

TasNetworks Revision 29 June 2018

TASMANIAN NETWORKS PTY LTD

ABN 24 167 357 299

and

[Insert User name]

ABN **[insert]**

**ASSET DEVELOPMENT AGREEMENT
CONNECTION ASSETS FOR **[INSERT FACILITY NAME]****

ANNUITY PAYMENT TEMPLATE

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AGREEMENT made the _____ day of _____ [insert]

PARTIES 1. Tasmanian Networks Pty Ltd

ABN 24 167 357 299

of 1-7 Maria Street, Lenah Valley, Tasmania, 7008

(TasNetworks)

2. [insert]

ABN [insert]

of [insert]

(User)

RECITALS

- A. User intends to construct the *facility*.
- B. The *facility* comprises a [wind farm] located at [insert] in Tasmania.
- C. To enable the export of electricity from the *facility* User will require *connection* to TasNetworks' *transmission system*.
- D. To facilitate the required *connection* to TasNetworks' *transmission system*, TasNetworks has agreed to [acquire easements (to be confirmed)] and build the *TasNetworks assets* to enable User's *connection* to TasNetworks' *transmission system*, subject to and in accordance with this agreement.

THE PARTIES AGREE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, unless the contrary intention appears:

agreed capability has the meaning as defined in the ***user connection agreement***;

approvals means any approval, authorisation, consent, exception, licence, permit, determination, certificate, registration or waiver of or from any ***Authority***, including any renewal or variation;

associate means, in relation to a party:

(a) a related body corporate (as defined in the *Corporations Act 2001* (Cth)) of the party; or

(b) an officer, employee, agent or contractor (of any tier) of the party;

Australian Bank means an “Australian bank” as defined in the *Corporations Act 2001* (Cth) which is incorporated in Australia;

Authority means the Crown, any government or regulatory department, body, instrumentality or entity, Minister of the Crown, agency or other authority, or any body which is the successor to the administrative responsibilities of such department, body, instrumentality, Minister of the Crown, agency or other authority (but does not include the parties unless in the case of TasNetworks it is acting as *System Operator*);

business day means any day except a Saturday, Sunday or public holiday in Hobart;

cash rate means the cash rate (also known as the interbank overnight rate), recorded to two decimal places, as set by the Reserve Bank of Australia, provided that if the **cash rate** cannot be so determined, then **cash rate** will, if the parties cannot otherwise agree, mean such rate as may be determined in accordance with the dispute resolution procedure in clause 16.2;

commencement date means the date 10 **business days** after all conditions precedent in clause 2.1 have been satisfied or waived;

conditions precedent deadline has the meaning given in clause 2.2;

connection charge means the “connection charge” specified in Schedule 2, as adjusted in accordance with this agreement;

consultant fees means all costs reasonably and necessarily incurred by TasNetworks in relation to the engagement of any consultants, and the provision of any services by those consultants, in relation to the performance of the **works** (excluding any **sub-contractor costs**);

date for practical completion means [insert] after the **commencement date**, as adjusted in accordance with this agreement;

date of practical completion means, subject to clause 6.4, the date on which practical completion of the **TasNetworks assets** is achieved, as stated in the notice under clause 6.2(a)(ii);

dispute means any dispute or difference of opinion between the parties or the absence of agreement between them about a matter under or arising out of this agreement;

execution date means the date this agreement is executed by the last party to do so;

excepted risk means any of the following events:

- (a) a change to an **approval** or the conditions of an **approval** after the **execution date** which:
 - (i) TasNetworks could not reasonably have anticipated at the **execution date**; and
 - (ii) was not required as a result of a variation to the **works** initiated by TasNetworks, unless User agrees to treat the variation as an **excepted risk**;
- (b) a new **approval** is granted to TasNetworks after the **execution date** which:
 - (i) TasNetworks could not reasonably have anticipated at the **execution date**; and
 - (i) was not required as a result of a variation to the **works** initiated by TasNetworks, unless User agrees to treat the variation as an **excepted risk**;
- (c) any of TasNetworks' assumptions are found or determined to be incorrect or inaccurate at the **execution date**;
- (d) any claim or application for a determination of native title under the *Native Title Act 1993* (Cth) in respect of the **site**;
- (e) access to the **site** is hindered or delayed subject to TasNetworks using reasonable endeavours to obtain such access;
- (f) a breach by User of this agreement;
- (g) any act, omission or delay of User that is not permitted by this agreement;
- (h) a variation to the **works** required by User and agreed to by TasNetworks;
- (i) an **outage event** occurs;
- (j) **inclement weather**;
- (k) a delay in connecting, testing and commissioning of the **facility** by the User, which results in TasNetworks not being able to carry out final testing of the **TasNetworks assets**;
- (l) an event which requires an urgent emergency response from TasNetworks, including the redeployment of contractors;
- (m) a change in an existing **Law**, or introduction of a new **Law**, after the **execution date**, which TasNetworks could not have reasonably have anticipated at the **execution date**;
- (n) a change to an existing tax, or introduction of a new tax, which:

- (i) applies in relation to the *works*, the *TasNetworks assets* or the resources used to perform the *works*; and
- (ii) TasNetworks could not have reasonably have anticipated at the *execution date*;
- (o) the discovery of a *latent condition* after the *execution date* which TasNetworks could not reasonably have anticipated at the *execution date*;
- (p) a *force majeure event*;
- (q) User not obtaining or acquiring any required *approval*, in accordance with clause 5.4;
- (r) any error, inaccuracy or inadequacy in *User supplied information* that results in any delay or disruption to the *works*, change to the *works* or an increase in the cost of the *works*;
- (s) any suspension of the *works* by TasNetworks in accordance with this agreement;
- (t) any delay or disruption to the *works* caused by User or its *associates*; and
- (u) any other event or circumstance which this agreement expressly entitles TasNetworks to claim for delay or extension of the *date for practical completion*,

Note: If a third party is building contestable IUSA components then insert the following additional excepted risks.

- (v) any breach (including failing to complete the contestable IUSA components (as defined under the *IWCA*) by the relevant deadline dates set out in the works program (as defined under the *IWCA*)) by the IUSA Provider (as defined under the *IWCA*) or User (as defined under the *IWCA*) of the *IWCA*
- (w) default by the IUSA Provider (as defined under the *IWCA*) or User (as defined under the *IWCA*) of the *IWCA*;
- (x) a suspension of works issued by TasNetworks in accordance with clause 22 of the *IWCA*; and
- (y) any variation made in accordance with clause 6 of the *IWCA*;

in each case, except to the extent caused or contributed to by TasNetworks or its *associates*;

facility means User's proposed [insert facility type] at [insert location] in Tasmania;

financiers means any financiers providing finance to User or a related body corporate (as defined in the *Corporations Act 2001*(Cth)) of User in relation to the **facility** and any trustee or agent appointed by them;

force majeure event means an event or circumstance that:

- (z) is beyond the reasonable control of the notifying party and its **associates**;
- (aa) is not caused by an act or omission of the notifying party or its **associates**; and
- (bb) could not have been avoided or overcome by the notifying party and its **associates** taking reasonable precautions and steps,

including the following events, to the extent they satisfy paragraphs (a) to (c) (inclusive):

- (a) any industrial or labour dispute which the notifying party can demonstrate:
 - (i) involves persons other than the notifying party and its **associates**; and
 - (ii) was not caused or induced by the acts or omissions of the notifying party or its **associates**;
- (b) natural disasters;
- (c) landslide, flood, cyclone, earthquake, severe storm, lightning strike, severe and abnormal weather condition, electro-magnetic radiation storm, explosion or fire;
- (d) an act of war, terrorism, riot, civil commotion, malicious damage, sabotage or revolution; and
- (e) an act or omission of another person (including an **Authority**) who is not under the control of the notifying party;

GST means a goods and services tax imposed under *A New Tax System (Goods and Services Tax) Act 1999* and related legislation;

inclement weather means weather that is beyond what could reasonably have been anticipated which prevents TasNetworks or TasNetworks' contractors from carrying out the **works**;

insolvency event means for 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; or
- (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 undertaking of that party; or

- (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; or
- (d) that party is deemed by the provisions of the *Corporations Act 2001* to be insolvent;

Note: If a third party is building contestable IUSA components then insert the following additional excepted risk.

IWCA means the Interface Works Construction Agreement between TasNetworks, User and IUSA Provider (as defined in the ***IWCA***) dated [insert date];

latent conditions means physical conditions at the ***site*** and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of TasNetworks' offer to ***connect*** if TasNetworks had inspected:

- (a) all written information made available by the User to TasNetworks for the purpose of preparing the offer to ***connect***;
- (b) all information influencing the risk allocation in TasNetworks' offer to ***connect*** and reasonably obtainable by the making of reasonable enquiries; and
- (c) the ***site*** and its near surrounds;

Law means:

- (a) those principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, the State of Tasmania or an ***Authority*** which have the force of law;
- (c) the Constitution of the Commonwealth of Australia;
- (d) the ***Rules*** and any ***approvals***, including conditions, provided by an ***Authority*** in respect thereof which have the force of law;
- (e) binding requirements and mandatory approvals, including conditions, of the Commonwealth of Australia, the State of Tasmania or an ***Authority*** which have the force of law; and
- (f) guidelines of the Commonwealth of Australia, the State of Tasmania or an ***Authority*** which have the force of law;

notice to proceed means a written notice given by User to TasNetworks which directs TasNetworks to proceed with the ***works*** and expressly states it is a "notice to proceed" given under this agreement;

outage event means where:

- (a) TasNetworks is prevented by an **Authority** from taking a network outage or is unable to procure an **Authority's** agreement to take an outage at the time and for the duration proposed by TasNetworks;
- (b) an **Authority** withdraws its agreement to any network outage;
- (c) an **Authority** requires TasNetworks to recall the network elements which are affected by an network outage before the end of the time period which was nominated for that outage; or
- (d) TasNetworks determines (acting reasonably and applying *good electricity industry practice*) that a network outage cannot be taken at the time that was originally scheduled for that network outage (including where TasNetworks is acting as an **Authority** for the purposes of this agreement),

other than as a result of a breach of this agreement or negligence by TasNetworks;

out of pocket expense means any amount that is:

- (a) payable by TasNetworks to a third party;
- (b) related to the performance of the **works**; and
- (c) not otherwise being recovered through **TasNetworks' costs**,

and includes application fees, registration fees, deposits, cancellation fees and any other 'out of pocket' expenses, in each case which are reasonably incurred by TasNetworks in relation to the performance of the **works**;

practical completion means the stage in the performance of the **works** when TasNetworks reasonably determines the following requirements have been satisfied:

- (a) the **TasNetworks assets** have been completed in accordance with this agreement, except for minor defects and omissions which do not prevent the **TasNetworks assets** satisfying paragraph (c);
- (b) the **TasNetworks assets** have been successfully commissioned in accordance with this agreement; and
- (c) the **TasNetworks assets** are capable of providing the **services** to User in accordance with the **User connection agreement**;

Rules means the National Electricity Rules;

SDS has the meaning as defined in the **User connection agreement**;

security means any guarantee, performance, undertaking, security interest or other document provided under clause 8 for the purpose of securing the payment of money by User under this agreement;

services has the meaning given to it in the *User connection agreement*;

site means the site where the *TasNetworks assets* will be constructed as shown in Schedule 5;

sub-contractor costs means all amounts reasonably incurred by TasNetworks and payable to its alliance partners, third party suppliers and other contractors of TasNetworks in relation to the carrying out of **works**;

TasNetworks assets means the facilities, assets, equipment and other tangible property to be provided in the performance of the **works**;

TasNetworks Assets Completion has the meaning given in clause 6.4;

TasNetworks' costs means all of TasNetworks' internal and external costs (both actual and committed, provided that such costs are not able to be avoided or reduced (for example, by terminating a contract), and including cost of debt), expenses, profit margin, overhead, project management costs and expenses (including any **sub-contractor costs**, **consultant fees**, **out of pocket expenses** and, where applicable, costs in respect of, or arising from, the termination by TasNetworks or any third party of any contract for or relating to the carrying out of any **works**) reasonably and necessarily incurred by TasNetworks (or a related body corporate as defined in the *Corporations Act 2001* (Cth)) in undertaking any activities associated with the **works**;

termination amount means **#[insert amount]**;

User connection agreement means a *connection agreement* between TasNetworks and User for the *connection* of the **facility** entered into on or about the date of this agreement;

User supplied information means all information, materials and data, of whatever kind, provided in writing by User to TasNetworks in relation to the **works**, the **facility**, the **site** or this agreement; and

works means the work set out in item 1 of Schedule 1 to this agreement and does not include the work referred to in item 2 of Schedule 1.

1.1 Interpretation

In this agreement unless the contrary intention appears:

- (a) a reference to a recital, clause, party, paragraph, Schedule or attachment is a reference to a recital and clause of and a party, paragraph, 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 or instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, instrument or provision;
- (c) a reference to an *applicable regulatory instrument, Australian Standard* or published index includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements, as applicable, of the same;
- (d) a reference to a thing (including, an amount) is a reference to the whole or any part of it, but nothing in this clause 1.2(d) implies that the performance of part of an obligation constitutes performance of that obligation;
- (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, and permitted assigns;
- (h) 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;
- (i) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (j) if a term is defined in this agreement other parts of speech and grammatical forms of that term have corresponding meanings; and
- (k) the word “includes” in any of its forms is not a word of limitation.

1.1 Headings, italics and bold type

- (a) Headings in this agreement are included for convenience only and do not affect the interpretation of this agreement.

- (b) Italics used to identify terms defined in the **Rules** and bold italics used to identify terms defined in this agreement form part of this agreement, however if a term so defined is not identified by italics or bold italics that fact is to be disregarded in deciding whether or not to apply the definition.

1.1 Terms defined in the Rules

Where a term defined in the **Rules** in general terms is used in this agreement it will be interpreted in its context within this agreement to refer specifically to assets and services relevant to this agreement.

1.2 Standards and indexes

Where an *Australian Standard* or published index referred to in this agreement ceases to exist a replacement standard or index agreed by the parties to have the same purpose will be substituted for that standard or index.

2. TERM AND TERMINATION

2.1 Conditions precedent

Other than clauses 1, 2, 9.2, 11, 12, 13, 14, 16, 17, 18, 19 and 20, **[Note: clause list to be confirmed]** this agreement does not come into force or effect until:

- (a) a ***notice to proceed*** is given by User to TasNetworks;
- (b) User provides TasNetworks with ***security*** in accordance with clause 8; and
- (c) User and TasNetworks have executed the ***User connection agreement***.

2.1 Satisfaction

User must satisfy the conditions precedent in clause 2.1 on or before the date that is **[insert]** days after the date of this agreement or such later date as is agreed by the parties in writing (***conditions precedent deadline***).

2.2 Non satisfaction

If a condition precedent in clause 2.1 has not been satisfied (or waived by all parties) on or before the ***conditions precedent deadline***, then:

- (a) if requested by User, the parties will, acting in good faith, endeavour to agree an extension to the ***conditions precedent deadline***; and
- (b) if User does not request an extension under clause 2.3(a) or the parties are unable to agree an extension within 5 ***business days*** after User's request under

clause 2.3(a), either party may terminate this agreement by written notice to the other party.

2.1 Term

Subject to clauses 2.1, 2.2 and 2.3, this agreement commences on the *execution date* and, unless terminated earlier, expires on the date on which the *User connection agreement* commences.

2.2 Effect of termination

- (a) If this agreement is terminated other than under clause 2.3 User must, within 5 *business days* of receipt of a tax invoice from TasNetworks, pay TasNetworks the *termination amount*.
- (b) This clause 2.5 survives termination of this agreement.

3. THE WORKS

3.1 General

The parties agree that the *works* required to facilitate the *connection* of the *facility* are set out in Schedule 1 to this agreement.

3.2 Variations initiated by TasNetworks

TasNetworks may, any time prior to *practical completion*, make any addition to or omission from or amendment to the *works* which is necessary for TasNetworks or in its reasonable discretion TasNetworks wishes to make.

3.3 Variations requested by User

- (a) User may, any time prior to *practical completion*, give TasNetworks a written request for an addition to or omission from or amendment to the *works*, provided the addition, omission or amendment is generally within the scope of the *works* and doesn't constitute a request for:
 - (i) an increase in *agreed capability*;
 - (ii) changes to equipment already ordered; or
 - (iii) changes that might have a material impact on the program and the ability of TasNetworks to achieve the *date for practical completion*.
- (b) If User requests an addition, omission or amendment under clause 3.3(a), the parties must endeavour to agree the following details in good faith:

- (i) a reasonable charge for the additional works;
 - (ii) a reasonable adjustment to the *date for practical completion*; and
 - (iii) any adjustment to the charges under the *User connection agreement*, in each case required as a result of the addition, omission or amendment. If the parties are unable to agree any of the details, either party may refer the matter for resolution in accordance with clause 16.2.
- (c) User may direct TasNetworks to proceed with an addition, omission or amendment after the details in clause 3.3(b) have been agreed by the parties or determined under clause 16.2.
 - (d) If User directs TasNetworks to proceed with additional works TasNetworks will issue User with an invoice for the agreed charge for the additional works.

3.1 Effect of variation

- (i) If an addition, omission or amendment is made in accordance with clause 3.2 or 3.3, then Schedule 1 to this agreement will be automatically amended to reflect the addition, omission or amendment.
- (e) Any addition, omission or amendment to the *works* under clauses 3.2 and 3.3 must be within the general scope of this agreement, unless otherwise agreed by User in relation to clause 3.2 or TasNetworks in relation to clause 3.3.

4. OBLIGATIONS OF TASNETWORKS

4.1 Performance of the *works*

- (a) TasNetworks must undertake and complete the *works* in accordance with this agreement.
- (b) In performing the *works*, TasNetworks must:
 - (i) comply with applicable *Laws*;
 - (ii) comply in all material respects with all applicable *Australian Standards*;
 - (iii) comply with good industry practice, including *good electricity industry practice* where applicable; and
 - (iv) ensure the *TasNetworks assets* are designed and constructed, in accordance with this agreement, such that on the *date of practical completion* they are capable of providing the *services* in accordance with the *User connection agreement*.

4.1 Procurement of construction works

TasNetworks will enter into contracts for the performance of the *works* with reputable contractors.

4.2 Project management

TasNetworks will be responsible for the project management of the *works*.

4.3 Easement Acquisition

TasNetworks will carry out the work referred to in item **[insert]** of Schedule 1.

[Note: to delete if not required]

4.4 Approvals

- (a) To the extent Schedule 6 states TasNetworks is responsible for obtaining the *approvals* required for the *works*, TasNetworks must use its reasonable endeavours to apply for, obtain and maintain those *approvals*.
- (b) To the extent Schedule 6 states TasNetworks is responsible for the conditions of an *approval*, TasNetworks must satisfy those conditions.
- (c) User must take all reasonable steps requested by TasNetworks to assist TasNetworks to obtain an *approval* or satisfy a condition of an *approval* in accordance with this clause 4.

4.1 Reporting

TasNetworks will provide User with a written report every month detailing:

- (a) the progress of the works;
- (b) any delays encountered or expected to be encountered in the delivery of the works; and
- (c) any additional costs or increases in the cost or expected cost of the *works*.

5. OBLIGATIONS OF USER

5.1 General

User will do all things that are consistent with the objects of this agreement and that are reasonably necessary to assist TasNetworks in performing its obligations under this agreement as and when reasonably requested to do so by TasNetworks including:

- (a) assisting TasNetworks and its contractors to gain access to any relevant property; and
- (b) facilitating and assisting the coordination and performance of all testing, commissioning, interface works and other works to be performed by User or User's *associates* and associated with the performance of the *works* by TasNetworks.

5.1 Specific Obligations

- (a) User must provide TasNetworks with the information specified in Appendix A within 14 days of receiving a written request from TasNetworks (and provided that the timing of such request must be consistent with the indicative timeframes set out in Appendix A). User acknowledges that the provision of this information is critical to achieving *practical completion*.
- (b) The parties will liaise with each other to coordinate commissioning activities

5.1 Easement Acquisition – to be used where User or related party owns land

- (a) User must obtain from the landowners executed documents necessary to grant TasNetworks a registered easement on the terms provided in the Electricity Infrastructure Easement set out in Schedule 4 over that part of land where the *TasNetworks' assets* will be located as shown in Schedule 5, and agrees to pay all costs of obtaining and registering the easement, including stamp duty, registration fees and any compensation payable to the land owner.
- (b) User must also obtain from the landowners of that land where the *TasNetworks' assets* will be located at shown in Schedule 5 a right of access to, and over, the land, on terms and conditions acceptable to TasNetworks, for the purpose of installing, testing, inspecting, maintaining, reading, repairing, replacing, operating or removing any of TasNetworks' electricity infrastructure and for any related purpose on and from the *commencement date*.

5.1 Approvals

- (a) User is responsible for obtaining any *approvals* required for the *works* which are not expressly stated in Schedule 6 to be the responsibility of TasNetworks,

and User must use its reasonable endeavours to apply for, obtain and maintain those *approvals*.

- (b) To the extent Schedule 6 states User is responsible for the conditions of an *approval*, User must satisfy those conditions.
- (c) TasNetworks will, at the User's cost, assist User obtain an *approval* or satisfy a condition of an *approval* in accordance with this clause 5.4.

6. COMPLETION OF WORKS

6.1 Timing for works

TasNetworks must:

- (a) proceed with the *works* with due expedition; and
- (b) achieve *practical completion* of the *works* on or before the *date for practical completion*.

6.2 Practical completion process

- (a) TasNetworks must give User:
 - (i) written notice at least [insert] *business days*' before TasNetworks anticipates that *practical completion* will be achieved; and
 - (ii) written notice stating the date when *practical completion* has been achieved.

6.3 Liquidated damages for late practical completion

- (a) Subject to clause 13.3 and the *facility* being connected to the *TasNetworks assets* and allowed to export energy to those assets, if (and to the extent that) TasNetworks does not achieve *practical completion* on or before the *date for practical completion*, TasNetworks must pay User liquidated damages at a rate of [\$ insert] per day for each day after the *date for practical completion* until (and including) the *date of practical completion*.
- (b) The liquidated damages payable under clause 6.3(a) are a genuine pre-estimate of the loss likely to be suffered by User as a result of TasNetworks' breach of clause 6.1(b). If TasNetworks' obligation to pay liquidated damages under this clause 6.3 is unenforceable for any reason (including because the liquidated damages are a penalty), User may, subject to clause 13.3, claim general damages for TasNetworks' breach of clause 6.1(b).

- (c) Subject to clause 6.3(b) and despite any other provision in this agreement, User agrees that TasNetworks' sole and exclusive liability for a failure to achieve *practical completion* on or before the *date for practical completion*, however that failure is caused (including negligence, breach of contract or otherwise), will be as set out in clauses 6.3(a) and 6.3(b).

6.4 Charges payable by User where TasNetworks' assets completed but facility not ready to connect

If the *TasNetworks assets* have been completed in accordance with this agreement, except for minor defects and omissions (*TasNetworks Assets Completion*) and TasNetworks is unable to finalise commissioning and achieve *practical completion* due to User not completing all of its obligations required to enable *connection* of the *facility*, then:

- (a) TasNetworks will be deemed to have achieved *practical completion* for all purposes under this agreement;
- (b) TasNetworks must give User a written notice stating the date of *TasNetworks Asset Completion*;
- (c) the *date of practical completion* will be taken to be the date of *TasNetworks Asset Completion*; and
- (d) the *connection charge* will be payable by the User from the date of *TasNetworks Assets Completion*.

6.5 Early Completion Bonus

- (a) If TasNetworks achieves *practical completion* before the *date for practical completion* User must pay TasNetworks an incentive amount of **[\$insert]** per day.
- (b) The maximum total incentive amount payable by User under clause 6.5(a) will be **[#]**.

7. EXCEPTED RISKS

7.1 Extensions of time

- (a) If *practical completion* has been, or is likely to be, delayed by an *excepted risk*:

- (i) the *date for practical completion* will be extended by the number of days by which *practical completion* has been, or is likely to be, delayed; and
 - (ii) User must pay the reasonable additional *TasNetworks' costs* which TasNetworks has or will incur in performing the *works* as a result of the delay.
- (b) TasNetworks must give User written notice of any anticipated delay to *practical completion* caused by an *excepted risk* within 10 *business days* after TasNetworks first became aware that the delay has occurred or will occur.
- (c) If the *excepted risk* continues to delay *practical completion*, TasNetworks must give the User written updates on the delay at least every 10 *business days* until the *excepted risk* no longer continues to delay *practical completion*.
- (d) Notice and updates under clauses 7.1(b) and 7.1(c) must include the following details:
 - (i) TasNetworks' best estimate of the delay to *practical completion* and costs referred to in clause 7.1(a)(ii); and
 - (ii) the steps being taken by TasNetworks to mitigate the delay to *practical completion* and costs referred to in clause 7.1(a)(ii).
- (e) TasNetworks must give User reasonable evidence of any delay to *practical completion* caused by an *excepted risk* and any costs referred to in clause 7.1(a)(ii) as soon as reasonably possible after the *excepted risk* no longer continues to delay *practical completion*.
- (f) After TasNetworks provides the final notice required under clauses 7.1(b) and 7.1(c) and the evidence required by clause 7.1(e), the parties will use reasonable endeavours to agree in good faith any extension to the *date for practical completion* and the amount of costs payable by the User pursuant to clause 7.1(a). If the parties are unable to agree the extension to the *date for practical completion* or amount payable under clause 7.1(a), either party may refer the matter for resolution in accordance with clause 16
- (g) TasNetworks will issue User an invoice for the amount payable pursuant to clause 7.1(a) as agreed or determined under clause 7.1(f).
- (h) If User fails to pay an invoice issued in accordance with clause 7.1 (g), TasNetworks may, without notice or reference to User, draw down or call upon the *security* for the amount owing.

- (i) TasNetworks must take reasonable steps to avoid or minimise any delay to ***practical completion*** and any additional costs referred to in clause 7.1(a)(ii).
- (j) TasNetworks is not entitled to an extension of time under clause 7.1(a) to the extent TasNetworks or its ***associate*** caused or contributed to the delay or ***excepted risk*** that caused the delay.

7A.1 Variations to works

- (a) If an ***excepted risk*** requires an addition to, omission from or amendment to the ***works*** or the way in which the ***works*** are to be carried out and performed or will increase the cost in carrying out the ***works***, the parties must use reasonable endeavours to agree in good faith:
 - (i) the addition to, omission from or amendment to the ***works*** required as a result of the ***excepted risk***; and
 - (ii) the reasonable additional ***TasNetworks' costs*** that have been or will be incurred as a result of the ***excepted risk***.
- (b) If the parties are unable to agree the matters required by this clause 7 .2(a), either party may refer the matter for resolution in accordance with clause 16 **[Note: as an alternative option before resolution under clause 16, the parties could use a Superintendent to determine the extension and price variation. If using a Superintendent then a clause needs to added noting that the Superintendent's costs will be split equally between the parties.]**.
- (c) TasNetworks must give User written notice within 10 ***business days*** after TasNetworks becomes aware that an addition to, omission from or amendment to the ***works*** or the way in which the ***works*** are to be carried out and performed is required as a result of an ***excepted risk***.
- (d) TasNetworks must promptly give User reasonable evidence that an ***excepted risk*** requires an addition to, omission from or amendment to the ***works*** or the way in which the ***works*** are to be carried out and performed (if any) and the additional costs referred to in clause 7 .2(a)(ii) and provide User with an invoice for the additional costs.
- (e) User must pay to TasNetworks the amount agreed pursuant to clause 7 .2(a) or determined under clause 7 .2(b).

- (f) If User fails to pay an invoice issued in accordance with clause 7.2(d), TasNetworks may, without notice or reference to User, draw down or call upon the *security* for the amount owing.
- (g) TasNetworks must take all reasonable steps to avoid or minimise the effects of an *excepted risk* and any additional costs referred to in clause 7.2(a)(ii).
- (h) TasNetworks is not entitled to recover additional costs to the extent TasNetworks or its *associate* caused or contributed to the *excepted risk*.

8. SECURITY

- (a) User must provide and maintain security for the *termination amount* by way of a bank guarantee for the amount of **[\$insert]**, which bank guarantee must, at all times be:
 - (i) given by an *Australian Bank* (lawfully carrying on business under the *Banking Act 1959* (Cth)) that meets the requirements of TasNetworks' Credit Risk Management Policy and which Australian Bank is otherwise acceptable to TasNetworks;
 - (ii) an irrevocable and unconditional commitment by the *Australian Bank* to pay, without enquiry or reference to User, the amount demanded by TasNetworks, without set-off or counterclaim, up to the amount of the *security*;
 - (iii) issued from a branch of the issuing Australian Bank in Hobart and provide for presentation and payment at that branch; and
 - (iv) otherwise on terms acceptable to TasNetworks.
- (a) Where any *security* provided in accordance with clause 8 has an expiry date:

- (i) User must, not later than 60 *business* days before that expiry date, provide TasNetworks with the proposed form of User's replacement *security*;
 - (ii) TasNetworks must, not more than 20 *business days* after receipt of the proposed form of User's replacement *security*, advise User whether or not the proposed form of *security* is acceptable;
 - (iii) User must provide TasNetworks with replacement *security* in a form acceptable to TasNetworks not less than 30 *business days* before that expiry date; and
 - (iv) If User fails to provide replacement security in accordance with this clause 8 (b), then TasNetworks may, without notice or reference to User, draw down or call upon the *security* for the full amount secured.
- (b) If TasNetworks draws or calls on a *security* in accordance with clause 8(b)(iv), and User provides TasNetworks with *security* which complies with this clause 8, then TasNetworks must within 10 *business days* after written request by User, pay to the User (or as it directs) the amount which TasNetworks has drawn down or called upon.
- (c) If User does not pay any amount invoiced by TasNetworks in accordance with this agreement within 5 *business days* after the amount has become due and payable, TasNetworks may, without notice or reference to User, draw down or call upon the *security* as payment of that amount.
- (d) TasNetworks may have recourse to the *security* without notice to User at any time TasNetworks reasonably claims that User has money owing to TasNetworks in connection with this agreement, including any claims that it is entitled to:
- (i) the payment of monies or an indemnity by User; or
 - (ii) reimbursement of any monies paid to others in connection with this agreement.
- (e) The obligations in this clause 8 will survive termination or expiry of this agreement.

9. INVOICING AND PAYMENT

9.1 Payment

- (a) Subject to clause 9.3, User agrees to pay all invoices issued by TasNetworks pursuant to clause 2.5 (Effect of Termination), clause 3.3 (d) (Variation Requested by User), clause 6.4 (Connection Charge), clause 6.5 (Early Completion Bonus) clause 7.1(g) (Extensions of Time), clause 7.2(d) (Variation to Works) and clause 10(a).
- (b) All payments by User to TasNetworks must be:
 - (i) for the full amount of each invoice including **GST**;
 - (ii) electronically transferred by User into an account or accounts nominated by TasNetworks;
 - (iii) transferred by User, to the nominated account or accounts by 4.00 pm on the tenth **business day** after receipt of the invoice;
 - (iv) without set-off or counterclaim; and
 - (v) without any deduction or withholding.

9.1 GST

- (a) Unless expressly stated otherwise amounts payable under this agreement are exclusive of **GST**.
- (b) Subject to TasNetworks' invoices being in a form which satisfies the requirements of the **GST** legislation for a valid tax invoice User agrees to pay to TasNetworks at the same time and in the same manner as the amount specified in the invoice an additional amount on account of the amount of TasNetworks' **GST** liability in respect of the amount covered by the invoice.

9.1 Manifest error

If User in good faith (acting reasonably and for genuine reasons) considers that there is a manifest error on the face of an invoice, then provided it has notified TasNetworks of the error prior to the date for payment of a tax invoice, User may pay TasNetworks such amount as it considers to be due and payable, and refer the balance to TasNetworks for TasNetworks' consideration. If TasNetworks disputes User's assessment of the tax invoice, the provisions of clause 16 (Dispute Resolution) will apply.

9.2 Late or non-payment

If a payment is not made by a party in accordance with this agreement then that party must pay interest on the amount for the period from the date the payment is due until the date of payment calculated in accordance with clause 9.5.

9.3 Interest

Interest payable under this agreement will:

- (a) accrue daily for each relevant *day* at the rate that is the aggregate of the ***cash rate*** and:
 - (i) 2% per annum in the case of interest referred to in clause 9.4; and
 - (ii) 0% in all other cases; and
- (b) be calculated on the basis of the actual number of *days* elapsed and assuming a 365 *day* year; and
- (c) be compounded on a daily basis.

9.1 Survival

The obligations in clause 9 will survive termination.

10. COMPLIANCE TESTING AND COMMISSIONING

If the ***works*** have been completed and prior to the *connection* of the ***facility*** User needs to establish a test *connection* to the ***transmission system*** for technical reasons, User may request a test *connection* on the following terms:

- (a) the ***connection charges*** will be payable by User from the date of the test *connection*;
- (b) User must follow TasNetworks' instructions in relation to the proposed test *connection* and must *disconnect* immediately upon being instructed to do so;
- (c) the parties will each comply with their respective obligations under the ***Rules*** to ensure that the *connection* of the ***facility*** is carried out in accordance with the procedures and timeframes set out in clause 5.8 of the ***Rules***.
- (d) to the maximum extent permitted by law, in no event or circumstance shall TasNetworks be liable to User for any loss or damage arising out of the test *connection*, whether for direct or consequential loss or damage of any type (including as a result of negligence); and

- (e) to the maximum extent permissible by law, User indemnifies TasNetworks against any third party claim, loss, or damage, howsoever arising from the test connection (including as a result of negligence).

11. RISK AND INSURANCE

11.1 TasNetworks insurance

TasNetworks must ensure the following insurance is effected and maintained:

- (a) Contract works insurance
 - (i) Cover: Loss of or damage to the *TasNetworks assets* and any equipment and materials to be incorporated into the *TasNetworks assets*.
 - (ii) Minimum amount: Full replacement value of the *TasNetworks assets*, equipment and materials, including a reasonable amount for demolition.
 - (iii) Insured: TasNetworks, User and TasNetworks' contractors must be named as insureds in respect of their interests.
 - (iv) Period required: Before the *commencement date* until *practical completion* is achieved.
- (b) Public liability insurance for TasNetworks
 - (i) Cover: Legal liability of TasNetworks for loss of or damage to property, death or injury (except to the extent covered under workers compensation insurance) arising out of the performance of the *works*.
 - (ii) Minimum amount: AUD\$20,000,000 per occurrence.
 - (iii) Period required: Whilst any *works* are being performed.
- (c) Motor vehicle insurance – compulsory third party
 - (i) Cover: All motor vehicles, trailers and mobile plant used in the performance of the *works*.
 - (ii) Minimum amount: As required by *Law*.
 - (iii) Period required: Whilst the motor vehicles are being used at the *site*.
- (d) Motor vehicle insurance – third party property damage
 - (i) Cover: All motor vehicles, trailers and mobile plant used in the performance of the *works*.
 - (ii) Minimum amount: AUD\$20,000,000 per occurrence.

- (iii) Period required: Whilst the motor vehicles are being used at the *site*.
- (e) Workers compensation insurance
 - (i) Cover: Liability for death or injury (including occupational disease) to employees as required by *law*.
 - (ii) Amount of cover: As required by *law*.
 - (iii) Period required: Whilst any *works* are being performed.

11.2 User insurance

User must ensure the following public liability insurance is effected and maintained:

- (a) Cover: Legal liability for loss of or damage to property, death or injury (except to the extent covered under workers compensation insurance) arising out of the construction and commissioning of the *facility*.
- (b) Minimum amount: AUD\$20,000,000 per occurrence.
- (c) Period required: Whilst any *works* are being performed in relation to the construction or commissioning of the *facility*.

11.3 Contractors insurance

TasNetworks and User must each ensure that each of its contractors who carry out:

- (a) in the case of TasNetworks, the *works*; or
- (b) in the case of User, any works relating to construction or commissioning of the *facility*,

effect and maintain the following public liability insurance:

- (c) Cover: Legal liability for loss of or damage to property, death or injury (except to the extent covered under workers compensation insurance) arising out of the performance of the aforementioned works by the contractor.
- (d) Minimum amount: AUD\$20,000,000 per occurrence.
- (e) Period required: Whilst the aforementioned works are being performed by the contractor.

11.4 Required insurers and policies

Each insurance policy required under this clause 11 must be effected and maintained with an insurer which has a minimum Standard & Poor's long term credit rating of A- (or equivalent rating with another recognised international rating agency).

11.5 Evidence

Each party must give the other party certificates of currency for the insurance policies required by this clause 11 within 10 *business days* after written request by the other party.

12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and warranties

As at the *execution date*, each party represents and warrants to the other parties that:

- (a) it is duly formed and validly existing under the laws of Australia;
- (b) it has the power to execute this agreement and to perform its obligations under this agreement and has taken all necessary action to authorise such execution and performance;
- (c) the execution and performance of this agreement does not violate, breach, conflict with or result in a contravention of any law applicable to it in relation to this agreement, any provision of its constitutional documents, any order or judgment of any court or *Authority* applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and
- (d) all licences that are required of it with respect to this agreement have been obtained and are in full force and effect and all conditions of such licences have been complied with.

[Note: if User is a trustee – additional warranties, representations and covenants will be needed.]

12.1 Continuing representations and warranties

The representations and warranties given in clause 12.1 are continuing representations and warranties, and will not merge on, and will remain in full force and effect after, the *execution date*.

12.2 Separate representations and warranties

Each representation and warranty given in clause 12.1 is to be treated as a separate representation and warranty in respect of each statement made and the interpretation of any statement made is not restricted by any reference to or inference from any other statement.

13. LIABILITY

13.1 Consequential loss

- (a) Subject to clause 13.1(b), to the maximum extent permitted by law, in no event or circumstance shall either party be liable to the other party for any indirect or consequential loss (being any loss that does not fall within the first limb of the decision in *Hadley v Baxendale*) of any kind (including as a result of negligence).
- (b) Each party's liability for consequential loss in respect of the following is not excluded by clause 13.1(a):
- (i) TasNetworks' liability for liquidated damages under clause 6.3 or general damages referred to in clause 6.3(b);
 - (ii) User's liability for any **termination amount** or the **connection charge** payable under this agreement;
 - (iii) liability for personal injury or death;
 - (iv) liability for third party property damage; and
 - (v) liability for fraud or wilful breach of the party or its **associates**.

13.1 Aggregate liability cap

- (a) Despite any other provision of this agreement, but subject to clause 13.2(b), the aggregate liability of each party to the other party arising out of or in connection with this agreement (however arising, including for negligence or payment of liquidated damages) is limited to \$[insert].
- (b) A party's liability in respect of the following is not limited by clause 13.2(a), and is not counted towards the limit on the party's liability under clause 13.2(a):
- (i) User's liability for any **termination amount** or **connection charge** payable under this agreement;
 - (ii) liability for personal injury or death;
 - (iii) liability for third party property damage; and
 - (iv) liability for fraud or wilful breach of the party or its **associates**.

13.1 Aggregate liquidated damages cap

Despite any other provision of this agreement, the aggregate liability of TasNetworks to User for liquidated damages under clause 6.3 or general damages referred to in clause 6.3(b) is limited to [insert].

14. DEFAULT PROVISIONS

14.1 Breach of the agreement

If a party:

- (a) fails to pay any amount payable by that party under this agreement by the due date (other than an amount withheld in accordance with clause 9.3);
- (b) fails to maintain security in accordance with clause 8 or provide replacement security in accordance with clause 8(b);
- (c) fails to remedy a material breach of a provision of this agreement (other than an obligation to pay money) which is capable of being remedied, within the reasonable time (being not less than 10 *business days*) specified in a notice from a party requiring remedy of the breach; or
- (d) breaches a provision of this agreement in a manner which is incapable of remedy, and fails to provide to the party requiring remedy of the breach, within 5 *business days* of demand, a written undertaking not to repeat the breach;

then that party (the “Defaulting Party”) will be in breach of this agreement.

14.1 Notice of breach

If a party is in breach of this agreement under clause 14.1, the party requiring remedy of the breach is entitled to serve notice on the Defaulting Party and, if after the expiration of 5 *business days* from the receipt by the Defaulting Party of the notice, the party requiring remedy of the breach reasonably believes that the Defaulting Party is still in breach of this agreement, and:

- (i) if the breach is capable of being remedied, a remedy is not being diligently pursued; or
- (ii) if the breach is incapable of being remedied, an undertaking requested under clause 14.1(d) is not provided in the required time,

then the party requiring remedy of the breach may:

- (iii) suspend the performance of all or part of its obligations under this agreement until it chooses to lift the suspension or the breach is remedied; or
- (iv) terminate this agreement (either as an alternative to suspension or during any period of suspension).

14.2 Repeat of breach

If a party repeats a breach of a provision of this agreement in respect of which it has given a written undertaking not to repeat a breach, then the party to which the undertaking has been given may:

- (a) suspend the performance of all or part of its obligations under this agreement until it chooses to lift the suspension or the breach is remedied; or
- (b) terminate this agreement (either as an alternative to suspension or during any period of suspension).

14.1 Effect of insolvency

If an *insolvency event* occurs with respect to a party:

- (a) that party must immediately notify the other party that the *insolvency event* has occurred; and
- (b) the other party may terminate this agreement at any time by giving notice to the party suffering an *insolvency event*, regardless of whether notice is given under clause 14.4(a).

Note: If a third party is building contestable IUSA components then insert the following clause.

14.1 Termination of IWCA

If TasNetworks terminates the **IWCA** in accordance with its rights under that agreement it may also terminate this agreement with immediately effect.

14.2 Rights, liabilities and obligations upon termination

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

- (a) any rights of a party against another party which:
 - (i) arose prior to the time at which such termination 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 of this agreement; or
- (b) the rights and obligations of the parties under clauses which survive the termination of this agreement, regardless of the reasons for the termination.

15. FORCE MAJEURE

15.1 Suspension of obligations by either party

A party (“the notifying party”) may suspend the performance or observance of this agreement (other than monetary obligations) if a *force majeure event* prevents it performing or observing its obligations under this agreement.

15.2 Notice obligations

If a party invokes clause 15.1 it must:

- (a) immediately notify the other parties;
- (b) as soon as practicable thereafter, but not later than 3 *business days* following the date on which the notifying party became aware of the *force majeure event*, give particulars to the other parties of the *force majeure event* and of the obligations of the notifying party under this agreement which have been, will be or are likely to be affected by the *force majeure event*; and
- (c) keep the other parties informed, both at reasonable intervals and upon request by the other party, as soon as practicable following the receipt of that request, of:
 - (i) the notifying party’s estimate of the likely duration of the *force majeure event* and its likely implications on the notifying party’s ability to perform its obligations under this agreement;
 - (ii) the action taken and the action proposed to be taken to mitigate the effect of the *force majeure event*;
 - (iii) the cessation of the *force majeure event* or the successful mitigation or minimisation of the effects of the *force majeure event*; and
 - (iv) any other matter which the other parties may reasonably request in connection with the occurrence of the *force majeure event*.

15.1 Mitigation

Subject to clause 15.4, the party invoking clause 15.1 must:

- (a) as soon as practicable after the occurrence of the *force majeure event*, use its reasonable endeavours to mitigate the effects of the *force majeure event*; and
- (b) use its reasonable endeavours to overcome or remove the *force majeure event*.

15.1 Amendment or termination of agreement

- (a) If a *force majeure event* continues to prevent a party from performing or observing its substantial obligations under this agreement for a period of 8 months of more from the date of its occurrence, either party may upon not less than 10 *business days* but no more than 60 days' notice either:
 - (i) request that the other party negotiate in good faith amendments to this agreement (including any obligations to make any payments under this agreement) which would remove the aspects of this agreement affected by the *force majeure event* from the operation of this agreement; or
 - (ii) notify the other party of its intention to terminate this agreement.
- (b) If the *force majeure event* continues substantially to impede the performance of this agreement after 20 *business days* from receipt of the written notice under clause 15.4(a), the party who gave the written notice may terminate this agreement at any time by issuing further written notice in the subsequent 20 *business days* to the other party.

15.1 Extensions of time

Any extension to the *date for practical completion* as a result of a *force majeure event* will be determined under clause 7.1.

16. DISPUTE

16.1 Application of Rules provisions

If a *dispute* is a dispute to which the *Rules* apply that *dispute* will be dealt with in accordance with the dispute resolution regime set out in or implemented in compliance with the *Rules*.

16.2 All other disputes

- (a) If a *dispute* arises that is not a *dispute* to which the **Rules** apply, the parties shall comply with the provisions of this clause 16.2.
- (b) A party may give to the other party a written notice (“Notice”) identifying the matters in *dispute*.
- (c) The parties must meet within 10 **business days** after the Notice has been given and attempt to resolve the *dispute*. Each party must be represented at the meeting by a person who has authority to agree to a resolution of the *dispute*.
- (d) If the *dispute* has not been resolved within 20 **business days** after the Notice has been given, the parties must participate in a mediation of the *dispute* in accordance with the Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.
- (e) If the *dispute* has not been resolved within 20 **business days** after the termination of the mediation, the parties may agree to refer the *dispute* to determination by an independent expert in accordance with clause 16.2(h) or to arbitration in accordance with clause 16.2(i) or a party may give to the other a notice referring the *dispute* to litigation.
- (f) Subject to clause 16.2 (g) , a party must not issue court proceedings in connection with a *dispute* unless a notice referring the *dispute* has been given in accordance with clause 16.2(e).
- (g) Clause 16.2(f) does not apply to an application for an urgent injunction or declaration.
- (h) Where the parties agree to refer the dispute to an independent expert the expert determination will be conducted in accordance with the Institute of Arbitrators & Mediators Australia Expert Determination Rules.
- (i) Where the parties agree to refer the *dispute* to arbitration the arbitration will be conducted in accordance with the Institute of Arbitrators and Mediators Australia Expedited Commercial Arbitration Rules.
- (j) Where this clause refers to rules of the Institute of Arbitrators & Mediators Australia that reference is to the version of the rules in force at the date of the Notice or, if there is no such version, the version of the rules most recently published.

16.1 Expert determination

Despite any other provision of this agreement, the parties agree that where a *dispute* under any of the following clauses is not resolved within 20 *business days* after termination of mediation of the *dispute* it will be referred to an expert for determination in accordance with clause 16.2(h):

- (a) the definition of *cash rate* in clause 1.1.

16.1 Survival

This clause 16 survives termination of this agreement.

17. CONFIDENTIALITY

17.1 Non-disclosure

Subject to clauses 17.2 and 17.3, the information contained in, relating to or provided in accordance with this agreement and all negotiations leading up to its execution are confidential to the parties and must not be disclosed to any other person.

17.2 Exceptions

Clause 17.1 does not prevent disclosure of information by a party:

- (a) which is in the public domain or comes into the public domain otherwise than as a result of a breach by the party of its obligations under clause 17.1 provided that participants in the Tasmanian electricity industry do not of themselves constitute the public domain;
- (b) where the party is required by *Law* to disclose the information or where the party, acting reasonably, discloses the information in the course of legal proceedings;
- (c) to the lawyers, consultants, contractors or professional advisers of the party who has entered into a confidentiality undertaking with similar effect to this part, but which obliges the party to enforce its rights under that confidentiality undertaking if and to the extent required by the other party;
- (d) to any bank, financier, investor or insurer to or of the party (other than the party's lawyers) who has entered into a confidentiality undertaking with similar effect to this part, but which:
 - (i) does not contain a provision corresponding to this clause 17.2(d); and

- (ii) obliges the party to enforce its rights under that confidentiality undertaking if and to the extent required by the other party;
- (e) with the consent of the other party;
- (f) to the extent required by **Law** or by a lawful requirement of any **Authority** having jurisdiction over a party or its *related body corporate*;
- (g) to the extent required by a lawful requirement of any stock exchange having jurisdiction over a party or its *related body corporate*;
- (h) to its *related body corporate*, but only on the basis permitted under clause 17.2 (d);
- (i) in the context of the sale of shares in or the sale of, or lease of, the assets of a party, to any consultant, bank, financier, insurer or professional adviser to a prospective purchaser or lessee of the relevant shares or assets as the case may be any the prospective purchaser or lessee but only on the basis permitted under clause 17.2(d); or
- (j) to the *System Operator* as required by this agreement or the **Rules**.

17.1 Enforcing confidentiality undertaking

Where a party has entered into a confidentiality undertaking pursuant to clause 17.2 (d), that party must enforce its rights under the confidentiality agreement to the extent reasonably required by the other party.

17.2 Provision of information to TasNetworks' contractors

User hereby consents to TasNetworks disclosing to its tenderers and contractors such information as is reasonably necessary to fulfil the objects of this agreement.

17.3 Survive expiration

The obligations contained in clauses 17.1, 17.2 and 17.3 will survive the termination of this agreement.

18. ASSIGNMENT AND OTHER DEALINGS

18.1 TasNetworks

Subject to the **Rules**, TasNetworks may at any time transfer or assign its rights and obligations under this agreement, provided that:

- (a) the proposed assignee or transferee is a responsible and solvent person with sufficient financial, business and technical capacity to successfully carry out the obligations of TasNetworks under this agreement; and
- (b) the proposed assignee or transferee will own or operate TasNetworks' *transmission network*; and
- (c) the proposed assignee or transferee first obtains all **approvals** required under all applicable *regulatory instruments* and the **Rules**, and the proposed assignee or transferee has otherwise complied with the requirements of the **Rules**; and
- (d) the proposed assignee or transferee first executes a deed of assignment or novation of this agreement in a form agreed between the parties acting reasonably pursuant to which the proposed assignee or transferee assumes the obligations of TasNetworks under this agreement.

18.1 User

User may with the consent in writing of TasNetworks transfer or assign this agreement and TasNetworks will not withhold its consent in circumstances where:

- (a) User requests the consent of TasNetworks to the transfer or assignment to the proposed assignee in writing;
- (b) User has provided to TasNetworks any information reasonably required by TasNetworks regarding the proposed assignee or transferee;
- (c) the proposed assignee or transferee is a responsible and solvent person with sufficient financial, business and technical capacity to successfully carry out the obligations of User under this agreement;
- (d) the proposed assignee or transferee first obtains all licences and permits required of the User under all applicable regulatory instruments and the **Rules**, and the proposed assignee or transferee has otherwise complied with the requirements of the **Rules**;
- (e) prior to settlement of any transfer or assignment:
 - (i) User or the proposed assignee or transferee pays to TasNetworks any moneys outstanding to TasNetworks under this agreement; and
 - (ii) where User was in default under this agreement in respect of an obligation that is to be transferred, the proposed transferee agrees to rectify that default; and

- (f) the proposed assignee or transferee first executes a deed of assignment or novation of this agreement in a form agreed between the parties acting reasonably.

18.1 Costs of assignment or novation

The party requesting an assignment or novation of this agreement must pay the other party's reasonable costs arising out of the assignment or novation.

19. NOTICES

19.1 Form

A notice or other communication to a party under this agreement must be in writing and addressed to that party in accordance with Schedule 3.

19.2 Service

- (a) Notices may be served by being:
- (i) delivered by hand at the party's then current address for service; or
 - (ii) sent to the party's then current address for service by pre paid ordinary mail.
- (b) Notice given by post is taken to be received on the third *business day* after posting.
- (c) A notice received by a party after 5:00 pm or on a day which is not a *business day* in the place where it is received, will be taken to have been received on the next *business day* in the place where it is received.

19.1 Change of contact details

A party may at any time by notice in writing to the other party designate a different person, address or facsimile number and Schedule 3 will be amended to record the revised details provided the address and facsimile number are within Australia.

20. MISCELLANEOUS

20.1 Waiver

No failure to exercise, nor any delay in exercising, any right, power or remedy under this agreement will operate as a waiver. No single or partial exercise of any right,

power or remedy will preclude any other or future exercise of that or any other right, power or remedy.

20.2 Entire agreement

This agreement constitutes the entire understanding of the parties on the subject matter and supersedes any and all other representations or statements by either party or its *representatives*, whether oral or in writing, made prior to the date of this agreement.

20.3 Amendment of agreement

Subject to clause 19.3 any amendments or alterations to this agreement must be by Agreement in writing executed by both parties.

20.4 Severability

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

20.5 No precedent

Nothing in this agreement will operate or be taken by either party to be a precedent as to the form or substance of any new (or supplementary) terms and conditions or other agreement which may be entered into between the parties.

20.6 No third party rights

Except as specifically provided in this agreement, the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this agreement and all covenants, stipulations, promises and agreements contained in this agreement are for the sole and exclusive benefit of the parties to this agreement.

20.7 Governing law

This agreement will be governed by the laws of Tasmania.

20.8 Submission to jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Tasmania, the Federal Court of Australia in Tasmania and courts of appeal from them for determining any *dispute* concerning this agreement.

20.9 Service of process

Any document in any action may be served by delivery to the party being served at its address for service of notices as specified in accordance with clause 19.

20.10 Counterparts

This agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of)
TASMANIAN NETWORKS PTY LTD)
by its duly authorised officer in the)
presence of:)

Signature of witness

Signature of authorised officer

Name of witness (print)

Name of authorised officer (print)

Position of witness (print)

Position of authorised officer (print)

Executed by [insert])
in accordance with section 127 of the)
Corporations Act 2001)

Director

Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

SCHEDULE 1 WORK

This schedule sets out the work required in order to connect the *facility*.

1 TASNETWORKS' WORKS

(a) [To be inserted]

2 EXCLUDED WORK

[To be inserted]

SCHEDULE 3 CONNECTION CHARGE

[TBA]

SCHEDULE 4 CONTACT DETAILS

TasNetworks: **Tasmanian Networks Pty Ltd**
Street address: 1-7 Maria Street, Lenah Valley TAS 7008
Postal address: PO Box 606, Moonah TAS 7009
Nominated representative: **Iain Meaney**
Title: **Commercial Solutions Team Leader**
Phone: **[insert]**

User: **[insert]**
Street address: **[insert]**
Postal address: **[insert]**
Nominated representative: **[insert]**
Title: **[insert]**
Phone: **[insert]**

or as most recently notified by the party under clause 19.

SCHEDULE 5 ELECTRICITY INFRASTRUCTURE EASEMENT

ELECTRICITY EASEMENT AND RESTRICTION AS TO USER OF LAND

Means:

FIRSTLY the full and free right and liberty for Tasmanian Networks Pty Ltd (described as “TasNetworks”) and its successors and its and their servants, agents and contractors at all times hereafter:

- (a) **TO** clear the lands marked “Transmission Line Easement wide” on Plan of Survey in the office of the Recorder of Titles (described as “the servient land”) and to lay, erect, construct, install and operate, in, upon, over, along and under the servient land towers, poles, wires, cables, apparatus, appliances and other ancillary work (described collectively as “electricity infrastructure”) for the transmission of electrical energy and for purposes incidental thereto.
- (b) **TO** inspect, maintain, repair, modify, add to, replace and remove the electricity infrastructure.
- (c) **TO** cause or permit electrical energy to flow or be transmitted or distributed through the electricity infrastructure.
- (d) **TO** cut away remove and keep clear of the electricity infrastructure all trees and other obstructions or erections of any nature whatsoever which may at any time overhang, encroach upon or be in or on the servient land and which may in the opinion of TasNetworks or its successors endanger or interfere with the proper operation of the electricity infrastructure.
- (e) **TO** enter into and upon the servient land for all or any of the above purposes, with or without all necessary plant equipment and machinery and the means of transporting the same, and if necessary to cross the remainder of the land, where practicable in consultation with the registered proprietor/s, for the purpose of access and egress to and from the servient land.

SECONDLY the benefit of a covenant for TasNetworks and its successors with the registered proprietor/s for themselves and their successors not to erect any buildings or place any structures or objects within the servient land without the prior written consent of TasNetworks or its successors to the intent that the burden of the covenant may run with and bind the servient land and every part thereof and that the benefit thereof may be annexed to the easement hereinbefore described.

SCHEDULE 6 SITE PLAN

SCHEDULE 7 APPROVALS

[Note: List approvals TasNetworks is responsible for obtaining.

List conditions of an approval TasNetworks is responsible for.

List conditions of an approval User is responsible for.]

APPENDIX A REQUIRED INFORMATION – TO BE REVIEWED

This Appendix A sets out the required information to be provided by User in accordance with clause 5.2 of this Agreement.

ITEM	REQUIRED INFORMATION	INDICATIVE TIMEFRAME FOR PROVISION
1	Environmental Management Plan conditions or commitments likely to impact on TasNetworks' construction activities or asset management operations.	Commencement date or as soon as User becomes aware of any changes
2	Site inductions or site specific access protocols required for TasNetworks or its Contractors.	At least 14 days prior to first site access
3	Commissioning plans and schedules relevant to commissioning activities requiring TasNetworks involvement or support.	At least 14 days prior to commissioning
4	Protection settings, scan lists and data points required to facilitate commissioning and operation of the connection.	At least 14 days prior to commissioning
5	Key personnel contact details, such as project manager, site supervisor, HSE manager, chief of tests or commissioning manager.	Prior to satisfaction of conditions precedent