

Transmission Connection Agreement – Third Party DCAs

Title	Transmission Connection Agreement – Third Party DCAs
Version	Version 2 (published on 21 December 2021)
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>dedicated connection asset</i> (DCA Provider) to enter into a transmission <i>connection agreement</i> (TCA) containing the terms and conditions upon which the DCA Provider’s <i>dedicated connection asset</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 third party <i>dedicated connection assets</i> 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 – Dedicated Connection Asset

ElectraNet Pty Limited (**ElectraNet**)

and

[INSERT] (**DCA Provider**)

[INSERT] Project

www.electranet.com.au

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Date

Parties

ElectraNet	ElectraNet Pty Limited ACN 094 482 416 of 52-55 East Terrace, ADELAIDE SA 5000
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DCA Provider	[INSERT] ACN [INSERT] of [INSERT]
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Background

-
- A The DCA Provider will design, construct, own, operate and maintain the DCA.
 - B The DCA will be used for the purpose of *connecting* the TNU Facility to the Transmission System via the IUSA.
 - C In order to *connect* the DCA to the Transmission System and provide the Services, it will first be necessary to undertake the Connection Work.
 - D This Agreement sets out the terms on which the Connection Work will be undertaken and the Services will be provided.
 - E This Agreement is a *connection agreement* between the DCA Provider and ElectraNet for the provision of *connection services*.

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:

Affected Party has the meaning set out in clause 22.1(a).

Agreed Capability means, in relation to the Connection Point, the maximum capability in MVA to transfer electricity to the DCA from ElectraNet's *transmission network* or from the DCA to ElectraNet's *transmission network* at the Connection Point as set out in Item 3 of Schedule 3.

Applicable Event of Force Majeure has the meaning set out in clause 22.1(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 DCA Provider (or both) from time to time; or
- (b) relate to the Transmission System, the Connection Assets, the TNU Facility, the DCA, 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, authorised agents, suppliers, 'associated entities' (as defined in the Corporations Act), contractors, subcontractors and professional advisers, and:

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

for the avoidance of doubt, ElectraNet is not an Associate of the DCA Provider.

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".

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

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

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 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.

Change in Applicable Law Event means:

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

after the Execution Date.

Change of Control means:

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

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

Claims includes all claims, demands, actions or proceedings for any Damages, including any such claim by way of indemnity, under contract (including any breach of this 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 the date on which ElectraNet provides a Notice to the DCA Provider in accordance with clause 2.4 confirming that all of the Preconditions have been satisfied or waived in accordance with clause 2.3(a).

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.

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 and the Communication Assets. For the avoidance of doubt, a reference to Connection Assets does not include the DCA.

Connection Point means the point of interface between the Network Assets and the DCA described in the Scope of Works.

Connection Work means the ElectraNet Connection Work and the DCA Provider 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.

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.

Corporations Act means the Corporations Act 2001 (Cth).

Damages includes any liabilities, expenses, losses (including Consequential Losses), damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against a Party) whether arising under contract (including any breach of this 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 DCA Provider 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 5.1 or clause 27, 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 DCA Provider under clause 3.10,

or where the Date for Practical Completion has been extended in accordance with clause 5.1 or clause 27, the date resulting from that extension.

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

DCA means the DCA Provider's *dedicated connection asset* described in Item 2 of Schedule 1 proposed to be designed, constructed, owned, operated and maintained by the DCA Provider and used to *connect* the TNU Facility (through the IUSA and, if applicable, the DNA) to ElectraNet's *transmission network*.

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

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

DCA Provider Connection Work means those activities and items of work described as the 'DCA Provider Connection Work' in the Scope of Works and which forms part of the TNU Connection Work.

DCA Provider Group means:

- (a) the DCA Provider, the TNU and each of their 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.

DCA Provider Liability Limits has the meaning set out in clause 25.2(a).

DCA Provider Site has the meaning set out in Schedule 4.

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 TNU 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 TNU.

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.

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.

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

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

Disposing Party has the meaning set out in clause 29.2.

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.

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 the DCA.

ElectraNet Background IP Materials means all IP Materials owned or licensed to ElectraNet and provided by, or on behalf of, ElectraNet to the DCA Provider 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 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 25.1(a).

ElectraNet Project Document Default Termination Event means, in respect of a Project Document other than this Agreement, where that 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”.

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 DCA, the TNU 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 8.4.

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 the TNU, 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.

Financial Cure Period has the meaning set out in clause 21.1(b)(i).

Financial Default has the meaning set out in clause 21.1(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 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 22.1(b).

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 19(b)(i).

Independent Expert has the meaning set out in clause 27.3(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 TNU Facility (via the DCA and DNA, if applicable) to ElectraNet's *transmission network* 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 TNU Facility to ElectraNet's *transmission network*, the agreement so entitled between ElectraNet and the Third Party IUSA Provider.

IUSA Network Operating Agreement means, where Third Party IUSA are used to *connect* the TNU Facility (via the DCA and DNA, if applicable) 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 3 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 mean the Land and Equipment Access Rules in Schedule 4.

Land Owner means the owner of any land over or in relation to which land access rights are required by ElectraNet for the purposes of undertaking any part of the ElectraNet Connection Work, performing the Services or locating the Connection Assets.

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

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 26(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.

Non-Compliance has the meaning set out in clause 12.4(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.

Notice has the meaning set out in clause 30.1 and **Notify** has a corresponding meaning.

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

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

Performance Default has the meaning set out in clause 21.1(c).

Performance Default Cure Date has the meaning set out in clause 21.1(c)(i).

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

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 2 of Schedule 2.

Prescribed Charge means any *Participant* fee or charge payable by the DCA Provider from time to time in respect of any *prescribed common transmission services* or *prescribed TUOS 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.

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 5.1).

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) the TNU TCA; and
- (e) any other document which the Parties agree in writing is a Project Document.

Project Information has the meaning set out in clause 36.1(a).

Recording Party has the meaning set out in clause 34.1.

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 26(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 37.1.

Required Date means, in respect of each Precondition, the corresponding date by which that Precondition must be satisfied as set out in Item 2 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 Transmission Services or other services agreed by the Parties in writing from time to time, and **Service** means any one of them.

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

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

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

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

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 4 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 Item 1 of Schedule 5;
- (b) the DCA Provider and the DCA, the requirements set out in Item 2 of Schedule 5;
- (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 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 2.7.

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

Third Party Assets means:

- (a) the TNU Facility;
- (b) any Third Party IUSA;
- (c) any Third Party DNA; and
- (d) any Subsequent TNU Facility.

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

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 forms part of the TNU Connection Work.

Third Party IUSA means any contestable IUSA components constructed and owned by a party other than ElectraNet or the DCA Provider used to transfer electricity between the TNU 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. For the avoidance of doubt, the Third Party IUSA Provider can be the same entity as the DCA Provider.

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 or Transmission Network User means the party (or parties) listed in Item 1 of Schedule 1.

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 and any Third Party DNA Work.

TNU 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* to the Transmission System via the DCA.

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

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

Transmission Network Connection Point means:

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

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

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 Facility) to the Transmission System after the Execution Date; and

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

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 DCA Provider and NER

- (a) The DCA Provider must comply with its obligations as a *Registered Participant* under the NER.
- (b) The DCA Provider 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) During any period in which the DCA Provider is not a *Registered Participant*, any provisions of the NER (other than Chapter 3) that set out:
 - (i) rights or obligations of a *Dedicated Connection Asset Service Provider* as against a *Primary Network Service Provider*;
 - (ii) rights of a *Primary Network Service Provider* as against a *Dedicated Connection Asset Service Provider*; or
 - (iii) technical or operational specifications that are relevant to the DCA,

are incorporated into this Agreement and any reference to the application of the NER to the DCA Provider, or compliance by the DCA Provider 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(c).

1.5 References to Third Party IUSA and Third Party DNA

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; and
- (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.

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 2 of Schedule 2.
- (b) If ElectraNet waives a Precondition applying to the DCA Provider in accordance with clause 2.3(a), it may do so on such conditions as it deems necessary.

2.4 Notice of Commencement Date

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

2.5 Failure of Preconditions

- (a) If a Precondition is not satisfied, or waived in accordance with clause 2.3(a), by the Required Date for the satisfaction of that Precondition:
 - (i) the Party who is specifically stated in Item 2 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 either Party terminates this Agreement under clause 2.5(c), neither Party will be entitled to any Claim against the other Party under, in respect of, or in connection with, this Agreement and each Party releases the other Party from any such Claims.

2.6 Clauses not subject to Preconditions

Clauses 1, 2, 14, 15, 21.1(a), 21.2(a), 21.2(d), 21.3, 21.4, 21.5, 21.6(e), 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35 and 36 come into full force and effect immediately on the Execution Date.

2.7 Term

Subject to clause 2.6, this Agreement commences on the Commencement Date and, subject to clause 21.6, 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.
- (b) ElectraNet will use best endeavours to:
 - (i) achieve Construction Completion of the ElectraNet Connection Work by the Date for Construction Completion; and
 - (ii) achieve Practical Completion by the Date for Practical Completion.
- (c) 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 DCA Provider Connection Work

The DCA Provider must:

- (a) ensure that each component of the DCA Provider 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 DCA Provider 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 DCA Provider Connection Work;
- (b) ensure that the DCA Provider 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 DCA Provider 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

The DCA Provider will be responsible for:

- (a) obtaining and maintaining, at its cost, all land access rights which the DCA Provider is required to obtain or hold before the performance of the DCA Connection Work can commence and be completed; and
- (b) obtaining and maintaining, at its cost, all land access rights which the DCA Provider is required to obtain or hold in order to operate the DCA.

3.4 Authorisations

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

- (a) the DCA Provider will be responsible for:
 - (i) obtaining and maintaining, at its cost, all Authorisations which the DCA Provider is required under Applicable Law to obtain or hold before the performance of the DCA Provider Connection Work can commence and be completed; and
 - (ii) obtaining and maintaining, at its cost, all Authorisations which the DCA Provider is required under the Applicable Laws to obtain or hold in order to operate the DCA; 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 DCA Provider of any proposed or likely departure from the current Program of Works following a request from the DCA Provider to do so.

3.6 Reporting

ElectraNet will provide monthly reports to the DCA Provider 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 DCA Provider or ElectraNet.
- (b) Where applicable, the Parties will permit any TNU, Third Party IUSA 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 DCA Connection Work and various other activities relating to the development of the DCA 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 DCA 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 DCA Provider or any member of the DCA Provider Group for any Claims for Damages suffered or incurred by the DCA Provider or any member of the DCA Provider 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 DCA Provider 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 DCA Provider must not:
- (i) cause any *outage* except as permitted by this clause 3.9 or clause 13; or
 - (ii) cause the prolongation, or otherwise delay, any *outage* permitted by this clause 3.9 or clause 13.

3.10 Completion of the DCA and DCA Connection Work for commissioning

The DCA Provider must serve a Notice on ElectraNet when the construction and commissioning of the DCA and the DCA 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 DCA Provider, provided that such variations:
- (i) do not give rise to a requirement for the DCA Provider's Connection Work to be varied; or
 - (ii) are required in order for ElectraNet to:
 - (A) act in accordance with *good electricity industry practice*;
 - (B) comply with all Applicable Laws.

- (b) Where a variation to the ElectraNet Connection Work will give rise to a requirement for the DCA Provider's Connection Work to be varied, ElectraNet must not vary the ElectraNet Connection Work without the DCA Provider's consent, which consent must not be unreasonably withheld.
- (c) ElectraNet will advise the DCA Provider of any proposed variation to the ElectraNet Connection Work as soon as reasonably practicable.

4.2 Variations to the DCA Connection Work

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

4.3 Variations to the DCA Connection Work

- (a) If, at any time after the Execution Date, the DCA Provider wishes to vary any part of the DCA Connection Work, the DCA Provider must submit a Notice to ElectraNet (**Variation Request**) setting out:
 - (i) particulars of the proposed variation to the DCA Connection Work;
 - (ii) the effect (if any) that the DCA Provider reasonably considers that the proposed variation may have on the ElectraNet Connection Work; and
 - (iii) any other relevant information related to the proposed variation to the DCA Connection Work.
- (b) The DCA Provider must promptly provide any further information reasonably requested by ElectraNet in relation to the Variation Request.
- (c) Within 15 Business Days of the Variation Request being received by ElectraNet, 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 DCA Connection Work which:
 - (i) is not agreed between ElectraNet and the TNU under the TNU TCA;
 - (ii) involves a change to the configuration and layout of the DCA contemplated by the Scope of Works;
 - (iii) adversely impacts other *Network Users* (including, any Subsequent TNU) or power system security;
 - (iv) gives rise to a need for any other *Network Users* (including any Subsequent TNU) to make any change, variation or modification to their *facilities*;
 - (v) 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
 - (vi) hinders or impedes the ability of any Subsequent TNU to *connect* a Subsequent TNU Facility to the Network Assets.
- (e) If the terms of the proposed variation to the DCA Connection Work are agreed between the Parties, each Party agrees to execute all documents as may be necessary or desirable to give full effect to the proposed variation to the DCA Connection Work prior to the commencement of the proposed variation.

- (f) If the Parties are unable to agree to the terms of a variation to the DCA 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 27.

5. Delay

5.1 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 DCA Provider 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 any event beyond the reasonable control of ElectraNet; or
 - (ii) if agreed in writing by the DCA Provider acting reasonably.
- (c) If clause 5.1(b) applies, ElectraNet will provide the DCA Provider 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 5.1(a).
- (d) Without limiting clause 5.1(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. Work health and safety

6.1 Defined terms

In this clause 6, the terms **Construction Project**, **Principal Contractor** and **Workplace** have the meanings given to them under the WHS Legislation.

6.2 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 DCA or any Third Party Assets, the DCA Provider Connection Work or the TNU Connection Work.

6.3 Health and safety obligations

- (a) The DCA Provider must Notify ElectraNet immediately of anything or any circumstance arising in connection with the DCA Provider'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 DCA Provider must provide ElectraNet with any information requested by ElectraNet from time to time about hazards and risks arising at or in relation to the DCA Provider's activities or any other safety matters relevant to the conduct of the ElectraNet Connection Work or Services.
- (c) The DCA Provider must take all reasonably practicable steps to:
 - (i) assist ElectraNet; and
 - (ii) compel any relevant third party whom the DCA Provider 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.

6.4 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 DCA Provider 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

7. Inspections and testing before first *energisation*

7.1 Inspection by DCA Provider

- (a) The DCA Provider 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 7.1(a), the DCA Provider 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.

7.2 Compliance testing

- (a) At any time after the Execution Date until the Date of Practical Completion, upon request, the DCA Provider must provide or procure ElectraNet and its Associates unrestricted access to the DCA in order to enable ElectraNet to test the effect of the DCA and the Third Party Assets on ElectraNet's existing *transmission network* and satisfy itself that the DCA and the Third Party Assets:
 - (i) are acceptable for *connection* to ElectraNet's *transmission network*; and
 - (ii) 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 DCA Provider not less than 2 Business Days' Notice of an inspection under clause 7.2(a) and any related request for testing of the DCA or the Third Party Assets; and
 - (ii) minimise, as far as reasonably possible, disruption to the DCA Provider or any Associate of the DCA Provider arising out of such inspections and tests.

7.3 Non-compliances

- (a) On completion of the inspections and testing mentioned in clause 7.2, ElectraNet will Notify the DCA Provider of any non-compliance in respect of the DCA resulting from such inspections and tests and provide the DCA Provider with such further information as is reasonably required by the DCA Provider to identify the relevant non-compliance.
- (b) Any inspection and testing by ElectraNet in accordance with clause 7.2 will not relieve the DCA Provider or its Associates from any liability, responsibility or obligation to ensure that the DCA 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.

7.4 Deficiencies

Without limiting clause 20.1, if ElectraNet determines at any time, having regard to *good electricity industry practice* that the DCA 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 DCA or any Third Party Assets to ElectraNet's *transmission network* until such deficiency has been remedied to the reasonable satisfaction of ElectraNet.

8. Commissioning and first energisation

8.1 Commissioning

Prior to the initial *connection* of the DCA 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 DCA Provider will procure the TNU and the Third Party IUSA Provider and Third Party DNA 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 DCA 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.

8.2 Secondary systems must be jointly commissioned

The DCA Provider acknowledges and agrees that:

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

- (ii) all *protection systems*, protection signalling, interlocking and *control systems* to be used in connection with the DCA and the Third Party Asset,

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

8.3 ElectraNet may witness joint commissioning

- (a) Where a joint commissioning test or exercise of the kind referred to in clause 8.2 is to be undertaken, the DCA Provider 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 8.3(a), ElectraNet may Notify the DCA Provider that ElectraNet or its Associate (or both) will attend and witness the relevant test or exercise, in which case, the DCA Provider must grant or procure such access as required for ElectraNet or its Associate (or both) to attend and witness such test or exercise.

8.4 Energisation Preconditions

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

Category	Energisation Precondition
<u>Inspection and Testing</u>	All <i>plant</i> , assets and equipment forming part of the DCA and the Third Party Assets have been inspected by ElectraNet and any deficiencies have been resolved in accordance with clause 7.
<u>Third Party IUSA</u>	ElectraNet is satisfied that the Third Party IUSA has been designed and constructed 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 DCA and the Third Party Assets) to be used in connection with the DCA and the Third Party Assets have been jointly commissioned by the DCA Provider, the TNU, the Third Party DNA Provider and the Third

	Party IUSA Provider in accordance with clause 8.2, and clause 8.3 has been complied with.
<u>Commissioning</u>	ElectraNet is satisfied that all <i>plant</i> , assets and equipment forming part of the DCA 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 11.
<u>Mutual Hold Harmless Deeds</u>	Any Mutual Hold Harmless Deeds required by clause 26 are in place and duly executed by all parties to them.
<u>Registration for DCA</u>	The DCA Provider has obtained any relevant registration or exemption under rule 2.5.1 of the NER with respect to the DCA.
<u>Pre-energisation documents</u>	The following documents have been finalised and provided by the DCA Provider 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, and may only be relied upon and waived in writing by ElectraNet in its sole and absolute discretion.
- (c) ElectraNet may impose conditions on the waiver by it of any Energisation Preconditions and any such conditions must be complied with by the DCA Provider.
- (d) Upon satisfaction of each Energisation Precondition, ElectraNet will Notify the DCA Provider confirming that the relevant Energisation Precondition has been satisfied.

8.5 Post Energisation Deliverables

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

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

PART 4 - SERVICES AND OPERATIONS

9. Transmission Services

9.1 Provision of Transmission Services

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

9.2 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 DCA Provider under this Agreement; and
 - (ii) no charges in respect of these services are imposed on the DCA Provider 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 DCA Provider under this Agreement, any applicable Prescribed Charge will be charged to the DCA Provider and the DCA Provider must do all things and execute all documents reasonably required by ElectraNet to effect the charging to the DCA Provider of the applicable Prescribed Charge.

10. Conditions applying to operations

10.1 Operation and control of the DCA and Third Party Assets

- (a) The DCA Provider must operate, control and maintain the DCA 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 10.1(a), the DCA Provider must:
 - (i) not operate the DCA, or permit electricity to be transferred through the DCA, so that the Agreed Capability is exceeded;
 - (ii) not operate the DCA, or permit electricity to be transferred through the DCA, so that the Capacity of ElectraNet's *transmission network* from time to time is exceeded;
 - (iii) operate the DCA to ensure that the TNU and any Subsequent TNU *connected* to the DCA is able to comply with the *performance standards* applying to the *facility* of the TNU and any Subsequent TNU (as applicable); and
 - (iv) immediately Notify ElectraNet if the DCA Provider becomes aware of any material and probable threat of a breach of clause 10.1(a) or this clause 10.1(b).

- (c) Without limiting clause 20.1, ElectraNet may take such steps as it reasonably considers necessary to interrupt, suspend, reduce or limit the delivery of electricity:
- (i) to the DCA through the Connection Assets; or
 - (ii) from the DCA 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 10.1(a) or 10.1(b).
- (d) The DCA Provider acknowledges and agrees that:
- (i) as at the Execution Date, the maximum Capacity of ElectraNet's *transmission network* to accept electricity at the Connection Point is equal to the *power transfer capability* set out in Item 3 of Schedule 3 under the network conditions and other circumstances described in Item 3 of Schedule 3;
 - (ii) despite clause 10.1(d)(i), the actual amount of electricity which can be transferred to or from the DCA 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; and
 - (II) the Agreed Capability; and
 - (B) may be limited due to conditions on ElectraNet's *transmission network* (including constraints caused by *Generators* exporting electricity into or *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 the transfer of electricity to or from the DCA through the Connection Assets will only be available to be utilised by the DCA Provider on a non-exclusive or 'non-firm' basis, and the DCA Provider 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 DCA Provider (or any third party with whom the DCA Provider contracts) as a direct or indirect result of the DCA Provider being unable to transfer electricity to or from the DCA 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 10.1 limits:
- (i) ElectraNet's right to terminate this Agreement pursuant to clause 21; or
 - (ii) ElectraNet's *disconnection* rights under the Applicable Laws or any other provision of this Agreement.

10.2 Connection of new or altered equipment

- (a) The DCA Provider must not alter any *plant* or equipment forming part of the DCA or permit or direct the alteration of any *plant* or equipment forming part of the Third Party Assets (including any *protection systems control systems* or SCADA Systems) without ElectraNet's prior written consent.
- (b) Any application made by the DCA Provider, the TNU, any Subsequent TNU or any other party to ElectraNet after the Execution Date to modify the DCA Provider's *connection* or alter *plant*, including (without limitation) any application to:
 - (i) modify the Connection Assets or the DCA Provider's *connection* with ElectraNet's *transmission network* (including in order to increase the Agreed Capability); or
 - (ii) modify, alter or change the electrical configuration or characteristics of the DCA (including any modification, alteration or change to the DCA specified in the Scope of Works), the TNU Facility, any Subsequent TNU Facility or any other facility,

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.

10.3 Subsequent TNUs and reallocation to *prescribed transmission services*

- (a) Subject to clause 10.3(b), 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*.
- (b) 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.
- (c) 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 13.
- (d) If the Parties cannot agree within 20 Business Days of commencing negotiations under clause 10.3(a) upon any variations that should be made to this Agreement to take into account that proposed *connection*, either Party can refer those variations for determination in accordance with clause 27.
- (e) 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).

10.4 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 X] to the TNU TCA in consultation with the TNU on terms consistent with that TNU TCA, 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 DCA Provider 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 DCA Provider 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.

10.5 Subsequent access to DCA

- (a) If at any time:
 - (i) the DCA Provider receives an application from a party to *connect* that party's *facility* to the DCA; or
 - (ii) a Subsequent TNU submits an *application to connect* a Subsequent TNU Facility to ElectraNet's *transmission network* via the DCA,

the relevant Party must immediately Notify the other Party of such application and the Parties must, enter into good faith negotiations:

 - (iii) to agree upon any variations that should be made to this Agreement to take into account the proposed *connection*; and
 - (iv) if required by ElectraNet, to enter into any arrangements associated with the proposed *connection*, including, without limitation, an agreement with respect to managing and coordinating the maximum aggregated output levels of all of the *facilities* of all *Network Users* (including the DCA Provider) *connected* through a single *connection point* to ElectraNet's *transmission network* or the DCA.
- (b) In addition to clause 10.5(a), the DCA Provider acknowledges and agrees that it must reimburse ElectraNet in relation to any Work required to be performed by ElectraNet to comply with all Applicable Laws in relation to the proposed *connection*, including any requirement of *AEMO* to install any circuit breakers, remote control equipment or remote monitoring equipment or the moving of metering and other related equipment, necessary for the proposed *connection*.

11. Operating Protocol

11.1 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 DCA Provider must procure that any Associate of the DCA Provider who is operating *facilities* or undertaking any Work in relation to *facilities* complies with the requirements of the Operating Protocol. The DCA Provider will not be relieved of any liability or obligation associated with the Operating Protocol because a member of the DCA Provider Group is operating *facilities* or undertaking any Work in relation to *facilities*.

11.2 Finalisation of Operating Protocol

- (a) As set out in clause 8.4, ElectraNet is not required to *connect* the DCA or any Third Party Asset to ElectraNet's *transmission network* or provide any Services to the DCA Provider until such time as the Parties have finalised the Operating Protocol in accordance with this clause 11.2.
- (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, the DCA and any Third Party Asset,determined in accordance with the process set out in clause 11.2(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.

11.3 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.

11.4 TNU

Notwithstanding anything in this clause 11, the DCA Provider acknowledges and agrees that the Operating Protocol (including any updates or amendments to the Operating Protocol) will need to be agreed with the TNU and the DCA Provider agrees to negotiate in good faith to agree the terms of the Operating Protocol (including any updates or amendments to the Operating Protocol from time to time) with the TNU as required by ElectraNet.

12. Performance Standards and special protection schemes

12.1 Performance Standards

- (a) The DCA Provider must take such action as is necessary to ensure that the DCA is planned, designed and operated in a manner which complies with the *performance standards* for the *Network Users' facilities connected* to the DCA and the other requirements of rule 4.15 of the NER.
- (b) If at any time the DCA Provider is not able to operate the DCA to comply with the current *performance standards* for the *Network Users' facilities connected* to the DCA, the NER or any other Applicable Law, the DCA Provider must consult with ElectraNet and AEMO and upgrade the DCA:
 - (i) at its own cost;

- (ii) to the extent necessary to ensure compliance with the requirements of any relevant *performance standards* for the *Network Users' facilities connected* to the DCA, the NER and all Applicable Laws; and
- (iii) within the timeframe reasonably required by ElectraNet.

12.2 ElectraNet may take action

Nothing in this clause 12 is intended to prevent ElectraNet from taking action under clause 20 of this Agreement.

12.3 Continue to monitor

Without limiting clause 12.1(a), the DCA Provider must:

- (a) continue to monitor the DCA and Notify ElectraNet as soon as reasonably possible after it becomes aware that any item of *plant* comprised within, or component of, the DCA 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:
 - (i) the DCA to fail to perform in accordance with the Technical Obligations applicable to the DCA;
 - (ii) the *facility* of any other *Network User* or any Third Party IUSA or Third Party DNA which is connected to the DCA to fail to comply with its *performance standards*;
- (b) in respect of all *control systems* and *protection systems* forming part of the DCA:
 - (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 DCA Provider in accordance with clause 12.3(b)(i) promptly upon request;
- (c) ensure that the DCA meets or exceeds the Technical Obligations; and
- (d) ensure that the DCA 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.

12.4 Non-compliance

- (a) If at any time ElectraNet believes (acting reasonably) that the DCA is not being operated in a manner which complies with the Technical Obligations or Applicable Law or enables other *Network Users* whose *facilities* are *connected* to the DCA to comply with the *performance standards* applicable to those *facilities* or the 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 DCA Provider 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 DCA or any Third Party Asset, installing appropriate equipment or limiting the hours of operation of any relevant equipment).

- (b) The DCA Provider must promptly comply with any direction given by ElectraNet under clause 12.4(a) at the DCA Provider's cost. If the DCA Provider fails to do so, ElectraNet may *disconnect* the DCA or any Third Party Asset (including by *disconnection* at the Connection Point).
- (c) ElectraNet will not be liable to the DCA Provider for any Damages incurred or suffered by the DCA Provider (including any third party Claims) as a result of ElectraNet:
 - (i) *disconnecting* the DCA or any Third Party Asset from the Connection Assets or ElectraNet's *transmission network*; or
 - (ii) interrupting, suspending, reducing or limiting the provision of any Services to the DCA Provider,

in accordance with this clause 12.4.

12.5 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 DCA Provider must, at its own cost, comply with the requirements of such schemes in so far as it relates to the DCA or the operations of the DCA Provider.
- (b) Without limiting clause 12.5(a), if at any time ElectraNet believes (acting reasonably) that the DCA Provider is not complying with any scheme referred to in clause 12.5(a), ElectraNet may direct the DCA Provider to take such steps as ElectraNet believes are reasonably necessary to comply with the relevant scheme.
- (c) The DCA Provider must promptly comply with any direction given by ElectraNet under clause 12.5(b) at the DCA Provider's cost. If the DCA Provider fails to do so, ElectraNet may *disconnect* the DCA or any Third Party Asset (including by *disconnection* at the Connection Point).
- (d) ElectraNet's costs of complying with any scheme issued by AEMO referred to in clause 12.5(a) (including ElectraNet's costs of procuring and installing appropriate equipment) will be a debt due and payable by DCA Provider to ElectraNet.
- (e) Any amount payable by the DCA Provider under clause 12.5(d) must be paid within 5 Business Days of the date on which ElectraNet notifies the DCA Provider of the amount payable.

13. Maintenance

13.1 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); 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 13.1(a)(iii).

- (b) In this clause 13.1, 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*.

13.2 Impact of maintenance on capability

Subject to clauses 13.3(d) and 13.3(f), the DCA Provider acknowledges and agrees that:

- (a) ElectraNet:
 - (i) has the right to maintain the Transmission System and undertake other Work in relation to its Transmission System; and
 - (ii) without limiting clause 13.2(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 13;
 - (C) in the case of any Third Party IUSA (which forms part of the Connection Assets), the terms of the IUSA Network Operating Agreement;
 - (D) in the case of any Third Party DNA, the terms of the DNA Network Operating Agreement; 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 DCA Provider at that time; or
 - (iii) otherwise interrupt, suspend, reduce or limit the provision of some or all of the Services by ElectraNet to the DCA Provider.

13.3 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 13.3(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 13.3(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 DCA Provider as to the best time for completing Planned Work in accordance with clauses 13.3(a) and 13.3(b), however, where ElectraNet has provided the DCA Provider with Notice of Planned Work in accordance with clause 13.3(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 DCA Provider under clause 13.3(c) without further Notice to the DCA Provider.
- (e) Nothing in this clause 13 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.

13.4 Disconnection or reduction to undertake Work

- (a) ElectraNet may *disconnect*, interrupt, suspend, reduce or limit the provision of any Service to the DCA Provider 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 13.3 or Unplanned Work on or in relation to ElectraNet's *facilities*.
- (b) ElectraNet will not be liable to the DCA Provider for any Damages incurred or suffered by the DCA Provider (including any third party Claims) as a result of ElectraNet:
 - (i) *disconnecting* the DCA or any Third Party Asset from the Connection Assets; or
 - (ii) interrupting, suspending, reducing or limiting the provision of any Services to the DCA Provider,

in order to undertake any Work in accordance with this clause 13.

- (c) The DCA Provider may ask ElectraNet to *disconnect*, interrupt, suspend, reduce or limit the provision of any Service to the DCA Provider 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 13.3 or Unplanned Work on or in relation to the DCA, any of the other *facilities* of the DCA Provider, any Third Party Asset or any of the other *facilities connected* to the DCA. 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.

13.5 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 13 (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 DCA, 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 DCA Provider to conduct (at the DCA Provider's cost) tests at any time during the Term with an ElectraNet nominee present to demonstrate that the DCA and any of the other *facilities* of the DCA Provider comply with the Technical Obligations and requirements of all Applicable Laws and this Agreement.
- (c) The DCA Provider 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 DCA Provider.
- (d) The DCA Provider 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 DCA Provider.
- (e) ElectraNet will, in performing the tests under this clause 13, use best endeavours to cause the minimum amount of disruption to the provision of the Services and operations of the DCA Provider.

13.6 No limitation

Nothing in this clause 13 limits:

- (a) ElectraNet's right to terminate this Agreement pursuant to clause 21; or
- (b) ElectraNet's *disconnection* rights under the Applicable Laws or any other provision of this Agreement.

PART 5 - GENERAL OBLIGATIONS

14. Compliance with Applicable Laws

14.1 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.

14.2 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.

15. Insurance

15.1 DCA Provider insurance

The DCA Provider must, at its own expense, effect, and maintain for the Term, the insurance policies specified in Item 4 of Schedule 3.

15.2 Inspection of DCA Provider insurance policy documentation

The DCA Provider will on reasonable request of ElectraNet provide:

- (a) certificates evidencing that the insurance policies required by clause 15.1 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 15.1.

15.3 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.

15.4 Inspection of ElectraNet insurance policy documentation

ElectraNet will on reasonable request by the DCA Provider provide:

- (a) certificates evidencing that the insurance policy required by clause 15.3 has been effected and all premiums have been paid; and
- (b) such other reasonable documentation (but excluding full policy terms) as the DCA Provider may require from time to time to confirm that the insurance policy is valid, current and meets the requirements of clause 15.3.

16. Title

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

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

17. Access

17.1 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 DCA in a manner which is consistent with the requirements of Applicable Laws and *good electricity industry practice*.

17.2 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 - PAYMENT AND GST

18. Interest for late payment

- (a) The DCA Provider must pay to ElectraNet interest on any amount due to ElectraNet 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 DCA Provider's obligation to pay any amount payable under this Agreement by the DCA Provider on the due date for payment of that amount will not be affected by this clause 18.
- (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 DCA Provider.
- (d) If the DCA Provider'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 DCA Provider 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 DCA Provider and that obligation being void or unenforceable.
- (e) ElectraNet holds the benefit of the indemnity in clause 18(d) for itself and on trust for each other member of the ElectraNet Group.

19. 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 19 (**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 19(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 19 which is defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning in this clause 19.

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

20. Disconnection or reduction

20.1 Disconnection or reduction

- (a) ElectraNet may *disconnect* the DCA (including by *disconnection* at the Connection Point) or interrupt, suspend, reduce or limit the provision of any Services (including by limiting the transfer of electricity to or from the DCA at the Connection Point or through the Connection Assets or ElectraNet's *transmission network*):
 - (i) if requested by the DCA Provider 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 21 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 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;
 - (iv) if the DCA Provider breaches clause 10.1(a) or 10.1(b) or any provision contained in the Operating Protocol;
 - (v) during an Emergency;
 - (vi) 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);
 - (vii) where a Party is required or directed (whether formally or informally) to do so under an Applicable Law;

- (viii) in accordance with clause 13;
 - (ix) in accordance with clause 12.4(b);
 - (x) in accordance with clause 12.5(c);
 - (xi) upon termination of this Agreement for any reason;
 - (xii) 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;
 - (xiii) if the TNU, Third Party DNA Provider or Third Party IUSA Provider fails to comply with any obligations contained in the Project Documents (or if any Subsequent TNU fails to comply with its obligations under its *connection agreement* with ElectraNet);
 - (xiv) any Project Document is terminated, other than as a result of a breach by ElectraNet; or
 - (xv) 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 20.1(a) can be referred by either Party to be determined in accordance with the dispute resolution procedures set out in clause 27.

20.2 Reason for disconnection or reduction

Subject to clause 20.3, if ElectraNet has exercised or proposes to exercise its rights under clause 20.1(a) ElectraNet must Notify the DCA Provider 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.

20.3 Emergencies

- (a) Without limiting clauses 13 and 20.1(a), if the continued *connection* of the DCA 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 DCA or any Third Party Asset (including by *disconnection* at the Connection Point);
 - (ii) interrupting, suspending, reducing or limiting the provision of any Service (including by limiting the transfer of electricity to or from the DCA at the Connection 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 20.3(a) must comply with the Notice requirements in the Land and Equipment Access Rules which relate to Emergency access.

20.4 Reconnection, re-establishment or restoration

If ElectraNet *disconnects* the DCA or any Third Party Asset or interrupts, suspends, reduces or limits the provision of the Services in accordance with clause 20.1(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.

20.5 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 20.1(a) or the *reconnection*, re-establishment or restoration or re-*energisation* of any Services under clause 20.4 unless the *disconnection* or the interruption, suspension, reduction or limitation to the provision of any Services in accordance with clause 20.1(a) was due to an act or omission of any Associate of the DCA Provider (or due to a request from the DCA Provider), in which case the DCA Provider 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 20.1(a) or complying with its obligation under clause 20.4.
- (b) Any amount payable by the DCA Provider under clause 20.5(a) must be paid within 5 Business Days of the date on which ElectraNet notifies the DCA Provider of the amount payable.

20.6 No limitation

Nothing in this clause 20 limits:

- (a) ElectraNet's right to terminate this Agreement pursuant to clause 21; or
- (b) ElectraNet's *disconnection* rights under the Applicable Laws or any other provision of this Agreement.

21. Termination

21.1 Termination by ElectraNet

ElectraNet may terminate this Agreement:

- (a) in accordance with clause 2.5(c);
- (b) at any time, if the DCA Provider 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 DCA Provider specifying the particulars of the Financial Default and giving the DCA Provider 20 Business Days from the date of the Notice to remedy the Financial Default (**Financial Cure Period**); and
 - (ii) the DCA Provider has not remedied the Financial Default within the Financial Cure Period; or
- (c) at any time, if the DCA Provider has failed to comply with any of its other material obligations under this Agreement (**Performance Default**) and:
 - (i) ElectraNet has given the DCA Provider 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 DCA Provider has not remedied the Performance Default by the Performance Default Cure Date or such later date as agreed in writing by ElectraNet acting reasonably;
- (d) without prejudice to clause 21.1(b) or 21.1(c), after the Date of Construction Completion, by giving 20 Business Days' Notice where:
- (i) the DCA has been *disconnected* from the Connection Point or the provision of any Services in relation to the Connection Point has been interrupted, suspended, reduced or limited under clause 20.1(a)(ii) for a Financial Default, and the DCA Provider has not paid the amount due within 20 Business Days after the date of that *disconnection*, interruption, suspension or limitation; or
 - (ii) the DCA has been *disconnected* from the Connection Point or the provision of any Services has been interrupted, suspended, reduced or limited under clause 20.1(a)(ii) for a Performance Default, and the DCA Provider 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; or
- (e) at any time, if the DCA Provider's transmission licence under the Electricity Act authorising it to operate a *transmission system* in South Australia or the DCA Provider's registration as a *Dedicated Connection Asset Service Provider* under the NER has been terminated.

21.2 Termination by the DCA Provider

The DCA Provider may terminate this Agreement:

- (a) in accordance with clause 2.5(c);
- (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 DCA Provider to do so; or
 - (ii) remedied that failure within a reasonable time after receiving a Notice from the DCA Provider to do so and ElectraNet has not demonstrated to the DCA Provider 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 DCA Provider decides, in its absolute discretion, not to proceed with the construction and commissioning of the DCA.

21.3 Termination for Solvency Default

- (a) If a Solvency Default occurs in relation to ElectraNet, the DCA Provider 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 Transmission Services within a reasonable time after the occurrence of the Solvency Default.
- (b) If a Solvency Default occurs in relation to the DCA Provider, ElectraNet may terminate this Agreement by Notice to the DCA Provider.
- (c) Subject to clause 21.3(d), if a Party gives a termination Notice under clause 21.3(a) or 21.3(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 21.3 under the Corporations Act or any other Applicable Law, a Notice given under clause 21.3(a) or 21.3(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.

21.4 Termination of Project Documents

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

21.5 Consequences of termination

- (a) On termination of this Agreement by either Party under the events listed in clause 21.1, 21.2, 21.3 and 21.4:
 - (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 DCA Provider, 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 21.5(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 DCA Provider under clause 21.2(b), 21.2(c) or 21.3(a) or where this Agreement has been terminated by ElectraNet under clause 21.4 due to a Project

Document being terminated for an ElectraNet Project Document Default Termination Event) the DCA Provider will reimburse ElectraNet for any costs which are incurred by ElectraNet in undertaking the work referred to in clause 21.5(a)(iii) (upon receipt from ElectraNet of reasonable evidence substantiating the amount of costs incurred).

- (c) Nothing in this clause 21.5 will limit either Party's right to recover Damages from the other Party for breach of contract.

21.6 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 21.6(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 21.6(a) or 21.6(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 21.6(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 DCA Provider for the proposed extension period, the Parties must take into account (among other things) the following matters and principles:
 - (i) whether any *Network Users* will be receiving *transmission services* using the Network Assets and the DCA after the Extended Expiry Date;
 - (ii) that the contents of this Agreement must be fair and reasonable having regard to the commercial interests of the Parties;
 - (iii) 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;
 - (iv) that this Agreement should be consistent with the prevailing practices and standards in the electricity industry at that time; and
 - (v) any other relevant matters or principles.
- (e) If, within 6 months of commencing negotiations in accordance with clause 21.6(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 DCA Provider for an agreed extension period, either Party may terminate this Agreement upon providing 1 month's Notice to the other Party.

21.7 Survival

- (a) This clause 21 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.

22. Applicable Event of Force Majeure

22.1 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) which the Affected Party could not have prevented by the exercise of a standard of care and diligence consistent with the observance of *good electricity industry practice*,
- (Applicable Event of Force Majeure)**, must immediately give Notice to the other Party of:
- (iii) that fact; and
 - (iv) all relevant particulars relating to that potential Applicable Event of Force Majeure of which it is aware at that time.
- (b) Within 10 Business Days of an Applicable Event of Force Majeure occurring, the Affected Party must give the other Party Notice containing whatever particulars are available at that time of the Applicable Event of Force Majeure, including:
- (i) its nature and likely duration;
 - (ii) the obligations of the Affected Party affected by the Applicable Event of Force Majeure and the nature and extent of its effect on those obligations; and
 - (iii) the actions taken, or proposed to be taken by the Affected Party to remedy, abate, mitigate or minimise the effects of the Applicable Event of Force Majeure,
- (a Force Majeure Suspension Notice)**.
- (c) The Affected Party must Notify the other Party of any 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 27 within 10 Business Days of the Force Majeure Suspension Notice being sent.

22.2 Suspension of obligations

- (a) Subject to compliance with the notice requirements under clause 22.1, 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 22.2(a) will not affect any rights or obligations in relation to any other Non-financial Obligations which the Affected Party is not prevented from performing by the Applicable Event of Force Majeure.

22.3 Mitigation

- (a) The Affected Party must, subject to clause 22.3(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 22.3(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.

22.4 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.

23. Warranties, liability and indemnities

23.1 Exclusion of warranties

Subject to clause 23.2 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.

23.2 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 23.2 to be void.

23.3 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.

23.4 Applicable Laws and limitations on liability

This clause 23 and clauses 24 and 25 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*).

23.5 Effect on insurance policies

The Parties acknowledge and agree that clauses 23.1, 23.2, 23.3, 23.4, 24 and 25 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.

23.6 Indemnities

- (a) The DCA Provider, to the extent permitted by law, indemnifies and holds harmless, ElectraNet and each other member of the ElectraNet Group against any Damages or Claims arising under, out of, or in connection with:
 - (i) loss of, or damage to, any real or personal property of any third party caused by, arising out of, or in connection with the Connection Work or any activity for which the DCA or any Associates of the DCA Provider 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 DCA Provider or any Associates of the DCA Provider 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 23.6(a) for itself and on trust for each other member of the ElectraNet Group.

23.7 Performance incentive scheme

- (a) The DCA Provider 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 DCA Provider or any Associate of the DCA Provider 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 DCA Provider or an Associate of the DCA Provider (including an act or omission of the DCA Provider or an Associate of the DCA Provider in undertaking Planned Work or Unplanned Work on or in relation to the DCA or any of the other *facilities* of the DCA Provider or an Associate of the DCA Provider),

when calculating an adjustment to ElectraNet's *maximum allowed revenue* under the *service target performance incentive scheme*, the DCA Provider 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 23.7(b), the DCA Provider 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 DCA Provider under clause 23.7(c) by seeking to coordinate the *outages* for the Connection Work and any Planned Work on or in relation to the DCA or any of the other *facilities* of the DCA Provider or an Associate of the DCA Provider 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 DCA Provider under clause 23.7(c) must be paid within 5 Business Days of the date on which ElectraNet notifies the TNU of the amount payable.

24. Exclusions of liability

24.1 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 Associate of the DCA Provider arising directly or indirectly out of, or in connection with, the DCA Provider Connection Work.
- (b) Without limiting clause 24.1(a), but subject to clause 24.1(e), no member of the ElectraNet Group will be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Consequential Loss of whatever kind suffered or incurred by the DCA Provider or any Associate of the DCA Provider 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 DCA Provider Group for Consequential Loss).
- (c) The DCA Provider indemnifies and holds harmless ElectraNet and each other member of the ElectraNet Group against any Claims from any member of the DCA Provider Group against any member of the ElectraNet Group in respect of:
 - (i) any Damages or Claims of whatever kind suffered or incurred by the DCA Provider or any Associate of the DCA Provider referred to in clause 24.1(a); and

- (ii) any Consequential Loss of whatever kind suffered or incurred by the DCA Provider or any Associate of the DCA Provider (including any Claims by third parties against the DCA Provider or any Associate of the DCA Provider for Consequential Loss) referred to in clause 24.1(b).
- (d) ElectraNet holds the benefit of the indemnity in clause 24.1(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 25.1(a), the exclusion of liability for Consequential Loss contained in clause 24.1(b) does not apply to the liability of ElectraNet to the extent that such Consequential Loss is caused by the Wilful Misconduct, Gross Negligence or fraud of ElectraNet or any other member of the ElectraNet Group.

24.2 DCA Provider exclusions of liability

- (a) Subject to clause 24.2(b), the DCA Provider will not be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Consequential Loss of whatever kind suffered or incurred by 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 24.2(a) does not apply to:
 - (i) the liability of the DCA Provider under clause 23.7;
 - (ii) the liability of the DCA Provider under the indemnities it provides under clauses 23.6(a)(i), 23.6(a)(ii), 24.1(c), 25.1(b) and 33.5(a);
 - (iii) the liability of the DCA Provider to the extent that such Consequential Loss is caused by the Wilful Misconduct, Gross Negligence or fraud of any Associate of the DCA Provider; or
 - (iv) the liability of the DCA Provider under clause 26.

25. Limitations of liability

25.1 ElectraNet Liability Limits

- (a) Subject to clauses 24.1 and 25.1(c), ElectraNet's aggregate liability to DCA Provider and each other member of the DCA Provider 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 DCA Provider indemnifies and holds harmless ElectraNet against any Claims from any member of the DCA Provider Group against ElectraNet for any Damages or Claims referred to in clause 25.1(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 25.1(a) do not apply to any liability of ElectraNet for or in respect of Claims for Damages caused by the Wilful Misconduct, Gross Negligence or fraud of ElectraNet or any member of the ElectraNet Group (other than such Claims for Damages which are in the nature of Consequential Loss, which is subject to the ElectraNet Liability Limits referred to in clause 25.1(a)).

25.2 DCA Provider Liability Limits

- (a) Subject to clauses 24.2 and 25.2(b), the DCA Provider'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 DCA Provider 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 DCA Provider 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,

(DCA Provider Liability Limits).

- (b) The DCA Provider Liability Limit under clause 25.2(a) does not apply to any liability of the DCA Provider for or in respect of:
 - (i) the liability of the DCA Provider under clause 21.5(b);
 - (ii) the liability of the DCA Provider under the indemnities it provides under clauses 23.6(a)(i), 23.6(a)(ii), 24.1(c), 25.1(b) and 33.5(a);
 - (iii) Claims for Damages caused by the Wilful Misconduct, Gross Negligence or fraud of any Associate of the DCA Provider; or
 - (iv) the liability of the DCA Provider under clause 26.

26. Related Companies

- (a) Without limiting clause 29.2, the DCA Provider 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 DCA (and will ensure that none of its Related Bodies Corporate appoint a Related Company in relation to the DCA) without providing ElectraNet with at least 10 Business Days' prior Notice.

- (b) If a Notice is provided to ElectraNet under clause 26(a) (or if such a Related Company is appointed without a Notice being provided to ElectraNet as required by clause 26(a)) and ElectraNet requests in writing and without limiting clause 24.1(c) and clause 25.1(b), the DCA Provider 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 DCA Provider has procured a Related Company to enter in a Mutual Hold Harmless Deed the DCA Provider acknowledges and agrees that the liability of the DCA Provider to indemnify and hold harmless ElectraNet and each other member of the ElectraNet Group under clause 24.1(c) and clause 25.1(b) will not be reduced or limited in any way.
- (d) If, despite clause 26(a) and clause 26(b), the DCA Provider appoints a Related Company without procuring a Mutual Hold Harmless Deed from that Related Company:
 - (i) the DCA Provider will be in breach of its obligations under this Agreement; and
 - (ii) the DCA Provider acknowledges and agrees that the liability of the DCA Provider to indemnify and hold harmless ElectraNet and each other member of the ElectraNet Group under clause 24.1(c) and clause 25.1(b) will not be reduced or limited in any way.
- (e) In this clause 26, **Related Company** means any company which:
 - (i) is registered as a *Dedicated Connection Asset Service Provider* under the NER in relation to any part of the DCA;
 - (ii) would have been required under the *National Electricity Law* and the NER to be registered as a *Dedicated Connection Asset Service Provider* in relation to the DCA (or any part of the DCA) if an exemption had not been granted under Chapter 2 of the NER; or
 - (iii) otherwise deals with or enters into contracts with either the DCA Provider or with a company described in clause 26(e)(i) or 26(e)(ii) in relation to the provision of any services associated with any part of the DCA, including a contract:
 - (A) for the operation and maintenance of the DCA or part of the DCA; or
 - (B) under which that company has a right to otherwise deal with the electricity transmitted by the DCA.

MISCELLANEOUS

27. Dispute resolution

27.1 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*.

27.2 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 27 (other than clause 27.1).
- (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 27.2(a).

27.3 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 27.2(b) then, either Party may require that the Dispute be determined by an independent expert appointed in accordance with clause 27.3(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.

27.4 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.

27.5 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.

27.6 Non-NER Disputes – rules of evidence

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

27.7 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.

27.8 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 27,

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.

27.9 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 27.3(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.

27.10 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.

27.11 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.

27.12 Disputes generally

- (a) Neither Party may have recourse to litigation in relation to a Dispute without first having complied with this clause 27.
- (b) This clause 27 does not prevent a Party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

27.13 Survival

This clause 27 survives the termination or expiry of this Agreement.

28. Change to Applicable Laws or other circumstances

28.1 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 28.2 and 28.3, this Agreement will be interpreted (as far as possible) in such a way as to enable compliance with that Applicable Law.

28.2 Negotiation

Despite clause 28.1, 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 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 27.

28.3 Disputes

In determining a Dispute relating to a matter arising under this clause 28 (in accordance with clause 27), 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.

29. Assignment and transfer

29.1 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 DCA Provider before that Disposal.
- (b) Other than in the circumstances set out in clause 29.1(a), and subject to clause 29.2, 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.

29.2 Requirements for Disposals

For the purposes of clause 29.1(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 DCA Provider, 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.

29.3 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 29.

29.4 Change in ownership of the DCA

- (a) The DCA Provider must not transfer or Dispose of any interest in the DCA 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 DCA takes place, by:
 - (i) the third party taking over all the rights and obligations of the DCA Provider under this Agreement and the other Project Documents to which the DCA Provider is a party to; and
 - (ii) the third party complying with the requirements in clause 29.2(c).
- (b) ElectraNet will provide its consent to a novation in accordance with clause 29.4(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 DCA Provider 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 DCA Provider disputes ElectraNet's decision to not agree to a novation, the matter will be resolved in accordance with clause 27.

29.5 Deed of acknowledgement and consent

- (a) The DCA Provider 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 DCA Provider, ElectraNet will act reasonably in negotiating a tripartite deed with any secured party under which ElectraNet consents to the relevant security interest and undertakes to provide notification prior to exercising rights of termination and provide the secured party with step-in rights in respect of this Agreement, subject to cure of pre-existing breaches, which must be in form and substance satisfactory to ElectraNet.

29.6 Change of Control

- (a) ElectraNet may terminate this Agreement by Notice to the DCA Provider where there is a Change of Control in relation to:
 - (i) the DCA Provider; or
 - (ii) where the DCA Provider 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 29.6(a) if ElectraNet is not reasonably satisfied that the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the DCA Provider to fulfil its obligations under this Agreement.
- (c) A termination under clause 29.6(a) will be deemed to be a termination of this Agreement by ElectraNet under clause 21.1(c).

30. Notices

30.1 Giving of Notices

Subject to clause 30.2, 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 5 of Schedule 3 for that type of Notice);
- (b) addressed to the person holding the office identified in Item 5 of Schedule 3 for that type of Notice; and
- (c) sent in the manner identified in Item 5 of Schedule 3 for that type of Notice.

30.2 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.

30.3 Maintenance of logs

Unless communications under clause 30.2 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.

30.4 Timing of receipt

A Notice given to a Party in accordance with clause 30.1 or 30.2 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).

30.5 Addresses and Notice details

A Party may change any details relating to that Party set out in Item 5 of Schedule 3 by Notice to the other Party given in accordance with this clause 30.

31. Provision and use of information

31.1 Obligation to provide information

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

- (a) concerns the DCA or the DCA Provider's operations;
- (b) is referred to in Schedules 5.3, 5.4 or 5.5 of the NER; or
- (c) is reasonably necessary to enable ElectraNet to:
 - (i) comply with its obligations under any Project Document;
 - (ii) comply with its obligations under any Applicable Law; or
 - (iii) operate, develop, design and plan the Transmission System in accordance with *good electricity industry practice* and the requirements of all Applicable Laws.

31.2 Status information

Without limiting clause 31.1(a), the DCA Provider will provide to ElectraNet at the end of each Contract Year, a Notice containing:

- (a) details of the expected load for the Connection Point for the next Contract Year; and
- (b) an estimate of the forecasted load for the Connection Point during the 10 year period following the end of the next Contract Year.

32. Confidential Information

32.1 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.

32.2 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 32.3 and 32.4);
 - (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 32 in relation to that information.
- (d) Subject to clauses 32.2(e), 32.2(f) and 32.2(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 32.2(d) and 32.2(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 DCA Provider regarding the content of such information, document or article and the DCA Provider has consented to such content (such consent not to be unreasonably withheld or delayed).

32.3 Disclosures required under Applicable Laws

Without limiting any other provision of this clause 32, the DCA Provider consents to ElectraNet using any information concerning the DCA, 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).

32.4 Other exceptions

Subject to clause 32.5, clause 32.2 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 DCA Provider to a contractor engaged in relation to the DCA 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 DCA Provider under clause 32.4(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 DCA 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; or
- (r) **(access policy)**: the disclosure, use or reproduction of Confidential Information by ElectraNet as contemplated by clause 10.4 or otherwise required in connection with an *access policy*.

32.5 Undertaking to keep confidential and restrictions on use

- (a) In the case of a disclosure under clause 32.4(b), 32.4(c), 32.4(d) or 32.4(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 32.2 and 32.3 and does not use the information for any purpose other than that permitted under clause 32.2(b).
- (b) Notwithstanding anything in this clause 32, but subject to clause 32.5(c), ElectraNet acknowledges and agrees that the data and information provided by the DCA Provider to ElectraNet pursuant to this Agreement in relation to the provision of non-contestable services specified under rule 5.2A.4(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 DCA Provider.
- (c) On and from the second anniversary of the Execution Date, the DCA Provider hereby consents to the use of the data and information referred to in clause 32.5(b) for the purpose of tendering for, or negotiating contestable *transmission services* specified in rule 5.2A.4(a) of the NER.

32.6 Survival

This clause 32 survives the termination or expiry of this Agreement.

33. Intellectual Property Rights

33.1 ElectraNet Background IP Materials

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

33.2 DCA Provider Background IP Materials

- (a) ElectraNet acknowledges that it does not own any Intellectual Property Rights in the DCA Provider Background IP Materials.
- (b) The DCA Provider hereby grants to ElectraNet a non-exclusive, royalty free, perpetual, irrevocable, worldwide licence (including the right to sub-licence) to (itself or using third

party contractors) use, reproduce, modify, adapt and further develop all Intellectual Property Rights in the DCA Provider Background IP Materials:

- (i) to the extent necessary or desirable to enable ElectraNet and the ElectraNet Group to (itself or using third party contractors):
 - (A) exercise any rights and perform any obligations under this 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 33.2(b), on and from the second anniversary of the Execution Date, the DCA Provider hereby grants to ElectraNet a non-exclusive, royalty free, perpetual, irrevocable, worldwide licence (including the right to sub-licence) to (itself or using third party contractors) use, reproduce, modify, adapt and further develop all Intellectual Property Rights in the DCA Provider 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 DCA Provider acknowledges and agrees that clause 33.2(c) is a consent given by the DCA Provider for the purposes of rule 5.3.8(a1) of the NER.

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

33.4 Warranties by DCA Provider

- (a) The DCA Provider represents and warrants to ElectraNet that:
 - (i) the DCA Provider is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use); or
 - (ii) is entitled to licence to ElectraNet and the ElectraNet Group in accordance with clause 33.2,

the Intellectual Property Rights in the DCA Provider Background IP Materials.

- (b) The DCA Provider represents and warrants to ElectraNet that it is able to assign the Intellectual Property Rights in all Contract IP Materials pursuant to clause 33.3.

33.5 Indemnity

- (a) The DCA Provider indemnifies and holds harmless ElectraNet and each member of the ElectraNet Group against any Damage or Claim arising from:
 - (i) any infringement or alleged infringement of Intellectual Property Rights owned by any third party in respect of any of the DCA Provider Background IP Materials;
 - (ii) any breach of the warranties set out in clause 33.4.
- (b) ElectraNet holds the benefit of the indemnity in clause 33.5(a) for itself and on trust for each other member of the ElectraNet Group.

33.6 Survival

This clause 33 survives the termination or expiry of this Agreement.

34. Records

34.1 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.

34.2 Form and retention

The records referred to in clause 34.1 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.

34.3 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 34.1. The other Party may collect from the Recording Party such records within that period.

35. Governing law and jurisdiction

35.1 Governing law

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

35.2 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.

36. Project Information

36.1 Warranties

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

- (a) the the DCA Provider has examined and carefully checked:
 - (i) the Scope of Works;
 - (ii) the Operating Protocol;
 - (iii) all relevant ElectraNet Standards; and
 - (iv) all information, data, representations, statements or documents made available by ElectraNet, or any other person whether or not on ElectraNet's behalf, to the DCA Provider in relation to the Connection Work, the Work, the DCA or the DCA Provider Site,

(the **Project Information**); and
- (b) the DCA Provider is satisfied that the Project Information is accurate, suitable, appropriate and adequate for the purposes of entering into the Project Documents and performing its obligations in accordance with this Agreement.

36.2 Acknowledgements

The DCA Provider 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 DCA Provider 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 DCA Provider's

obligations under this Agreement or give rise to any Claim on the part of the DCA Provider or any member of the DCA Provider 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 DCA Provider with respect to the Project Information;
- (f) ElectraNet is not liable for, or in connection with, any Claim (and neither the DCA Provider nor any member of the DCA Provider Group are entitled to make any Claim) arising out of, or in connection with, the Project Information; and
- (g) the DCA Provider has entered into this Agreement based on its own investigations, interpretations, deductions, information and determinations.

37. General

37.1 Authority to enter into Agreement

Each Party (in this clause 37.1 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.

37.2 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.

37.3 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.

37.4 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.

37.5 No reliance

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

37.6 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.

37.7 Cost and expenses

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

37.8 System Controller

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

37.9 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.

37.10 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.

37.11 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 37.11(a)(i).
- (b) Without limiting clause 37.11(a):
 - (i) any warranties provided by the Parties under this Agreement; and
 - (ii) clauses 21, 23, 24, 25, 27, 30, 32, 33, 34 and 35 and this clause 36, survive expiry or termination of this Agreement.

37.12 Survival of indemnities

Without limiting clause 37.11, each indemnity in this Agreement is a continuing obligation which survives the termination or expiry of this Agreement.

37.13 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.

37.14 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 a deed.

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

Signature of witness

Name (please print)

Signature of attorney

Name (please print)

Position held

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

Signature of director

Name (please print)

Signature of director/secretary

Name (please print)

Schedule 1- General

Item 1 TNU TCA and TNU

- (a) TNU TCA: [Insert details of contract]
- (b) TNU: [Insert name]

Item 2 Dedicated Connection Asset

[Insert details of the DCA]

Item 3 Liability limits

3.1 ElectraNet Liability Limits

- (a) For the ElectraNet Liability Limit referred to in clause 25.1(a)(i): \$1,000,000.
- (b) For the ElectraNet Liability Limit referred to in clause 25.1(a)(ii): \$1,000,000.

3.2 DCA Provider Liability Limit

- (a) For the DCA Provider Liability Limit referred to in clause 25.2(a)(i): \$1,000,000.
- (b) For the DCA Provider Liability Limit referred to in clause 25.2(a)(ii): \$1,000,000.

Schedule 2 - Construction

Item 1 Definition of Date for Construction Completion

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

Item 2 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
2.1	Execution of TNU TCA The TNU TCA has been executed by the TNU and ElectraNet, and preconditions to the TNU TCA (other than a precondition that the Preconditions under this deed have been satisfied or waived) have been satisfied or waived in accordance with the TNU TCA.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	DCA Provider and ElectraNet jointly	ElectraNet
2.2	Financial close The DCA Provider has provided ElectraNet with evidence (in a form satisfactory to ElectraNet) that the DCA Provider has achieved financial close for the financing of the DCA.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	DCA Provider	ElectraNet and the DCA Provider jointly
2.3	Land access The DCA Provider has granted or procured the granting of the following land access rights in respect of the Land on terms and conditions acceptable to ElectraNet: [insert if any land access rights are required].	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	DCA Provider	ElectraNet
2.4	Authorisations for Connection Work The DCA Provider or 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.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	DCA Provider	ElectraNet
2.5	Authorisations for DCA The DCA Provider has obtained all Authorisations required for all parts of the DCA.	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	DCA Provider	ElectraNet
2.6	Execution of IUSA Interface Works Agreement If the TNU has engaged a Third Party IUSA Provider to perform the Third Party IUSA	20 Business Days after the Execution Date (or such later date as agreed	TNU	ElectraNet

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
	<p>Works:</p> <p>(a) the Third Party IUSA Provider has executed an IUSA Interface Works Agreement with ElectraNet in a 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>	in writing between the Parties).		
2.7	<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 a 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
2.8	<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 a 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

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
2.9	<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 with the DNA Network Operating Agreement.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the Parties).	TNU	ElectraNet

Item 3 Land

[Insert]

Item 4 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 Transmission Services

Transmission Services means:

1. the provision of the capability of the ElectraNet Assets in accordance with this Agreement so as to enable the DCA Provider to:
 - (a) deliver electricity to ElectraNet's *transmission network* at the Connection Point up to but not exceeding the Agreed Capability for the DCA Connection Point; and
 - (b) take delivery of electricity from ElectraNet's *transmission network* at the Connection Point up to but not exceeding the Agreed Capability for the Connection Point, subject to the overriding limitations referred to in clause 9; and
2. the management, maintenance and operation of the ElectraNet Assets and any Third Party IUSA and/or Third Party DNA 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
Agreed Capability and permitted output**

Supply Voltage (kV)	Agreed Capability at Connection Point (MVA)	<i>power transfer capability</i> at Transmission Network Connection Point (MVA)
[132kV/275Kv]	[INSERT] MVA	Normal: [INSERT] MVA

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 Connection Point as at the Execution Date under Summer system normal operating conditions.

Item 4 DCA Provider insurance details

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

- (a) a public liability policy covering legal liability for damage to real or personal property, death, injury or disease, for not less than \$20 million limit of liability any one occurrence and unlimited in the aggregate;
- (b) a property damage or industrial special risks policy for the reinstatement value of the DCA.

Item 5 Notices

**Table 3-6
Notice details**

Type of Notice	Permitted service method	ElectraNet Description of person to whom Notice must be sent	DCA Provider 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 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 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	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u> [INSERT]

Type of Notice	Permitted service method	ElectraNet	DCA Provider
		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	
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 other Notices after Practical Completion	Written only	<u>Attention:</u> Manager, Business Development <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]

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:

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

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

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 DCA Provider 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 DCA Provider, the DCA Provider Group;

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

Site means either or both of the ElectraNet Site and the DCA Provider Site as the context requires; 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 in Item 2(d) will not apply.

Schedule 5 - Technical Obligations

Item 1 ElectraNet Technical Obligations

[Insert]

Item 2 TNU's Technical Obligations

[Insert]

Annexure A - Scope of Works

[Drafting Note: To be attached.]

Annexure B - Operating Protocol

[Drafting Note: To be attached.]