs, Licence Costs, Lease Costs or Freehold Transfer Costs relating to such rights as and when they become due and payable by ElectraNet; and
 - (iii) the Easement Costs, Licence Costs, Lease Costs or Freehold Transfer Costs which are payable by the TNU in accordance with clause 3.3(b)(ii) may be invoiced by ElectraNet under clause 23.1 and will be payable by the TNU in accordance with clause 23.2.

3.4 Authorisations

Unless another Party is responsible for satisfying any of the following items as a Precondition:

- (a) the TNU will be responsible for:
 - (i) obtaining and maintaining, at its cost, all Authorisations which the TNU is required under Applicable Law to obtain or hold before the performance of the TNU Connection Work can commence and be completed; and
 - (ii) obtaining and maintaining, at its cost, all Authorisations which the TNU is required under the Applicable Laws to obtain or hold in order to operate the Facility; and
- (b) ElectraNet will be responsible for:
 - (i) obtaining and maintaining all Authorisations which ElectraNet is required under Applicable Law to obtain or hold before the performance of the ElectraNet Connection Work can commence and be completed; and
 - (ii) obtaining and maintaining during the Term all Authorisations which ElectraNet is required under Applicable Law to obtain or hold in order to provide the Services.

3.5 Program of Works

- (a) ElectraNet must update the Program of Works monthly to show progress achieved in relation to the ElectraNet Connection Work, and (where appropriate) changes to the sequence and duration of the activities of the ElectraNet Connection Work required to meet the Date for Construction Completion and the Date for Practical Completion (including the effect of any extension of time) and otherwise in accordance with the Scope of Works.
- (b) ElectraNet may depart from the Program of Works at any time, and will promptly Notify the TNU of any proposed or likely departure from the current Program of Works following a request from the TNU to do so.
- (c) Nothing in this clause 3.5 will relieve ElectraNet from its obligation to achieve Construction Completion by the Date for Construction Completion and Practical Completion by the Date for Practical Completion.

3.6 Reporting

ElectraNet will provide monthly reports to the TNU of the progress achieved in relation to the ElectraNet Connection Work.

3.7 Project meetings

- (a) The Parties must hold a project meeting monthly to review progress and future planning of the Connection Work and to:
 - (i) assist in any necessary coordination; and
 - (ii) consider any work health and safety, environmental or other issues identified by the TNU or ElectraNet.
- (b) Where applicable, the Parties will permit any Third Party IUSA Provider, Third Party DCA Provider or Third Party DNA Provider to attend the monthly project meeting in order to, among other things:
 - (i) assist in any necessary coordination; and
 - (ii) consider any work health and safety or other issues identified by those parties.

3.8 Co-ordination

- (a) The Parties agree that the implementation and undertaking of the ElectraNet Connection Work, the TNU Connection Work and various other activities relating to the development of the Facility will require:
 - (i) the co-ordination of their respective activities and responsibilities; and
 - (ii) the establishment of an effective interface between their respective Associates (including the co-ordination of program details, technical issues and safety matters).
- (b) The Parties will use their best endeavours to facilitate this co-ordination, including by each Party:
 - (i) attending open discussions with the other Party and the other Party's Associates; or
 - (ii) procuring its respective Associates to attend such open discussions with the other Party and the other Party's Associates.

- (c) Both Parties agree that they have allowed for the impact of this co-ordination within their respective programs for the performance of the ElectraNet Connection Work and the TNU Connection Work.

3.9 Target Outage Window

- (a) The Parties acknowledge and agree that the Target Outage Window is the proposed period during which all required *outages* necessary to complete the Connection Work are intended to occur and ElectraNet will use its best endeavours to book and obtain such *outages* so that they can occur during the Target Outage Window.
- (b) The Parties acknowledge and agree that if:
 - (i) ElectraNet is unable to obtain any required Authorisations to book or obtain the required *outages* during the Target Outage Window;
 - (ii) ElectraNet considers that, in order to comply with a requirement of any Applicable Law or any requirement of AEMO, it is unable to book or obtain the required *outages* during the Target Outage Window; or
 - (iii) ElectraNet considers that any aspect of the Connection Work has not been completed to the extent necessary to enable the required *outages* to occur (regardless of the cause) during the Target Outage Window in order to perform or complete any other aspect of the Connection Work (including commissioning and *energisation*):
then:
 - (iv) without limiting anything in this Agreement, ElectraNet will not be liable to the TNU or any member of the TNU Group for any Claims for Damages suffered or incurred by the TNU or any member of the TNU Group arising out of, or in connection with, the matters referred to in this clause 3.9; and
 - (v) the Parties will meet to negotiate in good faith and agree to an extension to, or an amendment of, the Target Outage Window and book a subsequent *outage* as soon as reasonably practicable within the extended or amended Target Outage Window, or if the Parties are unable to agree to an extension to, or an amendment of, the Target Outage Window within 10 Business Days following the first meeting of the Parties pursuant to this clause 3.9(b)(v), the Target Outage Window will be extended or amended as determined by ElectraNet.
- (c) Without limiting clause 3.9(b), the TNU acknowledges that *outages* to complete the Connection Work:
 - (i) must generally be booked at least 3 months in advance and may only be booked or obtained by ElectraNet during certain times of the year; and
 - (ii) are subject in all respects to Applicable Law and requisite Authorisations from AEMO.
- (d) The TNU must not:
 - (i) cause any *outage* except as permitted by this clause 3.9 or clause 15; or
 - (ii) cause the prolongation, or otherwise delay, any *outage* permitted by this clause 3.9 or clause 15.

3.10 Completion of the Facility and TNU Connection Work for commissioning

The TNU must serve a Notice on ElectraNet when the construction and commissioning of the Facility and the TNU Connection Work is at the stage where ElectraNet is able to complete the commissioning of the ElectraNet Connection Work.

4. Variations to the Connection Work

4.1 Variations to ElectraNet Connection Work

- (a) ElectraNet may vary any part of the ElectraNet Connection Work for the convenience of ElectraNet and without the consent of the TNU provided that any such variation:
 - (i) is required as a result of a Qualifying Event; or
 - (ii) will not:
 - (A) derogate from ElectraNet's obligation under clause 3.1;
 - (B) cause the TNU to make any material change, variation or modification to the Facility or the TNU Connection Work, or materially increase the time to complete the Facility or the TNU Connection Work;
 - (C) cause the TNU to be required to obtain any new Authorisations for the Facility or the TNU Connection Work or vary any of the Authorisations for the Facility or the TNU Connection Work; or
 - (D) cause the cost of the TNU Connection Work or the operation and maintenance of the Facility to materially increase beyond the costs which would have been incurred if no variation had been made.
- (b) ElectraNet will advise the TNU of any proposed variation to the ElectraNet Connection Work permitted under clause 4.1(a) prior to making that variation to the ElectraNet Connection Work.
- (c) For any variation to the ElectraNet Connection Work which is not permitted under clause 4.1(a), ElectraNet will follow the process set out in clause 4.3.

4.2 Variations to the TNU Connection Work

The TNU must not carry out any variations to the TNU Connection Work except as agreed under clause 4.3.

4.3 Variations to the Connection Work

- (a) If at any time after the Execution Date:
 - (i) ElectraNet wishes to vary any part of the ElectraNet Connection Work other than as permitted under clause 4.1(a); or
 - (ii) the TNU wishes to vary any part of the TNU Connection Work (including where a Third Party IUSA Provider or Third Party DCA Provider wishes to vary any part of its works which forms part of the TNU Connection Work),

ElectraNet or the TNU (as applicable) must submit a Notice to the other Party (**Variation Request**) setting out:
 - (iii) particulars of the proposed variation to its Connection Work;

- (iv) the effect (if any) that the Party reasonably considers that the proposed variation may have on the other Party's Connection Work; and
 - (v) any other relevant information related to the proposed variation to its Connection Work.
- (b) Each Party must promptly provide any further information reasonably requested by the other Party in relation to the Variation Request.
 - (c) Within 15 Business Days of the Variation Request being received by the other Party, the Parties must use best endeavours to agree (acting reasonably but subject to clause 4.3(d)) on the matters listed in the Variation Request.
 - (d) For the purpose of clause 4.3(c), ElectraNet is not required to agree to any proposed variations to the TNU Connection Work which:
 - (i) increases the Maximum Permitted Output or involves a change to the configuration and layout of the Facility contemplated by the Scope of Works;
 - (ii) adversely impacts other *Network Users* (including, any Subsequent TNU) or *power system security*;
 - (iii) gives rise to a need for any other *Network Users* (including any Subsequent TNU) to make any change, variation or modification to their *facilities*;
 - (iv) requires ElectraNet to obtain any additional Authorisations (whether formal or informal) or comply with any additional Applicable Laws (including in particular, any additional or modified Authorisations from *AEMO* or *ESCOSA*); or
 - (v) hinders or impedes the ability of any Subsequent TNU to *connect* a Subsequent TNU Facility to the Network Assets.
 - (e) If the proposed variation to the Connection Work is agreed between the Parties, ElectraNet will determine the Compensable Amount arising from such variation in accordance with clause 22.2 and make any further adjustments as necessary in accordance with clause 22.2(f).
 - (f) If the Parties are unable to agree to the terms of a variation to the Connection Work within the 15 Business Day period referred to in clause 4.3(c), either Party may refer any Dispute related to the proposed variation for resolution in accordance with clause 31.

5. Delay

5.1 Failure to comply by ElectraNet

- (a) In this clause 5.1, **Delay Period** means the period commencing on the day following the Date for Construction Completion and ending on the Date of Construction Completion.
- (b) If ElectraNet is unable to achieve Construction Completion by the Date for Construction Completion, then for each full day of the resulting Delay Period, ElectraNet must pay the TNU liquidated damages equal to the amount specified in Item 2 of Schedule 2 per day up to the maximum amount specified in Item 2 of Schedule 2 (**Liquidated Damages**).
- (c) Subject to clause 5.1(d), Liquidated Damages must be paid by ElectraNet to the TNU within 20 Business Days after the Date of Practical Completion.

- (d) The Parties agree that:
- (i) Liquidated Damages will be set off against any Compensable Amounts payable by the TNU to ElectraNet as the result of any Compensable Events which occur before the Date of Practical Completion (if any); or
 - (ii) if:
 - (A) no Compensable Events occur before the Date of Practical Completion; or
 - (B) the Compensable Amounts payable by the TNU to ElectraNet as a result of the Compensable Events which occurred prior to the Date of Practical Completion is less than the Liquidated Damages payable by ElectraNet,

ElectraNet will pay the Liquidated Damages or the difference between the amounts set out in clause 5.1(d)(ii)(B) (as applicable), within 20 Business Days after the Date of Practical Completion.

5.2 Sole and exclusive liability

Notwithstanding any other provision in this Agreement, the TNU agrees that ElectraNet's sole and exclusive liability for any delay in the performance of the ElectraNet Connection Work by ElectraNet (including a failure to achieve Construction Completion by the Date for Construction Completion), however that failure is caused (including negligence, breach of contract or otherwise), will be as set out in clause 5.1.

5.3 Extensions of time

- (a) If ElectraNet becomes aware of any event which is likely to cause a delay in achieving Construction Completion or Practical Completion, ElectraNet must, within 20 Business Days of becoming aware of that fact, provide a Notice to the TNU setting out the circumstances and probable effects of the potential or actual delay, including ElectraNet's best estimate of:
 - (i) the length of the likely delay; and
 - (ii) the change to the ElectraNet Connection Work, the Program of Works or the manner in which the ElectraNet Connection Work will be undertaken (as compared to the manner referred to in this Agreement, including the Scope of Works) which will result from that delay.
- (b) The Date for Construction Completion, the Date for Practical Completion or both (as applicable) may be extended by ElectraNet:
 - (i) to the extent that a delay in achieving Construction Completion, Practical Completion or both (as applicable) is caused or contributed to by a Qualifying Event; or
 - (ii) if agreed in writing by the TNU acting reasonably.
- (c) If clause 5.3(b) applies, ElectraNet will provide the TNU with a Notice setting out the extension to the Date for Construction Completion, the Date for Practical Completion or both (as applicable) based on the length of the likely delay set out in the Notice provided under clause 5.3(a).
- (d) Without limiting clause 5.3(c), if an Applicable Event of Force Majeure delays the ability of ElectraNet to achieve Construction Completion or Practical Completion, the Date for Construction Completion or the Date for Practical Completion (as applicable) will, at a

minimum, be automatically extended for the duration that the Applicable Event of Force Majeure delays ElectraNet from achieving Construction Completion or Practical Completion.

6. Third Party IUSA Work and Third Party DNA Work

6.1 Application

This clause 6 only applies where Third Party IUSA and/or Third Party DNA are used or to be used to *connect* the Facility to the *transmission network*.

6.2 Third Party IUSA Work and Third Party DNA Work

The TNU must ensure that the Third Party IUSA and Third Party DNA are compatible with the existing Transmission System, and, accordingly, the TNU must ensure that the Third Party IUSA Work and Third Party DNA Work is carried out:

- (a) **(due care)**: with due care, skill and judgement;
- (b) **(Applicable Law)**: in accordance with Applicable Law;
- (c) **(fit for purpose)**: in a manner so that when the Third Party IUSA and Third Party DNA is completed, the asset is fit for purpose and free from defects;
- (d) **(good electricity industry practice)**: in accordance with *good electricity industry practice*;
- (e) **(Functional Specifications)**: in a manner which is consistent and complies in all respects with the Functional Specifications;
- (f) **(Detailed Design)**: in a manner which is consistent and complies in all respects with the Detailed Design for the Third Party IUSA and Third Party DNA which has been approved by ElectraNet in writing; and
- (g) **(Competent Contractors)**: by Competent Contractors.

6.3 Authorisations

Without limiting clause 3.4, the TNU is responsible for ensuring that all Authorisations required under the Applicable Laws before the Third Party IUSA Work and Third Party DNA Work can commence or be completed are obtained.

6.4 Access and audit

The TNU must provide or procure the ElectraNet Group access to all parts of the Third Party IUSA and Third Party DNA at any time after the Execution Date upon reasonable Notice to audit the Third Party IUSA or Third Party DNA to ensure compliance with the requirements of this Agreement.

6.5 ElectraNet is not required to design or construct

Subject to the Project Documents and Applicable Law, nothing in this Agreement requires ElectraNet to perform any work in connection with the design or construction of any Third Party IUSA or Third Party DNA.

6.6 No prejudice

The Parties acknowledge and agree that:

- (a) the review of the Detailed Design and the inspection, review, testing or joint commissioning of the Third Party IUSA and Third Party DNA by the ElectraNet Group under the terms of any Project Document or in accordance with Applicable Law is to be completed by ElectraNet as prudent owner and operator of ElectraNet's *transmission network*; and
- (b) such activities are to be completed for the sole benefit of ElectraNet and:
 - (i) must not be relied upon by any member of the TNU Group for any purpose; and
 - (ii) do not limit in any way, the TNU's liability in relation to the warranties and undertakings in this clause 6 or otherwise under this Agreement or Applicable Laws.

7. Work health and safety

7.1 Defined terms

In this clause 7, the terms **Construction Project**, **Principal Contractor** and **Workplace** have the meanings given to them under the WHS Legislation.

7.2 Construction project

The Parties acknowledge that the ElectraNet Connection Work constitutes a separate and discrete Construction Project for the purposes of the WHS Legislation and does not form part of any other Construction Project arising in relation to the construction of the Facility and any Third Party Assets or the TNU Connection Work.

7.3 Health and safety obligations

- (a) The TNU must Notify ElectraNet immediately of anything or any circumstance arising in connection with the TNU's activities which may affect ElectraNet's ability to perform the ElectraNet Connection Work or the Services without risk to health or safety of any person.
- (b) The TNU must provide ElectraNet with any information requested by ElectraNet from time to time about hazards and risks arising at or in relation to the TNU's activities or any other safety matters relevant to the conduct of the ElectraNet Connection Work or Services.
- (c) The TNU must take all reasonably practicable steps to:
 - (i) assist ElectraNet; and
 - (ii) compel any relevant third party whom the TNU has the capacity to influence or control to assist ElectraNet,

to coordinate safety matters in relation to the Construction Project constituted by the ElectraNet Connection Work and otherwise in relation to the performance of the Services.

7.4 Principal Contractor engagement

The Parties acknowledge and agree that:

- (a) for the purposes of the WHS Legislation, the “commissioner” of the Construction Project which is constituted by the ElectraNet Connection Work has the ability to appoint a Principal Contractor for the purposes of that Construction Project;
- (b) to the extent there is any ambiguity as to whether ElectraNet or the TNU is “commissioning” the Construction Project which is constituted by the ElectraNet Connection Work for the purposes of the WHS Legislation, as between the Parties, it is agreed ElectraNet is “commissioning” the Construction Project; and
- (c) ElectraNet will use its best endeavours to procure the person conducting a business or undertaking that is contracted by ElectraNet to construct the ElectraNet Connection Work to:
 - (i) formally accept that it is engaged as Principal Contractor for the purposes of the relevant Construction Project; and
 - (ii) agree to discharge and perform all duties and functions imposed on a Principal Contractor by the WHS Legislation.

PART 3 - INSPECTIONS, TESTING AND COMMISSIONING

8. Inspections and testing before first energisation

8.1 Inspection by TNU

- (a) The TNU and its Associates may inspect any part of the ElectraNet Connection Work at any time before Construction Completion by giving reasonable Notice to ElectraNet.
- (b) In exercising its right of inspection under clause 8.1(a), the TNU and its Associates must:
 - (i) be accompanied at all times by a representative of ElectraNet;
 - (ii) comply with the Land and Equipment Access Rules and all lawful directions of ElectraNet; and
 - (iii) minimise, as far as possible, disruption to ElectraNet or any Associate of ElectraNet undertaking the ElectraNet Connection Work.

8.2 Compliance testing

- (a) At any time after the Execution Date until the Date of Practical Completion, upon request, the TNU must provide or procure ElectraNet and its Associates unrestricted access to:
 - (i) the Facility; and
 - (ii) the Third Party Assets,

in order to enable ElectraNet to test the Facility and the Third Party Assets' effect on ElectraNet's existing *transmission network* and satisfy itself that the Facility and the Third Party Assets:

- (iii) are acceptable for *connection* to ElectraNet's *transmission network*; and
- (iv) comply in all material respects with:
 - (A) *good electricity industry practice*;
 - (B) Applicable Law;
 - (C) the Project Documents;
 - (D) the Technical Obligations; and
 - (E) the ElectraNet Standards.
- (b) ElectraNet will:
 - (i) provide the TNU not less than 2 Business Days' Notice of an inspection under clause 8.2(a) and any related request for testing of the Facility or the Third Party Assets; and
 - (ii) minimise, as far as reasonably possible, disruption to the TNU or any Associate of the TNU arising out of such inspections and tests.

8.3 Non-compliances

- (a) On completion of the inspections and testing mentioned in clause 8.2, ElectraNet will Notify the TNU of any non-compliance resulting from such inspections and tests and provide the TNU with such further information as is reasonably required by the TNU to identify the relevant non-compliance.
- (b) Any inspection and testing by ElectraNet in accordance with clause 8.2 will not relieve the TNU or its Associates from any liability, responsibility or obligation to ensure that the Facility or the relevant Third Party Assets (as applicable) are acceptable for *connection* or continued *connection* to ElectraNet's *transmission network* and compliant in all material respects with:
 - (i) *good electricity industry practice*;
 - (ii) Applicable Law;
 - (iii) the Project Documents;
 - (iv) the Technical Obligations; and
 - (v) the ElectraNet Standards.

8.4 Deficiencies

Without limiting clause 24.1, if ElectraNet determines at any time, having regard to *good electricity industry practice* that the Facility or any Third Party Asset is not acceptable for *connection* or continued *connection* to ElectraNet's *transmission network* because it does not comply with the requirements of:

- (a) *good electricity industry practice*;
- (b) Applicable Law;

- (c) the Project Documents;
- (d) the Technical Obligations; and
- (e) the ElectraNet Standards,

then ElectraNet may *disconnect* or refrain from *connecting* the Facility or any Third Party Assets to ElectraNet's *transmission network* until such deficiency has been remedied to the reasonable satisfaction of ElectraNet.

9. Commissioning and first energisation

9.1 Commissioning

Prior to the initial *connection* of the Facility or any Third Party Assets to ElectraNet's existing *transmission network*:

- (a) the Parties will each comply with their respective obligations under rule 5.8 of the NER and the TNU will procure the Third Party DNA Provider, the Third Party IUSA Provider and the Third Party DCA Provider to comply with rule 5.8 of the NER; and
- (b) the Parties will each carry out or procure the carrying out of any joint commissioning activities which are referred to in the Scope of Works,

so as to ensure that the *connection* of the Facility and the Third Party Assets is carried out in accordance with the procedures and timeframes set out in rule 5.8 of the NER, unless the Parties agree otherwise.

9.2 Secondary systems must be jointly commissioned

The TNU acknowledges and agrees that:

- (a) all *protection systems*, protection signalling, interlocking and *control systems* (including the SCADA System for the Facility and the Third Party Assets) to be used in connection with the Facility and the Third Party Assets must be jointly commissioned by the TNU, the Third Party DNA Provider, the Third Party IUSA Provider and the Third Party DCA Provider; and
- (b) during such joint commissioning, tests must be carried out by the TNU, the Third Party DNA Provider, the Third Party IUSA Provider and the Third Party DCA Provider to ensure:
 - (i) the data presented to ElectraNet's SCADA System by the SCADA System for the Facility and the Third Party Assets; and
 - (ii) all *protection systems*, protection signalling, interlocking and *control systems* to be used in connection with the Facility and the Third Party Asset,

fully comply with the performance requirements contained in the Project Documents, the Functional Specifications and Applicable Law.

9.3 ElectraNet may witness joint commissioning

- (a) Where a joint commissioning test or exercise of the kind referred to in clause 9.2 is to be undertaken, the TNU must Notify ElectraNet no less than 10 Business Days before the date on which the relevant test or exercise is expected to occur, together with details of the location of the relevant test or exercise.
- (b) Following the receipt of a Notice under clause 9.3(a), ElectraNet may Notify the TNU that ElectraNet or its Associate (or both) will attend and witness the relevant test or

exercise, in which case, the TNU must grant or procure such access as required for ElectraNet or its Associate (or both) to attend and witness such test or exercise.

9.4 Energisation Preconditions

- (a) Notwithstanding anything else in this Agreement, ElectraNet is not required to *energise* or *connect* the Facility or any Third Party Assets to ElectraNet's *transmission network* or provide any Services to the TNU until such time as ElectraNet provides a Notice to the TNU confirming each of the Energisation Preconditions set out in the table below are satisfied.

Category	Energisation Precondition
<u>Inspection and Testing</u>	All plant, assets and equipment forming part of the Facility and the Third Party Assets have been inspected by ElectraNet and any deficiencies have been resolved in accordance with clause 8.
<u>Third Party IUSA</u>	ElectraNet is satisfied that the Third Party IUSA has been designed and constructed in accordance with the Functional Specifications and otherwise in accordance with the terms of the relevant Project Documents and it has issued a 'Certificate of Practical Completion' (as defined in the IUSA Interface Works Agreement) to the Third Party IUSA Provider.
<u>Third Party DNA</u>	ElectraNet is satisfied that the Third Party DNA has been designed and constructed in accordance with the Functional Specifications and otherwise in accordance with the terms of the relevant Project Documents and it has issued a 'Certificate of Practical Completion' (as defined in the DNA Interface Works Agreement) to the Third Party DNA Provider.
<u>[DNA Access Policy (if applicable)]</u>	ElectraNet or any Third Party DNA Provider (as applicable) has submitted an <i>access policy</i> to the AER for approval in accordance with Rule 5.2A.8.
<u>Joint commissioning of secondary systems</u>	Without limiting the item below, all <i>protection systems</i> , protection signalling, interlocking and <i>control systems</i> (including the SCADA System for the Facility and the Third Party Assets) to be used in connection with the Facility and the Third Party Assets have been jointly commissioned by the TNU and the Third Party IUSA Provider, the Third Party DNA Provider and the Third Party DCA Provider in accordance with clause 9.2 and clause 9.3 has been complied with.
<u>Commissioning</u>	ElectraNet is satisfied that all plant, assets and equipment forming part of the Facility and the Third Party Assets have been commissioned in accordance with the Project Documents and the NER.
<u>Operating Protocol</u>	The Operating Protocol has been finalised in accordance with clause 13.
<u>Third Party DCA operating protocol</u>	An operating protocol is in place between ElectraNet and the Third Party DCA Provider.
<u>Mutual Hold Harmless Deeds</u>	Any Mutual Hold Harmless Deeds required by clause 30 are in place and duly executed by all parties to them.

<u>Registration</u>	Any DCA or DNA owner (other than ElectraNet) has obtained the relevant registration or exemption under rule 2.5.1 of the NER.
<u>Pre-energisation documents</u>	The following documents have been finalised and provided by the TNU to ElectraNet: [List of documents to be provided by ElectraNet technical team].

- (b) The Parties acknowledge and agree that the Energisation Preconditions in the above table are for the sole benefit of ElectraNet, which is the only party who may waive such preconditions or confirm that they have been satisfied.
- (c) ElectraNet may impose conditions on the waiver by it of any Energisation Preconditions and any such conditions must be complied with by the TNU.
- (d) Upon satisfaction of each Energisation Precondition, ElectraNet will Notify the TNU confirming that the relevant Energisation Precondition has been satisfied.

9.5 Post Energisation Deliverables

No later than 8 weeks after the Date of Practical Completion, the following documents must be provided by the TNU to ElectraNet:

[List of documents to be provided by ElectraNet technical team].

PART 4 - SERVICES AND OPERATIONS

10. Transmission Services

10.1 Provision of Entry Services

- (a) During the period from the Date of Construction Completion to the Date of Practical Completion, ElectraNet will provide Entry Services to the TNU at the Entry Point to the level and standard reasonably determined by ElectraNet at that time for the purposes of commissioning the Facility and any Third Party Assets.
- (b) As and from the Date of Practical Completion and until the end of the Term, ElectraNet will provide Entry Services to the TNU at the Entry Point in accordance with *good electricity industry practice*, the Technical Obligations and the other requirements of this Agreement.

10.2 Prescribed common transmission services, prescribed TUOS services and generator access services

- (a) The Parties acknowledge and agree that as at the Execution Date:
 - (i) no *prescribed common transmission services, prescribed TUOS services (either Transmission Customer or Generator)* or generator access services are provided to the TNU under this Agreement; and
 - (ii) no charges in respect of these services are imposed on the TNU under this Agreement.
- (b) If at any time:
 - (i) there is a Change in Applicable Law Event which provides that; or

- (ii) the interpretation of any Applicable Law by any Authority confirms that, *prescribed common transmission services, prescribed TUOS services* or generator access services are provided to the TNU under this Agreement, such event will be deemed to be a Change Event, and without limiting clause 22.2, any applicable Prescribed Charge will be passed through to the TNU.

11. Metering Services

11.1 Provision of Metering Services

As and from the Date of Construction Completion and during the Term, ElectraNet will provide the TNU with Metering Services in accordance with *good electricity industry practice*, Chapter 7 of the NER and the other requirements of this Agreement.

11.2 Access to metering installations

The TNU must at all times provide or procure the ElectraNet Group safe, convenient and unimpeded access to all *metering installations* owned by ElectraNet and used to provide the Metering Services (regardless of whether the premises where that *metering installation* is situated is owned or occupied by the TNU or a third party) for any purpose associated with this Agreement or the requirements of any Applicable Laws.

11.3 Housing

If requested by ElectraNet the TNU must make available to ElectraNet a suitable space and a reliable power source for any *metering installation* required to be provided and installed by ElectraNet under this Agreement. The room or area where that *metering installation* is housed must be kept clean and tidy at all times by any Party having the right to occupy that room or area.

11.4 Testing

- (a) ElectraNet will comply with all Applicable Laws relating to the testing and accuracy of any *metering installation* which ElectraNet is required to install, provide or maintain under this Agreement from time to time.
- (b) Any Party may request testing of the *metering installation* in accordance with the NER. If the tests show that the *metering installation* is not in compliance with the requirements of the NER, ElectraNet must at its own cost arrange to restore the accuracy of the *metering installation*. If the tests show that the *metering installation* is in compliance with the requirements of the NER, the costs of the test will be borne by the Party requesting the test.

11.5 Security

- (a) Each Party must do all things reasonably necessary to protect *metering installations* from unauthorised interference by other persons.
- (b) Each Party must Notify the other within 1 Business Day of discovering that a seal protecting a *metering installation* has been broken.
- (c) The cost of replacing broken seals and any necessary testing will be borne by the Party as determined under rule 7.15.2(e) of the NER.

11.6 Compliance with Applicable Laws relating to metering

Without limiting any other provision of this Agreement, each Party will:

- (a) comply with its respective obligations under all Applicable Laws relating to any *metering installation* required to be provided, installed or maintained by ElectraNet under this Agreement; and
- (b) take all reasonable steps, and co-operate with the other Party so as to enable that Party to comply with its obligations referred to in clause 11.6(a).

12. Conditions applying to operations

12.1 Operation and control of the Facility

- (a) The TNU must operate, control and maintain the Facility at all times in accordance with:
 - (i) *good electricity industry practice*;
 - (ii) Applicable Law;
 - (iii) the Project Documents;
 - (iv) the Technical Obligations; and
 - (v) the ElectraNet Standards.
- (b) Without limiting clause 12.1(a), the TNU must:
 - (i) not operate the Facility so that the Maximum Permitted Output or the Agreed Capability is exceeded;
 - (ii) not operate the Facility so that the Capacity of ElectraNet's *transmission network* from time to time is exceeded;
 - (iii) not operate the Facility in breach of the Performance Standards or other Technical Obligations; and
 - (iv) immediately Notify ElectraNet if the TNU becomes aware of any material and probable threat of a breach of clause 12.1(a) or this clause 12.1(b).
- (c) Without limiting clause 24.1, ElectraNet may take such steps as it reasonably considers necessary to interrupt, suspend, reduce or limit the delivery of electricity:
 - (i) to the Facility through the Connection Assets; or
 - (ii) from the Facility through the Connection Assets,if ElectraNet reasonably believes that such steps are necessary so as to avoid or rectify an Emergency or a breach of clauses 12.1(a) or 12.1(b).
- (d) The TNU acknowledges and agrees that:
 - (i) as at the Execution Date, the maximum capacity of ElectraNet's *transmission network* to accept electricity at the Transmission Network Connection Point is equal to the Capacity;

- (ii) despite clause 12.1(d)(i), the actual amount of electricity which can be exported from the Facility or imported into the Facility through the Connection Assets at any point in time:
 - (A) will depend on each of the following, which must not be exceeded at any time:
 - (I) the Capacity of ElectraNet's *transmission network* at that time;
 - (II) the Agreed Capability; and
 - (III) the Maximum Permitted Output of the Facility; and
 - (B) may be limited due to conditions on ElectraNet's *transmission network* (including *constraints* caused by other *Generators* exporting electricity into or other *Customers* importing electricity from, ElectraNet's *transmission network*);
- (iii) despite any other provision of this Agreement, the Capacity of ElectraNet's *transmission network* to accept electricity from the Facility and export electricity to the Facility through the Connection Assets will only be available to be utilised by the TNU on a non-exclusive or 'non-firm' basis, and the TNU has no exclusive or 'firm' right or entitlement to use all or any part of the available Capacity of ElectraNet's *transmission network* in priority to any other *Network User*; and
- (iv) ElectraNet will not be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Damage suffered by the TNU (or any third party with whom the TNU contracts) as a direct or indirect result of the TNU being unable to:
 - (A) transfer the Maximum Permitted Output for the Facility at that time to ElectraNet's *transmission network* through the Connection Assets; or
 - (B) import electricity to the Facility from ElectraNet's *transmission network* through the Connection Assets,

due to any limitation in relation to the Capacity of ElectraNet's *transmission network* at that time (including any *constraint* caused by other *Network Users* exporting electricity to or through ElectraNet's *transmission network* or other *Customers* drawing electricity from ElectraNet's *transmission network*).
- (e) Nothing in this clause 12.1 limits:
 - (i) ElectraNet's right to terminate this Agreement pursuant to clause 25;
 - (ii) ElectraNet's *disconnection* rights under the Applicable Laws or any other provision of this Agreement; or
 - (iii) the TNU's liability for, or obligation to pay, the Charges.

12.2 Connection of new or altered equipment

- (a) The TNU must not alter any *plant* or equipment forming part of its Facility (including any *protection systems* control systems or SCADA Systems) without ElectraNet's prior written consent.
- (b) Any application made by the TNU to ElectraNet after the Execution Date to modify the TNU's *connection* or alter *plant*, including (without limitation) any application to:

- (i) modify the Connection Assets or the TNU's *connection* with ElectraNet's *transmission network* (including in order to increase the Agreed Capability or the Maximum Permitted Output); or
- (ii) modify, alter or change the electrical configuration or characteristics of the Facility (including any modification, alteration or change to the Facility specified in the Scope of Works or any proposed increase in the Maximum Permitted Output),

will be dealt with as an *application to connect* and modify a *connection* to ElectraNet's *transmission network* for the purposes of Chapter 5 of the NER (including (where applicable) rules 5.2.4(b)(1), 5.2.5(b)(1) and 5.3 of the NER except to the extent such application relates to an alteration covered by rule 5.3.9 of the NER).

- (c) If the TNU proposes to modify, alter or change the *generating system* forming part of the Facility in a manner that will affect the performance of the *generating system* relative to any of the technical requirements referenced in rule 5.3.9(a) of the NER, it must comply with the requirements of rule 5.3.9 of the NER (and any other applicable provisions of the NER).

12.3 Subsequent TNUs and reallocation to prescribed transmission services

- (a) Subject to clause 12.3(d), if a Subsequent TNU submits an *application to connect* a Subsequent TNU Facility to the Network Assets (and to the extent that the *connection* of that Subsequent TNU Facility is to part of the Transmission Network that comprises a Third Party DNA, provided that the requirements of rule 5.3.6(a3) of the NER have been complied with), the Parties must enter into good faith negotiations (which take into account the *negotiating principles* under rule 5.2A.6 of the NER where applicable) and seek to agree upon any variations that should be made to this Agreement to take into account that proposed *connection*, including (among other things):
 - (i) the manner in which the Charges payable by the TNU after the date of the proposed *connection* should be varied to take into account the amount of any *negotiated transmission service* charges which will be payable to ElectraNet by the Subsequent TNU for the provision of any *negotiated transmission services* using any of the Network Assets, but excluding:
 - (A) any *negotiated transmission service* charges which will be payable to ElectraNet by that Subsequent TNU for the provision of any *negotiated transmission services* using any part of any Third Party IUSA or Third Party DNA forming part of the Network Assets; and
 - (B) any *prescribed transmission services* charges which will be payable to ElectraNet by that Subsequent TNU on account of the provision of any *prescribed transmission services* in relation to the Subsequent TNU Facility;
 - (ii) any required changes to the applicable access policy;
 - (iii) the manner in which the Charges payable by the TNU will be calculated in the event that any Subsequent TNU Facility is subsequently *disconnected* from the Network Assets; and
 - (iv) the manner in which the quantum of the Early Termination Amount payable under this Agreement and the Undertaking Amount will be varied to reflect the variation in the Charges under clauses 12.3(b)(i) and 12.3(b)(ii).
- (b) If any of the Network Assets (or any part of the value or costs of those Network Assets) are reallocated from *negotiated transmission services* to *prescribed transmission*

services during the Term in accordance with the Pricing Rules (that is, if any part of the value or costs of those Network Assets are added to ElectraNet's regulated asset base in accordance with the Pricing Rules), the Entry Charge payable by the TNU will be reduced by the amount which ElectraNet receives for the provision of *prescribed transmission services* using those Network Assets or relevant portion of those Network Assets. For the sake of clarification, any reduction in the Entry Charge will:

- (i) be capped at the amount which ElectraNet receives for the provision of *prescribed transmission services* using those Network Assets or the relevant portion of those Network Assets; and
 - (ii) only apply in relation to whole Contract Years that occur after those Network Assets or the relevant portion of those Network Assets have been rolled into ElectraNet's regulated asset base.
- (c) Nothing in clauses 12.3(a) or 12.3(b) will operate to reduce the Charges payable by the TNU after the occurrence of a relevant event identified in those clauses, below the amount determined by deducting the ongoing amount payable by Subsequent TNUs on account of *negotiated transmission services* and (where applicable) *prescribed transmission services* provided to those Subsequent TNUs using any of the Network Assets from the Charges payable by the TNU under this Agreement immediately prior to the occurrence of that event.
- (d) Nothing in this Agreement will be construed in a manner which would prevent ElectraNet from:
- (i) including at any time, any Network Assets or a portion of the value of any Network Assets within its regulatory asset base under the Pricing Rules (because it is determined that those Network Assets or a portion of those Network Assets are used in part to provide *prescribed transmission services*) if that is required or permitted under the provisions of the Pricing Rules or the NER;
 - (ii) complying with the requirements of its access undertaking applying under the *Competition and Consumer Act 2010* (Cth) and the NER (including, in particular, rule 5.2A.3 and 5.2A.6 of the NER) with respect to:
 - (A) a future application by an existing or intending *Network User* for access to the *network* services of ElectraNet's *transmission network* (including, in particular, a future application by a Subsequent TNU for access to any *transmission services* provided by the Network Assets);
 - (B) a future application to ElectraNet by a *Connection Applicant* for the provision of *prescribed transmission services* or *negotiated transmission services* (including, in particular, a future application to ElectraNet by a Subsequent TNU to *connect* a Subsequent TNU Facility to the Network Assets);
 - (C) using any part of the Transmission System (including the Network Assets) to provide *prescribed transmission services* or *negotiated transmission services* to another existing or intending *Network User*;
 - (D) complying with the requirements of the Pricing Rules or the NER in relation to the use, *augmentation*, operation or development of the Transmission System (including the Network Assets); or
 - (E) relocating any part of the Transmission System (including the Network Assets) including for the purpose of *connecting* another *Network User* to the Transmission System.

- (e) Any Work associated with:
 - (i) the connection of another *Network User* to the Network Assets;
 - (ii) the modification of another *Network User's* existing *connection* to the Network Assets; or
 - (iii) any modification to the Network Assets (including the relocation of any Network Assets) in order to provide *transmission services* to another *Network User*,

(including, in particular, the *connection* of a Subsequent TNU Facility to the Network Assets) will be undertaken by ElectraNet in accordance with clause 15.
- (f) If the Parties cannot agree within 20 Business Days of commencing negotiations under clause 12.3(a) or 12.3(b) in relation to any of the variations referred to in those clauses, that variation will be determined in accordance with clause 31.
- (g) For the avoidance of doubt, nothing in this Agreement will prevent ElectraNet from undertaking any Work on or in relation to the Transmission System (including the Network Assets) which is required to be undertaken in order to *connect* another *Network User* to the Transmission System (including, in particular, the *connection* of a Subsequent TNU Facility to the Network Assets).

12.4 DNA Access Policy

- (a) The Parties acknowledge that:
 - (i) under rule 5.2.7(c) of the NER an owner of a *designated network asset* must prepare, maintain and publish an *access policy* in accordance with rule 5.2A.8 of the NER (**DNA Access Policy**);
 - (ii) if an *applicant* seeks connection to a *designated network asset*, it may apply to the *Primary Transmission Network Service Provider* in accordance with rule 5.3 (subject to the relevant DNA Access Policy);
 - (iii) if an *applicant* seeks *DNA services* with respect to the DNA, the owner of the *designated network asset* must comply with the DNA Access Policy, together with the negotiating principles in Schedule 5.12 of the NER (see rule 5.2A.6(c) of the NER).
- (b) ElectraNet will be the owner of any DNA (other than a Third Party DNA) and, where applicable, the Parties agree that it:
 - (i) will develop the DNA Access Policy based on the standard form document set out in Annexure D to this Agreement in consultation with the Transmission Network User on terms consistent with this Agreement, to be submitted to the *AER* for approval before the DNA is commissioned and otherwise in accordance with any requirements of the NER; and
 - (ii) is authorised by the Transmission Network User to:
 - (A) respond to requests for access under the DNA Access Policy and to report on requests for connection and access to the DNA to the *AER* when such requests are made and when an agreement for access is entered into in accordance with the NER;
 - (B) publish and update both the DNA Access Policy and supporting information regarding the DNA on its website regarding the DNA, including information specifically contemplated by the NER; and

- (iii) may vary the DNA Access Policy in accordance with the NER [*to the extent required to comply with its obligations under the NER*].
- (b) The Transmission Network User agrees that, despite any other provision of this Agreement, ElectraNet may comply with the DNA Access Policy and is not required to engage in any conduct which it considers may prevent or hinder access to DNA services.

13. Operating Protocol

13.1 General

- (a) Each Party must comply with the Operating Protocol when operating its *facilities* or undertaking any Work in relation to its *facilities* that is covered by the Operating Protocol to the extent that the Operating Protocol is not inconsistent with the terms of this Agreement.
- (b) The TNU must procure that any member of the TNU Group who is operating its *facilities* or undertaking any Work in relation to its *facilities* complies with the requirements of the Operating Protocol. The TNU will not be relieved of any liability or obligation associated with the Operating Protocol because a member of the TNU Group (other than the TNU) is operating *facilities* of the TNU or undertaking any Work in relation to *facilities* of the TNU.

13.2 Finalisation of Operating Protocol

- (a) As set out in clause 9.4, ElectraNet is not required to *connect* the Facility or any Third Party Asset to ElectraNet's *transmission network* or provide any Services to the TNU until such time as the Parties have finalised the Operating Protocol in accordance with this clause 13.2.
- (b) The Parties agree that the draft Operating Protocol as at the Execution Date must be updated, to take into account:
 - (i) any relevant Technical Obligations and Applicable Laws; and
 - (ii) the final detailed technical specifications and parameters for the Connection Work and the Facility,determined in accordance with the process set out in clause 13.2(c).
- (c) The Parties will meet to discuss the updated Operating Protocol and negotiate in good faith to agree the terms of the final Operating Protocol by no later than the Date of Practical Completion.

13.3 Updating Operating Protocol

If either Party needs to update or amend the Operating Protocol during the Term, the Parties will meet to discuss the required amendments to the Operating Protocol and negotiate in good faith to agree the amendments to the Operating Protocol as soon as reasonably practicable.

14. Performance Standards and special protection schemes

14.1 Performance Standards

- (a) The TNU must take such action as is necessary to ensure that the Facility complies with the Performance Standards for the Facility and the other requirements of rule 4.15 of the NER.

- (b) Without limiting clause 14.4, if at any time the current Performance Standards for the Facility do not comply with the requirements of the NER or any other Applicable Law, the TNU must do either or both of the following (at its own cost):
 - (i) upgrade its Facility; and
 - (ii) consult with ElectraNet and AEMO in good faith in order to amend the Performance Standards for the Facility,to the extent necessary to ensure compliance with the requirements of the NER and all Applicable Laws.

14.2 ElectraNet may take action

Nothing in this clause 14 is intended to prevent ElectraNet from taking action under clause 24 of this Agreement.

14.3 Continue to monitor

Without limiting clause 14.1(a), the TNU must:

- (a) continue to monitor the Facility and Notify ElectraNet as soon as reasonably possible after it becomes aware that any item of plant comprised within, or component of, the Facility has failed or is required to be taken out of service and the loss of such item of plant or component will or is likely to cause the Facility to fail to perform in accordance with the Technical Obligations applicable to the Facility;
- (b) in respect of all *control systems* and *protection systems* forming part of the TNU's *facility*:
 - (i) conduct tests of such *control systems* and *protection systems* at least every 4 years during the Term (commencing on the Date of Practical Completion); and
 - (ii) provide ElectraNet with copies of details and results of all tests which have been completed by the TNU in accordance with clause 14.3(b)(i) promptly upon request (which ElectraNet may request be included as part of the compliance monitoring program required to be developed and maintained by the TNU in accordance with clause 14.4);
- (c) ensure that the Facility meets or exceeds the Technical Obligations;
- (d) ensure that the Facility is not likely to cause a material adverse effect on *power system security* or adversely affect the quality or security of network services to other *Network Users* through its failure to comply with a Technical Obligation; and
- (e) Notify ElectraNet if it serves a notice on AEMO under rule 4.15(f) of the NER or receives a notice from AEMO under rule 4.15(i)(3) of the NER before 5 pm on the next Business Day after the day on which the relevant notice was received or given.

14.4 Compliance monitoring program

- (a) The TNU must develop and maintain a compliance monitoring program which satisfies the requirements of rule 4.15 of the NER in relation to the ongoing compliance of the Facility with the Performance Standards.
- (b) The TNU acknowledges that ElectraNet accepts no liability in respect of any such compliance monitoring program relating to the Facility and indemnifies and holds harmless ElectraNet against any Damages suffered or incurred by ElectraNet arising out of the failure of any compliance monitoring program to identify any failure of the Facility to comply with the Performance Standards.

14.5 Non-compliance

- (a) If at any time ElectraNet believes (acting reasonably) that the Facility is not being operated in a manner which complies with the Performance Standards or the other requirements of rule 4.15 of the NER (including as a result of an Applicable Event of Force Majeure) (**Non-Compliance**) and:
- (i) complaints are received from any *Network Users* stating that they are being adversely affected by the Non-Compliance; or
 - (ii) any *facility* or other equipment (including without limitation, assets forming part of the Transmission System) is being adversely affected by the Non-Compliance,

ElectraNet may direct the TNU to take such steps as ElectraNet believes are reasonably necessary to eliminate or minimise the adverse effect of the Non-Compliance (which may include constraining or limiting the operation of the Facility, installing appropriate equipment or limiting the hours of operation of any relevant equipment).

- (b) The TNU must promptly comply with any direction given by ElectraNet under clause 14.5(a) at the TNU's cost. If the TNU fails to do so, ElectraNet may *disconnect* the Facility (including by *disconnection* at the Entry Point).
- (c) ElectraNet will not be liable to the TNU for any Damages incurred or suffered by the TNU (including any third party Claims) as a result of ElectraNet:
- (i) *disconnecting* the Facility from the Connection Assets or ElectraNet's *transmission network*; or
 - (ii) *interrupting*, suspending, reducing or limiting the provision of any Services to the TNU,

in accordance with this clause 14.5.

14.6 Special protection schemes

- (a) If at any time, *AEMO* introduces or publishes any special protection scheme, *emergency frequency control scheme*, emergency control scheme or similar, the TNU must, at its own cost, comply with the requirements of such schemes in so far as it relates to the Facility or the operations of the TNU.
- (b) Without limiting clause 14.6(a), if at any time ElectraNet believes (acting reasonably) that the TNU is not complying with any scheme referred to in clause 14.6(a), ElectraNet may direct the TNU to take such steps as ElectraNet believes are reasonably necessary to comply with the relevant scheme.
- (c) The TNU must promptly comply with any direction given by ElectraNet under clause 14.6(b) at the TNU's cost. If the TNU fails to do so, ElectraNet may *disconnect* the Facility (including by *disconnection* at the Entry Point).
- (d) ElectraNet's costs of complying with any scheme issued by *AEMO* referred to in clause 14.6(a) (including ElectraNet's costs of procuring and installing appropriate equipment) will be deemed to be a Change Event and, without limiting clause 22.2, will be a debt due and payable by TNU to ElectraNet.

15. Maintenance

15.1 Maintenance obligation

- (a) Each Party must manage, operate and maintain its *facilities*:
- (i) so as to avoid any adverse effect upon *power system security*;
 - (ii) in accordance with the requirements of Applicable Law, the Technical Obligations and *good electricity industry practice* (including any Directives which may be issued to the Parties from time to time); and
 - (iii) so as to protect and avoid any damage to, or any other adverse effect upon:
 - (A) the other Party's *facilities* and other plant, equipment and property;
 - (B) any property of a third person that is *connected* to the other Party's *facilities* (including, in particular, any Subsequent TNU Facility which is *connected* to the Network Assets); or
 - (C) any other *Network User connected* to ElectraNet's *transmission network*,which that Party knows or ought to reasonably know could occur if it does not comply with this clause 15.1(a)(iii).
- (b) In this clause 15.1, a reference to "manage, operate and maintain" includes providing, managing and maintaining such systems and procedures as are reasonably required in accordance with *good electricity industry practice*.

15.2 Impact of maintenance on capability

Subject to clauses 15.3(d) and 15.3(f), the TNU acknowledges and agrees that:

- (a) ElectraNet:
- (i) has the right to maintain the Transmission System and undertake other Work in relation to the Transmission System; and
 - (ii) without limiting clause 15.2(a)(i), will maintain the Connection Assets, in accordance with:
 - (A) ElectraNet's own maintenance policies and procedures (subject to those policies and procedures complying with *good electricity industry practice* and the requirements of any relevant Applicable Laws);
 - (B) the requirements of this clause 15; and
 - (C) in the case of any Third Party IUSA and any Third Party DNA (which each form part of the Connection Assets), the terms of the IUSA Network Operating Agreement or DNA Network Operating Agreement, respectively; and
- (b) an *outage* of a part of the Transmission System (including any part of the Connection Assets) for the purposes of undertaking any Work may:
- (i) reduce the *power transfer capability* of ElectraNet's *transmission network*;
 - (ii) reduce the Capacity of ElectraNet's *transmission network* available for use by the TNU at that time; or

- (iii) otherwise interrupt, suspend, reduce or limit the provision of some or all of the Services by ElectraNet to the TNU.

15.3 Schedule of Work

- (a) Each Party will use best endeavours to give to the other Party at least 3 months' prior Notice of any Work which that Party:
 - (i) proposes to undertake on or in relation to the *facilities* of that Party; and
 - (ii) reasonably considers may adversely affect the other Party.
- (b) Without limiting clause 15.3(a), the Parties can agree to vary their programs of Work at any time to take advantage of any *outage* of the *facilities* of a Party.
- (c) Despite clause 15.3(a), unless otherwise agreed, each Party must give to the other Party at least 20 Business Days' (and where it is reasonably possible, up to 3 months') prior Notice of the final details for:
 - (i) the planned date of commencement of any Planned Work;
 - (ii) the duration of any planned *outage* associated with that Planned Work; and
 - (iii) the details of the nature and purpose of an action proposed to be taken by the Party undertaking that Planned Work during that planned *outage*,and comply with any additional requirements contained in the Operating Protocol relating to any Planned Work.
- (d) ElectraNet will use its best endeavours to negotiate and agree with the TNU as to the best time for completing Planned Work in accordance with clauses 15.3(a) and 15.3(b), however, where ElectraNet has provided the TNU with Notice of Planned Work in accordance with clause 15.3(c), ElectraNet may *disconnect* interrupt, suspend, reduce or limit the provision of any Service and complete the required Planned Work at the time and for the duration Notified to the TNU under clause 15.3(c) without further Notice to the TNU.
- (e) Nothing in this clause 15 will prevent a Party immediately carrying out any Unplanned Work on the *facilities* of that Party. The Party needing to undertake any Unplanned Work must Notify the other Party as soon as possible after it becomes aware of the need to undertake that Unplanned Work.
- (f) Each Party will, in carrying out any Planned Work or Unplanned Work:
 - (i) diligently carry out the Work and ensure that it is completed in a timely manner; and
 - (ii) not unreasonably delay or restrict the other Party from performing Work which is necessary for that Party to perform in order to comply with the requirements of any Applicable Law, *good electricity industry practice* or the Technical Obligations.
- (g) Where a Party requires the other Party's consent under any Applicable Law before it can undertake any Work, that consent will not be unreasonably withheld.

15.4 Disconnection or reduction to undertake Work

- (a) ElectraNet may *disconnect*, interrupt, suspend, reduce or limit the provision of any Service to the TNU if that is necessary in accordance with *good electricity industry practice*, or to comply with any Applicable Law, in order to undertake any Planned Work

in accordance with clause 15.3 or Unplanned Work on or in relation to ElectraNet's *facilities*.

- (b) ElectraNet will not be liable to the TNU for any Damages incurred or suffered by the TNU (including any third party Claims) as a result of ElectraNet:
 - (i) *disconnecting* the Facility from the Connection Assets; or
 - (ii) interrupting, suspending, reducing or limiting the provision of any Services to the TNU,

in order to undertake any Work in accordance with this clause 15.

- (c) The TNU may ask ElectraNet to *disconnect*, interrupt, suspend, reduce or limit the provision of any Service to the TNU if that is necessary in accordance with *good electricity industry practice*, to comply with any Applicable Law, in order to undertake any Planned Work scheduled in accordance with clause 15.3 or Unplanned Work on or in relation to the Facility or any of the other *facilities* of the TNU. ElectraNet will comply with that request unless to do so would be contrary to an Applicable Law.
- (d) Each Party will bear its own costs of and incidental to any switching of its *facilities* which is reasonably required to enable the other Party to undertake any Planned Work or Unplanned Work in accordance with this Agreement.

15.5 Inspection and testing under the NER

- (a) Each Party will comply with:
 - (i) the provisions of rules 5.7 and 5.8 of the NER; and
 - (ii) the procedures applicable pursuant to this clause 15 (to the extent that they do not derogate from rules 5.7 and 5.8 of the NER),

in relation to the inspection and testing of the Facility, the Connection Assets and the Transmission System (whichever is applicable in the circumstances) during the Term.

- (b) Without limiting rules 5.7 and 5.8 of the NER, ElectraNet may require the TNU to conduct (at the TNU's cost) tests at any time during the Term with an ElectraNet nominee present to demonstrate that the Facility and any of the other *facilities* of the TNU comply with the Technical Obligations and requirements of all Applicable Laws and this Agreement.
- (c) The TNU acknowledges that ElectraNet will need to conduct tests from time to time in relation to the Transmission System and that these tests may result in the interruption, suspension, reduction or limitation of Services to the TNU.
- (d) The TNU will:
 - (i) provide all assistance reasonably requested by ElectraNet in relation to these tests; and
 - (ii) not be entitled to make any Claim against ElectraNet in relation to these tests and any associated interruption, suspension, reduction or limitation of Services to the TNU.
- (e) ElectraNet will, in performing the tests under this clause 15, use best endeavours to cause the minimum amount of disruption to the provision of the Services and operations of the TNU.

15.6 Critical spare parts

- (a) At any time during the Term, the TNU may direct ElectraNet in writing to procure and hold any of the items of plant or equipment for the ElectraNet Assets identified as 'critical spare parts' in the Scope of Works (**Critical Spare Parts**).
- (b) The TNU acknowledges and agrees that:
 - (i) unless directed to do so by the TNU pursuant to clause 15.6(a), ElectraNet has no obligation to hold any spare parts (including any Critical Spare Parts) for the ElectraNet Assets; and
 - (ii) the Critical Spare Parts may (but is not guaranteed to) assist ElectraNet to reduce the length of any disruptions to the Services as a result of any loss or damage to the ElectraNet Assets.
- (c) If the TNU directs ElectraNet under clause 15.6(a) to procure any Critical Spare Parts (including to replace any such parts used by ElectraNet during the Term), ElectraNet's costs of procuring such Critical Spare Parts will be deemed to be a Change Event and, without limiting clause 22.2, will be a debt due and payable by TNU to ElectraNet.
- (d) Title in all Critical Spare Parts will always remain with ElectraNet.

15.7 No limitation

Nothing in this clause 15 limits:

- (a) ElectraNet's right to terminate this Agreement pursuant to clause 25;
- (b) ElectraNet's *disconnection* rights under the Applicable Laws or any other provision of this Agreement; or
- (c) the TNU's liability for, or obligation to pay, the Charges.

PART 5 - GENERAL OBLIGATIONS

16. Compliance with Applicable Laws

16.1 Compliance

Notwithstanding any other provision of this Agreement, 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 Agreement:

- (a) the provisions of this Agreement 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 Agreement to the extent of that inconsistency.

16.2 Limitation

Nothing in this Agreement 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 Agreement directly or indirectly limits that right.

17. Insurance

17.1 TNU insurance

The TNU must, at its own expense, effect, and maintain for the Term, the insurance policies specified in Item 5 of Schedule 3.

17.2 Inspection of TNU insurance policy documentation

The TNU will on reasonable request of ElectraNet provide:

- (a) certificates evidencing that the insurance policies required by clause 17.1 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 17.1.

17.3 ElectraNet insurance

ElectraNet must effect, and maintain until the Date of Practical Completion, an insurance policy which provides cover in relation to any loss or damage to the ElectraNet Connection Work.

17.4 Inspection of ElectraNet insurance policy documentation

ElectraNet will on reasonable request by the TNU provide:

- (a) certificates evidencing that the insurance policy required by clause 17.3 has been effected and all premiums have been paid; and
- (b) such other reasonable documentation (but excluding full policy terms) as the TNU may require from time to time to confirm that the insurance policy is valid, current and meets the requirements of clause 17.3.

18. Title

The TNU agrees, and will procure a similar agreement from any person who holds any security interest over any asset of the TNU, that the ElectraNet Assets are not:

- (a) owned by or subject to any proprietary interest of the TNU;
- (b) fixtures on, or form part of, any land owned by the TNU or another party; and
- (c) collateral for the purposes of any security interest granted by the TNU.

19. Access

19.1 Land and Equipment Access Rules

Each Party will give the other Party and its Associates reasonable access to:

- (a) its *facilities*; and
- (b) any land or premises owned or occupied by that Party upon which any *facilities* belonging to that Party is situated,

from time to time in accordance with the Land and Equipment Access Rules, for the:

- (c) purposes identified in the Project Agreements, Applicable Law or the Operating Protocol;

- (a) purpose of allowing the Connection Works (including any related interface works) to be harmoniously completed;
- (d) purpose of complying with, or monitoring compliance with, the obligations of the Parties under this Agreement and any Applicable Law as they relate to the obligations of the Parties under this Agreement;
- (e) purpose of assessing the requirements of any Planned Work or Unplanned Work; and
- (f) purpose of permitting the *connection* of a Subsequent TNU Facility to the Network Assets and the future operation of that connection and the Subsequent TNU Facility in a manner which is consistent with the requirements of Applicable Laws and *good electricity industry practice*.

19.2 Additional requirements

Each Party must comply, and ensure that its Associates comply, with any reasonable requirements of the other Party relating to the health and safety of people on or near the sites which are controlled by the other Party and the protection of the environment and the security of the sites which are controlled by the other Party.

PART 6 - PERFORMANCE SECURITY, CHARGES, CHANGE IN CIRCUMSTANCES, BILLING AND PAYMENT

20. Performance security

20.1 Provision of Undertaking

- (a) On or before the Undertaking Provision Date for each Undertaking Period, the TNU must provide ElectraNet an Undertaking in accordance with clause 20.2 so that ElectraNet holds security for the TNU's performance under the Agreement in an amount totalling the Undertaking Amount for the relevant Undertaking Period.
- (b) ElectraNet may, in its absolute discretion, waive in writing the requirement for the TNU to provide an Undertaking in respect of any Undertaking Period during such time as the TNU has:
 - (i) an Acceptable Credit Rating; or
 - (ii) provided ElectraNet a guarantee and indemnity from a Related Body Corporate of the TNU holding an Acceptable Credit Rating on terms and conditions acceptable to ElectraNet (in ElectraNet's absolute discretion) (**Corporate Guarantee**).
- (c) During any period where clause 20.1(b) applies, if the TNU or the party that has provided a Corporate Guarantee (as applicable), ceases to have an Acceptable Credit Rating, the TNU must provide an Undertaking to ElectraNet for an amount totalling the Undertaking Amount for the relevant Undertaking Period within 10 Business Days of a request being made by ElectraNet.

20.2 Requirements for Undertaking

Each Undertaking provided under this clause 20 must be in a form and on terms acceptable to ElectraNet (in its absolute discretion).

20.3 Failure to provide the Undertaking

- (a) Without limiting clause 20.4, if the TNU fails to provide the required Undertaking by the relevant Undertaking Provision Date, ElectraNet may:
 - (i) if the failure to provide the Undertaking occurs prior to the Date of Practical Completion, refuse to commence or recommence, or suspend, the ElectraNet Connection Work; or
 - (ii) if the failure to provide the Undertaking occurs on or after the Date of Practical Completion, refuse to provide, or suspend the provision of, the Services in accordance with clause 24.1,

until the TNU provides the required Undertaking.
- (b) If ElectraNet suspends the performance of the ElectraNet Connection Work or the provision of the Services under clause 20.3(a), or terminates this Agreement for a failure of the TNU to provide or maintain the required Undertaking in accordance with this clause 20, then ElectraNet will have no liability whatsoever to the TNU as a result of that suspension or termination.

20.4 Calling on the Undertaking

- (a) Without limiting the unconditional nature of the Undertaking, ElectraNet may draw or call on any Undertaking for the full Undertaking Amount (or, at ElectraNet's option, part of the Undertaking Amount):
 - (i) within 5 Business Days of the date on which any Undertaking provided under this clause is due to expire (where it has not been replaced with an Undertaking which satisfies the requirements of clauses 20.1 and 20.2);
 - (ii) whenever ElectraNet asserts a right to the payment of money by the TNU under, arising out of, or in connection with this Agreement (including the Charges, Compensable Amounts, Early Termination Amounts or Damages relating to this Agreement).
- (b) ElectraNet's right under clause 20.4(a) to draw or call on the Undertaking exists regardless of whether or not ElectraNet has any other rights under this Agreement in relation to that default by the TNU, or has exercised any of those rights.
- (c) Neither ElectraNet's rights under this clause 20, nor the receipt by ElectraNet of all or part of the amount of any Undertaking, prejudice any of ElectraNet's other rights or remedies under this Agreement or at law.
- (d) Where ElectraNet has drawn or called upon the Undertaking and it is subsequently agreed between the Parties or determined by a court exercising valid jurisdiction that the amounts drawn or called upon were not payable by the TNU, ElectraNet will repay the amount not payable by the TNU within 30 Business Days and the repayment of this amount will be the sole and exclusive remedy of the TNU against the ElectraNet Group with respect to such recourse to the Undertaking.

20.5 No injunction

The TNU must not take any steps to challenge, injunct or otherwise restrain:

- (a) ElectraNet from taking any steps for the purpose of drawing, calling on or making a demand on an Undertaking, receiving any proceeds or otherwise exercising its rights with respect to the Undertaking;
- (b) ElectraNet from using any proceeds of an Undertaking; or

- (c) the issuer of the Undertaking, from paying money to ElectraNet under that Undertaking.

20.6 Return of Undertaking

Except to the extent that:

- (a) an Undertaking has been earlier drawn or called upon by ElectraNet in accordance with this Agreement (and the Undertaking Amount has been received by ElectraNet); or
- (b) there is a Dispute which has not been determined in accordance with clause 31,

ElectraNet must return the Undertaking to the TNU if the TNU is not in default of any of its obligations under this Agreement and one or more of the following applies:

- (c) the Undertaking has been replaced with another Undertaking in accordance with this clause 20;
- (d) the TNU can demonstrate to ElectraNet's satisfaction, that the TNU has an Acceptable Credit Rating; or
- (e) all moneys payable by the TNU to ElectraNet under this Agreement have been paid and all other obligations of the TNU under this Agreement have been performed to ElectraNet's satisfaction.

20.7 Survival

This clause 20 survives the termination or expiry of this Agreement.

21. Charges

21.1 TNU to pay Charges

- (a) If Construction Completion has not been achieved on or before the Sunset Date as a result of the occurrence of an event or circumstance beyond the reasonable control of ElectraNet, the TNU must pay to ElectraNet the Capital Charge pro rated for each Sunset Billing Period.
- (b) The TNU must pay to ElectraNet the Charges for each Billing Period, subject to adjustment for any Capital Charges that were paid during the Sunset Billing Periods.

21.2 Metering data

If the TNU has appointed a *Metering Data Provider* with respect to the *metering installation* pursuant to rule 7.5.1 of the NER, then the TNU must ensure that its appointed *Metering Data Provider* provides to ElectraNet the *metering data* for the Connection Point in order for ElectraNet to comply with its obligations under this Agreement.

22. Varying the Charges

22.1 Acknowledgement

The TNU acknowledges and agrees that:

- (a) ElectraNet may vary the Charges as it deems necessary if a:
 - (i) Change in Applicable Law Event;
 - (ii) Change in Taxes Event;
 - (iii) Network Event;

- (iv) Service Standards Event; or
- (v) Change Event,

(Qualifying Event) occurs and such Qualifying Event results in or will result in:

- (vi) ElectraNet incurring higher or lower costs in performing the ElectraNet Connection Work or providing the Services, including higher costs in performing any Work other than, or in addition to, the ElectraNet Connection Work set out in the Scope of Works in order to provide, or continue to provide the Entry Services in accordance with this Agreement and Applicable Law and any costs incurred to deal with, abate, mitigate or minimise the effect of a Qualifying Event as contemplated under clause 22.2(d) (as compared to the level of costs which ElectraNet would have incurred in performing the ElectraNet Connection Work or providing the relevant Services if that Qualifying Event had not occurred); or
- (vii) a reduction in the total amount received by or paid to ElectraNet or which ElectraNet is entitled to receive or be paid under this Agreement (as compared to the total amount which ElectraNet would have received or be paid or be entitled to receive or be paid under this Agreement if that Qualifying Event had not occurred),

(Compensable Event);

- (b) ElectraNet may vary the Entry Charge, in accordance with the procedure set out in Item 2 of Schedule 1;
- (c) ElectraNet may vary the Metering Charge, in accordance with the procedure set out in Item 9 of Schedule 1;
- (d) ElectraNet or the TNU (as applicable) may be entitled to be paid a Compensable Amount to the extent necessary to address any Compensable Event, as determined under clause 22.2; and
- (e) ElectraNet may vary the Charges in accordance with clause 22.3(a).

22.2 Qualifying Event and Compensable Event

- (a) ElectraNet will provide a Notice to the TNU of the occurrence of any Qualifying Event as soon as reasonably practicable after becoming aware of the Qualifying Event, setting out the available details in relation to that Qualifying Event and the likely consequences arising from that Qualifying Event.
- (b) If the Qualifying Event is a Compensable Event, as soon as practicable after the Notice under clause 22.2(a) is given, ElectraNet will determine an amount applicable to that Compensable Event to reflect such amount as ElectraNet considers is necessary to:
 - (i) compensate ElectraNet for:
 - (A) the increase in the cost to ElectraNet of performing the ElectraNet Connection Work or providing the Services as a result of that Compensable Event; or
 - (B) the reduction in the total amount received by or paid to ElectraNet or which ElectraNet is entitled to receive or be paid under this Agreement as a result of that Compensable Event; or
 - (ii) compensate the TNU for the decrease in the cost to ElectraNet of performing the ElectraNet Connection Work or providing the Services as a result of that Compensable Event,

as compared to:

- (iii) the costs which ElectraNet would have incurred in performing the ElectraNet Connection Work or providing the Services; or
- (iv) the total amount which ElectraNet would have received or been paid or been entitled to receive or be paid under this Agreement,

if that Compensable Event had not occurred.

- (c) The Parties agree that in order to give effect to the principles in clause 22.2(b), ElectraNet will provide the TNU with ElectraNet's calculation of the quantum of the additional Sub-Contractor's Costs, Consultant's Fees, ElectraNet's Costs and other costs that ElectraNet will incur or save as a result of the Compensable Event (including any costs incurred by ElectraNet under clause 22.2(d)).
- (d) The Parties acknowledge and agree that nothing in this clause 22.2 will:
 - (i) prevent ElectraNet from taking immediate and reasonable steps to deal with or remedy, abate, mitigate or minimise the effect of a Qualifying Event including incurring any cost or taking any action which is required in order to deal with the occurrence of the Qualifying Event and the potential consequences of that Qualifying Event; or
 - (ii) limit ElectraNet's discretion in relation to the steps that may need to be taken to deal with and or remedy, abate, mitigate or minimise the effect of a Qualifying Event.
- (e) The TNU acknowledges and agrees that the amount determined by ElectraNet under this clause 22.2 will be the **Compensable Amount** for the purposes of that Compensable Event and, unless Disputed by the TNU in accordance with, and within the time prescribed by, clause 22.4(f), will be binding on the TNU and payable in accordance with clause 22.4.
- (f) The following items will (where necessary) be adjusted by ElectraNet to take into account the effect of any Qualifying Event or Compensable Amount payable under this clause 22:
 - (i) the Program of Works;
 - (ii) the Scope of Works;
 - (iii) the Undertaking Amount;
 - (iv) the Early Termination Amount; and
 - (v) such other matter as ElectraNet reasonably considers necessary,

and subject to clause 22.2(g), the TNU must execute all required documents to give effect to such adjustments.

- (g) To the extent that a delay in achieving Construction Completion, Practical Completion or both (as applicable) is caused or contributed to by a Qualifying Event, ElectraNet will make any adjustments to the Date for Construction Completion, Date for Practical Completion of both (as applicable) under clause 5.3.

22.3 Requirement to rectify loss or damage

- (a) If:
- (i) any loss or damage occurs to the ElectraNet Connection Work or the ElectraNet Assets; or
 - (ii) if there is a mechanical or electrical breakdown, or failure of equipment forming part of, any of the ElectraNet Assets for any reason,
- other than to the extent such loss, damage, mechanical or electrical breakdown or failure was caused or contributed to by the negligence of the ElectraNet Group, the costs of rectifying such loss or damage to the ElectraNet Connection Work or the costs of rectifying such loss, damage, mechanical or electrical breakdown or failure of equipment forming part of any of the ElectraNet Assets will be borne by the TNU and will be deemed to be a Compensable Amount.
- (b) Where ElectraNet receives insurance proceeds in respect of the loss or damage to the ElectraNet Connection Work or the loss, damage, mechanical or electrical breakdown or failure of equipment forming part of any of the ElectraNet Assets ElectraNet agrees to apply any such insurance proceeds to the costs of reinstatement of the ElectraNet Connection Work or ElectraNet Assets (as the case may be) and the Compensable Amount under clause 22.3(a) will be reduced by the amount of such insurance proceeds (less the deductible payable by ElectraNet).

22.4 Payment of Compensable Amounts

- (a) With respect to each single Compensable Event, if a Compensable Amount is payable:
- (i) from ElectraNet to the TNU, then ElectraNet will refund the Compensable Amount to the TNU (either by way of a single lump sum credit in an invoice, a separate credit in each subsequent invoice or by adjusting the Charge); or
 - (ii) from the TNU to ElectraNet, then clause 22.4(b) or 22.4(c) will apply (subject to clause 5.1(d)).
- (b) If the aggregate of the total Compensable Amount for a single Compensable Event is less than the Compensable Event Direct Payment Limit, the TNU must, within 20 Business Days of the date on which the Compensable Amount is determined in accordance with the provisions of this Agreement elect to:
- (i) pay the Compensable Amount to ElectraNet as a lump sum payment, in which case the Project Management Fee will be added to the Compensable Amount and then invoiced by ElectraNet; or
 - (ii) pay the Compensable Amount through a modification to the Charges determined in accordance with clause 22.4(d), in which case the Project Management Fee will not be added to the Compensable Amount.
- (c) If the aggregate of the total Compensable Amount for a single Compensable Event equals or exceeds the Compensable Amount Direct Payment Limit, the TNU must pay the Compensable Amount which exceeds the Compensable Amount Direct Payment Limit to ElectraNet through a modification to the Charges determined in accordance with clause 22.4(d).
- (d) A modification to the Charges under this clause 22.4 must:
- (i) be based upon the final amount of the Compensable Amount determined under clause 22.2; and

- (ii) be determined in a manner consistent with the manner in which the original Charges were determined by ElectraNet,

and ElectraNet will provide the TNU a Notice containing its assessment of the Compensable Amount and the modification to the Charges and the date from which such modified Charges will become payable.

- (e) A modification to the Charges under clause 22.4(d) may occur and be Notified to the TNU at any time after the Compensable Amount is determined in accordance with the provisions of this Agreement.
- (f) If the TNU in good faith, Notifies ElectraNet within 10 Business Days of receipt of a Notice from ElectraNet of the Compensable Amount that it does not agree with ElectraNet's assessment of the Compensable Amount or to the proposed modification to the Charges, either Party may refer that matter to be determined by an Independent Expert in accordance with the dispute resolution procedures set out in clause 31.

22.5 Disputes regarding the modification of the Charges

- (a) Notwithstanding anything to the contrary in clause 31, if either Party refers to an Independent Expert in accordance with clause 31 the question as to whether the proposed modification to the Charges under clause 22.4(d) has been determined in a manner which is consistent with the manner in which the original Charges under this Agreement were determined by ElectraNet, the Parties agree that:
 - (i) ElectraNet will provide full details concerning the methodology used to determine the original Charges under this Agreement to the Independent Expert who has been appointed by the Parties to resolve the Dispute;
 - (ii) the Independent Expert will be instructed to determine the modification to the Charges using the methodology provided by ElectraNet under clause 22.5(a)(i) and the Compensable Amount set out in the Notice provided by ElectraNet under clause 22.4(d) and advise the Parties of its decision concerning that adjustment within 20 Business Days of receipt of the information from ElectraNet under clause 22.5(a)(i);
 - (iii) the Independent Expert will be instructed not to disclose details concerning the methodology used to determine the original Charges under this Agreement to the TNU or any member of the TNU Group but to simply certify that the adjustment to the Charges has been determined by applying that methodology and the Compensable Amount set out in the Notice; and
 - (iv) on notification by the Independent Expert of its determination the Parties will be bound by that determination and the Charges will be adjusted and this Agreement will be deemed to have been amended from the date determined by the Independent Expert.
- (b) If the modified Charges notified under clause 22.4(d) are greater than the Charges determined by the Independent Expert in accordance with clause 22.5(a):
 - (i) ElectraNet will set off against the future Charges payable by the TNU any excess Charges paid by the TNU; and
 - (ii) ElectraNet must pay the Independent Expert's costs.
- (c) If the modified Charges notified under clause 22.4(d) are less than or equal to the Charges determined by the Independent Expert under clause 22.5(a):
 - (i) the TNU must pay the shortfall to ElectraNet (if any); and

- (ii) the TNU must pay the Independent Expert's costs.

23. Billing and payment

23.1 Billing

- (a) On or about 5 Business Days after the end of each Billing Period, ElectraNet will issue to the TNU an invoice in respect of the Entry Charge (if applicable) for that Billing Period, and any other amount payable under this Agreement by the TNU in relation to that Billing Period.
- (b) ElectraNet will issue one invoice per Contract Year in respect of the annual Metering Charge, which will be pro-rated by ElectraNet in the event that a Contract Year is less than 365 days. Such Metering Charges may be included in the same invoice as an invoice for Entry Charges under clause 23.1(a).
- (c) An invoice may include Charges in respect of one or more Billing Periods and be in respect of a Charge that has previously been made in order to reflect any adjustments under clause 23.4 due to (for example) revised or substituted *metering data*, information or other information.
- (d) An invoice in respect of any amount payable by the TNU will contain sufficient information and supporting detail to enable the TNU to determine its liability for that amount. The TNU may request, and ElectraNet must provide, such further information as is reasonable to determine the TNU's liability for the Charge or other amount.

23.2 Payments

- (a) Subject to clause 23.3, the TNU must pay ElectraNet the amount set out in the invoice under clause 23.1(a) no later than 12.00 noon on the 20th Business Day after the end of the Billing Period to which the invoice relates or the 5th Business Day after the subsequent supply of information required under clause 23.1(d), whichever is the later.
- (b) Subject to clause 23.3 and any other provision of this Agreement, the TNU must make payments under this clause 23.2 free and clear of any withholding or deduction for any tax unless required by law.
- (c) All payments to be made under this Agreement must be:
 - (i) made in cleared funds to a bank account nominated in writing by ElectraNet; and
 - (ii) rounded to the nearest dollar.

23.3 Billing Disputes

- (a) Subject to clause 22.2(e), the TNU must Notify ElectraNet not less than 5 Business Days before the due date for payment of an invoice under 23.2(a), if the TNU Disputes on a bona fide basis its obligation under this Agreement to pay all or part of that invoice (the **Disputed Amount**).
- (b) If the TNU notifies of a Disputed Amount in accordance with clause 23.3(a):
 - (i) the TNU must pay 80% of the Disputed Amount by the date due for payment of that invoice;
 - (ii) the TNU must pay the whole of the remaining balance of the amount due under that invoice (after deduction of any outstanding amount in relation to the Disputed Amount) by the date due for payment of that invoice; and

- (iii) either Party can refer that matter to be determined in accordance with the dispute resolution procedures set out in clause 31.
- (c) If as a result of the dispute resolution process under clause 31, it is determined that the amount of that invoice should have been:
 - (i) less than the amount already paid by the TNU on account of that invoice, ElectraNet must pay to the TNU the difference between the amount already paid by the TNU and the amount determined as being properly due; or
 - (ii) more than the amount already paid by the TNU on account of that invoice, the TNU must pay to ElectraNet the difference between the amount already paid by the TNU and the amount determined as being properly due,

for each day after the date that invoice was due to be paid, up to and including the date the difference is paid. An amount payable under this clause 23.3(c) will fall due 5 Business Days after the determination of the Dispute.
- (d) A Notice given by the TNU under clause 23.3(a) must contain sufficient information and supporting detail to enable ElectraNet to determine that the Dispute is bona fide and the nature of the TNU's Dispute concerning that invoice.
- (e) The payment of all or part of an amount will not preclude the TNU from subsequently challenging its liability to pay that amount.

23.4 Incorrect invoices

- (a) If any amount invoiced under clause 23.1(a) is subsequently shown to be incorrect for any reason (and the amount was not the subject of a Dispute under clause 23.3), the amount of the difference between the previously invoiced Charge and the corrected Charge will be added to or credited to (as the case may be) the next invoice issued by ElectraNet to the TNU under clause 23.1(a) after that error is discovered.
- (b) If:
 - (i) the TNU has been overcharged or undercharged in any form whatsoever;
 - (ii) the TNU has actually paid the invoices containing such overcharge or undercharge; and
 - (iii) the overcharge or undercharge was not the subject of a Dispute under clause 23.3,

within 20 Business Days after the overcharge or undercharge (as the case may be) was discovered and the amount of the overcharge or undercharge was agreed by the Parties or determined pursuant to the provisions of clause 31, ElectraNet will refund to the TNU the amount of any overcharge and the TNU will pay to ElectraNet the amount of any undercharge (as applicable).

23.5 Interest for late payment

- (a) Subject to clause 23.3, a Party must pay to the other Party interest on any amount due to the other Party under this Agreement and not paid by the due date for payment under this Agreement. Such interest will:
 - (i) accrue daily at the Default Rate (and compound on weekly rests), for each day from the date on which the amount became due and payable until the amount is paid;
 - (ii) be payable on the first Business Day of each month;

- (iii) be calculated on actual days elapsed and a 365 day year; and
 - (iv) be capitalised on the first Business Day after the due date for payment of such interest if not paid when due.
- (b) The TNU's obligation to pay the Charges or any other amount payable under this Agreement by the TNU on the due date for payment of those Charges or that amount will not be affected by this clause 23.5.
 - (c) The parties acknowledge that the Default Rate is a genuine pre-estimate of the loss that ElectraNet will suffer as a result of late payment by the TNU.
 - (d) If the TNU's obligation to pay interest at the Default Rate is void or unenforceable for any reason (including because it is held to be a penalty), the TNU must indemnify and hold harmless ElectraNet and each other member of the ElectraNet Group against any Damages suffered or incurred by ElectraNet or any other member of the ElectraNet Group as a result of late payment by the TNU and that obligation being void or unenforceable.
 - (e) ElectraNet holds the benefit of the indemnity in clause 23.5(d) for itself and on trust for each other member of the ElectraNet Group.

23.6 Goods and services tax

- (a) Unless specifically described in this Agreement 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 Agreement 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 Agreement is subject to GST (other than a supply the consideration for which is specifically described in this Agreement as "GST inclusive"):
 - (i) the consideration payable or to be provided for that supply but for the application of this clause 23.6 (**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 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 23.6(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 Agreement, 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 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.

- (f) A word or expression used in this clause 23.6 which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 23.6.

PART 7 - DISCONNECTION, TERMINATION, FORCE MAJEURE, LIABILITIES AND INDEMNITIES

24. Disconnection or reduction

24.1 Disconnection or reduction

- (a) ElectraNet may *disconnect* the Facility (including by *disconnection* at the Entry Point) or interrupt, suspend, reduce or limit the provision of any Services (including by limiting the transfer of electricity to or from the Facility at the Entry Point or through the Connection Assets or ElectraNet's *transmission network*):
- (i) if requested by the TNU in accordance with rule 5.9.1 of the NER or otherwise by Notice to ElectraNet;
 - (ii) if ElectraNet is entitled to terminate this Agreement pursuant to clause 25 in connection with a Financial Default, Performance Default or Solvency Default (but without prejudice to any continuing rights of termination which are expressly reserved);
 - (iii) if the TNU breaches clause 6.4 or the relevant party does not provide the ElectraNet Group access to all parts of the Third Party Assets for the purpose set out in clause 6.4;
 - (iv) if ElectraNet considers it necessary in order to prevent any impact on *power system security* if there is a mechanical or electrical breakdown or failure of equipment forming part of any Third Party Asset;
 - (v) if the TNU breaches clause 12.1(a) or 12.1(b) or any provision contained in the Operating Protocol;
 - (vi) during an Emergency;
 - (vii) if directed by the System Controller or *AEMO* or by any person exercising an authority granted to it under an Applicable Law (for example, in order to achieve any load shedding directed by *AEMO* under the NER, or the System Controller under the Electricity Act);
 - (viii) where a Party is required or directed (whether formally or informally) to do so under an Applicable Law;
 - (ix) in accordance with clause 15;
 - (x) where the TNU fails to provide an Undertaking in accordance with clause 20.3(a);
 - (xi) in accordance with clause 14.5(b);
 - (xii) in accordance with clause 14.6(c);
 - (xiii) upon termination of this Agreement for any reason;

- (xiv) in accordance with the terms of any agreed *control system, protection system* or run back or tripping scheme (or similar) which forms part of the Connection Assets;
 - (xv) if a Third Party DCA Provider, Third Party DNA Provider or Third Party IUSA Provider fails to comply with any obligations contained in the Project Documents;
 - (xvi) any Project Document is terminated, other than as a result of a breach by ElectraNet; or
 - (xvii) during any period of extreme bushfire danger in accordance with ElectraNet's bushfire policy from time to time.
- (b) For the avoidance of doubt, any Dispute in relation to the operation of clause 24.1(a) can be referred by either Party to be determined in accordance with the dispute resolution procedures set out in clause 31.

24.2 Reason for disconnection or reduction

Subject to clause 24.3, if ElectraNet has exercised or proposes to exercise its rights under clause 24.1(a) ElectraNet must Notify the TNU as soon as practicable (where possible, prior to *disconnection* or interruption, suspension, reduction or limitation of Services (as applicable)) setting out the reasons why ElectraNet has exercised, or proposes to exercise, that right.

24.3 Emergencies

- (a) Without limiting clauses 15 and 24.1(a), if the continued *connection* of the Facility has caused or is likely to cause an Emergency, a Party may take all reasonable steps to prevent or remove that Emergency including:
- (i) *disconnection* of the Facility (including by *disconnection* at the Entry Point);
 - (ii) interrupting, suspending, reducing or limiting the provision of any Service (including by limiting the transfer of electricity to or from the Facility at the Entry Point or through the Connection Assets or ElectraNet's *transmission network*); and
 - (iii) entering in or onto land or premises owned or occupied by the other Party in accordance with the Land and Equipment Access Rules.
- (b) The Party proposing to take action under clause 24.3(a) must comply with the Notice requirements in the Land and Equipment Access Rules which relate to Emergency access.

24.4 Reconnection, re-establishment or restoration

If ElectraNet *disconnects* the Facility or interrupts, suspends, reduces or limits the provision of the Services in accordance with clause 24.1(a), ElectraNet will use its best endeavours to *reconnect*, re-establish or restore the *connection* at the relevant *connection point* or energise the relevant *connection point* (as the case may be) as soon as possible after the circumstances giving rise to that *disconnection*, interruption, suspension, reduction or limitation have ceased or been rectified to ElectraNet's reasonable satisfaction.

24.5 Costs of disconnection and reconnection

- (a) ElectraNet will bear its own costs associated with any *disconnection*, or interruption, suspension, reduction or limitation of the provision of any Services in accordance with clause 24.1(a) or the *reconnection*, re-establishment or restoration or re-*energisation* of any Services under clause 24.4 unless the *disconnection* or the interruption,

suspension, reduction or limitation to the provision of any Services in accordance with clause 24.1(a) was due to an act or omission of any member of the TNU Group (or due to a request from the TNU), in which case the TNU must pay to ElectraNet the reasonable costs incurred by ElectraNet in *disconnecting*, interrupting, suspending, reducing or limiting the provision of any of the Services in accordance with clause 24.1(a) or complying with its obligation under clause 24.4.

- (b) Any amount payable by the TNU under clause 24.5(a) must be paid within 5 Business Days of the date on which ElectraNet notifies the TNU of the amount payable.

24.6 No limitation

Nothing in this clause 24 limits:

- (a) ElectraNet's right to terminate this Agreement pursuant to clause 25;
- (b) ElectraNet's *disconnection* rights under the Applicable Laws or any other provision of this Agreement; or
- (c) the TNU's liability for, or obligation to pay, the Charges.

25. Termination

25.1 Termination by ElectraNet

ElectraNet may terminate this Agreement:

- (a) in accordance with clause 2.5(c) or 2.5(g);
- (b) at any time, if the TNU fails to pay any amounts due to ElectraNet under this Agreement or where this Agreement deems an event to be a 'Financial Default' (**Financial Default**) and:
 - (i) ElectraNet has given a Notice to the TNU specifying the particulars of the Financial Default and giving the TNU 20 Business Days from the date of the Notice to remedy the Financial Default (**Financial Cure Period**); and
 - (ii) the TNU has not remedied the Financial Default within the Financial Cure Period; or
- (c) at any time, if the TNU has failed to comply with any of its other material obligations under this Agreement (**Performance Default**) and:
 - (i) ElectraNet has given the TNU a Notice specifying the particulars of the Performance Default and a reasonable deadline for curing the relevant failure (**Performance Default Cure Date**); and
 - (ii) the TNU has not remedied the Performance Default by the Performance Default Cure Date or such later date as agreed in writing by ElectraNet acting reasonably; or
- (d) without prejudice to clause 25.1(b) or 25.1(c), after the Date of Construction Completion, by giving 20 Business Days' Notice where:
 - (i) the Facility has been *disconnected* from the Entry Point or the provision of any Services in relation to the Entry Point has been interrupted, suspended, reduced or limited under clause 24.1(a)(ii) for a Financial Default, and the TNU has not paid the amount due within 20 Business Days after the date of that *disconnection*, interruption, suspension or limitation; or

- (ii) the Facility has been *disconnected* from the Entry Point or the provision of any Services has been interrupted, suspended, reduced or limited under clause 24.1(a)(ii) for a Performance Default, and the TNU has not:
 - (A) commenced to remedy that Performance Default including where appropriate by using its best endeavours to identify the likely causes of the Performance Default within 20 Business Days after the date of that *disconnection*, interruption, suspension, reduction or limitation; or
 - (B) remedied that Performance Default within a reasonable time after the date of that *disconnection*, interruption, suspension, reduction or limitation.

25.2 Termination by the TNU

The TNU may terminate this Agreement:

- (a) in accordance with clause 2.5(c) or 2.5(g);
- (b) by giving 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;
- (c) where ElectraNet has failed to comply with any of its material obligations under this Agreement and has not:
 - (i) commenced to remedy that failure within 20 Business Days after receiving a Notice from the TNU to do so; or
 - (ii) remedied that failure within a reasonable time after receiving a Notice from the TNU to do so and ElectraNet has not demonstrated to the TNU that ElectraNet is using its best endeavours to remedy that failure; or
- (d) at any time prior to the satisfaction or waiver of the Preconditions, without cause, if the TNU decides, in its absolute discretion, not to proceed with the construction and commissioning of the Facility.

25.3 Termination for Solvency Default

- (a) If a Solvency Default occurs in relation to ElectraNet, the TNU may terminate this Agreement by Notice to ElectraNet if this Agreement has not been novated from ElectraNet to TLC or another entity licenced to provide the Entry Services within a reasonable time after the occurrence of the Solvency Default.
- (b) If a Solvency Default occurs in relation to the TNU, ElectraNet may terminate this Agreement by Notice to the TNU.
- (c) Subject to clause 25.3(d), if a Party gives a termination Notice under clause 25.3(a) or 25.3(b) (as applicable) then this Agreement 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 25.3 under the Corporations Act or any other Applicable Law, a Notice given under clause 25.3(a) or 25.3(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.

25.4 Termination of Project Documents

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

25.5 Consequences of termination

- (a) On termination of this Agreement by either Party under the events listed in clause 25.1, 25.2, 25.3 and 25.4:
 - (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;
 - (ii) as between ElectraNet and the TNU, ElectraNet retains all title in all ElectraNet Assets; and
 - (iii) ElectraNet may:
 - (A) *disconnect*, dismantle, *decommission* and remove any of the Network 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 following the removal of the Network Assets referred to in clause 25.5(a)(iii)(A) (including any work required to reinstate the Transmission System).
- (b) If this Agreement is terminated for any reason (other than where this Agreement is terminated by the TNU under clause 25.2(b), 25.2(c) or 25.3(a) or where this Agreement has been terminated by ElectraNet under clause 25.4 due to a Project Document being terminated for an ElectraNet Project Document Default Termination Event) the TNU will reimburse ElectraNet for any costs which are incurred by ElectraNet in undertaking the work referred to in clause 25.5(a)(iii) (upon receipt from ElectraNet of reasonable evidence substantiating the amount of costs incurred).
- (c) The TNU indemnifies and holds harmless ElectraNet against any Damage suffered or incurred by ElectraNet as a result of a Third Party IUSA Provider, Third Party DNA Provider or a Third Party DCA Provider failing to pay ElectraNet in accordance with a Project Document for ElectraNet's costs of undertaking any work of a similar nature to that referred to in clause 25.5(a)(iii) under the relevant Project Document, where that Project Document has been terminated for any reason other than for an ElectraNet Project Document Default Termination Event.
- (d) If this Agreement is terminated by the TNU under clause 25.2(d), the TNU will reimburse ElectraNet for any costs which are incurred by ElectraNet performing any Preliminary Work. Such amounts will become payable by the TNU in accordance with the terms of the Preliminary Works Agreement.

- (e) Nothing in this clause 25.5 will limit either Party's right to recover Damages from the other Party for breach of contract.

25.6 Recovery of Early Termination Amount on termination

- (a) On:
 - (i) termination of this Agreement by ElectraNet under clauses 25.1(b) to 25.1(d) (inclusive) or clause 25.3 at any time after the date on which all Preconditions have been satisfied or waived;
 - (ii) termination of this Agreement by either Party under clause 25.4 other than for an ElectraNet Project Document Default Termination Event; or
 - (iii) repudiation of this Agreement by the TNU,

the TNU must pay to ElectraNet the Early Termination Amount (or such lesser amount as may be advised by ElectraNet in writing) within 20 Business Days of the Termination Date.
- (b) The Parties acknowledge and agree that the Early Termination Amount is a genuine pre-estimate of the loss that ElectraNet will suffer as a result of an early termination of this Agreement by ElectraNet under clauses 25.1(b) to 25.1(d) (inclusive) or clause 25.3, termination of this Agreement by either Party under clause 25.4 or repudiation of this Agreement by the TNU, and it has been calculated based upon amounts the TNU has agreed to pay ElectraNet under this Agreement for the ElectraNet Connection Work and the Services as at the Execution Date.
- (c) If a TNU's obligation to pay the Early Termination Amount under this clause 25.6 is void or unenforceable for any reason (including because the Early Termination Amount is held to be a penalty), the TNU indemnifies and holds harmless ElectraNet and each other member of the ElectraNet Group against any Damages suffered or incurred by ElectraNet or any other member of the ElectraNet Group as a result of that obligation being void or unenforceable. ElectraNet is also entitled to claim Damages from the TNU in relation to the termination of the Agreement under 25.1(b) to 25.1(d) (inclusive) or clause 25.3, termination of this Agreement by either Party under clause 25.4 or for a repudiation of this Agreement by the TNU and clauses 28 and 29 will not apply to limit the liability of the TNU in relation to any claim for Damages by ElectraNet pursuant to this clause 25.6.
- (d) ElectraNet holds the benefit of the indemnity in clause 25.6(c) for itself and on trust for each other member of the ElectraNet Group.
- (e) Nothing in clause 25.6 will limit ElectraNet's right to recover:
 - (i) any amount owing by the TNU under this Agreement prior to the Termination Date or under clause 25.5; or
 - (ii) Damages from the TNU in relation to a breach of any of the TNU's Non-financial Obligations which have occurred prior to the Termination Date.

25.7 Holding over and further term

- (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 25.7(a), unless otherwise terminated in accordance with its terms, this Agreement will remain in

full force and effect after the Expiry Date until either Party terminates this Agreement by providing 6 months' Notice to the other Party.

- (c) Before the expiration or termination of this Agreement in accordance with clause 25.7(a) or 25.7(b), the Parties may agree to negotiate an extension to the Term, in which case, the Parties must negotiate in good faith and take the principles set out in clause 25.7(d) into account in respect of the proposed extension period.
- (d) In negotiating the fair and reasonable commercial arm's length terms and conditions upon which the Services will be provided by ElectraNet to the TNU for the proposed extension period, the Parties must take into account (among other things) the following matters and principles:
 - (i) the Entry Charge after the Extended Expiry Date should not include any amount on account of the capital cost of the Network Assets originally installed by ElectraNet;
 - (ii) the Entry Charge may take into consideration the depreciated value of any of the Network Assets which were replaced or refurbished during the Term other than as a result of a breach by ElectraNet of its obligations under this Agreement;
 - (iii) the Entry Charge may take into consideration the value of any new assets that will be required in order for ElectraNet to continue to provide the Services to the TNU after the Extended Expiry Date in accordance with the requirements of this Agreement and the Applicable Laws at that time;
 - (iv) the Entry Charge should include an allowance for maintaining and operating the Network Assets taking into account the age and condition of the Network Assets;
 - (v) the Entry Charge should take account of any variation to the potential risk of having to replace any existing Network Assets after the Extended Expiry Date;
 - (vi) the Entry Charge should include an allowance for ElectraNet to make a fair and reasonable profit from the provision of Services after the Extended Expiry Date;
 - (vii) the provision of an Undertaking in accordance with clause 20.2 if the Entry Charges for the Extension Period are not being paid in advance;
 - (viii) whether any Subsequent TNU's will be receiving *transmission services* using the Network Assets during the Extension Period;
 - (ix) that the contents of this Agreement must be fair and reasonable having regard to the commercial interests of the Parties;
 - (x) that at all times, any Service provided under this Agreement must be provided in accordance with *good electricity industry practice* and the other requirements of this Agreement and Applicable Laws;
 - (xi) that this Agreement should be consistent with the prevailing practices and standards in the electricity industry at that time; and
 - (xii) any other relevant matters or principles.
- (e) If, within 6 months of commencing negotiations in accordance with clause 25.7(c), the Parties have not executed an agreement in writing recording the terms and conditions upon which the Services will be provided by ElectraNet to the TNU for an agreed extension period, either Party may terminate this Agreement upon providing 1 month's Notice to the other Party.

25.8 Survival

- (a) This clause 25 survives the termination or expiry of this Agreement.
- (b) Termination of all or any part of this Agreement for any reason does not affect the accrued rights and obligations of the Parties.

26. Applicable Event of Force Majeure

26.1 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 Agreement (**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:
 - (iii) in the case of ElectraNet being the Affected Party, give notice verbally to the TNU in accordance with the Operating Protocol; or
 - (iv) in the case of the TNU being the Affected Party, give Notice to ElectraNet of:
 - (A) that fact; and
 - (B) all relevant particulars relating to that potential Applicable Event of Force Majeure of which it is aware at that time.
- (b) If requested by the other Party, the Affected Party must within 10 Business Days of that request, give the other Party a 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,

(**Force Majeure Suspension Notice**).
- (c) The Affected Party must Notify the other Party of any change 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 31 within 10 Business Days of the Force Majeure Suspension Notice being sent.

26.2 Suspension of obligations

- (a) Subject to compliance with the notice requirements under clause 26.1, 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 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 26.2(a) will not:
 - (i) 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; or
 - (ii) suspend the TNU's obligations to continue to pay the Charges under this Agreement.

26.3 Mitigation

- (a) The Affected Party must, subject to clause 26.3(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 26.3(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.

26.4 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.

27. Warranties, liability and indemnities

27.1 Exclusion of warranties

Subject to clause 27.2 and except as otherwise expressly set out in this Agreement, 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 ElectraNet Connection Work, the ElectraNet Assets or the Services to be provided under this Agreement.

27.2 Exclusion of implied terms

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:

- (a) contravene any Applicable Law or general law which imposed or implied it; or
- (b) cause this clause 27.2 to be void.

27.3 Competition and Consumer Act

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

27.4 Applicable Laws and limitations on liability

This clause 27 and clauses 28 and 29 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*).

27.5 Effect on insurance policies

The Parties acknowledge and agree that clauses 27.1, 27.2, 27.3, 27.4, 28 and 29 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.

27.6 Indemnities

- (a) The TNU, 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 of any third party caused by, arising out of, or in connection with the Connection Work or any activity for which the TNU or any member of the TNU Group is directly or indirectly responsible; and
 - (ii) personal injury (which includes illness) or death of any person caused by, arising out of, or in connection with the Connection Work or any activity for which the TNU or any member of the TNU is directly or indirectly responsible,except to the extent such Damages or Claims were caused or contributed to by ElectraNet or any other member of the ElectraNet Group.

- (b) ElectraNet holds the benefit of the indemnity in clause 27.6(a) for itself and on trust for each other member of the ElectraNet Group.

27.7 Performance incentive scheme

- (a) The TNU acknowledges that an *outage* which is required for the purpose of undertaking and completing the ElectraNet Connection Work or which is caused or contributed to by the TNU or any member of the TNU Group may be taken into account by the *AER* when determining ElectraNet's performance results for the purposes of the *service target performance incentive scheme*.
- (b) If the *AER* takes into account an *outage* of the Transmission System which is:
 - (i) required for the purpose of undertaking and completing the ElectraNet Connection Work; or
 - (ii) caused by an act or omission of the TNU or a member of the TNU Group (including an act or omission of the TNU or a member of the TNU Group in undertaking Planned Work or Unplanned Work on or in relation to the Facility or any of the other *facilities* of the TNU or a member of the TNU Group),

when calculating an adjustment to ElectraNet's *maximum allowed revenue* under the *service target performance incentive scheme*, the TNU must pay to ElectraNet the difference between the *maximum allowed revenue* determined by the *AER* and the *maximum allowed revenue* which would have been determined by the *AER* if the relevant *outage* had not occurred.

- (c) If the *maximum allowed revenue* ElectraNet is entitled to under the *service target performance incentive scheme* is reduced as a result of any *outage* referred to in clause 27.7(b), the TNU must pay to ElectraNet the difference between the actual *maximum allowed revenue* ElectraNet is entitled to under the *service target performance incentive scheme* and the *maximum allowed revenue* that ElectraNet would have been entitled to under the *service target performance incentive scheme* but for the occurrence of that *outage*.
- (d) ElectraNet will use its best endeavours to minimise the amount payable by the TNU under clause 27.7(c) by seeking to coordinate the *outages* for the Connection Work and any Planned Work on or in relation to the Facility or any of the other *facilities* of the TNU or a member of the TNU Group with planned *outages* in relation to any relevant *Network User facilities* or *transmission elements* during the same general period.
- (e) Any amount payable by the TNU under clause 27.7(c) must be paid within 5 Business Days of the date on which ElectraNet notifies the TNU of the amount payable.

28. Exclusions of liability

28.1 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 any member of the TNU Group arising directly or indirectly out of, or in connection with, the TNU Connection Work, including any failure by any member of the TNU Group to design, procure or construct the Third Party IUSA or Third Party DNA in accordance with any Applicable Law, the Functional Specifications or any Project Document.
- (b) Without limiting clause 28.1(a), but subject to clause 28.1(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 any member of the TNU Group arising directly or indirectly out of, or in connection with, this Agreement or any other Project Document (including Claims by third parties against any member of the TNU Group for Consequential Loss).

- (c) The TNU indemnifies and holds harmless ElectraNet and each other member of the ElectraNet Group against any Claims from any member of the TNU Group against any member of the ElectraNet Group in respect of:
 - (i) any Damages or Claims of whatever kind suffered or incurred by any member of the TNU Group referred to in clause 28.1(a); and
 - (ii) any Consequential Loss of whatever kind suffered or incurred by any member of the TNU Group referred to in clause 28.1(b).
- (d) ElectraNet holds the benefit of the indemnity in clause 28.1(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 29.1(a), the exclusion of liability for Consequential Loss contained in clause 28.1(b) does not apply to:
 - (i) the liability of ElectraNet to pay Liquidated Damages under clause 5.1; or
 - (ii) subject to the ElectraNet Liability Limits referred to in clause 29.1(a), 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.

28.2 TNU exclusions of liability

- (a) Subject to clause 28.2(b), the TNU 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 any member of the ElectraNet Group arising directly or indirectly out of, or in connection with, this Agreement.
- (b) The exclusion of liability for Consequential Loss contained in clause 28.2(a) does not apply to:
 - (i) the liability of the TNU to pay the Charges or any Compensable Amounts;
 - (ii) the liability of the TNU under clause 27.7;
 - (iii) the liability of the TNU to pay the Early Termination Amount or for Damages under clause 25.6;
 - (iv) the liability of the TNU under the indemnities it provides under clauses 23.5(d), 25.5(c), 25.6(c), 27.6(a)(i), 27.6(a)(ii), 28.1(c), 29.1(b) and 37.5(a);
 - (v) the liability of the TNU to the extent that such Consequential Loss is caused by the Wilful Misconduct, Gross Negligence or fraud of any member of the TNU Group; or
 - (vi) the liability of the TNU under clause 30.

29. Limitations of liability

29.1 ElectraNet Liability Limits

- (a) Subject to clauses 28.1 and 29.1(c), ElectraNet's aggregate liability to TNU and each other member of the TNU Group for any Damages and Claims arising directly or indirectly out of, or in connection with, this Agreement or any other Project Document, will not (to the maximum extent permitted by law) exceed:
 - (i) in respect of the Connection Work Period, the relevant amount for ElectraNet as specified in Item 3.1 of Schedule 1 in respect of:
 - (A) each event or circumstance giving rise to such Damages or Claims which occurs during the Connection Work Period; and
 - (B) all events or circumstances giving rise to such Damages or Claims, in the aggregate, which occur during the Connection Work Period; and
 - (ii) in respect of each Contract Year, the relevant amount for ElectraNet as specified in Item 3.1 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 TNU indemnifies and holds harmless ElectraNet against any Claims from any member of the TNU Group against ElectraNet for any Damages or Claims referred to in clause 29.1(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 29.1(a) do not apply to any liability of ElectraNet for or in respect of:
 - (i) the payment of Liquidated Damages by ElectraNet under clause 5.1 (which is subject to the liability limit specified in Item 2 of Schedule 2); or
 - (ii) 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 is subject to the ElectraNet Liability Limits referred to in clause 29.1(a)).

29.2 TNU Liability Limits

- (a) Subject to clauses 28.2 and 29.2(b), the TNU's aggregate liability to ElectraNet for any Damages and Claims arising directly or indirectly out of, or in connection with, this Agreement, will not (to the maximum extent permitted by law) exceed:
 - (i) in respect of the Connection Work Period, the relevant amount for the TNU as specified in Item 3.2 of Schedule 1 in respect of:
 - (A) each event or circumstance giving rise to such Damages or Claim which occurs during the Connection Work Period; and
 - (B) all events or circumstances giving rise to such Damages or Claims, in the aggregate, which occur during the Connection Work Period; and

- (ii) in respect of each Contract Year, the relevant amount for the TNU as specified in Item 3.2 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,

(TNU Liability Limits).

- (b) The TNU Liability Limit under clause 29.2(a) does not apply to any liability of the TNU for or in respect of:
 - (i) the liability of the TNU to pay the Charges or any Compensable Amounts;
 - (ii) the liability of the TNU under clause 25.5(b);
 - (iii) the liability of the TNU to pay the Early Termination Amount or for Damages under clause 25.6;
 - (iv) the liability of the TNU under the indemnities it provides under clauses 25.5(c), 25.6(c), 27.6(a)(i), 27.6(a)(ii), 28.1(c), 29.1(b) and 37.5(a);
 - (v) Claims for Damages caused by the Wilful Misconduct, Gross Negligence or fraud of the TNU or any member of the TNU Group; or
 - (vi) the liability of the TNU under clause 30.

30. Related Companies

- (a) Without limiting clause 33.2, the TNU must not appoint or engage a Related Company or permit a Related Company to be appointed or engaged to perform any activities which are connected with the Facility (and will ensure that none of its Related Bodies Corporate appoint a Related Company in relation to the Facility) without providing ElectraNet with at least 10 Business Days' prior Notice.
- (b) If a Notice is provided to ElectraNet under clause 30(a) (or if such a Related Company is appointed without a Notice being provided to ElectraNet as required by clause 30(a)) and ElectraNet requests in writing and without limiting clause 28.1(c) and clause 29.1(b), the TNU must procure the Related Company to enter into a mutual hold harmless deed with ElectraNet in respect of Consequential Loss (**Mutual Hold Harmless Deed**).
- (c) Notwithstanding that the TNU has procured a Related Company to enter in a Mutual Hold Harmless Deed the TNU acknowledges and agrees that the liability of the TNU to indemnify and hold harmless ElectraNet and each other member of the ElectraNet Group under clause 28.1(c) and clause 29.1(b) will not be reduced or limited in any way.
- (d) If, despite clause 30(a) and clause 30(b), the TNU appoints a Related Company without procuring a Mutual Hold Harmless Deed from that Related Company:
 - (i) the TNU will be in breach of its obligations under this Agreement; and
 - (ii) the TNU acknowledges and agrees that the liability of the TNU to indemnify and hold harmless ElectraNet and each other member of the ElectraNet Group under clause 28.1(c) and clause 29.1(b) will not be reduced or limited in any way.

- (e) In this clause 30, **Related Company** means any company which:
- (i) is registered as a *Customer* or a *Generator* under the NER in relation to any part of the Facility;
 - (ii) would have been required under the *National Electricity Law* and the NER to be registered as a *Customer* or a *Generator* in relation to the Facility (or any part of the Facility) if another party had not been registered as an Intermediary under the *National Electricity Law* and the NER in relation to the Facility (or that part of the Facility); or
 - (iii) otherwise deals with or enters into contracts with either the TNU or with a company described in clause 30(e)(i) or 30(e)(ii) in relation to the provision of any services associated with any part of the Facility, including a contract:
 - (A) for the operation and maintenance of the Facility or part of the Facility;
 - (B) for the purchase of electricity generated by the Facility; or
 - (C) under which that company has a right to otherwise deal with the electricity generated by the Facility.

PART 8 - MISCELLANEOUS

31. Dispute resolution

31.1 NER Disputes

- (a) If any NER Dispute arises between the Parties under or in relation to this Agreement, then the dispute resolution regime provided for in rule 8.2 of the NER will apply to that Dispute.
- (b) For the purposes of rule 8.2.5(c) of the NER, the Parties agree that the *Adviser* may attempt to resolve the Dispute in accordance with rule 8.2.5(c)(1) of the NER within such period as the *Adviser* considers reasonable.
- (c) Nothing in this clause limits the application of rule 5.5 of the NER to the extent it may apply in respect of a *DNA services access dispute*.

31.2 Non-NER Disputes – first stage dispute resolution

- (a) If a Dispute, other than a NER Dispute, arises between the Parties a Party may, by Notice, refer the Dispute to resolution in accordance with this clause 31 (other than clause 31.1).
- (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 31.2(a).

31.3 Non-NER Disputes – reference to and appointment of Independent Expert

- (a) If the Dispute remains unresolved at the end of the period referred to in clause 31.2(b) then, either Party may require that the Dispute be determined by an independent expert appointed in accordance with clause 31.3(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.

31.4 Non-NER Disputes – 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.

31.5 Non-NER Disputes – 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.

31.6 Non-NER Disputes – rules of evidence

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

31.7 Non-NER Disputes – 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.

31.8 Non-NER Disputes – 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 Agreement.
- (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 Agreement 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 Agreement; and
 - (iii) the relevant clause of this Agreement requires that failure to agree to be resolved in accordance with this clause 31,

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.

31.9 Non-NER Disputes – 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 31.3(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.

31.10 Non-NER Disputes – obligations not suspended

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

31.11 Non-NER Disputes – criteria for Charges

In making any determination as to the level of Charges that will apply under this Agreement, the Independent Expert must, without limitation, have regard to the following factors:

- (a) that the Charges must be fair and reasonable; and
- (b) without limiting the scope of clause 31.11(a) the Charges must provide ElectraNet with a reasonable rate of return for the services which it provides to the TNU.

31.12 NER and non-NER Disputes

In the event that a Dispute has both NER and Non-NER elements, the Parties will seek to use their best endeavours to:

- (a) Notify each other of the nature of the Dispute; and
- (b) specify in any Notice provided to the other Party which matters relate to NER and Non-NER matters.

31.13 Disputes generally

- (a) Neither Party may have recourse to litigation in relation to a Dispute without first having complied with this clause 31.
- (b) This clause 31 does not prevent a Party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

31.14 Survival

This clause 31 survives the termination or expiry of this Agreement.

32. Change to Applicable Laws or other circumstances

32.1 Interpretation of Agreement

If after the Execution Date, an Applicable Law:

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

then subject to clauses 32.2 and 32.3, this Agreement will be interpreted (as far as possible) in such a way as to enable compliance with that Applicable Law.

32.2 Negotiation

Despite clause 32.1 and without limiting ElectraNet's rights under clause 22.2, if at any time after the Execution Date:

- (i) a Change in Applicable Law Event occurs;
- (ii) the manner in which an Applicable Law, the Pricing Rules or any Authority regulates how any Charge is to be calculated, varied or applied or the ElectraNet Connection Work or any Services are to be provided, materially changes;
- (iii) the activities comprised within or the service standards applying to the ElectraNet Connection Work or any Service materially change (provided such change is the result of a change in an Applicable Law); or
- (iv) any other event, circumstance or change occurs which materially affects the way in which the ElectraNet Connection Work or any of the Services are provided or ElectraNet operates its *facilities*,

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

- (b) If the Parties are unable to agree upon any such amendment within 28 days of commencing negotiations, either Party may refer that Dispute for resolution in accordance with clause 31.

32.3 Disputes

In determining a Dispute relating to a matter arising under this clause 32 (in accordance with clause 31), the Independent Expert will take into account (among other things) the following factors:

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

33. Assignment and transfer

33.1 Restriction

- (a) ElectraNet may Dispose of some or all of its rights and obligations under this Agreement to a Related Body Corporate, or TLC (or a nominee of TLC). If it does so, it must give Notice to the TNU before that Disposal.
- (b) Other than in the circumstances set out in clause 33.1(a), and subject to clause 33.2, no Party may Dispose of its rights or obligations under this Agreement 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.

33.2 Requirements for Disposals

For the purposes of clause 33.1(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 Laws; and
- (c) before the Disposal occurs:
 - (i) 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 Agreement; and
 - (ii) in the case of any Disposal by the TNU, provides ElectraNet with (or procures ElectraNet to be provided with) performance security in the form of an Undertaking or deed of guarantee and indemnity in a form and on terms acceptable to ElectraNet in all respects and which complies with the requirements of clause 20.

33.3 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 33.

33.4 Change in ownership of the Facility

- (a) The TNU must not transfer or Dispose of any interest in the Facility to a third party without ElectraNet's prior written consent unless ElectraNet consents to novate this Agreement to that third party at the same time as the transfer or dispose of (the interest in) the Facility takes place, by:
 - (i) the third party taking over all the rights and obligations of the TNU under this Agreement and the other Project Documents to which the TNU is a party to; and
 - (ii) the third party complying with the requirements in clause 33.2(c).
- (b) ElectraNet will provide its consent to a novation in accordance with clause 33.4(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 TNU under this Agreement 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 Agreement 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 TNU disputes ElectraNet's decision to not agree to a novation, the matter will be resolved in accordance with clause 31.

33.5 Deed of acknowledgement and consent

- (a) The TNU must not create or permit to exist any security interest, mortgage, charge or encumbrance over any of its rights under this Agreement except with the prior written consent of ElectraNet.
- (b) If requested by the TNU, 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 Agreement, subject to cure of pre-existing breaches, which must be in form and substance satisfactory to ElectraNet.

33.6 Change of Control

- (a) ElectraNet may terminate this Agreement by Notice to the TNU where there is a Change of Control in relation to:
 - (i) the TNU; or
 - (ii) where the TNU is expressed to be a party to this Agreement 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 33.6(a) if ElectraNet is not reasonably satisfied that the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the TNU to fulfil its obligations under this Agreement.
- (c) A termination under clause 33.6(a) will be deemed to be a termination of this Agreement by ElectraNet under clause 25.1(c).

34. Notices

34.1 Giving of Notices

Subject to clause 34.2, 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 Agreement (**Notice**) must be:

- (a) in writing, which includes email and other electronic communications (unless otherwise specified in Item 6 of Schedule 3 for that type of Notice);
- (b) addressed to the person holding the office identified in Item 6 of Schedule 3 for that type of Notice; and
- (c) sent in the manner identified in Item 6 of Schedule 3 for that type of Notice.

34.2 Day to day Notices

Subject to complying with the requirements of the Applicable Laws, any Notice given in the course of the day-to-day running of each Party's *facilities* or the *National Electricity Market* by or on behalf of a Party to the other Parties may be made by automated electronic process, email, telephone or other instantaneous means of communication.

34.3 Maintenance of logs

Unless communications under clause 34.2 are recorded in some other way satisfactory to both Parties, the Parties must ensure that logs are kept, in which persons or electronic systems giving and receiving those communications record brief details of their substance and timing.

34.4 Timing of receipt

A Notice given to a Party in accordance with clause 34.1 or 34.2 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).

34.5 Addresses and Notice details

A Party may change any details relating to that Party set out in Item 6 of Schedule 3 by Notice to the other Party given in accordance with this clause 34.

35. Provision and use of information

35.1 Obligation to provide information

- (a) The TNU will provide to ElectraNet (within 10 Business Days of being requested to do so) any information requested by ElectraNet which:
- (i) concerns the Facility or the TNU's operations;
 - (ii) is referred to in Schedules 5.3, 5.4 or 5.5 of the NER; or
 - (iii) is reasonably necessary to enable ElectraNet to:
 - (A) comply with its obligations under any Project Document;
 - (B) comply with its obligations under any Applicable Law; or
 - (C) operate, develop, design and plan the Transmission System in accordance with *good electricity industry practice* and the requirements of all Applicable Laws.
- (b) Without limiting clause 35.1(a), the information referred to in Schedules 5.3, 5.4 and 5.5 of the NER of particular relevance to ElectraNet comprises:
- (i) preliminary system planning (including those items denoted as Standard Planning Data (S) in the Generating System Model Guidelines, Generating System Design Data Sheet, Generating System Setting Data Sheet and in Schedules S 5.5.3 to S 5.5.5 (both inclusive) of the NER);
 - (ii) registered system planning data (including those items denoted in Schedule 5.5.3 to 5.5.4 (both inclusive) of the NER denoted as Detailed Planning Data (D)); and
 - (iii) registered data including:
 - (A) prior to actual *connection* and provision of access, data derived from manufacturers' data, detailed design calculations, works or site tests (including those items denoted in Schedule 5.5.3 to 5.5.5 (both inclusive) of the NER as R1); and
 - (B) after *connection*, data derived from on-system testing (including those items denoted in Schedule 5.5.3 to 5.5.5 (both inclusive) of the NER as R2);
 - (C) the "Network and Plant Technical Data" set out in Schedule 5.5.3 of the NER;
 - (D) the "Network Plant and Apparatus Setting Data" set out in Schedule 5.5.4 of the NER; and
 - (E) the "Load Characteristics at Connection Point" set out in Schedule 5.5.5 of the NER.

35.2 Status information

Without limiting clause 35.1(a)(i), the TNU will provide to ElectraNet at the end of each Contract Year, a Notice containing:

- (a) details of the expected *load* for the Entry Point for the next Contract Year; and

- (b) an estimate of the forecasted *load* for the Entry Point during the 10 year period following the end of the next Contract Year.

36. Confidential Information

36.1 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.

36.2 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:
 - (i) must not disclose Confidential Information to any person except as permitted by this Agreement (including clauses 36.3 and 36.4);
 - (ii) must only use or reproduce Confidential Information for the purpose for which it was disclosed or another purpose contemplated by this Agreement; 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 36 in relation to that information.
- (d) Subject to clauses 36.2(e), 36.2(f) and 36.2(g), 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) Despite clauses 36.2(d) and 36.2(e), a Party is entitled to make a statement to the following effect in relation to this Agreement: *“ElectraNet and [insert] have entered into a conditional connection agreement in relation to the proposed connection of the [insert] located [insert] to ElectraNet’s transmission network”*.
- (g) 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 TNU regarding the content of such information, document or article and the TNU has consented to such content (such consent not to be unreasonably withheld or delayed).

36.3 Disclosures required under Applicable Laws

Without limiting any other provision of this clause 36, the TNU consents to ElectraNet using any information concerning the Facility, electricity usage, *metering* data and any related or similar

information 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).

36.4 Other exceptions

Subject to clause 36.5, clause 36.2 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:
 - (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 Agreement, 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 TNU to a contractor engaged in relation to the Facility or by ElectraNet to a contractor engaged in relation to the ElectraNet Connection Work;
- (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 Agreement 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 TNU under clause 36.4(i); and
 - (ii) to the extent reasonably required in order to answer any question by that person concerning the terms and conditions of this Agreement;
- (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 Agreement;
- (p) **(Connection Applicant)**: the disclosure of any Confidential Information concerning the Connection Assets or 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*;
- (q) **(Applicable Laws)**: the disclosure, use or reproduction of Confidential Information where required or permitted from time to time under an Applicable Law;
- (r) **(access policy)**: the disclosure, use or reproduction of Confidential Information by ElectraNet as contemplated by clause 12.4 or otherwise required in connection with an *access policy*.

36.5 Undertaking to keep confidential and restrictions on use

- (a) In the case of a disclosure under clause 36.4(b), 36.4(c), 36.4(d) or 36.4(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 36.2 and 36.3 and does not use the information for any purpose other than that permitted under clause 36.2(b).
- (b) Notwithstanding anything in this clause 36, but subject to clause 36.5(c), ElectraNet acknowledges and agrees that the data and information provided by the TNU 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 TNU.
- (c) On and from the second anniversary of the “Execution Date” of the first “Work Order” issued under the Preliminary Works Agreement (as those terms are defined under the Preliminary Works Agreement), the TNU hereby consents to the use of the data and information referred to in clause 36.5(b) for the purpose of tendering for, or negotiating contestable *transmission services* specified in rule 5.2A.4(a) of the NER.

36.6 Survival

This clause 36 survives the termination or expiry of this Agreement.

37. Intellectual Property Rights

37.1 ElectraNet Background IP Materials

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

37.2 TNU Background IP Materials

- (a) ElectraNet acknowledges that it does not own any Intellectual Property Rights in the TNU Background IP Materials.
- (b) The TNU 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 TNU 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 Agreement or the other Project Documents;
 - (B) perform the ElectraNet Connection Work;
 - (C) provide the Services; and
 - (D) fully enjoy, exploit and further develop the Contract IP Materials; or
 - (ii) 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 37.2(b), on and from the second anniversary of the "Execution Date" of the first "Work Order" issued under the Preliminary Works Agreement (as those terms are defined under the Preliminary Works Agreement), the TNU 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 TNU 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 TNU acknowledges and agrees that clause 37.2(c) is a consent given by the TNU for the purposes of rule 5.3.8(a1) of the NER.

37.3 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 TNU 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 TNU a non-exclusive, irrevocable, perpetual, royalty free licence to use any Contract IP Materials for the purposes of this Agreement.

37.4 Warranties by TNU

- (a) The TNU represents and warrants to ElectraNet that:
 - (i) the TNU 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 the ElectraNet Group in accordance with clause 37.2,

the Intellectual Property Rights in the TNU Background IP Materials.
- (b) The TNU represents and warrants to ElectraNet that it is able to assign the Intellectual Property Rights in all Contract IP Materials pursuant to clause 37.3.

37.5 Indemnity

- (a) The TNU 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 TNU Background IP Materials;
 - (ii) any breach of the warranties set out in clause 37.4.
- (b) ElectraNet holds the benefit of the indemnity in clause 37.5(a) for itself and on trust for each other member of the ElectraNet Group.

37.6 Survival

This clause 37 survives the termination or expiry of this Agreement.

38. Records

38.1 Type of records

A Party (the **Recording Party**) must maintain such records, data and other information as required by Law, as the other Party may from time to time by Notice in reasonable detail to the Recording Party reasonably require for the purpose of this Agreement or as may otherwise be reasonably necessary to enable the Parties to comply promptly and fully with the obligations under this Agreement.

38.2 Form and retention

The records referred to in clause 38.1 must be maintained in either written or electronic form. The Recording Party must maintain these records for so long as required by law or longer as otherwise agreed by the Parties in writing.

38.3 Notice of disposal

The Recording Party must give the other Party not less than 20 Business Days prior Notice of its intention to dispose of any records referred to in clause 38.1. The other Party may collect from the Recording Party such records within that period.

39. Governing law and jurisdiction

39.1 Governing law

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

39.2 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 Agreement.
- (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.

40. Project Information

40.1 Warranties

Without limiting the TNU's obligations under this Agreement, the TNU represents and warrants to ElectraNet that:

- (a) the TNU has examined and carefully checked:
 - (i) the Scope of Works;
 - (ii) the Functional Specifications;
 - (iii) the Operating Protocol;
 - (iv) all relevant ElectraNet Standards; and
 - (v) all information, data, representations, statements or documents made available by ElectraNet, or any other person whether or not on ElectraNet's behalf, to the TNU in relation to the Connection Work, the Work, the Facility or the Land, (the **Project Information**); and
- (b) the TNU 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 Agreement.

40.2 Acknowledgements

The TNU acknowledges and agrees that:

- (a) it enters into the Project Documents based on its own:
 - (i) enquiries, investigations, interpretations, deductions, information and determination; and
 - (ii) independent evaluation as to the currency, accuracy, suitability, adequacy or completeness of any Project Information;
- (b) the TNU has not in any way relied upon, and will not rely upon:
 - (i) any Project Information (including any summary of any document or information referred to or incorporated by reference in the Project Information); or

- (ii) the accuracy or adequacy of any Project Information (including any summary of any document or information referred to or incorporated by reference in the Project Information),

provided by or on behalf of ElectraNet, for the purposes of entering into the Project Documents or performing its obligations in accordance with this Agreement;

- (c) 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 TNU's obligations under this Agreement or give rise to any Claim on the part of the TNU or any member of the TNU Group;
- (d) neither ElectraNet nor anyone on ElectraNet's behalf, warrants, guarantees, assumes any responsibility for, or makes any representation about, the accuracy or adequacy of the Project Information;
- (e) neither ElectraNet nor anyone on ElectraNet's behalf owes any duty of care to the IUSA Provider with respect to the Project Information;
- (f) ElectraNet is not liable for, or in connection with, any Claim (and neither the TNU nor any member of the TNU Group is entitled to make any Claim) arising out of, or in connection with, the Project Information; and
- (g) the TNU has entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations.

41. General

41.1 Authority to enter into Agreement

Each Party (in this clause 41.1 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 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.

41.2 Amendment and waiver

- (a) Unless expressly stated to the contrary in this Agreement, this Agreement 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.

41.3 Severance

Any provision in 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.

41.4 Entire agreement

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.

41.5 No reliance

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

41.6 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 Agreement and the transactions contemplated by it.

41.7 Cost and expenses

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

41.8 System Controller

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

41.9 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.

41.10 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.

41.11 Survival

- (a) If this Agreement is terminated or expires, then except where this Agreement expressly provides otherwise:
 - (i) 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;
 - (ii) each Party retains the rights and Claims it has against the other Party for any past breach of this Agreement; and
 - (iii) the provisions of this Agreement survive termination or expiry to the extent necessary to give effect to clause 41.11(a)(i).
- (b) Without limiting clause 41.11(a):
 - (i) any warranties provided by the Parties under this Agreement; and
 - (ii) clauses 20, 25, 27, 28, 29, 31, 34, 36, 37, 38 and 39 and this clause 40, survive expiry or termination of this Agreement.

41.12 Survival of indemnities

Without limiting clause 41.11, each indemnity in this Agreement is a continuing obligation which survives the termination or expiry of this Agreement.

41.13 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.

41.14 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.

EXECUTED as an agreement.

Signed for an 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

Executed by **[TNU Co]** ACN [123 123 123] in accordance with s127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name (please print)

Name (please print)

Schedule 1 - Charges and other items

Item 1 Preliminary Works Agreement

The 'Preliminary Works Agreement' dated [insert] between ElectraNet and the TNU.

The Preliminary Works Agreement may be constituted by master terms and conditions and one or more work orders (or similar document incorporating those terms and conditions).

Item 2 Entry Charge

2.1 Annual Entry Charge

The total Entry Charge payable in respect of each Contract Year (**Annual Entry Charge**) is to be determined by ElectraNet in accordance with the following formula on each Review Date:

$$\text{Annual Entry Charge} = \text{Base Rate} \times \left(\frac{X\text{Days}}{CY\text{Days}} \right) \times \left(\frac{CPI_{\text{new}}}{CPI_{\text{base}}} \right)$$

2.2 Entry Charge for each Billing Period

The Entry Charge payable for each Billing Period during a Contract Year will be determined by ElectraNet in accordance with the following formula on each Review Date:

$$\text{Entry Charge} = \text{Annual Entry Charge} \times \left(\frac{\text{Monthly Factor}}{\text{Annual Factor}} \right)$$

2.3 Definitions

In this Item 2:

Annual Entry Charge has the meaning set out in Item 2.1 of this Schedule 1.

Base Rate is equal to \$[insert], being the sum of the Capital Charge and the O&M Charge.

Capital Charge is equal to \$[insert].

O&M Charge is equal to \$[insert].

XDays means:

- (a) for the First Contract Year, the number of days from the Date of Construction Completion to the next 30 June immediately following the Date of Construction Completion (inclusive of both dates);
- (b) for the Last Contract Year, the number of days from 1 July immediately preceding the Expiry Date or the Termination Date to the Expiry Date or Termination Date (as applicable and inclusive of both dates); and
- (c) for every other Contract Year, 365;

CYDays means 365;

CPI_{new} means the last quarterly CPI published before the Review Date or CPI_{base} (whichever is the greater amount);

CPI_{base} means the most recent quarterly CPI published before the Execution Date, being [insert];

Review Date means, for a Contract Year, the first day of that Contract Year.

Monthly Factor means:

- (a) for the month in which the Date of Construction Completion occurs, the number of days from the Date of Construction Completion to the last day of the month in which the Date of Construction Completion occurs (inclusive of both dates);
- (b) for each month in the First Contract Year (other than the month in which the Date of Construction Completion occurs), the number of days in that month;
- (c) for each month in the Last Contract Year (other than the month in which the Expiry Date or Termination Date occurs), the number of days in that month;
- (d) for the month in which the Expiry Date or Termination Date occurs, the number of days from first day of that month to the Expiry Date or Termination Date (as applicable and inclusive of both dates); and
- (e) for every other month during the other Contract Years, the number of days in that month; and

Annual Factor means:

- (a) for the First Contract Year, the number of days from the Date of Construction Completion to the next 30 June immediately following the Date of Construction Completion (inclusive of both dates); and
- (b) for the Last Contract Year, the number of days from the 1 July preceding the Expiry Date or Termination Date to the Expiry Date or Termination Date (as applicable and inclusive of both dates); and
- (c) for every other Contract Year, 365.

Item 3 Liability limits

3.1 ElectraNet Liability Limits

- (a) For the ElectraNet Liability Limit referred to in clause 29.1(a)(i): \$1,000,000.
- (b) For the ElectraNet Liability Limit referred to in clause 29.1(a)(ii): \$1,000,000.

3.2 TNU Liability Limit

- (a) For the TNU Liability Limit referred to in clause 29.2(a)(i): \$1,000,000.
- (b) For the TNU Liability Limit referred to in clause 29.2(a)(ii): \$1,000,000.

Item 4 ElectraNet’s Costs

ElectraNet’s Costs means all costs (other than Sub-Contractor’s Costs, Consultant’s Fees and Project Management Fees) incurred by ElectraNet in relation to the ElectraNet Connection Work and the Services, including:

- (a) ElectraNet’s internal costs related to any component of the ElectraNet Connection Work and the Services and charged at the rate referred to in Item 5 of this Schedule 1;
- (b) ElectraNet’s allowance for general overheads and costs; and
- (c) any cancellation fees and non-refundable deposits to third parties relating to any component of the ElectraNet Connection Work and the Services that have been paid or are required to be paid by ElectraNet.

Item 5 ElectraNet Internal Rate for ElectraNet Connection Work and Services

The internal cost component of ElectraNet’s Costs will be limited to the time spent by ElectraNet personnel in relation to the relevant ElectraNet Connection Work or Service charged at the following GST exclusive hourly rates:

**Table 1-5
ElectraNet’s Costs**

Role	Rate (per hour)
Project Manager	[INSERT]
Principal Engineer	[INSERT]
Project Engineer	[INSERT]
Senior Engineer	[INSERT]
Engineer	[INSERT]
Legal Counsel	[INSERT]
Project Controller	[INSERT]
Administration Officer	[INSERT]

This Item 5 is valid for 12 months from the Execution Date and thereafter will be automatically adjusted to reflect ElectraNet’s standard published or notified rates from time to time for each category of personnel.

Item 6 Freehold Transfer Costs, Lease Costs, Easement Costs and Licence Costs

Freehold Transfer Costs, Lease Costs, Easement Costs and Licence Costs include all reasonable costs which are incurred by ElectraNet in connection with the procurement, acquisition, negotiation, exercise, registration or compliance with any Freehold Transfer, Lease, Easement or Licence, including:

- (a) ElectraNet’s Costs and Consultant’s Fees (including external conveyancing fees);
- (b) any rent, easement consideration, licence consideration and fees;

- (c) any stamp duty, outgoings, registration fees or other statutory charges;
- (d) any compensation payable by ElectraNet to the relevant Land Owner on account of unavoidable damage to crops or loss of use of land caused by the undertaking of the ElectraNet Connection Work; and
- (e) the cost of any required remediation in relation to any land owned by a Land Owner as a result of the undertaking of the ElectraNet Connection Work.

Item 7 Project Management Fee

Project Management Fee means in relation to the calculation of any Compensable Amounts, an amount equal to [insert]% of the aggregate of the Sub-Contractor's Costs and the Consultant's Fees for the ElectraNet Connection Work to which those Compensable Amounts relate.

Item 8 Metering Charge

The amount of the Metering Charges as at the Execution Date will be \$[insert] per annum plus GST.

This amount will be adjusted in accordance with Item 9 of this Schedule 1.

Item 9 CPI Adjustment of the Metering Charge

The Metering Charge for each Contract Year will be adjusted on each Review Date in accordance with the following formula:

$$P_r = P_{R_{r-1}} \times \left(\frac{CPI_{new}}{CPI_{base}} \right)$$

where:

P_r means the Metering Charge payable by the TNU for the Contract Year following the relevant Review Date;

P_{r-1} means the relevant Metering Charge payable during the Contract Year ending on the relevant Review Date;

CPI_{new} means the latest quarterly CPI published as at the relevant Review Date or **CPI_{base}** (whichever is the greater amount);

CPI_{base} means the most recent quarterly CPI published before the Execution Date, being [insert]; and

Review Date for a Contract Year, the first day of that Contract Year.

Item 10 Undertaking Amount

The amount of the Undertaking to be provided by the TNU:

- (i) as a Precondition; or
- (ii) otherwise under clause 20,

in respect of an Undertaking Period must equal the Undertaking Amount corresponding to that Undertaking Period as set out in Table 1-10 (the **Undertaking Table**) and increased in

accordance with clause 22.2(f) (where applicable) and in accordance with the following formula:

$$U_r = U_{r-1} \times \left(\frac{CPI_{new}}{CPI_{base}} \right)$$

where:

U_r means the Undertaking Amount for the relevant Undertaking Period;

BU_{r-1} means the base Undertaking Amount shown in the Undertaking Table below for the relevant Undertaking Period;

CPI_{new} means the latest quarterly CPI published as at the first day of the relevant Undertaking Period or CPI_{base} (whichever is the greater amount); and

CPI_{base} means the most recent quarterly CPI published before the Execution Date, being [insert].

Table 1-10
Undertaking Amounts

Undertaking Period	Undertaking Amount	Undertaking Provision Date
The period from the Commencement Date to the Date of Construction Completion	#[insert]	Required Date under Item 3.1 of Table 2-3 of Schedule 2
Contract Year 1	#[insert]	Date of Construction Completion
Contract Year 2	#[insert]	1 July of Contract Year 2
Contract Year 3	#[insert]	1 July of Contract Year 3
Contract Year 4	#[insert]	1 July of Contract Year 4
Contract Year 5	#[insert]	1 July of Contract Year 5
Contract Year 6	#[insert]	1 July of Contract Year 6
Contract Year 7	#[insert]	1 July of Contract Year 7
Contract Year 8	#[insert]	1 July of Contract Year 8
Contract Year 9	#[insert]	1 July of Contract Year 9
Contract Year 10	#[insert]	1 July of Contract Year 10
Contract Year 11	#[insert]	1 July of Contract Year 11
Contract Year 12	#[insert]	1 July of Contract Year 12
Contract Year 13	#[insert]	1 July of Contract Year 13
Contract Year 14	#[insert]	1 July of Contract Year 14
Contract Year 15	#[insert]	1 July of Contract Year 15
Contract Year 16	#[insert]	1 July of Contract Year 16

Contract Year 17	#[insert]	1 July of Contract Year 17
Contract Year 18	#[insert]	1 July of Contract Year 18
Contract Year 19	#[insert]	1 July of Contract Year 19
Contract Year 20	#[insert]	1 July of Contract Year 20
Contract Year 21	#[insert]	1 July of Contract Year 21
Contract Year 22	#[insert]	1 July of Contract Year 22
Contract Year 23	#[insert]	1 July of Contract Year 22
Contract Year 24	#[insert]	1 July of Contract Year 22
Contract Year 25	#[insert]	1 July of Contract Year 22
Contract Year 26	#[insert]	1 July of Contract Year 22

Item 11 Compensable Amount Direct Payment Limit

#[insert] (exclusive of GST).

Item 12 Early Termination Amount

The amount of Early Termination Amount for each period specified in Table 1-12 below (**Early Termination Amount Table**) will be equal to the base amount shown in the Early Termination Amount Table for the relevant period and increased in accordance with clause 22.2(f) (where applicable) and in accordance with the following formula:

$$FR_r = FR_{r-1} \times \left(\frac{CPI_{new}}{CPI_{base}} \right)$$

where:

FR_r is the amount of Early Termination Amount for the relevant period;

FR_{r-1} is the base amount shown in the Early Termination Amount Table below for the relevant period;

CPI_{new} means the last quarterly CPI published as at the first day of the relevant period or CPI_{base} (whichever is the greater amount); and

CPI_{base} means the most recent quarterly CPI published before the Execution Date, being [insert].

**Table 1-12
Early Termination Amount Table**

Year	Early Termination Amount (\$ million)
The period from the Commencement Date to Date of Construction Completion.	#[insert] plus GST
Contract Year 1 (i.e. the period from Date of	#[insert] plus GST

Year	Early Termination Amount (\$ million)
Construction Completion to next 30 June)	
Contract Year 2	#[insert] plus GST
Contract Year 3	#[insert] plus GST
Contract Year 4	#[insert] plus GST
Contract Year 5	#[insert] plus GST
Contract Year 6	#[insert] plus GST
Contract Year 7	#[insert] plus GST
Contract Year 8	#[insert] plus GST
Contract Year 9	#[insert] plus GST
Contract Year 10	#[insert] plus GST
Contract Year 11	#[insert] plus GST
Contract Year 12	#[insert] plus GST
Contract Year 13	#[insert] plus GST
Contract Year 14	#[insert] plus GST
Contract Year 15	#[insert] plus GST
Contract Year 16	#[insert] plus GST
Contract Year 17	#[insert] plus GST
Contract Year 18	#[insert] plus GST
Contract Year 19	#[insert] plus GST
Contract Year 20	#[insert] plus GST
Contract Year 21	#[insert] plus GST
Contract Year 22	#[insert] plus GST
Contract Year 23	#[insert] plus GST
Contract Year 24	#[insert] plus GST
Contract Year 25	#[insert] plus GST
Contract Year 26	#[insert] plus GST

Schedule 2 - Construction

Item 1 Definition of Date for Construction Completion

The date which is [insert] calendar months after the Commencement Date.

Item 2 Liquidated Damages

[\$[insert] per day for each full day of the resulting Delay Period.

ElectraNet's liability for Liquidated Damages will not in any circumstance exceed an amount equal to \$[insert].

Item 3 Preconditions

**Table 2-3
Preconditions**

[Drafting Note: Amend as necessary for each TCA.]

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
3.1	Performance security The TNU has provided performance security to ElectraNet as required by clause 20 in form and substance acceptable to ElectraNet.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.2	Financial close The TNU has provided ElectraNet with evidence (in a form satisfactory to ElectraNet) that the TNU has achieved financial close for the financing of the Facility.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet and the TNU jointly
3.3	Freehold Transfers If ElectraNet requires Freehold Transfer(s) over any portion(s) of the Land, the TNU has provided ElectraNet with the required Freehold Transfer(s) in form and substance acceptable to ElectraNet.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.4	Leases If ElectraNet requires any Lease(s) over any portion(s) of the Land, the TNU has provided ElectraNet with the required Lease(s) in form and substance acceptable to ElectraNet.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.5	Easements If ElectraNet requires any Easement(s) over any portion(s) of the Land, the TNU has provided ElectraNet with the required Easement(s) in form and substance	20 Business Days after the Execution Date (or such later date as agreed in writing between the	TNU	ElectraNet

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
	acceptable to ElectraNet.	Parties).		
3.6	<p>Licences</p> <p>If ElectraNet requires any Licence(s) over any portion(s) of the Land, the TNU has provided ElectraNet with the required Licence(s) in form and substance acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.7	<p>Authorisations for Connection Work</p> <p>The TNU has obtained all Authorisations required to commence the Connection Work (including all development approvals required to commence the ElectraNet Connection Work) 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).	TNU	ElectraNet
3.8	<p>Authorisations for Facility</p> <p>The TNU has obtained all Authorisations required for all parts of the Facility.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.9	<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 Network Assets or the Land (including any Freehold Transfer, Lease, Easement or Licence) 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
3.10	<p>Execution of IUSA Interface Works Agreement</p> <p>If the TNU has engaged a Third Party IUSA Provider to perform the Third Party IUSA Works:</p> <p>(a) the Third Party IUSA Provider has executed an IUSA Interface Works Agreement with ElectraNet in form and substance acceptable to ElectraNet; and</p> <p>(b) all preconditions to the IUSA Interface Works Agreement (other than a precondition that the Preconditions under this Agreement have been satisfied or waived) have been satisfied or waived in accordance with the IUSA Interface Works Agreement.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
3.11	<p>Execution of DNA Interface Works Agreement</p> <p>If the TNU has engaged a Third Party DNA Provider to perform the Third Party DNA Works:</p> <p>(a) the Third Party DNA Provider has executed a DNA Interface Works Agreement with ElectraNet in form and substance acceptable to ElectraNet; and</p> <p>(b) all preconditions to the DNA Interface Works Agreement (other than a precondition that the Preconditions under this Agreement have been satisfied or waived) have been satisfied or waived in accordance with the DNA Interface Works Agreement.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.12	<p>Execution of IUSA Network Operating Agreement</p> <p>If the TNU has engaged a Third Party IUSA Provider to own a Third Party IUSA:</p> <p>(a) the Third Party IUSA Provider has executed an IUSA Network Operating Agreement with ElectraNet in form and substance acceptable to ElectraNet; and</p> <p>(b) all preconditions to the IUSA Network Operating Agreement (other than a precondition that the Preconditions under this Agreement have been satisfied or waived) have been satisfied or waived in accordance with the IUSA Network Operating Agreement.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.13	<p>Execution of DNA Network Operating Agreement</p> <p>If the TNU has engaged a Third Party DNA Provider to own a Third Party DNA:</p> <p>(a) the Third Party DNA Provider has executed a DNA Network Operating Agreement with ElectraNet in a form and substance acceptable to ElectraNet; and</p> <p>(b) all preconditions to the DNA Network Operating Agreement (other than a precondition that the Preconditions under this Agreement have been satisfied or waived) have been satisfied or waived in accordance</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
	with the DNA Network Operating Agreement.			
3.14	<p>Execution of Third Party DCA Transmission Connection Agreement</p> <p>If the TNU has engaged a Third Party DCA Provider to own and operate a Third Party DCA:</p> <p>(a) the Third Party DCA Provider has executed the Third Party DCA Transmission Connection Agreement with ElectraNet in form and substance acceptable to ElectraNet; and</p> <p>(b) all preconditions to the Third Party DCA Transmission Connection Agreement (other than a precondition that the Preconditions under this Agreement have been satisfied or waived) have been satisfied or waived in accordance with the Third Party DCA Transmission Connection Agreement.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet
3.15	<p>Expansion option</p> <p>If ElectraNet requires any Freehold Transfer(s) or Lease(s) over any portion(s) of the Land to facilitate the future expansion of the Network Assets, the TNU has provided to ElectraNet with the required Freehold Transfer or Lease in form and substance acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet

Item 4 Land

[Insert]

Item 5 Target Outage Window

[Insert]

Schedule 3 - Operations

Item 1 Expiry Date

The Expiry Date will be the day which is on the [insert] anniversary after the Date of Construction Completion.

Item 2 Entry Services

Entry Services means:

1. the provision of the capability of the ElectraNet Assets in accordance with this Agreement so as to enable the TNU to:
 - (a) deliver electricity to ElectraNet's *transmission network* at the Entry Point up to but not exceeding the Agreed Capability for the Entry Point; and
 - (b) take delivery of electricity from ElectraNet's *transmission network* at the Entry Point up to but not exceeding the Agreed Capability for the Entry Point for the sole purpose of:
 - (i) commissioning the Facility; or
 - (ii) starting up the TNU's *generating units* at the Facility from time to time (including charging up the batteries if applicable to the *connection*),

in both cases, subject to the overriding limitations referred to in clause 10;
2. the management, maintenance and operation of the ElectraNet Assets and any Third Party IUSA and/or Third Party DNA between the Entry Point and the Transmission Network Connection Point so as to provide the capability referred to in paragraph 1 of this Item 2 using *good electricity industry practice* and in accordance with the Technical Obligations and requirements of all Applicable Laws.

Item 3 Agreed Capability and permitted output

Table 3-3
Capability and permitted output

Supply Voltage (kV)	Agreed Capability at Entry Point (MVA) (for both for import and export)	Maximum Permitted Output of Facility (MW)
[132kV/275Kv]	[INSERT] MVA	[INSERT] MW

Notes:

- 1 "Normal" refers to a scenario where all *transmission elements* which affect Capacity of ElectraNet's *transmission network* are in service. This is the maximum 'System Normal' capability (i.e. the highest value, defined by the peak of the annual load cycle, at which sustained operation is permitted).
- 2 ElectraNet will maintain the above supply voltage level + or - 10% at all times.

- 3 The *power transfer capability* set out in the above table is the *power transfer capability* of ElectraNet's *transmission network* at the Transmission Network Connection Point as at the Execution Date under Summer system normal operating conditions.

Item 4 Metering Services

- (a) Providing, installing and maintaining the *metering installation* for the Connection Point.
- (b) Performing the functions and responsibilities of a *Metering Coordinator* in relation to each *metering installation* in accordance with Chapter 7 of the NER.
- (c) ElectraNet will provide, install and maintain the *metering installation* for the Connection Point in accordance with Chapter 7 of the NER and the procedures authorised under the NER.
- (d) The *metering installation* will meet the requirements of a Type 2 Installation for the Connection Point, as defined in Chapter 7, Schedule 7.2 of the NER.
- (e) The entire *metering installation* will be located adjacent to the Connection Point.
- (f) The NER requires that *metering data* be collated in 30 minute *trading intervals* coincident with Australian Eastern Standard Time. ElectraNet will configure the *meters* to collate *metering data* in 15 minute intervals so as to be consistent with other Type 2 installations within South Australia.

Item 5 TNU insurance details

The TNU must secure and maintain throughout the Term the insurance policies specified below:

- (a) a public liability policy covering legal liability for loss or damage to real or personal property and for injury or disease (including death) to any person, howsoever caused, including as a result of or in connection with fires or bushfires caused or resulting from the actions or omissions of the TNU for not less than \$20 million limit of liability for any one occurrence and unlimited in the aggregate.
- (b) a property damage or industrial special risks policy for the reinstatement value of the Facility.

Item 6 Notices

Table 3-6
Notice details

Type of Notice	Permitted service method	ElectraNet	TNU
		Description of person to whom Notice must be sent	Description of person to whom Notice must be sent
All Notices up to the Commencement Date	Written only	<u>Attention:</u> Manager, Business Development <u>Physical address:</u> ElectraNet 52-55 East Terrace Rymill Park	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u>

Type of Notice	Permitted service method	ElectraNet	TNU
		Description of person to whom Notice must be sent	Description of person to whom Notice must be sent
		Adelaide SA 5000 <u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au	[INSERT]
All Notices from the Commencement Date up to the Date of Practical Completion	Written only	<u>Attention:</u> ElectraNet Project Manager <u>Physical address:</u> ElectraNet 52-55 East Terrace Rymill Park Adelaide SA 5000 <u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u> [INSERT]
Technical or operational	Any method	<u>Attention:</u> Network Operations Manager <u>Physical address:</u> ElectraNet 52-55 East Terrace Rymill Park Adelaide SA 5000 <u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u> [INSERT]
Billing	Written only	<u>Attention:</u> Accounts Payable Manager <u>Physical address:</u> ElectraNet 52-55 East Terrace Rymill Park Adelaide SA 5000 <u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u> [INSERT]
All Notices after Practical Completion	Written only	<u>Attention:</u> Manager, Business Development <u>Physical address:</u> ElectraNet 52-55 East Terrace	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u>

Type of Notice	Permitted service method	ElectraNet Description of person to whom Notice must be sent	TNU Description of person to whom Notice must be sent
		Rymill Park Adelaide SA 5000 <u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au	[INSERT]

Item 7 DNA Service

[Insert details of any *DNA service* being provided by ElectraNet e.g.

Providing access to the DNA (but does not include a requirement to extend or replicate the designated network asset) in accordance with the terms of this Agreement.

If a DNA service is being provided by a third party, then this TCA must acknowledge that no ElectraNet DNA Services are being provided and include relevant Third Party DNA Provider details for the purposes of rule 5.3.6(a3), including:

- third party confirmation of access to DNA services that has been agreed with the Connection Applicant in accordance with the relevant access policy; and
- details of technical requirements or limitations agreed as part of the DNA services that are relevant to the offer to connect.]

Schedule 4 - Land and Equipment Access Rules

1. Definitions

Despite anything to the contrary in this Agreement, in these Land and Equipment Access Rules, italicised terms have the meanings given to them in the NER and:

ElectraNet Equipment means the ElectraNet Assets and any plant, materials or equipment which is incorporated, or will be incorporated, into the ElectraNet Assets;

ElectraNet Site means the portion of the Land on which the ElectraNet Connection Works are being undertaken, or will be undertaken, or such areas of land where the ElectraNet Assets are located, which sites will be occupied and controlled by a member of the ElectraNet Group;

Equipment means either or both of the ElectraNet Equipment and the TNU Equipment as the context requires;

High Risk Area means an area which is designated from time to time to be unsafe for work by the member of the relevant Party Group which occupies and controls relevant Site or infrastructure for WHS purposes;

Party Group means in respect of ElectraNet, the ElectraNet Group and in respect of the TNU, the TNU Group;

Personnel means any personnel whom are members of the ElectraNet Group or the TNU Group, as the context requires;

Site means either or both of the ElectraNet Site and the TNU Site as the context requires;

TNU Equipment means the Facility and the Third Party Assets and any plant, materials or equipment which is incorporated, or will be incorporated, into the Facility or the Third Party Assets;

TNU Site means such areas of land which the TNU Connection Work is being undertaken or will be undertaken or such areas of land where the Facility and the Third Party Assets are located, which sites will be occupied and controlled by a member of the TNU Group; and

WHS means work, health and safety.

2. General access

The following rules will apply for general access to the Sites and Equipment.

- (a) Each Party will ensure that members of the other Party's Group are granted access to its Sites and Equipment from time to time in accordance with the Project Documents and Applicable Law.
- (b) Each Party must ensure that before any members of its Party Group access the Sites or Equipment of the other Party Group, 12 hours' Notice is provided to the other Party, which Notice must contain:
 - (i) names and photo identification of all personnel who will be accessing the relevant Sites or Equipment; and
 - (ii) reasonable details of why access is required and the proposed times for access.
- (c) At all times whilst accessing the relevant Sites or Equipment, each Party must ensure that all members of its Party Group:
 - (i) comply with the other Party's reasonable security, WHS and other access directions, policies and procedures;
 - (ii) in respect of access to any ElectraNet Site, comply with the ElectraNet asset access manual (as updated from time to time);
 - (iii) do not carry out any work in any High Risk Areas;
 - (iv) consult in good faith with members of the other Party Group (or its WHS principal contractor) in respect of matters concerning WHS;
 - (v) if required by the member of the other Party Group which occupies and controls the relevant Equipment or Sites:
 - (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 relevant Sites or Equipment.
- (d) Other than in the event of any Emergency, access to the Sites and Equipment under this Item 2 will be restricted to the hours of 8:30am to 5:00pm on Business Days and weekends which are not public holidays.

3. Emergency access

In the event of an Emergency, the rules in Item 2 above will apply subject to the following exceptions:

- (a) the notice requirements of Item 2(b) above will not need to be complied with before access is granted, provided they are complied with as soon as reasonably practicable; and
- (b) the access time restrictions Item 2(d) will not apply.

Schedule 5 - Technical Obligations

[Drafting Note: Technical Obligations Schedule will be confirmed and updated once Performance Standards are finalised.]

Item 1 ElectraNet Technical Obligations

[Insert]

Item 2 TNU's Technical Obligations

2.1 General standards

[insert]	[insert]	[insert]	[insert]	[insert]
[insert]	[insert]	[insert]	[insert]	[insert]

2.2 Nominated levels and limits

2.3 Registered Performance Standards for [insert]

[Insert performance standards]

Annexure A - Scope of Works

[Drafting Note: To be attached.]

Annexure B - Functional Specifications

[Drafting Note: Where there is no Third Party IUSA or Third Party DNA, mark as "Not used".]

Annexure C - Operating Protocol

[Drafting Note: To be attached.]

Annexure D – Standard form *access policy*

[Drafting Note: To be attached.]