

Network Operating Agreement (BESS)

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

[Shared Assets Provider name] (ABN [•])

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Agreement made at Sydney

PARTIES **NSW Electricity Networks Operations Pty Ltd** (ACN 609 169 959) as trustee for NSW Electricity Networks Operations Trust (ABN 70 250 995 390) of **Level 1, 180 Thomas Street, Sydney, NSW, 2000 ("Transgrid")**

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

Background

- A. Transgrid is required to operate, maintain and control the Shared Assets as the Primary Network Service Provider under the Rules.
- B. The Shared Assets will be constructed by the Shared Assets Provider and commissioned under the Construction Coordination Agreement but will be owned by the Shared Assets Provider.
- C. The Shared Assets will form part of Transgrid's transmission network in all material respects.
- D. This agreement is the network operating agreement required between the Shared Assets Provider as a third party IUSA owner and/or designated network asset owner and the Primary Transmission Network Service Provider in accordance with clause 5.2A.7 of the Rules.

The parties agree

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears.

"ACCC" means the Australian Competition and Consumer Commission.

"Access Policy" means the access policy for a Designated Network Asset approved by the AER and published on the Shared Assets Provider's website.

"Acceptable Credit Rating" has the meaning given to that term in clause 3.1(a).

"AEMC" means the Australian Energy Market Commission.

"AEMO" means the Australian Energy Market Operator.

"AER" means the Australian Energy Regulator.

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

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

"Approved Bank" means an authorised deposit taking institution (as that term is used in the Banking Act 1959 (Cth)), or other financial institution, either as must be approved by Transgrid.

"Approved Digital Bank Guarantee Platform" means a digital bank guarantee platform approved by Transgrid.

"APRA" means the Australia Prudential Regulatory Authority.

"Assignment" has the meaning given to that term in clause 22.1 and the terms **"Assign"**, **"assignor"** and **"assignee"** will have corresponding meanings.

"Associates" means, in relation to a party:

- (a) each of that party's holding companies (as defined in the *Corporations Act 2001* (Cth)), Subsidiaries or Related Bodies Corporate;
- (b) each of that party's sub-contractors, including the Construction Contractor;
- (c) all officers, employees, authorised agents, (sub-)contractors and professional advisers engaged or employed by or on behalf of that party and any person or entity referred to in limbs (a) and (b) above; and
- (d) any other person engaged or employed by or on behalf of the party in the performance of the Shared Assets work.

"Authorisation" means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, declaration, permit, ruling, statutory required policy of insurance, authority or exemption from (and any renewal or variation of any of them), by or with an Authority; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if an Authority intervenes or acts in a way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

"Authority" means any government, governmental, semi-governmental or judicial entity or authority, including any self-regulatory organisation established under statute, AEMO, Transgrid acting as a *System Operator* or service provider to AEMO under clause 4.3.3 of the Rules, AER, AEMC and the ACCC provided that for the avoidance of doubt, while acting in any capacity other than as a system operator or service provider to AEMO under clause 4.3.3 of the Rules, Transgrid is not an Authority under this definition.

"Billing Period" means:

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

"Boundary Point" means the point of delineation between the Identified User Assets and the Designated Network Assets, as described or shown in Schedule 1.

"Business Day" means any day other than:

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

"Charges" means the charges and other amounts payable under clause 7 of this agreement from time to time.

"Claims" means all claims, demands, actions, disputes and proceedings whether arising in contract, tort (including breach of statutory duty and negligence), equity or otherwise.

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

"Commencement Date" means the 'commencement date' (as that term is defined in the Project Agreement) under the Project Agreement.

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

"Connection Agreement" means the Network Connection Agreement entered into between Transgrid, the Shared Assets Provider and the Customer on [insert date].

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

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

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

"Construction Coordination Agreement" means the Construction Coordination Agreement between Transgrid[,] [and] the Customer[,] [and] the Shared Assets Provider [and] the Dedicated Assets Provider] dated on or about the date of this agreement.][OPTION: Delete definition and references throughout if not applicable.]

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

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

"COVID-19" has the meaning set out in clause 21.4(b).

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

"Credit Support Provider" has the meaning set out in clause 3.2(a)(i).

"Customer" means the Customer under the Connection Agreement, who is:

- (a) in respect of an Identified User Asset, an original member of the initial *identified user group* connecting to the *transmission network* through that Identified User Asset; and
- (b) in respect of a Designated Network Asset, an original member of the initial *identified user group* that utilises that Designated Network Asset to convey and control electricity.

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

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

"Dedicated Asset Provider" means [insert.].][OPTION - only include if there will be a third party Dedicated Assets Provider.]

"Defects Rectification Works" means the work undertaken by Transgrid in accordance with clause 5.4(c)(iii) as described in Item [4] of Schedule 3.

"defaulting party" has the meaning given to that term in clause 15.1(a)(i).

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

"Designated Network Assets" means the *designated network assets* described in Schedule 1 which are used to convey electricity from Customer's Connection Point to the Boundary Point and which, under the terms and conditions of this agreement, forms part of Transgrid's *transmission network*.

"Directive" means any present or future requirement, instruction, direction or order of an Authority (whether formal or informal) which is binding on, or expressed to apply to Transgrid or the Shared Assets Provider or relates directly or indirectly to the design construction, operation or maintenance of the *transmission system* or Shared Assets.

"DNA Connection Applicant" has the meaning given to that term in clause 10.1A10.1(b).

"DNA Upgrade Works" has the meaning given that term in clause 10.2(b).

"Emergency Works" has the meaning given to that term in clause 5.4(c)(ii).

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

"Encumbrances" means any:

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

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

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

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

"Fair Market Value" means the fair market value of that asset as at that immediately preceding 31 December on the date of the Purchase Option exercise.

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

"Financial Default" means a failure by one party to pay to the other party an amount due to the other party under this agreement at the due time for that payment.

"Financial Year" means the period of 12 months commencing on the 1st July in any year and concluding on the 30th June in the following year.

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

"GST" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"GST Amount" has the meaning given to that term in clause 7.5(d).

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

"Insolvency Event" means, in respect of a party, any of the following events:

- (a) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint an administrator to that party;
- (b) a receiver, receiver manager, official manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth)) or similar officer is appointed over the assets or undertakings of that party;
- (c) that party enters into or proposes to enter into any arrangement, composition or compromise with or assignment for the benefit of, its creditors or a class of them;
- (d) that party is deemed by the provisions of the *Corporations Act 2001* (Cth) to be insolvent; and/or
- (e) anything occurs that has a substantially similar effect to any of the events set out in limbs (a) to (d) above.

"Intellectual Property Rights" means intellectual property rights being all rights conferred by law, including those in and in relation to inventions, patents, designs, copyright, registered and unregistered trademarks, trade names, brands, logos and get up, names, circuit layouts and confidential information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"Interest Rate" means, in relation to a particular day, the Overdraft Index Rate applied that day by the Commonwealth Bank of Australia (ACN 123 123 124) (which rate is published at <https://www.commbank.com.au/business/rates-fees.html>). If the bank stops publishing that rate, then it means an equivalent rate used on that day by the Commonwealth Bank of Australia at which it lends money to its corporate customers.

"Land" means the land described in Schedule 5.

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

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

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

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

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

"NOA Services Commencement Date" means the date when the Shared Assets have passed all commissioning tests under the Construction Coordination Agreement and operational control of the Shared Assets has transferred to Transgrid under clause 5.1 of this agreement and clause [9] of the Construction Coordination Agreement.

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

"Non-Financial Default" means:

- (a) a breach by the Shared Assets Provider of its obligations under this agreement which causes, or is reasonably likely to cause, a material adverse effect to Transgrid in the performance of its obligations under this agreement, which includes the Shared Assets Provider's refusal of or obstruction to Transgrid undertaking Defects Rectification Works, System Security Works or Emergency Works or the Shared Assets Provider's breach of clause 5.5; or
- (b) a breach by Transgrid of its obligations under this agreement which causes or is reasonably likely to cause, a material adverse effect to the Shared Assets Provider in the performance of its obligations under this agreement,

other than a Financial Default.

"Non-Routine Capital Works" has the meaning given to that term in clause 5.4(c)(i).

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

"Non-Routine Maintenance Services" has the meaning given to that term in clause 5.3(b).

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

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

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

"Prohibited Development" has the meaning given to that term in clause 9.4.

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

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

"rectification plan" has the meaning given to that term in clause 15.1(a)(ii).

"Related Body Corporate" means:

- (a) in the case of Transgrid, means NSW Electricity Networks Assets Pty Limited (ACN 609 169 922) as trustee for the NSW Electricity Networks Assets Trust and each of their respective related bodies corporate (within the meaning of paragraph (b) below); and
- (b) otherwise in the case of any party or entity has the meaning given in the *Corporations Act 2001* (Cth) but on the basis that "subsidiary" has the meaning given to Subsidiary in this agreement and that "body corporate" includes a fund for collective investment of its members, a trust or a partnership.

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

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

"Routine Services" means the services that Transgrid provides to the Shared Assets Provider under clause 5.3(a) in accordance with Routine Services Program.

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

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

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

"Settlements Residue" means the amount referred to as settlements residue, calculated in accordance with clause 2 of Schedule 4A (as amended from time to time in accordance with clause 4 of Schedule 4A).

"Shared Assets" means:

- (a) Identified User Assets; and
- (b) Designated Network Assets.

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

- (a) a latent defect in the Shared Assets that could not have been reasonably discovered by Transgrid during the testing, commissioning or handover processes under the Construction Coordination Agreement and Project Agreement;
- (b) the Shared Assets Provider fails to pay for or approve (as relevant) Defects Rectification Works, Emergency Works, System Security Works and/or Non-Routine Capital Works such that Transgrid is unable to undertake those works;
- (c) an error, defect, omission, deficiency, non-conformity, fault, failure, malfunction or discrepancy in the *detailed design* of the Shared Assets such that it causes or is reasonably likely to cause:
 - (i) a material adverse effect to Transgrid in the performance of its obligations under this agreement; or
 - (ii) damage to Transgrid's *transmission system*; and
- (d) damage to the Shared Assets and/or Transgrid's *transmission system* arising out of or in connection with the Shared Assets Provider or its representatives' acts or omissions.

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

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

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

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

"System Security Works" means the work undertaken by Transgrid in accordance with clause 5.4(c)(iv), as described in Item [5] of Schedule 3.

"Tax Written Down Value" means:

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

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

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

"Transmission Network Lease" has the meaning given to that term in clause 22.8.

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

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

"Trustee" means the trustee of the Trust.

1.2 NER Definitions and references

In this agreement, unless the context otherwise requires:

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

1.3 General interpretation

In this agreement unless the contrary intention is specifically expressed:

- (a) a reference to a recital, clause, paragraph, schedule or attachment is a reference to a recital, clause or paragraph of or schedule or attachment to this agreement and references to this agreement include any schedule or attachment;
- (b) a reference to this agreement, any other agreement, deed or instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, deed, instrument or provision;

- (c) a reference to a statute, ordinance, licence, code or other law includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements of that statute, ordinance, licence, code or law;
- (d) a reference to a thing (including an amount) is a reference to the whole and each part of it;
- (e) the singular includes the plural and vice versa;
- (f) the word "person" includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, an unincorporated association and any authority;
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) a reference to one gender includes all genders;
- (i) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (j) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (k) a reference to a month is a reference to a calendar month;
- (l) a reference to time is a reference to Sydney time;
- (m) if a word or phrase is specifically defined in this agreement other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (n) mentioning anything after include, includes or including does not limit what else might be included; and
- (o) a reference to "\$", AUD or dollars is to Australian currency.

1.4 Relationship between Shared Assets Provider and Rules

- (a) The parties acknowledge that the Rules contain certain provisions which are relevant to the operation of this agreement, and which need to be incorporated into this agreement:
 - (i) to enable Transgrid to properly comply with its obligations as a registered *Network Service Provider* and *Primary Transmission Network Service Provider* under the Rules; and
 - (ii) to require the Shared Assets Provider to comply with various technical obligations imposed upon the Shared Assets Provider in relation to the operation of the *identified user shared asset* or the *designated network asset* under the Rules (as applicable, depending on the description of Shared Assets in Schedule 1).
- (b) For the period that the Shared Assets Provider is not a *Registered Participant* (or exempted by the AER from having to be a *Registered Participant*), any provision of Chapters 4, 5, 7 and 8 of the Rules that set out:
 - (i) rights and obligations of an *identified user shared asset* owner or *designated network asset* owner as against a *Network Service Provider* (or vice versa); or
 - (ii) technical or operational specifications that are relevant to the Shared Assets that are the subject of this agreement,

and are required for either of the purposes set out in paragraph 1.4(a), are incorporated into this agreement mutatis mutandis and any reference to the application of the Rules to the Shared Assets Provider, or the compliance by the Shared Assets Provider with the Rules, under this agreement will be taken to be the application or compliance with, those Rules referred to in this paragraph (b).

- (c) Any provisions that are incorporated into this agreement under paragraph (b) must be read and construed in accordance with the following:
- (i) references to an *identified user shared asset owner*, *designated network asset owner* or analogous terms are to be taken to be references to the Shared Assets Provider as appropriate;
 - (ii) references to *third party IUSA owner* and owner of the *designated network asset* (as applicable depending on the description of Shared Assets in Schedule 1.) are to be taken to be references to the Shared Assets Provider as appropriate;
 - (iii) references to *Network Service Provider* or analogous terms are to be taken to be references to Transgrid;
 - (iv) any other terms relevant to the abovementioned terms must be construed accordingly; and
 - (v) to the extent the provision purports to impose an obligation on a party to:

A.	interact in some manner with a third party;
B.	comply with a requirement of a third party;
C.	provide information to a third party; or
D.	be subject to the jurisdiction of a third party,

that requirement will have no effect.

- (d) In addition, in order to interpret the above provisions, the following provisions of the Rules apply to the extent necessary to give meaning to any provisions incorporated into the agreement in accordance with paragraph (b) above:
- (i) Clause 4.1.1;
 - (ii) Clause 5.1A.1 and 5.1.2;
 - (iii) Clause 7.1.1;
 - (iv) Clause 8.1.3;
 - (v) Chapter 9, to the extent that it modifies any provisions incorporated into the agreement in accordance with paragraph (b) above;
 - (vi) Chapter 10; and
 - (vii) any other provisions which are specifically referred to in Chapter 10 and are necessary to give meaning to the definitions set out in Chapter 10.

1.5 Rights of MHC

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

2. TERM

2.1 Term

- (a) This agreement:
 - (i) commences on the Commencement Date; and
 - (ii) ends on the earlier of:
 - A. the date on which there is no *connection agreement* between Transgrid and any person where the Shared Assets are used to provide for that *connection* or conveyance of electricity associated with that *connection*; and
 - B. the date that this agreement is terminated in accordance with its terms.
- (b) Clauses 1, 12, 17 to 25 (inclusive) come into force and effect on the Execution Date.

2.2 Renewal of agreement

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

3. CREDIT SUPPORT

3.1 Acceptable credit rating

- (a) For the purposes of this clause 3, an entity will have an "**Acceptable Credit Rating**" if at all times it holds a long term issuer credit rating of at least A- in respect of unsecured obligations of the entity, as rated by Standard & Poor's (Australia) Pty Limited ("**Standard & Poor's**") or the equivalent long term credit rating by Moody's Investors Service Pty Ltd ("**Moody's Investors Service**") or Fitch Ratings Inc ("**Fitch Ratings**").
- (b) If, in Transgrid's reasonable opinion, the methods by which Standard & Poor's or the relevant rating agency determine credit ratings materially change or that organisation no longer determines credit ratings, then Transgrid may, from time to time, in its discretion determine a credit rating for the relevant entity for the purposes of this clause 3.

3.2 Credit Support

- (a) The Shared Assets Provider must, within 10 Business Days of the NOA Services Commencement Date, procure that the issuing bank provide to Transgrid credit support in Transgrid's favour that:

- (i) is issued by a bank ("**Credit Support Provider**") approved by Transgrid (acting reasonably and having regard to Transgrid's total exposure to that bank) which is an Approved Bank supervised by the Australia Prudential Regulatory Authority ("**APRA**") and carries an Acceptable Credit Rating;
 - (ii) is issued directly to Transgrid:
 - A. if Transgrid has approved an Approved Digital Bank Guarantee Platform, through an Approved Digital Bank Guarantee Platform; or
 - B. if Transgrid has not approved or no longer approves any Approved Digital Bank Guarantee Platforms, from a branch located in Australia by the Credit Support Provider;
 - (iii) is capable of being presented for payment at an office of the issuing bank in Sydney and, if issued through an Approved Digital Bank Guarantee Platform, is also capable of being presented for payment through that Approved Digital Bank Guarantee Platform;
 - (iv) is in the form of an unconditional and irrevocable bank guarantee reasonably acceptable to Transgrid;
 - (v) is duly executed by the Credit Support Provider and delivered unconditionally by the Credit Support Provider to Transgrid;
 - (vi) constitutes a valid and binding unsubordinated obligation of the Credit Support Provider to make payment to Transgrid; and
 - (vii) permits drawings or claims by Transgrid to an amount which is not less than the amount determined in accordance with Item 3 of Schedule 5, (the "**Credit Support**").
- (b) Without limiting Transgrid's rights under this agreement, if the Shared Asset's Provider fails to provide Credit Support when required and in accordance with clause 3.2(a), Transgrid may immediately cease providing O&M Services until such time the Shared Asset's Provider provides the outstanding Credit Support.

3.3 Amount of Credit Support

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

3.4 Drawings on Credit Support

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

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

3.5 Changes in amount of Credit Support

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

3.6 Refund of drawing

If Transgrid has drawn on a Credit Support:

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

then, Transgrid must:

- (c) in the case of a drawing referred to in clause 3.6(a), refund the amount drawn to the Shared Assets Provider; or
- (d) in the case of a drawing referred to in clause 3.6(b), refund the difference between the amount that was drawn and the amount for which the Shared Assets Provider is liable to pay Transgrid.

3.7 Return of Credit Support

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

3.8 Expiry of Credit Support

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

3.9 Replacement of Digital Credit Support

- (a) Transgrid may at any time, by notice to the Customer, revoke its approval of an Approved Digital Bank Guarantee Platform.
- (b) On receiving a notice under clause 3.9(a) the Customer must procure the immediate issue of replacement Credit Support to Transgrid from an issuer as described in clause 3.2(a) and which otherwise complies with clauses 3.2. Transgrid must return any Credit Support being replaced under this clause 3.9(b) in exchange for the replacement Credit Support.
- (c) The Customer agrees that in addition to any other right of Transgrid to draw on any Credit Support, Transgrid may make a drawing on any Credit Support issued through an Approved Digital Bank Guarantee Platform for which Transgrid has revoked its approval under 3.9(a), in which event Transgrid may draw the full face value of that Credit Support and hold that amount as security until such time as the Customer provides a replacement Credit Support.

4. INTERFACES

4.1 Interface boundaries

- (a) The parties agree that the boundaries between each of:
 - (i) the Shared Assets and the *transmission network*; and
 - (ii) the Designated Network Assets and the Identified User Assets, being the Boundary Point, respectively, is as it is set out in the relevant diagrams in Schedule 1.
- (b) The Shared Assets Provider owns all those components that form the Shared Assets and Transgrid owns all those components that form part of the *transmission network* from the boundary referred to in clause 4.1(a)(i) as identified in the diagram in Schedule 1 and the parties must update the diagram in Schedule 1 promptly following any modification or augmentation of the Shared Assets under either clauses 5.4 or 10.2, including any changes to the Boundary Point.

4.2 Interface and integration

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

5. OPERATION AND MAINTENANCE SERVICES

5.1 Handover of operational control of the Shared Assets

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

5.2 Transgrid's responsibilities

- (a) The Shared Assets Provider agrees that Transgrid has the right and obligation to control, operate and maintain the Shared Assets under the Rules.
- (b) The Shared Assets Provider agrees that:
 - (i) Transgrid must control, operate and maintain the Shared Assets as if it formed part of its broader *transmission network*;
 - (ii) Designated Network Assets are treated under the Rules as forming a part of Transgrid's *transmission network* and accordingly Transgrid must ensure that Designated Network Assets it controls, maintains and operates under this agreement must meet the various system standards and technical requirements that apply to a *transmission network*, including ensuring that Designated Network Assets satisfy *system standards* and those applicable technical requirements under Schedules 5.1 and 5.1a of the Rules.
- (c) On and from the NOA Services Commencement Date, Transgrid must maintain and operate (or ensure that its Related Body Corporate and third party contractors will maintain and operate) the Shared Assets through the provision of O&M Services in accordance with:
 - (i) Applicable Laws;
 - (ii) requirements of the Rules;
 - (iii) good electricity industry practice; and
 - (iv) relevant Australian Standards.

5.3 Routine Services and Non-Routine Maintenance Services

- (a) On and from the NOA Services Commencement Date, Transgrid will undertake Routine Services for the Shared Assets in accordance with its Routine Services Program as set out in Schedule 2 for which the Shared Assets Provider will pay the Annual Fee.

- (b) In addition to the Routine Services undertaken by Transgrid in accordance with clause 5.3(a), the Shared Assets Provider may request that Transgrid undertake particular maintenance activities as provided in the Specific Maintenance Schedule set out in Item 1 of Schedule 3 ("**Non-Routine Maintenance Services**").
- (c) If the Shared Assets Provider requests particular maintenance activities as provided in the Specific Maintenance Schedule in accordance with clause 5.3(b), the Shared Assets Provider must pay Transgrid separately the fees identified for each of those activities in the Specific Maintenance Schedule in addition to the payment of the Annual Fee.

5.4 Capital Works Replacement

- (a) The parties agree that Transgrid has the right to alter, replace and augment the Shared Assets in accordance with the Rules, including as required to perform its obligations under the Connection Agreement with the Customer and any *connection agreement* for a new *connection* entered into by Transgrid under clauses 10.1 and 10.1A.
- (b) The Shared Assets Provider must provide all information reasonably requested by Transgrid in relation to the Shared Assets to allow Transgrid to carry out its rights and obligations under clause 5.4(a).
- (c) In addition to the capital works undertaken by Transgrid as part of the Routine Services in accordance with clause 5.3(a):
 - (i) the Shared Assets Provider may request that Transgrid undertake particular capital works replacement as provided in the Non-routine Capital Works Schedule set out in Item 1 of Schedule 3 ("**Non-Routine Capital Works**");
 - (ii) Transgrid may undertake works without the Shared Assets Provider's prior approval if works are needed immediately to repair damage to the Shared Assets, which are necessary to ensure its continued function and prevent further harm and damage to the broader *transmission network* ("**Emergency Works**"). All Emergency Works must be undertaken in accordance the Emergency Works Schedule set out in Item [3] of Schedule 3;
 - (iii) Transgrid may undertake Defects Rectification Works following discussion and agreement with the Shared Assets Provider in accordance with the Defects Rectification Works Schedule set out in Item [4] of Schedule 3;
 - (iv) Transgrid may undertake works by giving notice to Shared Assets Provider if those works are needed to ensure that a Designated Network Asset meets the various *system standards* for voltage, stability and power transfer capability and other relevant technical requirements that apply to it as a *transmission network* under the Rules ("**System Security Works**").
- (d) Without limiting any rights that Transgrid may have to damages or otherwise in respect of any Defects at Law, if the Shared Assets Provider requests Non-Routine Capital Works in accordance with clause 5.4(c)(i) or Transgrid undertakes Emergency Works, Defects Rectification Works or System Security Works in accordance with clauses 5.4(c)(ii), 5.4(c)(iii) or 5.4(c)(iv):
 - (i) the Annual Fee shall be adjusted in accordance with paragraph 2.5 of Schedule 4; and

- (ii) the Shared Assets Provider must pay Transgrid separately the fees identified for each of those activities in the Non-routine Capital Works, Emergency Works and Defects Rectification Works and System Security Works Schedules, in addition to the payment of the Annual Fee.

5.5 Shared Assets Provider's responsibilities

The Shared Assets Provider must procure that the Construction Contractor provides Transgrid with the Collateral Warranty on or before the Shared Assets are handed over to Transgrid under clause 5.1.

6. SETTLEMENTS RESIDUES

- (a) This clause 6 and Schedule 4A apply only if the Shared Assets is or comprises a Designated Network Asset.
- (b) With respect to Settlements Residue:
 - (i) either Transgrid or the Shared Assets Provider will pay the Settlements Residue (as set out in clause 3 of Schedule 4A); and
 - (ii) the Settlements Residue amount is determined in accordance with the methodology set out in clause 2 of Schedule 4A.

7. PAYMENT FOR SERVICES

7.1 Amount of charges

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

7.2 Invoicing

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

7.3 Contents of invoices

Transgrid will ensure that any invoices rendered under clause 7.2 will be valid for GST purposes and will include the following information:

- (a) **Charges:** particulars of the Charges payable by the Shared Assets Provider or amounts due to the Shared Assets Provider under clause 7.1 (including sufficient information in relation to such Charges and other amounts to reasonably enable the Shared Assets Provider to verify the basis of the relevant charges or other amount);

- (b) **Other amounts:** particulars of any other Charges payable by the Shared Assets Provider in respect of the invoice period that applies under clause 7.2, including any amounts payable under clauses 7.4, 7.5, 7.7, 7.8 and 7.9 (including sufficient information in relation to such charges to reasonably enable the Shared Assets Provider to verify the basis of the relevant charges); and
- (c) **Rules information:** any information required to be provided in invoices under clause 6A.27.2 of the Rules.

7.4 Taxes

If:

- (a) the Shared Assets Provider is required by law to make any deduction or withholding from any amount paid or payable by it under this agreement; or
- (b) Transgrid is required by law, or any variation of any law which commences operation after the Execution Date, to make any payment, or any increased payment, on account of a tax, duty, levy, impost or other charge or in the nature of any such thing on or in relation to any amount received or receivable by it under this agreement or in relation to any O&M Services provided under this agreement or which is payable as a result of entering into or performing this agreement (other than income tax),

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

- (c) the Shared Assets Provider will ensure that any such deduction or withholding does not exceed the legal minimum and will pay any such tax or other amount required to be deducted or withheld to the relevant taxation or other authority before the date on which penalties apply;
- (d) the amount payable by the Shared Assets Provider under this agreement will be increased to the extent necessary to ensure that, after the making of the relevant deduction, withholding or payment, Transgrid receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount (after allowances for any credit or benefit received by Transgrid as a result of the Shared Assets Provider's deduction, withholding or payment) equal to the amount which Transgrid would have received and so retained had no such deduction, withholding or payment been made unless Transgrid is prohibited under the Rules from receiving such amount; and
- (e) the Shared Assets Provider will deliver to Transgrid, within 5 Business Days after each deduction or withholding is required by law to be made, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made.

7.5 GST

- (a) Unless the context requires otherwise, words and phrases in this clause that have a specific meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) will have the same meaning in this clause.
- (b) If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (c) Unless otherwise stated, all amounts expressed to be payable under or in connection with this Agreement are exclusive of any GST.

- (d) A recipient of a taxable supply under or in connection with this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (the **"GST Amount"**). The recipient must make that payment to the supplier as and when the consideration or part of it is provided, except that the recipient need not pay unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.
- (e) If an adjustment event occurs in relation to a supply made under or in connection with this agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- (f) Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another party under this agreement, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus any GST Amount payable under this clause 7.5.
- (g) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (h) If a party has a Claim under or in connection with this agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
- (i) This clause 7.5 will not merge upon completion and will continue to apply after expiration or termination of this agreement.

7.6 Disputed invoices

- (a) In the event of any dispute concerning an invoiced amount the Shared Assets Provider will, within 10 Business Days after the date it received the invoice, notify Transgrid in writing identifying the amount in dispute and giving full reasons for the dispute.
- (b) The Shared Assets Provider will pay the full amount of any portion of the invoice which is not in dispute.
- (c) The parties will meet to try to resolve the dispute, and failing resolution within a further 10 Business Days, the dispute will be determined in accordance with clause 19.
- (d) If, and for so long as, the Shared Assets Provider complies in good faith with the provisions of this clause 7, it will not, for that reason alone be in breach of its obligations under clause 7.2 as a result of failing to pay any portion of an invoice which is in dispute

7.7 Interest on disputed amount

Where, as a result of the determination of a dispute of the nature referred to in clause 7.6, either party has to pay money to the other, then, in addition to such payment, interest will be payable thereon from the date the disputed invoice was due until the date the paying party actually pays the other party the relevant amount at a rate equal to the Interest Rate calculated on a daily basis with payment of such interest due on the date agreed between the parties or determined in accordance with clause 19 for the payment of the principal amount.

7.8 Adjustment of invoices

- (a) This clause 7.8 applies if:

- (i) the Shared Assets Provider has been overcharged or undercharged in any form whatsoever;
 - (ii) the Shared Assets Provider has actually paid the invoices containing such overcharge or undercharge; and
 - (iii) the overcharge or undercharge is in relation to an invoice dated within the preceding 12 months from the date of discovery of the overcharge or undercharge.
- (b) Within 20 Business Days after the overcharge or undercharge (as the case may be) has been discovered and the amount of the overcharge or undercharge has been agreed by the parties or determined pursuant to the provisions of clause 19, Transgrid will refund to the Shared Assets Provider the amount of the overcharge (if any) and the Shared Assets Provider will pay to Transgrid the amount of the undercharge (if any).
- (c) Interest will be payable at a rate equal to the Interest Rate on such amounts from the date on which the incorrect invoice was due for payment until the date of payment of such undercharge or overcharge calculated on a daily basis with payment of such interest due on the date on which the amount of the undercharge or overcharge is due.

7.9 Default interest

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

8. DEFECTS

8.1 Shared Assets Provider warranties

The Shared Assets Provider warrants that:

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

9. ACCESS

9.1 Shared Assets forms part of the *transmission network*

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

9.2 Easements and Transgrid access rights

- (a) On and from the NOA Services Commencement Date and during the Term, the Shared Assets Provider must at its own cost and at no cost to Transgrid, ensure that MHC or another nominee of Transgrid is granted:
 - (i) easements for the access routes identified in Schedule 6; and
 - (ii) any other easement which is required by Transgrid for securing a permanent right to access the Shared Assets.
- (b) The easements granted under clause 9.2(a) will identify the access route determined by Transgrid (acting reasonably) and be otherwise on terms reasonably acceptable to Transgrid.
- (c) Without limiting clause 9.2(b) and Transgrid's other rights of access under this agreement, the Shared Assets Provider must provide Transgrid (and its Associates) with clear, unhindered and safe access to and over the Land and any associated access roads for the purpose of undertaking the O&M Services.

9.3 Shared Assets Provider access

- (a) The Shared Assets Provider agrees that Transgrid and its Associates has unrestricted use of and right of access to the Shared Assets for any purpose related to:
 - (i) the provision of O&M Services under this agreement;
 - (ii) any *connection agreements* related to the Shared Assets; and
 - (iii) Transgrid's responsibilities and rights under the Rules as it relates to the Shared Assets.
- (b) The Shared Assets Provider may on reasonable prior written notice to Transgrid inspect the Shared Assets.
- (c) In exercising its access right under clause 9.3(b), the Shared Assets Provider's authorised officers must comply with all of Transgrid's directions, including following relevant health and safety policies and procedures, industry practice in relation to the security, facilities and systems.
- (d) The Shared Assets Provider's access right under clause 9.3(b) may be restricted or limited:
 - (i) by industrial relations or occupational health and safety requirements; or
 - (ii) where such access will delay Transgrid in the performance of its obligations under this agreement, the Construction Coordination Agreement, the Connection Agreement and/or the Project Agreement.

9.4 No encroachments

- (a) The Shared Assets Provider must not carry out, and ensure that no third party carries out, any development within the restricted areas within the vicinity of the Shared Assets as set out in Schedule 6 (other than development in respect of the Shared Assets themselves or as otherwise expressly permitted by this agreement) without Transgrid's prior written consent ("**Prohibited Development**").
- (b) The Shared Assets Provider must notify Transgrid as soon as reasonably practicable if it becomes aware of any actual or proposed Prohibited Development.
- (c) Without limitation to any other rights or remedies, Transgrid may by notice immediately suspend or limit the provision of the O&M Services to the Shared Assets Provider without notice in accordance with clause 14.1(c) if there is any Prohibited Development until such time as Prohibited Development is removed or Transgrid otherwise considers that the Prohibited Development causes no risk of any damage, loss or injury to any person or property.
- (d) The Shared Assets Provider indemnifies, will keep indemnified and hold harmless Transgrid and its Associates from Damages suffered or Claims incurred by Transgrid or its Associates arising from or in connection with any Claims that arise in connection with any Prohibited Development.

9.5 Authorisations

The Shared Assets Provider is responsible for obtaining and maintaining at its cost all Authorisations required for the construction of the Shared Assets including any alterations, replacements and augmentations carried out on those Shared Assets.

10. OTHER CONNECTIONS

10.1 New connections – Identified User Assets

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

10.1A. New connections – Designated Network Assets

- (a) Transgrid agrees that the Shared Assets Provider is responsible for administering access to a Designated Network Asset in accordance with the Rules and the Access Policy for that Designated Network Asset.

- (b) If Transgrid receives an *application to connect* to a Designated Network Asset from a third party ("**DNA Connection Applicant**"), Transgrid will provide the Shared Assets Provider with written notice of the *connection* enquiry from the DNA Connection Applicant.
- (c) The Shared Assets Provider must administer access to the Designated Network Asset in good faith and in accordance with its obligations under the Rules and the Access Policy for that Designated Network Asset.
- (d) Transgrid may only make an offer to *connect* to a DNA Connection Applicant if the Shared Assets Provider:
 - (i) provides written confirmation to Transgrid that access to the Designated Network Assets has been agreed with the DNA Connection Applicant in accordance with the Access Policy for that Designated Network Asset; and
 - (ii) has provided Transgrid with details of technical information on the nature of the access provided to the DNA Connection Applicant (including technical requirements or limitations agreed with the DNA Connection Applicant) that are relevant to the *connection* services that Transgrid will provide to the DNA Connection Applicant under its connection agreement with Transgrid.

10.2 Capital works to Shared Assets for new connection

- (a) Subject to paragraph 10.2(b), if the *connection* to the Shared Assets by the Connection Applicant or DNA Connection Applicant requires incremental capital works that are:
 - (i) non-contestable IUSA components;
 - (ii) contestable IUSA components;
 - (iii) with respect to Designated Network Assets,
 (each, "**New Capital Works**"), Transgrid will consult with the Shared Assets Provider in relation to the functional specifications of the New Capital Works and interface between the *transmission network* and the *contestable IUSA components* or *designated network asset* (as applicable).
- (b) To the extent that the New Capital Works are cut-in works to the Designated Network Asset, upgrades to existing assets that comprise the Designated Network Asset or increases in capacity of the Designated Network Asset ("**DNA Upgrade Works**"), Transgrid will provide the functional specifications for the DNA Upgrade Works and the Shared Assets Provider will provide the detailed design and undertake construction for the DNA Upgrade Works.
- (c) Unless otherwise agreed with the Shared Assets Provider and the Connection Applicant or DNA Connection Applicant, for:
 - (i) New Capital Works that are *non-contestable IUSA components*, Transgrid will recover the costs of providing functional specifications, detailed design and undertaking construction of those New Capital Works from the Connection Applicant;
 - (ii) New Capital Works that are *contestable IUSA components*, Transgrid will recover the costs of providing functional specifications of the *contestable IUSA components* from the Connection Applicant;
 - (iii) DNA Upgrade Works, Transgrid will recover the costs of providing functional specifications of the DNA Upgrade Works from the DNA Connection Applicant; and

- (iv) DNA Upgrade Works, the Shared Assets Provider will recover the costs of providing detailed design and construction of the DNA Upgrade Works from the DNA Connection Applicant under the access arrangement contract it has with the DNA Connection Applicant.
- (d) All New Capital Works built under this clause 10.2 will form part of the Shared Assets and will be operated and maintained by Transgrid under the terms of this agreement.
- (e) All DNA Upgrade Works built by the Shared Assets Provider pursuant to clause 10.2(c)(iv) and provided for under the access arrangement contract with the DNA Connection Applicant will form part of the Shared Assets and will be operated and maintained by Transgrid under the terms of this agreement.
- (f) The parties agree to use reasonable endeavours to amend and update this agreement accordingly to include New Capital Works and DNA Upgrade Works.

10.3 Cost sharing

- (a) If there is a new *connection* made under this clause 10 to the Shared Assets, costs of the O&M Services under this agreement will be shared with the Connection Applicant or DNA Connection Applicant in accordance with the principles set out in Schedule 5.11 and Schedule 5.12 of the Rules, using the most appropriate cost allocation methodology determined by Transgrid in consultation with the Connection Applicant, DNA Connection Applicant and the Shared Assets Provider.
- (b) Where a Shared Asset is an Identified User Asset, Transgrid will rebate the Shared Assets Provider those amounts recovered by Transgrid from the Connection Applicant for the Connection Applicant's share of the costs of the O&M Services referred to in clause 10.3(a), on a monthly basis.
- (c) Where a Shared Asset is a Designated Network Asset, the Shared Assets Provider will recover from the DNA Connection Applicant, under the separate access arrangement contract it has with the DNA Connection Applicant, the DNA Connection Applicant's share of the costs of the O&M Services.
- (d) Nothing in this clause 10 will increase the Charges payable by the Shared Assets Provider under this agreement.

10.4 Access and assistance

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

11. FORCE MAJEURE

11.1 Force Majeure

- (a) If either party fails to comply with or observe any provision of this agreement (other than an obligation to make a payment) and that failure is caused by an event or circumstance which is beyond the reasonable control of that party and which that party could not have prevented by the exercise of reasonable care and *good electricity industry practice* (a "**Force Majeure Event**"), that failure will not give rise to any cause of action or liability based on breach of the relevant provision of this agreement.

- (b) Without limiting clause 11.1(a), the following events will be Force Majeure Events to the extent that they satisfy the requirements of clause 11.1(a):
- (i) **Acts of God etc:** any event or circumstance occasioned by or in consequence of any acts of God, acts of public enemy, wars, terrorism, blockades, insurrections, riots, rebellion, epidemics (including COVID-19), landslips, landslides, lightning strike which damages plant or materials, earthquakes, fires, cyclones, floods, typhoons, geomagnetically induced currents, arrests, restraints of rulers, and civil war;
 - (ii) **Applicable Laws:** the compliance by the affected party in good faith with Applicable Laws which are varied or introduced after the Execution Date;
 - (iii) **Directives, Court Orders etc:** the binding order or Directive of any court, tribunal, Authority (other than Transgrid) by reason of any cause beyond the control of the party invoking this clause 11.1 and which does not arise from a breach of this agreement by the party invoking this clause 11.1;
 - (iv) **Strikes and lockouts:** strikes, lockouts and other labour disputes other than those solely involving the employees (or employees of contractors and sub-contractors) of the party invoking this clause 11.1;
 - (v) **Power supply failure:** a partial or entire failure of the supply or availability of electricity to the power system, a partial or entire failure of any *Generator* or *Market Network Service Provider* to inject electricity into the national grid, or a partial or entire failure of any other person to take electricity;
 - (vi) **Failure or delay of supplier:** a failure or delay by a supplier (being a party with whom the affected party contracts from time to time) of goods or services to provide such goods or services and that failure or delay was caused by a Force Majeure Event (provided that, for the purposes of this clause 11.1(b)(vi), a reference to a 'party' in the definition of Force Majeure Event in clause 11.1(a) is to be construed as a reference to the relevant supplier); and
 - (vii) **Acts of third parties:** acts or omissions by a third party beyond the control of the party invoking this clause 11.1 and its Associates, including an Authority (other than Transgrid) and any Other Transgrid Customer.

11.2 Notice

If a party becomes aware of the existence of, or a serious prospect of, a forthcoming Force Majeure Event, it will notify the other party as soon as reasonably practicable of the particulars of which it is aware. If a party invokes clause 11.1, it will notify the other party as soon as reasonably practicable of full particulars of the Force Majeure Event relied upon.

11.3 Avoidance and Mitigation

The party invoking clause 11.1 will:

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

- (d) as soon as is reasonably practicable after the abatement or cessation of the Force Majeure Event, resume performance of its affected obligations under this agreement to the extent such abatement or cessation permits.

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

11.4 Termination on account of Force Majeure Event

- (a) Subject to clause 11.4(b), if the Force Majeure Event or its direct effect or consequence on the operations of either party, is of such magnitude, or will be (or it is more probable than not that it will be) of such duration, that after a period of not less than 12 consecutive months from the date of the commencement of the Force Majeure Event, it is unreasonable in all the circumstances for either party to perform, comply with or observe this agreement, that party may, by serving no less than 10 Business Days' notice, terminate this agreement.
- (b) Clause 11.4(a) will not apply to a Force Majeure Event which prevents or limits either party from performing any obligation under this agreement if the Shared Assets Provider:
 - (i) notifies Transgrid that it does not want this agreement to terminate as a result of that Force Majeure Event; and
 - (ii) continues to pay the Charges and (where relevant) complies with its other obligations under this agreement.

11.5 Shared Assets Provider required to comply

Nothing in this clause 11 affects any obligation that the Shared Assets Provider has to pay Transgrid for O&M Services notwithstanding that, as a result of a Force Majeure Event, Transgrid is delayed in providing, or fails to provide, such O&M Services to the Shared Assets Provider.

12. INSURANCE

12.1 Transgrid's Insurance

Transgrid must effect and maintain for the Term, appropriate insurance arrangements for:

- (a) workers compensation insurance covering liability to employees under the law of their place of employment and any other place where such employees may be required to provide the O&M Services;
- (b) motor vehicle insurance covering damage to and arising from its motor vehicles utilised in the exercise of its rights and performance of its obligations under this agreement for an overall minimum amount of \$[20] million and Transgrid must procure that its contractors who exercise Transgrid rights or perform its obligations under this agreement have that same level of motor vehicle insurance; and
- (c) public liability insurance for a minimum amount of \$20 million for any one claim, (collectively the "**Insurance Cover**").

12.2 The Shared Assets Provider's Insurance

- (a) At all times during the Term, the Shared Assets Provider must, at its own expense, effect and maintain or cause to effected and maintained in full force the insurance policies specified in Item 1 of Schedule 5.

- (b) To the extent possible, the insurance policies referred to in clause 12.2(a) must cover Transgrid as a named insured.

12.3 Contents of Shared Assets Provider's Insurance Policy Documentation

The Shared Assets Provider will use reasonable endeavours to ensure that each of the insurance policies referred to in clause 12.2(a):

- (a) contains an agreement by the insurer that:
 - (i) it waives all rights of subrogation in relation to the claims between the insureds and against Transgrid;
 - (ii) it will not cancel the relevant insurance policy without giving at least 90 days' prior written notice to Transgrid;
 - (iii) it will not act upon a notice of cancellation given by any other insured as to the interests of Transgrid without the prior written consent of Transgrid;
 - (iv) with exception of the erosion of a policy's aggregate liability limit through a claim, no reduction in limits or coverage in the relevant insurance policy will be made without giving at least 90 days' prior written notice to the Shared Assets Provider; and
 - (v) all claims for insurance premiums, commissions, levies, stamp duties, charges and other expenses against Transgrid are waived;
- (b) includes a cross liability provision to the effect that the relevant insurance policy applies to the parties as separate insureds and will not be avoided or otherwise affected by any indemnity given under this agreement; and
- (c) insures the interest of Transgrid up to the limits of the relevant insurance policy regardless of any non-disclosure or misrepresentation by the Shared Assets Provider or any breach or violation by the Shared Assets Provider of any warranties, declarations or conditions contained in the relevant insurance policy.

12.4 Inspection Insurance Cover Documentation

- (a) On reasonable request by a party ("**requesting party**"), the other party ("**requested party**") must make available for inspection by the requesting party evidence of the insurance policies maintained under clause 12 by the requested party.
- (b) A party ("**requested party**") must also, on reasonable request by the other party ("**requesting party**"), provide:
 - (i) certificates evidencing that the insurance policies required to be effected and maintained by the requested party under clause 12 have been effected and all premiums have been paid; and
 - (ii) such other reasonable documentation as the requesting party may require from time to time to confirm that the insurance policies required to be effected and maintained by the requested party under clause 12 are valid, current and meet the requirements of clause 12.

12.5 Reinstatement

- (a) If the Shared Assets are substantially destroyed (whether by a Force Majeure Event or otherwise) and the Shared Assets Provider elects not to use the proceeds of the Shared Assets Provider's Insurance to repair, reinstate and replace the Shared Assets, the Shared Assets Provider must provide notice to Transgrid of its election.
- (b) Transgrid may terminate this agreement by written notice within 10 Business Days' receipt of notice received under clause 12.5(a).

13. INFORMATION AND RECORDS

- (a) Each party must produce and maintain the Controlled Records for which it is responsible in accordance with this clause 13. The Controlled Records must contain the information reasonably specified by Transgrid in writing from time to time.
- (b) Each party must ensure that:
 - (i) it holds a complete and up to date copy of the Controlled Records for which it is responsible; and
 - (ii) the information contained in the Controlled Records is kept up to date and accurate.
- (c) Each party must maintain a register of the Controlled Records which details:
 - (i) all of the Controlled Records for which it is responsible;
 - (ii) the nature of any amendments made to those Controlled Records pursuant to clause 13(b); and
 - (iii) the date on which any amendments made to those Controlled Records came into effect.
- (d) Each party (the **"first party"**) must promptly on written request provide the other party with:
 - (i) a copy of the Controlled Records for which the first party is responsible;
 - (ii) a copy of the register referred to in clause 13(c); and
 - (iii) prior to the date on which any amendment it makes to any Controlled Records for which it is responsible comes into effect, a copy of the amendment to be made together with a notice specifying the parts of the Controlled Records which are to be amended.

14. SUSPENSION OF SERVICES

14.1 Right to suspend

- (a) If the Shared Assets Provider does not pay any part of an invoice rendered by Transgrid on or before the day on which such invoice is due for payment under clause 7.2 or has failed to make any other payment required under this agreement on or before the date on which such payment is due then, unless the Shared Assets Provider has given a notice under clause 7.6(a) in respect of that amount and otherwise complied with its obligations under clause 7.6, Transgrid, by notice to the Shared Assets Provider, may suspend or limit the provision of the O&M Services to the Shared Assets Provider until such time as payment is made.
- (b) Subject to clause 14.1(c), Transgrid may suspend or limit the provision of the O&M Services to the Shared Assets Provider if the Shared Assets Provider commits a Non-Financial Default and the Shared Assets Provider has not:

- (i) provided to Transgrid a plan to rectify the Non-Financial Default within 10 Business Days after Transgrid notifying the Shared Assets Provider of the existence of the Non-Financial Default, which rectification plan must specify a reasonable date (taking into account the nature of the Non-Financial Default and the requirements of all Applicable Laws and *good electricity industry practice*) by which the Non-Financial Default will be remedied by the Shared Assets Provider;
 - (ii) commenced to remedy the Non-Financial Default within 10 Business Days after providing the rectification plan to Transgrid under clause 14.1(b)(i); or
 - (iii) remedied the Non-Financial Default by the date specified in the rectification plan provided to Transgrid under clause 14.1(b)(i).
- (c) Nothing in clause 14.1(b) will limit Transgrid's right (without notice to the Shared Assets Provider) to suspend or limit the provision of O&M Services to the Shared Assets Provider if Transgrid considers:
- (i) that the Non-Financial Default by the Shared Assets Provider could cause any risk of damage, loss or injury to any person or property; or
 - (ii) the suspension or limitation is required by Applicable Law or is in accordance with any Directive given under Applicable Laws or this agreement.
- (d) Any suspension or limitation of the provision of Services under clauses 14.1(a), (b), (c) will not affect any right Transgrid may have to terminate this agreement under clause 15.
- (e) The giving, or failure to give, by Transgrid of notice under clause 14.1(a) will not affect any right Transgrid may have to be paid interest under clause 7.9 as a result of the Shared Assets Provider's failure to pay any part of an invoice.

14.2 Shared Assets Provider required to comply

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

14.3 No liability

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

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

14.4 Subject to Tripartite Agreement

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

15. TERMINATION

15.1 Default

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

15.2 Failure to cure

- (a) In the case of Financial Default if the defaulting party does not cure the relevant Financial Default within the Financial Cure Period in clause 15.1(a)(i), then the non-defaulting party may in addition to any other rights and remedies under this agreement, exercise any or any combination of the following remedies:
 - (i) terminate this agreement by written notice to the defaulting party; and
 - (ii) exercise all available legal and equitable remedies including, but not limited to, suing for compensation or seeking orders for declaration, injunctive relief or damages or such other orders or relief as the non-defaulting party may think fit.
- (b) In curing the Financial Default within the Financial Cure Period, the non-defaulting party may set off any unpaid amount against any payments required to be made to the defaulting party under this agreement.
- (c) Without prejudice to any other rights of the non-defaulting party, the defaulting party must pay the non-defaulting party interest on the amount which is the subject of a Financial Default (plus any accrued interest compounding daily) at the Default Rate from the date when payment is due until the Financial Default is cured.
- (d) In the case of a Non-Financial Default, if the defaulting party does not:
 - (i) provide a rectification plan within the time required by clause 15.1;
 - (ii) provide a rectification plan that is to the reasonable satisfaction of the non-defaulting party;

- (iii) commence to remedy the Non-Financial Default within 10 Business Days after providing the rectification plan to the non-defaulting party under clause 15.1(a)(ii); or
- (iv) remedy the relevant Non-Financial Default within the Non-Financial Cure Period specified in clause 15.1(b),

then the non-defaulting party may, in addition to any other rights and remedies under this agreement exercise any or any combination of the following remedies:

- (v) terminate this agreement by serving prior written notice to the defaulting party; and
- (vi) exercise all available legal and equitable remedies including, suing for compensation or seeking orders for declaration, injunctive relief or damages or such other orders and relief as it may think fit.

15.3 Termination notice

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

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

15.4 Survival

Termination or expiration of all or part of this agreement for any reason does not affect:

- (a) any rights of any party against another party which:
 - (i) arose prior to the time at which such termination or expiration occurred; and
 - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement occurring prior to the termination or expiration; or
- (b) the rights and obligations of the parties under clauses 3, 7, 9, 15, 17 and 18, and any other clauses that expressly or by implication are intended to survive termination or expiry of this agreement.

15.5 No other right to terminate

Except as expressly provided in this agreement, but despite any right which would otherwise be conferred at law or in equity, the parties have no right (and waive any right which they may otherwise have had) to rescind or terminate this agreement.

15.6 Consequences of termination

- (a) Upon termination of this agreement by either party under clauses 11.4, 12.5, and 15, Transgrid will be entitled to *disconnect*, dismantle, *decommission* and remove any of the Shared Assets and undertake, complete and commission all other work which Transgrid reasonably determines is necessary to allow the *transmission system* to operate in accordance with *good electricity industry* practice and the other requirements of Applicable Laws following the *disconnection*, dismantling, *decommissioning* or removal of the Shared Assets referred to under this clause 15.6(a).
- (b) If Transgrid commences to *disconnect*, dismantle and *decommission* and remove the Shared Assets in accordance with clause 15.6(a):

- (i) (other than where Transgrid is the defaulting party), the Shared Assets Provider must reimburse Transgrid for any costs which are directly and necessarily incurred by Transgrid in undertaking that work (upon receipt from Transgrid of reasonable evidence substantiating the amount of costs incurred); and
 - (ii) other than where Transgrid is the defaulting party, the Shared Assets Provider must reimburse Transgrid for any other costs reasonably incurred by Transgrid to cease carrying out the O&M Services (as relevant and calculated in accordance with Transgrid's standard charging methodology) which are not otherwise being recovered under clause 15.6(b)(i).
- (c) Nothing in this clause 15.6 will limit either party's right to recover Damages from the other party for breach of contract, or exercise of rights under clause 16.

15.7 Cross termination

Transgrid may terminate this agreement with immediate effect by:

- (a) giving notice to the Shared Assets Provider upon the termination of the Project Agreement on or before the Date of Practical Completion as defined in the Project Agreement, without prejudice to the clauses [16.10 and 16.12] of the Project Agreement and clauses 15.4 and 15.6, which remain in full force and effect; and/or
- (b) only where the Shared Asset comprises of an Identified User Asset only, giving notice to the Shared Assets Provider upon the termination of the Connection Agreements, without prejudice to clauses [12.8 and 12.10] of the Connection Agreement and clauses 15.4 and 15.6, which remain in full force and effect.
- (c) If this agreement terminates in accordance with this clause 15.7 in circumstances where the Project Agreement or Network Connection Agreement was terminated due to default by[, or an Insolvency Event affecting,] a party, this agreement is defined to have been terminated due to the relevant default of[, or Insolvency Event] affecting, the party.

15.8 [Shared Assets Provider insolvency]

Transgrid may terminate this agreement at any time by giving the Shared Assets Provider notice of termination if any Insolvency Event occurs in respect of the Shared Assets Provider.]

15.9 Transgrid insolvency

The Shared Assets Provider may terminate this agreement at any time by giving Transgrid notice of termination if any Insolvency Event occurs in respect of Transgrid.

15.10 Obligation to notify of Insolvency Event

If an Insolvency Event occurs with respect to a party, then that party must immediately notify each other party that the Insolvency Event has occurred.

15.11 Subject to Tripartite Agreement

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

16. OWNERSHIP AND OPTION TO PURCHASE

16.1 Ownership

The parties agree that the Shared Assets are owned by the Shared Assets Provider through the Term and the Shared Assets includes those alterations, replacements and augmentations carried out by Transgrid on the Shared Assets under clauses 5.4 and 10.2.

16.2 Purchase option

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

16.3 Exercise of purchase option

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

- (v) provide a register of all contracts that are necessary for the operation and full enjoyment of the Shared Assets or cannot be separated from the Shared Assets to Transgrid, and assign all of the Shared Assets Provider's rights under, benefits of, interests in and burdens under all contracts as are nominated by Transgrid. The Shared Assets Provider must prepare novation contracts in respect of each these nominated contracts and use reasonable endeavours to have these executed by the relevant counterparties prior to the Completion Date; and
- (vi) provide all other reasonable assistance required by Transgrid, to enable Transgrid to exercise its rights or perform its obligations under the Purchase Option.
- (f) As between Transgrid and the Shared Assets Provider, Transgrid is liable for all stamp duty liabilities associated with the exercise of the Purchase Option.

16.4 Transmission Network Lease and MHC approval

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

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

17. LIABILITY

17.1 No liability for failure to supply

The Shared Assets Provider acknowledges that except as expressly provided in this clause 17, the terms of this agreement do not represent a waiver by Transgrid of, nor an agreement to limit or exclude, any limitation of its liability under sections 119 or 120 of the NEL.

17.2 Limitation of Transgrid's liability

- (a) To the extent permitted by law, Transgrid and its Associates will not be liable to the Shared Assets Provider for any Damages or Claims arising from any act or omission of Transgrid or its Associates in relation to this agreement or the performance or non-performance of any of Transgrid's obligations under it, other than:
 - (i) **Payment of amounts:** any obligation on Transgrid to pay any Settlements Residue due under this agreement;
 - (ii) **Direct loss or damage:** subject to clauses 17.2(b) and 17.6, the direct loss, injury, damage or expense of the Shared Assets Provider caused by Transgrid's failure to comply with, observe or perform any provision of this agreement; and
 - (iii) **Total amount of liability:** subject to clause 17.2(b), in respect of such direct loss, injury, damage or expense to the Shared Assets Provider referred to in clause 17.2(a)(ii), when aggregated with any liability of Transgrid arising from or in connection with the Connection Agreement:

- A. up to the amount of \$[•] in aggregate in respect of any single event or circumstance of failure described in clause 17.2(a)(ii) or single event or circumstance giving rise to a liability from or in connection with the Connection Agreement occurring during the Term (and a series of acts or omissions arising out of or in connection with the same event or circumstance will be taken to be a single event or circumstance); and
 - B. notwithstanding clause 17.217.2(a)(iii)A, up to the amount of \$[•] in aggregate in respect of all events or circumstances of failure described in clause 17.2(a)(ii) and all events or circumstances giving rise to a liability from or in connection with the Connection Agreement occurring in any one Contract Year.
- (b) To the extent permitted by law and without limiting clauses 17.2(a) and 17.6:
- (i) Transgrid and its Associates are not liable for any loss of use, revenue, profit or opportunity by the Shared Assets Provider or its Associates or the amount of any Damages awarded against the Shared Assets Provider in favour of, or monies paid by the Shared Assets Provider by way of settlement to, any third party and any costs or expenses of the Shared Assets Provider in connection with the same; and
 - (ii) for the avoidance of doubt, the limitation on Transgrid's and its Associates' liability as provided in this clause 17.2 will apply to any negligent act or omission, fault or cause by Transgrid and its Associates.

17.3 Transgrid's liability as a System Operator

- (a) To the extent permitted by law, Transgrid and its Associates will not be liable to the Shared Assets Provider for any Damages or Claims arising from any act or omission of Transgrid, whether or not in its capacity as a *System Operator*, and its Associates in relation to the performance, non-performance or purported performance of any System Operations Function.

17.4 Limitation of the Shared Assets Provider's liability

- (a) To the extent permitted by law, the Shared Assets Provider and its Associates will not be liable to Transgrid for any Damages or Claims arising from any act or omission of the Shared Assets Provider or its Associates in relation to this agreement or the performance or non-performance of any of the Shared Assets Provider's obligations under it, other than:
 - (i) **Payment of amounts:** any obligation on the Shared Assets Provider to pay any Charges under clause 7.1 and any other amounts (including interest) due under this agreement;
 - (ii) **Indemnities:** any obligation on the Shared Assets Provider to indemnify Transgrid in accordance with any provision of this agreement;
 - (iii) **Direct loss or damage:** subject to clauses 17.4(b) and 17.6, the direct loss, injury, damage or expense of Transgrid caused by the Shared Assets Provider's failure to comply with observe or perform any provision of this agreement; and
 - (iv) **Total amount of liability:** subject to clause 17.4(b), in respect of such direct loss, injury, damage or expense to Transgrid:
 - (A) up to the amount of \$[•] in respect of any single event or circumstance of failure described in clause 17.4(a)(iii) occurring during the Term (and a series of acts or omissions arising out of or in connection with the same event or circumstance will be taken to be a single event or circumstance); and

(B) notwithstanding clause 17.4(a)(i)(A), up to the amount of \$[•] in respect of all events or circumstances of failure described in clause 17.4(a)(iii) occurring in any one Contract Year.

- (b) To the extent permitted by law and without limiting clauses 17.4(a) and 17.6 but subject to clause 17.5:
- (i) the Shared Assets Provider and its Associates are not liable for any loss of use, revenue, profit or opportunity by Transgrid, or the amount of Damages awarded against Transgrid in favour of, or monies paid by Transgrid by way of settlement to, any third party and any costs or expenses of Transgrid in connection with the same; and
 - (ii) for the avoidance of doubt, the limitation on the Shared Assets Provider's and its Associates' liability as provided in this clause 17.4 will apply to any negligent act or omission, fault or cause by the Shared Assets Provider and its Associates.

17.5 Shared Assets Provider indemnity

- (a) Despite clause 17.4, the Shared Assets Provider will indemnify and keep Transgrid up to the amount of \$[•] in any one Contract Year for all loss (including Performance Scheme Loss), injury, damage and expense suffered by Transgrid arising out of or in connection with:
- (i) Shared Assets Provider Caused Events; and
 - (ii) Claims by third parties arising out of or in connection with Shared Assets Provider Caused Events.
- (b) The Shared Assets Provider's liability under this indemnity in clause 17.5 is reduced proportionately to the extent Transgrid's negligent acts or omissions have caused or contributed to such loss (including Performance Scheme Loss), injury, damage and expense.

17.6 No liability for indirect loss

- (a) Subject to clause 17.5, neither party has any liability to the other party, nor will either party be entitled to make any Claim, for any indirect loss.
- (b) For the purpose of this clause 17.6, "**indirect loss**" means:
- (i) loss that does not arise directly or naturally from the relevant breach; and
 - (ii) any loss of use, revenue, profit or opportunity or pure economic loss, whether or not they arise directly or naturally from the relevant breach.

17.7 Part Contract Year

The limitation of each party's liability described in clauses 17.2(a)(iii) and 17.4(a)(iv) in any Contract Year is to apply for a whole Contract Year. Accordingly, the applicable liability caps shall be pro-rated for any part Contract Years.

17.8 No implied terms

Subject to the *Competition and Consumer Act 2010* (Cth) and the express provisions of this agreement, all warranties, terms and conditions in relation to the performance of Transgrid's obligations or the exercise of Transgrid's rights under this agreement, which may be implied by use, statute or otherwise are excluded (to the maximum extent permitted by law).

17.9 Exclusions

The limits of liability referred to in clauses 17.2(a)(iii) and 17.4(a)(iv) do not apply to, except, limit or restrict in any way the liability of a party in respect of:

- (a) any liability in respect of personal injury or death, to the extent caused by that party; and
- (b) any loss suffered or incurred by another party as a result of any criminal acts, wilful misconduct, wilful breach or fraud on the party of that party,

and any liability of the type or nature referred to in clauses 17.9(a) and 17.9(b) shall not be taken into account for the purposes of calculating whether the limits of liability referred to in clauses 17.2(a)(iii) and 17.4(a)(iv) have been reached or exceeded.

18. CONFIDENTIALITY

18.1 General

All information acquired or received by any one party (the "**receiving party**") from the other party (the "**disclosing party**") in connection with this agreement, the fact of the existence of the information, and the terms of this agreement will be held and kept confidential by the receiving party, will only be used by the receiving party for the purposes of implementing this agreement, the Project Agreement, the Connection Agreement and the Construction Coordination Agreement, complying with the receiving party's obligations under Applicable Laws or operating the *transmission system* or the Shared Assets and must not be disclosed by the receiving party to any third party except with the prior consent of the disclosing party and upon such terms as may be stipulated by the disclosing party, provided that this clause 18.1 does not apply to:

- (a) **Assignee:** disclosure to or use by a bona fide intending Assignee of the receiving party upon obtaining a similar undertaking of confidentiality from such intending Assignee;
- (b) **Customer:** to the Customer under the Connection Agreement or customers under other *connection agreements* between Transgrid where that customer is using an aspect of the Shared Assets for that *connection* or conveyance of electricity associated with that connection, upon obtaining a similar undertaking of confidentiality from the Customer or those customers (as applicable);
- (c) **Associates:** disclosure to any Associates, but only to the extent that such disclosure is necessary and provided that the receiving party has made the Associate aware of the confidential nature of the matters and information and the Associate has agreed to keep the matters and information confidential or is otherwise bound by confidentiality obligations to the disclosing party;
- (d) **Professional consultants:** disclosure to or use by any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants (which may include professional obligations of confidentiality);
- (e) **Banks etc.:** disclosure to or use by any bank or financial institution from whom the receiving party is seeking to obtain finance or their professional advisers, upon obtaining a similar undertaking of confidentiality from such bank or institution or professional advisers;
- (f) **Under Applicable Laws:** disclosure of information that to the extent the receiving party bona fide believes such is required to enable the receiving party to comply with obligations, or exercise rights, under an Applicable Law, including the Rules;

- (g) **Public domain:** disclosure or use of information that has become generally available to the public other than as a result of an unauthorised disclosure by either party, or any of its Associates;
- (h) **Legal proceedings:** disclosure or use of information in any mediation, adjudication, arbitration, litigation or legal proceeding of any kind arising out of or in connection with this agreement or otherwise in compliance with the order of any Court of competent jurisdiction;
- (i) **Statutes and listing requirements:** disclosure of information that the receiving party bona fide believes is required either by any relevant law or the listing requirements of any recognised stock exchange;
- (j) **Employees:** disclosure of information by the receiving party or any person to whom the receiving party is permitted to disclose information, to an employee or officer of the receiving party or that person which require the information for the purposes of this agreement or for the purpose of advising the receiving party in relation to this agreement, and use of the information by that employee for that purpose, provided that the receiving party takes appropriate steps to ensure that such employees keep the information confidential;
- (k) **Safety:** disclosure of information if required to protect the safety of personnel or equipment;
- (l) **Financing, investment or disposal:** disclosure, use or reproduction of information by or on behalf of the receiving party to the extent reasonably required in connection with the receiving party's existing or proposed financing arrangements, an existing or proposed investment in that party or the actual or a proposed disposal of that party's assets, or the disposal or transfer of any issued shares in relation to that party or the issuance of any new shares in relation to that party, upon obtaining a similar contractual undertaking of confidentiality; or
- (m) **Modelling:** disclosure, use or reproduction of data held by AEMO or a *Network Service Provider* for the purpose of modelling the operation of the *power system*, to the extent reasonably necessary to enable a *Connection Applicant* to develop an *application to connect*, but not including information provided in accordance with clauses S5.2.4(a), (b)(5) and (b)(6) of the Rules.
- (n) **Related entities:** in the case of:
 - (i) Transgrid, disclosure to or use by any owner or lessee of any assets comprising any part of the *transmission system*; and
 - (ii) either party, disclosure to or use by the Customer but only to the extent that such disclosure or use is necessary for the purposes of the operation and maintenance of the Customer's Facilities.
- (o) **Designated Assets Provider:** disclosure to or use by the Designated Assets Provider for the purposes of the operation and maintenance of the Designated Assets; and
- (p) **Shared Assets Provider:** disclosure to or use by the Shared Assets Provider for the purposes of the operation and maintenance of the identified User Assets.

18.2 Associates and other persons

Each party will be responsible for ensuring that:

- (a) its Associates; and
- (b) other persons to whom it discloses under clauses 18.1(a), (b), (d), (e), (j) and (l),

who are at any time in possession of confidential information of a kind referred to in clause 18.1 will observe and comply with clause 18.1 is aware of the confidential nature of the information and must ensure that such persons hold that information in confidence, and will accordingly be responsible for the acts or omissions such persons.

18.3 Compulsory disclosure

If a party to this agreement believes it is required either by any relevant law or the listing requirements of any recognised stock exchange to disclose confidential information of a kind referred to in clause 18.1 to a third party, then, to the extent that it is legally able to do so, that party must give notice thereof as soon as is reasonably practicable to the other party (including details of the confidential information to be disclosed and the third party to whom it is to be disclosed).

18.4 Intellectual Property Rights

- (a) Unless the parties otherwise agree in writing, the Shared Asset Provider acknowledges that nothing in this agreement grants it any Intellectual Property Rights in any material owned or controlled by Transgrid and that all Intellectual Property Rights in any material developed or used by Transgrid for the purposes of performing this agreement will be, or remain (as applicable), in the ownership of Transgrid.
- (b) Unless the parties otherwise agree in writing, Transgrid acknowledges that nothing in this agreement grants it any Intellectual Property Rights in any material owned or controlled by the Shared Asset Provider and that all Intellectual Property Rights in any material developed or used by the Shared Assets Provider for the purposes of performing this agreement will be, or remain (as applicable), in the ownership of the Shared Assets Provider.
- (c) In consideration of Transgrid performing the O&M Services, the Shared Assets Provider grants a non-exclusive, royalty free licence to Transgrid and its Associates to use any Intellectual Property Rights in any material provided by it to Transgrid which is used for the purposes of performing this agreement.
- (d) In consideration of the Shared Assets Provider paying the Charges, Transgrid grants a non-exclusive, royalty free licence to the Shared Assets Provider and its Associates to use any Intellectual Property Rights in any material provided by it to the Shared Assets Provider which is used for the purposes of performing this agreement.
- (e) The Shared Assets Provider indemnifies and saves harmless Transgrid and its Associates from any Damages suffered or Claims incurred by Transgrid or its Associates arising from or in connection with any actual or alleged infringement by Transgrid or its Associates of Intellectual Property Rights of a third party, where, pursuant to this agreement, such Intellectual Property Rights have been furnished or licensed to Transgrid by the Shared Assets Provider.
- (f) The Shared Assets Provider will render all reasonable assistance to and will co-operate with Transgrid for the purposes of defending or otherwise in connection with any Claims which are brought against Transgrid or its Associates in respect of any such actual or alleged infringement which are brought against Transgrid or its Associates. Transgrid will notify the Shared Assets Provider as soon as practicably possible after the date on which any such Claims become known to Transgrid.

19. DISPUTE RESOLUTION

19.1 Rule disputes

If a dispute arises between the parties under or in relation to this agreement which:

- (a) relates to the obligations of either party under the Rules;
- (b) relates to the interpretation of the Rules; or
- (c) is otherwise within the terms of clause 8.2.1(a) of the Rules,

then such disputes will be resolved in accordance with clause 8.2 of the Rules.

19.2 Other Disputes

- (a) If a dispute arises between the parties under or in relation to this agreement which is not required in accordance with clause 19.1 to be resolved in accordance with clause 8.2 of the Rules, then either party may give the Senior Manager of the other party a notice specifying the matters in dispute (a "**notice of dispute**").
- (b) If after a period of 15 Business Days after the referral to the Senior Managers in accordance with clause 19.1(a) the Senior Managers have not been able to resolve the dispute then either party may, by notice in writing to the other, require the dispute to be determined by an Expert. To avoid doubt, this clause 19 is not a reference to arbitration.

19.3 Linked dispute

- (a) A dispute under this document will be a linked dispute where:
 - (i) it affects the entitlements and/or obligations of the Customer; or
 - (ii) the outcome of that dispute could affect the entitlements and/or obligations of the Customer,

under the Construction Coordination Agreement, Project Agreement or Connection Agreement ("**Linked Dispute**").

- (b) If a party to this agreement:
 - (i) issues a notice of dispute to the other person; or
 - (ii) receives a notice of dispute from the other person,

relating to a Linked Dispute under clause 19.2, it must send a copy of that notice of dispute to the Customer.

- (c) If the Customer elects to join the dispute on the terms of this clause 19, the parties agree that a Linked Dispute will be resolved collectively and that each of the Customer, the Shared Assets Provider and Transgrid has the right to:
 - (i) participate in resolving the dispute under clause 19.2(b);
 - (ii) make written submissions; and
 - (iii) participate in further legal proceedings,

in relation to a Linked Dispute.

- (d) If a party provides information or documents relevant to a Linked Dispute, it must at the same time provide the information and documents to the Customer, the Shared Assets Provider and Transgrid (as relevant).

19.4 Agreement to appoint Expert

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

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

- (a) either party may request the President of the Law Society of New South Wales, from time to time (or in the event that there is no office of such society of that name, the person who in substance carries out the role of that office) to appoint the Expert; and
- (b) the person appointed by the President of the Law Society of New South Wales, from time to time (or in the event that there is no office of such society of that name, the person who in substance carries out the role of that office) following the first request by a party to make such appointment is the Expert for the purpose of determining the dispute.

19.5 Expert Determination

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

19.6 Terms of Appointment of Expert

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

- (a) the Expert must consult with the parties concerning the matters under dispute;
- (b) the Expert must make a draft report available to the parties within 20 Business Days after their appointment;
- (c) the Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;
- (d) the Expert must keep confidential, information provided by or on behalf of the parties to the Expert;
- (e) the Expert may investigate the matters under dispute and make inquiries in relation to them, and take the advice of any other person the Expert wishes (subject to the other person providing a confidentiality undertaking); and
- (f) the Expert will use their reasonable endeavours to notify the parties of the Expert's determination within 35 Business Days after the referral to the Expert.

19.7 Expert not liable

The parties agree that the Expert will not be liable in contract, tort (including negligence) or otherwise for Damages suffered or Claims incurred by a party or any other person as a consequence of any matter or thing done or omitted to be done by the Expert if the matter or thing was done or omitted in

good faith for the purposes of carrying out the responsibilities of the Expert as contemplated by this clause 19. If required by an Expert appointed under this clause 19, the parties will enter into an agreement or deed with the Expert agreeing that this clause 19.7 applies and binds them in relation to the matters referred to the Expert.

19.8 Parties to Provide Information

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

19.9 Parties Bound by Determination

On notification by the Expert of the Expert's determination under clause 19.6(f) the parties are bound by that determination, except in the existence of fraud or manifest error.

19.10 Urgent Interlocutory Relief

This clause 19 does not prevent either party from:

- (a) obtaining, from a court, any injunctive, declaratory or other interlocutory relief that may be urgently required; or
- (b) initiating any legal process immediately prior to the end of any period specified by a relevant law during which legal process or the bringing of an action must be initiated.

20. COMMUNICATIONS AND NOTICES

20.1 Operational communications

- (a) Any operational communications given by or on behalf of a party may be by telephone or other instantaneous means of communication.
- (b) Operational communications are to be recorded in a manner satisfactory to the parties. The parties will ensure that logs are kept in which persons giving and receiving operational communications record brief details of their substance and timing.

20.2 Written notices

All notices, other than operational communications under or in connection with this agreement must be in writing and must be:

- (a) delivered by hand to the street address of the addressee;
- (b) sent by express prepaid registered post or certified post (airmail if posted to or from a place outside Australia) to the postal address of the addressee; or
- (c) sent by email to the email address of the addressee.

20.3 Addresses and emails

- (a) The addressee, street address, postal address, phone number, email address and contact for each party to which notices must be sent are as specified in Schedule 5.
- (b) A party may at any time, by notice given to the other party, change its notice details.
- (c) The address of a party must always be an address within Australia.

20.4 Notice takes effect

A notice will be effective from the later of:

- (a) the time it is actually received or deemed to be received; or
- (b) any later time specified in the communication provided it has actually been received prior to that time.

20.5 Deemed receipt

- (a) Other than operational communications, a notice delivered by hand to the address of a party will be deemed to have been received if it is handed (with or without acknowledgement of delivery) to any person at that address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries), represents themselves and appears to be an officer of the party.
- (b) A notice sent by post will be deemed to have been received at the time when the letter containing it would have been delivered in the ordinary course of post.
- (c) Any communication sent by email will be deemed to have been received at the earlier of:
 - (i) when the addressee's email system logs the email message as having been received; or
 - (ii) when the email message enters the addressee's information system.
- (d) If a communication is received on a day which is not a Business Day or after 5.00 pm local time where it is received on a Business Day, it is taken to be received on the next Business Day.

21. CHANGE TO APPLICABLE LAW OR OTHER CIRCUMSTANCES

21.1 Amendments to this agreement

If, after the Execution Date, an Applicable Law:

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

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

21.2 Negotiation

Despite clause 21.1, if at any time after the Execution Date:

- (a) an Applicable Law is introduced, modified, re-enacted, substituted or commences operation;
- (b) the manner in which an Applicable Law is interpreted or applied, materially changes;
- (c) without limiting clauses 21.2(a) or 21.2(b), the manner in which an Applicable Law or any Authority regulates how any Charge is to be calculated, varied or applied (or the terms upon which any O&M Services will be provided) materially changes;
- (d) without limiting clauses 21.2(a) or 21.2(b), the activities comprised within or the service standards applying to any O&M Services materially change due to a change in an Applicable law; or
- (e) without limiting clauses 21.2(a) or 21.2(b), any other event, circumstance or change occurs which materially affects the way in which any O&M Services are provided or Transgrid operates the Shared Assets, provided such event, circumstance or change is the result of a change in an Applicable Law,

and that change in circumstances or event will result in a material change in the commercial position of either party under this agreement, the parties must consider and negotiate in good faith any specific amendments to this agreement requested by a party to take account of that change, event or circumstance so as to substantially return the parties to their respective commercial positions under this agreement immediately prior to that change, event or circumstance.

21.3 Disputes

- (a) If the parties are unable to agree upon any amendment proposed by a party in accordance with clause 21.2 within 28 days after commencing negotiations, either party may refer that dispute for resolution in accordance with clause 19.
- (b) In determining a dispute arising under this clause 21, the Expert must take into account (amongst other things) the following factors:
 - (i) that the contents of this agreement must be fair and reasonable having regard to the commercial interests of the parties;
 - (ii) that at all times, any O&M Services under this agreement must be provided in accordance with *good electricity industry practice*, all Applicable Laws and the other requirements of this agreement; and
 - (iii) that this agreement should be consistent with the prevailing practices and standards in the electricity industry at that time.

21.4 COVID-19

- (a) The parties acknowledge and agree that:
- (b) the human coronavirus disease named by the World Health Organisation as COVID-19, including the virus that causes that disease ("**COVID-19**") may cause disruption and delay; and
- (c) COVID-19 will constitute a change to an Applicable Law to the extent that:
 - (i) it results in a change to pre-existing circumstances or actions (including but not limited to actions by the State or Commonwealth governments in response to COVID-19 or a change to the severity of pre-existing circumstances (such as an increase in COVID-19 infection rates); or
 - (ii) it is an event that occurs after the Execution Date.

22. ASSIGNMENT AND CHANGE OF CONTROL

22.1 General prohibition of Assignment

Subject to this clause 22, each party's rights and obligations under this agreement are personal to it and neither party may assign, novate or otherwise transfer any of its rights or obligations under this agreement (an "**Assignment**") without the prior written consent of the other party, which may not be unreasonably withheld, delayed or given subject to unreasonable conditions.

22.2 Withholding consent

A party (a "**continuing party**") may only withhold its consent to an Assignment by another party ("**assignor**") if:

(a) the continuing party is reasonably satisfied that the proposed assignee is not financially, technically and legally capable of performing the assignor's obligations, under this agreement; and/or

(b) the assignor does not comply with clause 22.3 (as applicable),

provided that it will not be reasonable for the Shared Assets Provider to withhold its consent to the Assignment by Transgrid to a proposed assignee which has been or will at the time the Assignment is effective be registered as a Network Service Provider in respect of a substantial part of the Transmission System (which in any case must include the Assets).

22.3 Assignment requirements

(a) The Shared Assets Provider may only Assign its rights and obligations under this agreement if:

- (i) it is an Assignment of all of the Shared Assets Provider's rights and obligations under this agreement; and
- (ii) the Shared Assets Provider at the same time also assigns, transfers or disposes of (its interest in) the Shared Assets and the Construction Coordination Agreement to the proposed assignee such that the assignee will at the time the Assignment is effective be the owner of the Shared Assets.

(b) If the Shared Asset Provider proposes to Assign all its rights and obligations under this agreement in accordance with clause 22.3(a), the Shared Asset provider must:

- (i) prior to such Assignment, notify the other party that it intends to assign its rights under this agreement;
- (ii) have the onus of establishing the applicable requirements specified in clause 22.2 or clause 22.3(a) above (as relevant) to the reasonable satisfaction of the other party; and
- (iii) ensure that the proposed assignee:
 - A. enters into a deed in form and substance satisfactory to Transgrid under which the proposed assignee assumes all of the obligations and liabilities of the assignor under this agreement, including those arising prior to the Assignment and not then performed or discharged;
 - B. obtains all requisite authorisations for the Assignment and assumption;
 - C. in the case of an Assignment by the Shared Assets Provider, procures that Transgrid is provided with the Credit Support; and
 - D. has sufficient financial, technical and legal capacity to own the Shared Assets.

22.4 Transgrid Assignment to Related Bodies Corporate

(a) Transgrid may from time to time, without the Shared Assets Provider's consent, Assign any or all of its rights or obligations under this agreement to a Related Body Corporate of Transgrid if at the time the Assignment takes effect:

- (i) Transgrid also assigns, novates or otherwise transfers its rights and obligations under the Construction Coordination Agreement to the same Related Body Corporate;
- (ii) such Related Body Corporate owns, controls or operates Transgrid's transmission network and holds all Authorisations necessary to do so; and

- (iii) such Related Body Corporate has the legal, financial and technical capacity to perform Transgrid's obligations under this agreement.
- (b) Transgrid must provide the Shared Assets Provider with written notice of an Assignment which occurs pursuant to clause 22.4(a) as soon as practicable after the Assignment.
- (c) Where Transgrid proposes to Assign any of its rights or obligations under this agreement in accordance with clause 22.4(a), the Shared Assets Provider must do all such things and sign all such documents as may be required by law or reasonably required by Transgrid to give effect to such Assignment.

22.5 Security Interests

- (a) Subject to clause 22.5(b) and clause 24, neither party is permitted to create or permit to exist any Security Interest over its rights under this agreement except with the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- (b) Transgrid may grant Security Interests over this agreement where such Security Interest is granted to financiers for the purposes of financing any of Transgrid's business operations.

22.6 Successors

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

22.7 Change of Control

- (a) For the purposes of clauses this clause 22.7:
 - (i) a **"Change of Control"** occurs if:
 - A. a person; or
 - B. if a person comprises more than one entity, any one of the entities comprising that person,
 - comes under the Control of a third party who did not Control the person at the Execution Date; and
 - (ii) **"Control"** has the meaning given to it in section 50AA of the *Corporations Act 2001* (Cth).
- (b) The Shared Assets Provider must give Transgrid prior written notice of any proposed Change of Control of the Shared Assets Provider.
- (c) The Shared Assets Provider must not be the subject of any Change of Control without the prior written consent of Transgrid, such consent not to be unreasonably withheld, delayed or given subject to unreasonable conditions, provided that Transgrid is reasonably satisfied that the Change of Control will not diminish, fetter, limit or otherwise restrict the ability of the Shared Assets Provider to fulfil the obligations under this agreement.

22.8 Transfer at expiry or early termination of Transmission Network Lease

- (a) On written notice to the Shared Assets Provider, Transgrid may on and from the expiry or early termination of the lease between MHC as lessor and NSW Electricity Networks Assets Pty Limited as trustee of the NSW Electricity Network Assets Trust as lessee dated 16 December 2015 ("**Transmission Network Lease**") assign, novate or transfer all of its rights and obligations under this agreement to MHC (or its nominee) without the Shared Assets Provider's consent.

- (b) Such assignment, novation or transfer will be effected by written notice from Transgrid to the Shared Assets Provider, irrespective of whether the parties execute an assignment or novation deed.

23. MISCELLANEOUS

23.1 Governing law

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

23.2 Jurisdiction

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts located in New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this agreement.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph 23.2(a) of this clause.

23.3 Amendments

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

23.4 Waiver

- (a) Failure to exercise or enforce or delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.

23.5 Further acts

Each party will promptly do and perform all reasonable further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this agreement.

23.6 Execution and Counterparts

- (a) This agreement as well as modifications to it may be executed electronically (including by electronic signature or by email of a signed document in PDF or scanned format), in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, all of which together constitute one agreement.
- (b) Each signatory confirms that their signature appearing in the document, including any such print-out (irrespective of which party printed it), is their personal signature authenticating it.

- (c) A party who has executed a counterpart of this agreement may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that other party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this agreement executed by it will not affect the validity of this agreement. The parties agree and intend that such an exchange by email in PDF or scanned format shall bind the party so signing with the same effect as though the signature were an original signature.
- (d) Where a person signs this Agreement electronically, the electronic signature is an effective binding signature, and the electronic document containing it can be an effective electronic counterpart of this Agreement. In addition, the person intends that any print-out of the signature by a party will also constitute an effective original signature, so that the print-out will also be an executed original counterpart of the Agreement.
- (e) The parties to this document acknowledge and agree that:
 - (i) they consent to the use of the electronic signatures and the agreement proceeding by electronic means; and
 - (ii) they intend to be legally bound by the terms of the agreement on which the electronic signature(s) has been placed.

23.7 No representation or reliance

- (a) Each party acknowledges that the other party (or any person acting on its behalf) has not made any representation or other inducement to it to enter into this agreement, except for inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of the other party, except for any inducement expressly set out in this agreement.

23.8 Entire Agreement

To the extent permitted by law, this agreement embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties, and supersedes any prior agreement (whether or not in writing) between the parties, in relation to the subject matter of this agreement.

23.9 Indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this agreement.

23.10 Consents

A consent required under this agreement from a party may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

23.11 Sub-Contracting

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

23.12 Expenses

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

23.13 Stamp duties

The Shared Assets Provider:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement;
- (b) indemnifies Transgrid against any liability arising from failure to comply with clause 23.13(a), including any liability to reimburse any other party for such amounts; and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

23.14 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy. Failure by a party to exercise, or a delay in exercising a right, power or remedy does not prevent its exercise.

23.15 Remedies cumulative

The rights, powers and remedies provided in this agreement are cumulative with and are not exclusive of the rights, powers or remedies provided by law independently of this agreement.

23.16 Publicity

A party may not make press or other announcements or releases relating to this agreement and the transactions the subject of this agreement without the approval of the other party to the form and manner of the announcement or release unless that announcement or release is required to be made by law or by a recognised stock exchange.

23.17 Severance

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

23.18 No partnership

Nothing contained or implied in this agreement creates any partnership, agency or trust between the parties, and no party has any authority to bind another party in any way.

23.19 Inconsistency between agreement and Rules

- (a) If any terms of this agreement are inconsistent with any obligation imposed or right conferred on a *Registered Participant* by Chapter 5 of the Rules and the application of the conflicting terms of this agreement would adversely affect the quality or security of *network service* to other *Network Users*, the provisions of Chapter 5 of the Rules will prevail over the terms of this agreement to the extent of the inconsistency.
- (b) If this agreement imposes an obligation on a party and compliance by that party with that obligation would cause that party to breach the Rules then the party need not comply with that obligation to the extent necessary to avoid breaching the Rules.
- (c) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency between Applicable Laws, this agreement and other agreements relating to the O&M Services between the parties:
 - (i) Applicable Laws, including the Rules;
 - (ii) this agreement;
 - (iii) the Connection Agreement;
 - (iv) the Construction Coordination Agreement; and
 - (v) other agreements relating to the O&M Services.

23.20 Acknowledgement of Rules obligations

The parties acknowledge that, notwithstanding clause 23.19, the Rules include a number of obligations which relate to this agreement and that, except as otherwise expressly provided for, this agreement is not intended to affect such Rules obligations.

23.21 Acknowledgement of System Operator function

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

24. NO SECURITY INTEREST

- (a) Nothing in this agreement creates, or shall be interpreted as creating any Security Interest in the Shared Assets.
- (b) Each party agrees that it will not seek to register, or otherwise assert the existence of any Security Interest in the Shared Assets.

25. TRUSTEE'S CAPACITY AND LIABILITY

25.1 Limitation of Liability

Despite any other provision of this agreement:

- (a) the Trustee enters into this agreement in its capacity as trustee of the Trust and in no other capacity;
- (b) subject to clause 25.1(d), the recourse of the Shared Assets Provider or any other person to the Trustee in respect of any of the Trustee's obligations and liabilities under or in connection with this agreement is limited to the amount the Trustee actually receives in the exercise of its right of indemnity from the assets of the Trust;
- (c) subject to clause 25.1(d), if the Trustee does not receive all or any part of the money owing to it in connection with the Trustee not complying with any obligation or not paying any liability under or in connection with this agreement because the Trustee cannot obtain that money under the indemnity referred to in clause 25.1(b), the Shared Assets Provider cannot bring proceedings against the Trustee in its personal capacity to recover that money; and
- (d) clauses 25.1(b) and 25.1(c) do not apply to any obligation or liability of the Trustee under or in connection with this agreement to the extent that it is not complied with or paid because the Trustee's right to be indemnified from the Trust assets is reduced because of the Trustee's own fraud or breach of trust.

25.2 Contribution to Liability

An act or omission of the Trustee (including acts and omission that result in the Trustee not complying with any obligation or not paying any liability under or in connection with this Agreement) does not constitute fraud or breach of trust by the Trustee for the purposes of this clause 25 to the extent to which that act or omission was caused or contributed to by any act or omission of the Shared Assets Provider.

25.3 Trustee warranties

The Trustee warrants to each other party that, on the Execution Date:

- (a) the Trust has been duly established;
- (b) it is the sole trustee of the Trust;
- (c) it has been validly appointed as trustee of the Trust and no action has been taken, or to its knowledge has been proposed, to remove it as trustee of the Trust;
- (d) it has power under the trust deed which establishes the Trust to enter into this agreement and comply with its obligations under this agreement;
- (e) it has taken all necessary action to authorise the execution of this agreement and performance of its obligations under this agreement (including any authorisation required under the trust deed which establishes the Trust);
- (f) it has a right to be indemnified out of the Trust assets in respect of obligations incurred by it under this agreement except to the extent:
 - (i) the Trustee has acted beyond power or improperly in relation to the Trust; or
 - (ii) as a result of the Trustee's fraud or breach of trust;
- (g) no action has been taken, or to its knowledge has been proposed, to terminate the Trust; and
- (h) entry into this agreement is a valid exercise of its powers under the trust deed which establishes the Trust for the benefit of the beneficiaries of the Trust.

25.4 Trustee obligations

- (a) The Trustee must not, without the consent of each other party, do anything which:
- (b) reduces the Trustee's right of indemnity from the assets of the Trust in respect of the Trustee's obligations under this agreement;
- (c) effects or facilitates the termination of the Trust; or
- (d) effects or facilitates the resettlement of the assets of the Trust.
- (e) The Trustee must exercise its right of indemnity under the trust deed which establishes the Trust to the assets of the Trust in respect of liabilities it incurs to another party under this agreement.

Signed as an agreement

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

Signed for and on behalf of **NSW Electricity Networks Operations Pty Limited** (ACN 609 169 959) as trustee of **NSW Electricity Networks Operations Trust** (ABN 70 250 995 390) by its attorneys under power of attorney:

_____ Signature of attorney	_____ Signature of attorney
_____ Name and position of Attorney	_____ Name and position of Attorney
_____ Date	_____ Date

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

_____ Signature of director	_____ Signature of director / company secretary
_____ Print name	_____ Print name
_____ Date	_____ Date

Schedule 1 Shared Assets description and asset boundaries

Identified User Shared Assets

[Insert]

Designated Network Assets

[Insert]

Asset Boundaries and Boundary Point

[Insert]

Schedule 2 Routine Services Program

[Insert] |

[(a) All operating and maintenance requirements are as per the latest Transgrid asset strategies and operations and maintenance policies, as updated from time to time.

(b) Routine Services include:

- (i) 25 year service life;
- (ii) Defects maintenance; and
- (iii) Performance by Transgrid internal labour from its [insert] depot.]

Schedule 3 Maintenance and Capital Works Schedules

ITEM 1 – Non-Routine Maintenance Schedule

[Insert] | [All Non-Routine Maintenance Services are carried out in accordance with the latest applicable Transgrid asset strategies and operations and maintenance policies, as updated from time to time.]

ITEM 2 – Non-Routine Capital Works Schedule

[Insert] | [All Non-Routine Capital Works are carried out in accordance with the latest applicable Transgrid asset strategies and operations and maintenance policies, as updated from time to time.]

ITEM 3 – Emergency Works Schedule

[Insert] | [All Emergency Works are carried out in accordance with the latest applicable Transgrid asset strategies and operations and maintenance policies, as updated from time to time.]

ITEM 4 – Defects Rectification Works Schedule

[Insert] | [All Defects Rectification Works are carried out in accordance with the latest applicable Transgrid asset strategies and operations and maintenance policies, as updated from time to time.]

ITEM 5 – System Security Works Schedule

[Insert]

Schedule 4 Charges

1. DEFINED TERMS

"Annual Fee" means the fee payable by the Shared Assets Provider to Transgrid for the provision of Routine Services, being:

- (a) for Billing Year 1, the Billing Year 1 Annual Fee determined in accordance with paragraph 2.2 of this Schedule 4; and
- (b) for subsequent Billing Years, the Annual Fee, as adjusted from time to time in accordance with paragraph 2.2 of this Schedule 4.

"Billing Year 1" means the 12 months commencing on the first day of the first Billing Period;

"Billing Year 2" and so on have a corresponding meaning.

"CPI" means the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) published by the Australian Bureau of Statistics, but if there is any suspension or discontinuance of that CPI or if its method of calculation is materially altered, then an index which reflects movements in the cost of living in Australia will be substituted by the parties (but if the parties are unable to agree upon the most appropriate index, then an index will be determined by an actuary appointed by the President for the time being of the Institute of Actuaries of Australia, which determination will be made by the appointee as an expert and not an arbitrator and will be binding on the parties).

"Quarter" and **"Quarterly"** means the period of 3 months commencing on 1 January, 1 April, 1 July or 1 October (as applicable).

2. ANNUAL FEE

2.1 Annual Fee

The Shared Assets Provider must pay the Annual Fee for each Billing Year in 12 equal monthly instalments (each a **"Monthly Instalment"**) commencing from the NOA Services Commencement Date.

2.2 The Billing Year 1 Annual Fee

The Shared Assets Provider must pay the Billing Year 1 Annual Fee. The Year 1 Annual Fee is calculated as follows:

$Yr1AnnFee = \$[insert]$

2.3 The Year 1 Monthly Instalment

The Year 1 Monthly Instalment will be calculated as follows:

$Yr1MonthlyInstal$ = the Year 1 Monthly Instalment

$Yr1MonthlyInstal = \frac{Yr1AnnFee}{12}$

12

2.4 Annual Adjustment to Annual Fee

The Annual Fee for each Billing Year after Billing Year 1 (i.e. Billing Year t) will be determined in accordance with the following formula:

$AnFee_t = AnFee_{t-1} \times \frac{CPI(new)}{CPI(original)}$

$CPI(original)$

where:

$AnFee_t$ = the Annual Fee for Billing Year t ;

$AnFee_{t-1}$ = for the previous year

$CPI(new)$ = the most recently published Quarterly CPI prior to the commencement of Billing Year t ; and

$CPI(original)$ = the CPI for the Quarter that occurred 12 months prior to the Quarter which is the subject of $CPI(new)$,

provided that if the Annual Fee for Billing Year t (determined in accordance with the above formula in this paragraph) is less than the Annual Fee for the previous Billing Year, the Annual Fee for Billing Year t will remain the same as the Annual Fee for the previous Billing Year.

2.5 Adjustment to Annual Fee for Non-Routine Capital Works, Emergency Works, Defects Rectification Works and System Security Works

Without limiting any rights that Transgrid may have to damages or otherwise in respect of any Defects at Law, if the Shared Assets Provider requests Non-Routine Capital Works in accordance with clause 5.4(c)(i) or Transgrid undertakes Emergency Works, Defects Rectification Works or System Security Works in accordance with clauses 5.4(c)(ii), 5.4(c)(iii) or 5.4(c)(iv), Transgrid may increase the Annual Fee by such amount as Transgrid reasonably considers is necessary to compensate Transgrid for the increase in the cost to Transgrid of providing the Routine Services as a result of such works.

3. OTHER CHARGES

(a) Transgrid will charge the Shared Assets Provider at Transgrid's standard rates, as notified by Transgrid to the Shared Assets Provider from time to time, for all:

(i) Non-Routine Maintenance Services;

- (ii) Non-Routine Capital Works;
 - (iii) Emergency Works; and
 - (iv) Defects Rectification Works.
- (b) The charges described in paragraph (a) will include Transgrid's standard margin for the type of services performed or works carried out.

Schedule 4A Settlements Residue

1. Defined terms

"**Calendar Quarter**" means:

- (a) each period of three consecutive months in the Term starting on 1 January, 1 April, 1 July or 1 October;
- (b) if the Term starts on a date other than 1 January, 1 April, 1 July or 1 October, the period from that date to the end of that Calendar Quarter (inclusive); and
- (c) if this agreement ends on a date other than 31 December, 31 March, 30 June or 30 September, the period from the start of that Calendar Quarter to that date (inclusive).

2. Calculation of the settlements residue amount

Transgrid will calculate the *settlements residue* amounts that accrues on a Designated Network Asset calculated for a Calendar Quarter in accordance with the following formula:

$$SR = P_{RRN} \times (LF_{bp} \times MWh_n) - P_{RRN} \times (LF_n \times MWh_n)$$

Where:

SR is the Settlements Residue located behind the *boundary point* during a Calendar Quarter

LF_{bp} is the *boundary point loss factor* applicable to the *boundary point*

LF_n is the *DNA boundary point loss factor* applicable to each *transmission network connection point* located behind the *boundary point*

MWh_n is the total electrical *energy* (in MWh) produced or consumed at each *transmission network connection point* located behind the *boundary point*, based on *metering data* at that *transmission network connection point* during a Calendar Quarter

P_{RRN} is the *regional reference price*

3. Payment of the settlements residue

- (a) If
 - (i) the Customer is a *Market Generator* at the relevant *transmission network connection point*, then the absolute value of the Settlements Residue is payable by Transgrid to the Shared Assets Provider; and
 - (ii) the Customer is a *load* at the relevant *transmission network connection point*, then the absolute value of the Settlements Residue is payable by the Shared Assets Provider to Transgrid.
- (b) Transgrid will include the Settlements Residue Amount for the Calendar Quarter in the next invoice rendered to the Shared Assets Provider under clause 7.2:
 - (i) as an offset amount if it is payable from Transgrid to the Shared Assets Provider; and
 - (ii) as an amount due from the Shared Assets Provider to Transgrid, if it is payable by the Shared Assets Provider to Transgrid.

4. Amendment of settlements residue formula

If:

- (a) the Designated Network Asset is augmented and Transgrid requires and installs a meter at the Boundary Point to accurately calculate the settlements residue amounts that accrues on that Designated Network Asset;
- (b) the Shared Assets Provider requests that Transgrid install a meter at the Boundary Point at the Shared Assets Provider's cost; or
- (c) there are material errors in the formula set out in clause 2 of this schedule to calculate the settlements residue amounts,

then Transgrid may amend the formula set out in clause 2 of this schedule by giving the Shared Assets Provider at least 5 Business Days' written notice. Any amendment of the formula by Transgrid must seek to facilitate the outcome and objectives of clause 3.6.2B of the Rules.

Without limiting the foregoing, Transgrid must amend the provisions of this Schedule 4A to the extent Transgrid considers necessary (acting reasonably) to ensure that it complies with the Rules and *good electricity industry practice*.

Schedule 5 Agreement details

ITEM 1 – Insurance

On or before [insert], the Shared Assets Provider must effect the following insurance policies:

Insurance of employees

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

Property Insurance

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

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

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

Public liability Insurance

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

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

Comprehensive Motor Vehicle Insurance.

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

ITEM 2 – The Land

[Insert]

ITEM 3 – Credit Support

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

ITEM 4 – Representatives and Senior Managers

Transgrid

Transgrid's Representative

Name:	
Address:	
Telephone:	
Email:	

Transgrid's Senior Manager

Name:	
Address:	
Telephone:	
Email:	

The Shared Assets Provider

Shared Assets Provider's Representative

Name:	
Address:	
Telephone:	
Email:	

Shared Assets Provider's Senior Manager

Name:	
Address:	
Telephone:	
Email:	

ITEM 5 – controlled Records

Controlled records

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

Schedule 6 Easements for access routes

Easements (clause 9.2)

[insert]

Restricted Area (clause 9.4)

[insert]