

Project Construction and Co-ordination Deed

for [Insert] Terminal Station and
Interface for [Insert]

VicGrid

and

[Generator]

and

AusNet Transmission Group Pty Ltd

and

[TNSP (if not AusNet)]

IMPORTANT NOTE: This document is a template only and may not be appropriate to a particular project. VicGrid will issue a tailored version when the technical requirements are nearing finalisation. This document is provided for information only and not for the purpose of commencing negotiations

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Details

Date _____

[Insert Date]

Parties

VicGrid
ABN 90 719 052 204
of Level 37, 2 Lonsdale Street, Melbourne, Victoria 3000
and
[Generator]
ABN [Insert]
of [Insert Address]
and
AusNet Transmission Group Pty Ltd
ABN 78 079 798 173
of Level 31, 2 Southbank Boulevard, SOUTHBANK VIC 3006
[and]
TNSP (if not AusNet)]

Condition Precedent
Fulfilment Date

(clause 4.4)

[Insert]

Terminal Station

[Insert]

Interface

As shown on the SLD in **Schedule 3**

Connection Assets

As shown on the SLD in **Schedule 3**

[Wind/Solar] Farm

The *generating system* to be known as the "[Insert]", including all associated equipment up to, but not including, the Connection Assets.

Initial Term

From the date of this Agreement and expiring [Insert] years after the Commencement Date.

Reference Date

[Insert Date]

Cap Amounts

(clause 30)

Construction Period Cap Amounts				
	Generator	VicGrid	TNSP	AusNet Services
Liability of Generator to	Not applicable			
Liability of VicGrid to	Not applicable			
Liability of TNSP to	Not applicable			
Liability of AusNet Services to	Not applicable			
Service Year Cap Amounts				
	Generator	VicGrid	TNSP	AusNet Services
Liability of Generator to	Not applicable			
Liability of VicGrid to	Not applicable			
Liability of TNSP to	Not applicable			
Liability of AusNet Services to	Not applicable			

Project Representatives:

(clause 6.3)

VicGrid:	[Insert] Principle Project Manager, Victorian Connections Level 22, 530 Collins Street, MELBOURNE VIC 3000 Phone: (03) 9609 8718 Email: [Insert] @vicgrid.com.au
Generator:	[Insert name] [Insert address] Phone: [Insert] Email: [Insert]
TNSP:	[Insert name] [Insert address] Phone: [Insert] Email: [Insert]
AusNet Services:	[Insert] Level 31, 2 Southbank Blvd SOUTHBANK VIC 3006 Phone: (03) 9695 6179 Email: [Insert] @ausnetservices.com.au

**Address for Service of
Notices:**
(clause 42.1)

To VicGrid:	Level 37, 2 Lonsdale Street, Melbourne, Victoria 3000 Attention: Group Manager, Victorian Planning, System Design & Engineering Email: [Insert] Cc [Insert name, Title] [Insert address] Email: [Insert]
To Generator:	[Insert address] Attention: [Insert] Email: [Insert]
To TNSP:	[Insert address] Attention: [Insert] Email: [Insert]
To AusNet Services:	[Insert name] Level 31, 2 Southbank Blvd SOUTHBANK VIC 3006 Phone: (03) 9695 6179 Email: [Insert]@ausnetservices.com.au

Recitals

- A. Generator intends to develop the [Wind/Solar] Farm.
- B. Generator has requested a new Connection to the Victorian Transmission Network at or near the Terminal Station Land. A *contestable augmentation* and interface to the Victorian Transmission Network needs to be constructed to effect the requested Connection.
- C. The Terminal Station comprises the required *contestable augmentation*.
- D. Generator has selected TNSP to design, construct and commission the Terminal Station.
- E. Once the Terminal Station is commissioned, TNSP will provide *transmission services* to VicGrid under the TNSP NSA, which is a network agreement required under section 50D of the NEL.
- F. VicGrid will engage AusNet Services to design, construct and commission the Interface, and AusNet Services will then use the Interface to provide VicGrid with *transmission services* under the Interface NSA, which is a network agreement required under section 50D of the NEL.
- G. VicGrid will provide Generator with *shared transmission services* under the UoSA, which is the connection agreement VicGrid is required to enter into under section 50E of the NEL.
- H. This Deed sets out the construction, governance and project management arrangements to apply between the parties during the construction and operation of the Terminal Station and Interface and also functions as an *augmentation connection agreement* for the purposes of clause 8.11.7 of the Rules.

Operative Provisions

1 Definitions and Interpretation

Defined Terms

1.1 In each Related Agreement capitalised terms not otherwise defined in **clause 1.2** are defined either in the **Details** or in the relevant Related Agreement and italicised terms are defined in the NEL or the Rules.

1.2 In each Related Agreement, unless the context requires otherwise:

Access Road means the area shown as the "Access Road" on the Site Plan.

VicGrid Bank Guarantee means the bank guarantee provided by Generator to VicGrid in accordance with the UoSA.

VicGrid Functions means the *declared network functions*, the planning functions under section 49(2) of the NEL, functions conferred by *jurisdictional electricity legislation* or an *Application Act* and all related functions in respect of the Victorian Transmission Network.

Affected Party has the meaning given in **clause 33.1**.

Approvals means all approvals, authorisations, permits, consents, licences, exemptions and the like required to be issued by or obtained from any Authority in connection with the Project Land, the construction or operation of the Terminal Station, the construction or operation of the Interface or the performance by each of the parties (other than VicGrid) of its obligations under the Related Agreements.

Associated Entity is as defined in section 50AAA of the Corporations Act.

AusNet Services Bank Guarantee means the bank guarantee provided by Generator to AusNet Services in accordance with the AusNet Services Side Deed.

AusNet Services Pay-Out Amount means the **PCCD (Terminal Station Pay-Out Amount)** and the **PCCD (Interface) Pay-Out Amount** as defined in the AusNet Service Side Deed.

AusNet Services Side Deed means the agreement between VicGrid, Generator and AusNet Services entitled "AusNet Services Side Deed for [Insert] Terminal Station and Interface [Insert Name]. [Wind/Solar] Farm)".

Authority means any government department, local government council, government or statutory authority, body, instrumentality, minister, agency or other authority exercising administrative or regulatory functions, excluding VicGrid.

Bank Bill Rate means:

- (a) on any day, the average bid rate (expressed as a percentage yield to maturity per annum rounded upwards, if necessary, to the nearest 0.01%) displayed on the page of the Reuters Monitor System, designated 'BBSY' at or about 10.30am on that day (or if that day is not a Business Day on the Business Day immediately preceding that day) for the purchase of bills of exchange (as defined in Bills of Exchange Act 1909 (Cth)) bearing the acceptance of a bank licensed under sections 8 or 9 of the Banking Act 1959 (Cth) and for a term to maturity of 90 days; or
- (b) if there is manifest error in the calculation of that average rate, or that average rate is not displayed at or about 10.30am on that day, or if that average rate becomes clearly inappropriate, unfair or incapable of application, as the 'Bank Bill Rate' for that day is as agreed between the parties in good faith to be representative of the rate at which such bills are being purchased by such banks at or about 10.30am on that day.

Business Day means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Melbourne.

Certificate of Practical Completion means a certificate issued by VicGrid under **clause 24.13**.

Claim means any monetary claim or demand of any kind for debt, costs, charges, outgoings, expenses, payments, losses, liabilities, damages or compensation of whatever nature (whether arising under breach of contract, in tort, including negligence, or otherwise at Law) in connection with the Project, Connection Assets, [Wind/Solar] Farm, Works, a Related Agreement or the Connection Agreements.

Commencement Date means the date when all conditions precedent specified in **clause 2.1** have been satisfied or waived in accordance with **clause 2.3**.

Commissioning Test means, in relation to an item of plant or equipment, a process by which it is approved for active service based on observed or measured operation that meets the Functional Specification.

Commissioning Test Program means the program of Commissioning Tests to be carried in accordance with **clause 23**.

Connection means the direct or indirect contact between the electrical systems of two persons such as will allow the supply of electricity between those systems, where the reference to 'indirect contact' means a connection to an electrical system that is, in turn, connected to the particular electrical system.

Connection Assets Works means the design, construction and commissioning of the Connection Assets.

Constructing Party means AusNet Services.

Construction Obligations means all obligations, duties and rights of, or acts or omissions by, a Project Party arising out of or in connection with the Project Works, Connection Assets Works or [Wind/Solar] Farm Works during the Construction Period.

Construction Period means the period commencing on the Commencement Date up to and including the date of completion of Minor Outstanding Items.

Consumer Price Index means:

- (a) the quarterly consumer price index: all groups index number weighted average of eight capital cities published by the Australian Bureau of Statistics; or
- (b) if the index referred to in **paragraph (a)** ceases to be published, or its basis of assessment is changed so that it no longer accurately reflects changes in the prevailing level of prices substantially in the same manner as it did prior to the change, the nearest equivalent index as agreed between the parties, or if the parties do not agree, the index nominated by the Australian Statistician or their nominee (acting as an expert), whose decision is binding and conclusive.

Contamination means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind (alone or in combination), other than those naturally present in a given segment of the environment that makes or may make any segment of the environment:

- (a) unsafe, unfit or harmful for habitation, use or occupation by any person or animal;
- (b) degraded in its capacity to support the design life of the Project; or
- (c) not comply with any environmental Law.

Control means the possession, directly or indirectly, of the power to direct the business activities of a person, whether through ownership, statutory authority, contract or otherwise.

Co-ordination Committee means a committee established under **clause 11.5**.

Co-ordination Matters means matters in respect of any Works that depend on or have the potential to impact on any other Works, including:

- (a) interfaces between the Project, [Wind/Solar] Farm and Connection Assets;
- (b) the scheduling of the Project Works, [Wind/Solar] Farm Works and Connection Assets Works;
- (c) industrial relations issues;

- (d) access to the Project Land and any other land on which Project Works, [Wind/Solar] Farm Works or Connection Assets Works are performed;
- (e) the undertaking of Project Works, [Wind/Solar] Farm Works and Connection Assets Works;
- (f) Practical Completion processes and responsibilities; and
- (g) any matters related, or incidental, to any of the matters referred to in paragraphs (a) – (f).
- (h) **Co-ordination Schedule** means the requirements set out in **Schedule 10**.

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

CPI Adjusted means, in the context of an amount to be adjusted on a specified date, the amount will be adjusted for changes to the Consumer Price Index in accordance with the following formula:

$$A_n = A_{n-1} \times \left[\frac{CPI_n}{CPI_{n-1}} \right]$$

where:

A_n = the adjusted amount;

A_{n-1} = the amount immediately before the adjustment is made;

CPI_n = the Consumer Price Index published for the quarter ending on the adjustment date (or most recently before the adjustment date, where the adjustment date occurs during a quarter); and

CPI_{n-1} = the Consumer Price Index published for the same quarter during the immediately preceding year.

At no time will A_n be less than A_{n-1} .

CSA means the agreement between TNSP and Generator entitled "Connection Services Agreement" dated on or about the date of this Deed.

Date of Practical Completion is the date on which Practical Completion is achieved, as stated in the Certificate of Practical Completion or determined in accordance with the Dispute Resolution Procedure.

Default Event means, in relation to a party:

- (a) where the party is a Constructing Party:
 - (i) displays an intention to abandon, or abandons, its component of the Project Works or a material part of that component;
 - (ii) Disposes, or attempts to Dispose, of the Project or its interest in the Related Agreements, other than in accordance with the Related Agreements;
- (b) where the party is not a Constructing Party, the party Disposes, or attempts to Dispose, of its interest in the Related Agreements, other than in accordance with the Related Agreements;
- (c) a Financial Default; or
- (d) any other material breach of a Related Agreement.

Default Notice means a notice of a Dispute given under **clause 41.4**. **Defaulting Party** means the party subject to a Default Event.

Defect means any part of the Project not in accordance with the requirements for that part of the Project referred to in the Related Agreements.

Delivery Program means the design, construction and commissioning plan for the Project, a copy of which is contained in **Schedule 4**.

Design Documentation means any drawings, information, plans, reports, computer records, models and specifications (whether in hard copy or electronic form) prepared by or on behalf of a Project Party in performing its obligations under a Related Agreement, including those in relation to the Project Works.

Dismantle means to remove or alter assets (other than through the operation of switching equipment) so that electricity cannot be supplied.

Dispose means assign, transfer, novate or otherwise dispose of any estate in Law, whether by sale, lease, declaration or creation of trust or otherwise.

Dispute means:

- (a) a disagreement or difference of opinion between any of the parties as to any matter in connection with a Related Agreement, including any breach, termination, validity or its subject matter; or
- (b) except where provided otherwise, a failure of any of the parties to reach agreement on a matter where a Related Agreement requires agreement or requires the parties to negotiate in good faith with a view to reaching agreement,

but does not include a disagreement or difference concerning the exercise of rights under an VicGrid Bank Guarantee.

Dispute Notice means a notice of a Dispute given under **clause 42.4**.

Dispute Resolution Procedure means the procedure set out in **clause 41.1 – 41.14**. **Emergency** is defined in **clause 28.18**.

Event of Force Majeure means a circumstance affecting an Affected Party that satisfies all of the following criteria:

- (a) the circumstance is beyond the reasonable control of the Affected Party;
- (b) the circumstance is not the result of:
 - (i) a breach of a Related Agreement or any relevant Law by the Affected Party; or
 - (ii) an act or omission (other than an act or omission expressly required by, and carried out in accordance with, a Related Agreement) by the Affected Party;
- (c) the circumstance results in that party's being unable to observe or perform on time and as required any obligation (not being an obligation to pay money, or co-ordinate or consult with any other party) under any Related Agreement; and
- (d) the circumstance involves one or more of the following:
 - (i) acts of God or natural disasters, including lightning strikes, earthquakes, floods, droughts, mudslides and washaways;
 - (ii) explosions or fires, except where the explosion or fire originates at the Project Land and is caused by the Affected Party's plant or equipment;
 - (iii) acts of war, acts of public enemies, terrorism, riots, civil commotions, hostilities (whether war be declared or not), malicious damage, sabotage, blockade and rebellion;
 - (iv) acts or omissions of any Authority;
 - (v) ionising radiation or contamination by radioactivity from any source not caused or contributed to by the Affected Party;
 - (vi) a Labour Dispute;
 - (vii) acts or omissions of a person (including a New Proponent) with *facilities* Connected to, or using, the Victorian Transmission Network, or a system for supply of electricity Connected to the Victorian Transmission Network and where those acts or omissions affect the ability of a party to perform its obligations under any Related Agreement by virtue of that Connection to, or use of, the Victorian Transmission Network, except to the extent that person owes an obligation to the Affected Party to not take those acts or make those omissions or is an Associated Entity of the Affected Party; or
 - (viii) after the Date of Practical Completion, the occurrence of any event of severe weather that affects that Affected Party's ability to perform its obligations under any Related Agreement.

Facilities means, in relation to AusNet Services, the Interface, in relation to TNSP, the Terminal Station and Connection Assets and, in relation to Generator, the **[Wind/Solar]** Farm.

Financial Default means a failure by a party to pay any amount due and payable under any Related Agreement.

Financial Year means the period commencing on 1 July of any calendar year and ending on 30 June of the following calendar year.

First Energisation Criteria are specified in **Schedule 6**.

Functional Specification means the Primary Functional Requirements and the Protection and Control Requirements for the Project as released, issued or reissued by VicGrid from time to time.

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

- (a) a receiver, manager, receiver and manager, trustee, administrator, controller (as those terms are defined in the Corporations Act) or similar officer is appointed in respect of the party or any asset of the party;
- (b) a liquidator or provisional liquidator is appointed in respect of the party;
- (c) an order is made, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in **paragraph (a) or (b)**;
 - (ii) winding up the party; or
 - (iii) proposing or implementing a scheme of arrangement in respect of the party;
- (d) a moratorium of any debts of the party or an official assignment or a composition or an arrangement (formal or informal) with the party's creditors or any similar proceeding or arrangement by which the assets of the party are subjected conditionally or unconditionally to the control of the party's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days;
- (e) the party becomes, admits that it is, is declared to be, or is deemed under any Law to be, insolvent or unable to pay its debts;
- (f) any writ of execution, garnishee order, mareva injunction or similar order, Schedule, distress or other process is made, levied or issued against or in relation to a substantial proportion of the assets of the party; or
- (g) anything that has a substantially similar effect to any of the events set out in **paragraphs (a) to (f)**.

Interface Assumption means an "Interface Assumption" set out in the AusNet Services Side Deed.

Interface Land means the land shown as "Interface Land" on the Site Plan being the land on which AusNet Services will construct the Interface.

Interface NSA means the agreement entitled "Network Services Agreement for Delburn Terminal Station Interface" between VicGrid and AusNet Services dated on or about the date of this Deed.

Interface Works means the design, construction and commissioning of the Interface in accordance with this Deed.

Labour Dispute means a strike, lockout, ban, stoppage or other industrial action:

- (a) that affects a region, Victoria, Australia or an industry generally and is not caused by or directed at the Affected Party or an Associated Entity of the Affected Party; or
- (b) at the Project Land and caused by or directed at a party other than the Affected Party or an Associated Entity of the Affected Party.

Law means Commonwealth, State, or local legislation, judicial, administrative, or regulatory decrees, judgments, awards or orders and all common laws and principles of equity and, for the avoidance of doubt, includes any Regulatory Instrument and regulations made under a Regulatory Instrument.

Milestone Completion means, for a Milestone Event, when the Milestone Event has been completed in accordance with this Deed.

Milestone Date is set out against each Milestone Event in **Schedule 4** as extended in accordance with **clause 16, 17 or 18**.

Milestone Event means each of the milestone events set out in **Schedule 4**.

Minor Outstanding Item means:

- (a) any Defect that does not prevent the Practical Completion Criteria from being satisfied; or
- (b) any work the parties agree is a Minor Outstanding Item, regardless of whether it is identified in an Outstanding Completion Items List.

Modern Slavery has the meaning given to that term in section 4 of the *Modern Slavery Act 2018* (Cth).

Native Title Application means any claim or application under any Law relating to native title, including any application under:

- (a) section 61 of the Native Title Act 1993 (Cth);
- (b) the Aboriginal and Torres Strait Islander Heritage Act 1984 (Cth);
- (c) the Land Titles Validation Act 1994 (Vic); or
- (d) any future Law in respect of the same subject matter,

that, if successful, would substantially derogate from a Constructing Party's ability to perform its obligations under this Deed.

NEL means *National Electricity Law*, having force as a law of Victoria under section 6 of the National Electricity (Victoria) Act 2005 (Vic), and includes the National Electricity (Victoria) Act 2005 (Vic).

Network Agreement means the agreement entitled "Network Agreement" between VicGrid and AusNet Services dated 3 October 1994.

Network Services, where used in the context of the:

- (a) Terminal Station, are the services by that name provided by TNSP under the TNSP NSA; and
- (b) Interface, are the services by that name provided by AusNet Services under the Interface NSA.

Network Services Commencement Date means the Date of Practical Completion of the Project. **NSAs** means the TNSP NSA and the Interface NSA.

New Proponent means a person who has submitted an *application to connect* a *facility* to the Terminal Station or a Subsequent Augmentation other than at, or through, the Point of Supply.

New Proponent Change Event means where VicGrid receives an *application to connect* at the Terminal Station from a New Proponent after the Reference Date.

OHS Law means the Occupational Health and Safety Act 2004 (Vic).

OHS Regulations means the Occupational Health and Safety Regulations 2017 (Vic).

Outage Plan has the meaning given in **clause 20.4**. **Outage Rebate** is defined in the Network Agreement.

Outstanding Completion Items List means a list issued by VicGrid under **clause 24.7** or an updated list issued by VicGrid under **clause 24.10**, as supplemented by any additions to that list notified by VicGrid under **clause 24.12** setting out those items that must be completed to achieve Practical Completion.

Overload means any non-momentary excursion of current, voltage or fault level beyond the ratings advised by any equipment owner taking into account any special conditions or qualifications included in that advice.

Performance Incentive Scheme means any service target performance incentive scheme published by the AER in accordance with clause 6A.7.4 of the Rules and any other performance incentive scheme related to the provision of *transmission services* by AusNet Services or TNSP established between AusNet Services and an Authority or VicGrid from time to time.

Point of Supply is specified in **Schedule 3**.

Practical Completion means that stage in the design, construction and commissioning of the Project when the Practical Completion Criteria have been satisfied (except for Minor Outstanding Items).

Practical Completion Criteria are specified in **Schedule 6**.

Primary Functional Requirements or **PFRs** means PFR/ [Insert], version [Insert], released [Insert].

Progress Report means a progress report in the form specified in **Attachment 1** containing the following information in respect of the Project Works and Connection Asset Works:

- (a) the progress made by a Constructing Party in the previous month in respect of the Connection Asset Works and its component of the Project Works compared with the progress anticipated under the Delivery Program and the progress required to complete each Milestone Event by its Milestone Date;
- (b) all significant non-conformances identified in a Constructing Party's Quality Assurance Plan together with disposition, authorisation and corrective action undertaken;
- (c) if a Constructing Party has experienced a significant delay or has failed to achieve any Milestone Event by its Milestone Date in the previous month:
 - (i) a detailed update describing the particulars of the delay or failure and the effect of the delay or failure on Milestone Completion of the Milestone Event and Practical Completion; and
 - (ii) the course of action the Constructing Party proposes to undertake to ensure that its component of the Connection Asset Works and Project Works will thereafter be carried out in order to achieve that Milestone Completion, further Milestone.

Completions by the Constructing Party's relevant Milestone Dates, and Practical Completion by the Constructing Party's Milestone Date for Practical Completion; and

- (d) any costs associated with any delay that the Constructing Party believes it has become entitled to recover since the last progress report; and
- (e) any act, matter or thing that may have an actual or potential material adverse effect on the progress of the Connection Asset Works and its component of the Project Works, together with detailed particulars of how the Constructing Party is dealing with these issues.

Project means design, construction and commissioning of the Terminal Station, Interface and Connection Assets.

Project Assumptions means the assumptions set out in Schedule 2 of the AusNet Services Side Deed.

PCCD or **this Deed** means this document.

Project Group means a group established under **clause 8.1**. **Project Land** means the Terminal Station Land and Interface Land. **Project Parties** means Generator, AusNet Services and TNSP.

Project Works means the Terminal Station Works and Interface Works.

Protection and Control Requirements or **PCRs** means:

- (a) for the Terminal Station, Interface and Connection Assets [Insert];
- (b) for [Insert]; and
- (c) for [Insert].

Quality Assurance Plan means a plan prepared by each Constructing Party for the systematic measurement and comparison against relevant standards, monitoring of processes and an associated feedback loop with the aim of minimising errors in the performance of its Construction Obligations.

Regulatory Instrument means:

- (a) the NEL and Rules;
- (b) any other Law that has the effect of regulating any part of the electricity industry in Victoria; and

- (c) in respect of a party, any licence the party holds regulating its activities in respect of the electricity industry and any code, guideline or direction that party is required to comply with under that licence.

Related Agreements means this Deed, the AusNet Services Side Deed, UoSA, TNSP NSA, Interface NSA and any other agreement that the parties agree is a Related Agreement.

Related Dispute exists when a Dispute relates to any fact, opinion, matter or thing arising out of or in any way connected with another Dispute.

Road Access Rules are detailed in **Schedule 7**.

Rules means the National Electricity Rules made under the NEL.

Security of Payment Act means the Building and Construction Industry (Security of Payment) Act 2002 (Vic).

Security Interest means any security arrangement (including a security interest as defined in the Personal Property Securities Act 2009 (Cth), a mortgage, bill of sale (as defined in any statute), charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements or any arrangement having a similar effect) which secures payment of money, performance of obligations or protection against default. It also includes any agreement to create any such security arrangement or allow any such security arrangement to exist.

Service Year means each period of 12 months from the Date of Practical Completion and each anniversary of the Date of Practical Completion and the period from the last anniversary of the Date of Practical Completion to the expiry or termination of this Deed.

Single Line Diagram or **SLD** is shown in **Schedule 3**.

Site Plan means the plan contained in **Schedule 1**.

Solar Farm Works means the design, construction and commissioning of the Solar Farm.

Specified Services means the services described in **Schedule 1** of the UoSA.

Subsequent Augmentation means any *augmentation* to the Victorian Transmission Network at the Terminal Station authorised or agreed to by VicGrid.

System means software, hardware (including peripherals and storage media), equipment, networks, other technology and communications links, and data and information stored on, residing in, or processed by, the foregoing, and includes information about its technical design and configuration and security.

System Code means the Electricity System Code issued by the Office of the Regulator-General Victoria 20 October 2000.

Tax means any duty (including stamp duty) and other tax (including GST), levy, impost, deduction or similar charge or withholding plus interest and penalties, charges, fees or other amounts made on or in respect of it, including any carbon tax or any such amount that relates to, or is imposed because of environmental matters, but does not include any income tax.

Term means the Initial Term, as extended in accordance with **clause 36**.

Terminal Station Assumption means a "Terminal Station Assumption" set out in the AusNet Services Side Deed.

Terminal Station Land is shown as the "Terminal Station Land" on the Site Plan.

Terminal Station Works are the design, construction and commissioning of the Terminal Station in accordance with this Deed.

TNSP Bank Guarantee means the bank guarantee provided by Generator to TNSP in accordance with the AusNet Services Side Deed.

TNSP NSA means the agreement between VicGrid and TNSP entitled "Network Services Agreement for Delburn Terminal Station" dated on or about the date of this Deed.

TOC means the person responsible for authorising the switching of equipment on the Victorian Transmission Network.

Transmission means the transfer of electricity in bulk at 66kV and above.

Transmission Charge, in the context of the Terminal Station, is specified in Schedule 3 of the TNSP NSA and, in the context of the Interface, is specified in Schedule 2 of the AusNet Services NSA.

Transmission Underwriting Charge is specified in Schedule 3 of the UoSA.

UoSA means the agreement between Generator and VicGrid entitled “Use of System Agreement for Victorian Transmission Network Services for Delburn Terminal Station” dated on or about the date of this Deed.

Variation means a variation of the Functional Specification which will, or is likely to, result in a change to the Works or a Transmission Charge.

Victorian Transmission Network means the *declared transmission system* for Victoria and, after the Date of Practical Completion, includes the Terminal Station and Interface.

Wilful Breach means fraud, or an intentional or reckless breach of a Related Agreement and not resulting from an error of judgement or mistake made in good faith.

Wind Farm Works means the design, construction and commissioning of the Wind Farm.

Works means, in relation to:

- (a) TNSP, the Terminal Station Works and Connection Assets Works;
- (b) AusNet Services, the Interface Works; and
- (c) Generator, the **Wind/Solar** Farm Works.

Interpretation

1.3 Unless a contrary intention appears, a reference in any Related Agreement to:

- (a) a Related Agreement includes any Schedules to that Related Agreement;
- (b) a document (including a Related Agreement) includes the document as novated, varied, extended, or replaced, and despite any change in the identity of the parties;
- (c) a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule of that Related Agreement;
- (d) a clause is a reference to all its subclauses;
- (e) legislation (including the Rules) includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the singular includes the plural and vice versa and a gender includes all genders;
- (g) the word “**person**” includes a firm, a body corporate, a partnership, an unincorporated association or an Authority and any successor entity to those persons;
- (h) a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) a party includes, where the context requires it, that party’s directors, officers, employees, contractors, sub-contractors, agents, any trustee, permitted assignee, liquidator, administrator, Associated Entity, and any other person authorised by that party or over which that party should have exercised Control;
- (j) the words “**includes**”, “**including**” or “**such as**” are not words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates to examples of a similar kind;
- (k) the words “**any item of plant or equipment**” means any item of plant or equipment forming part of the Project;

- (l) the words “**component of the Project**” means:
 - (i) in respect of TNSP, the Terminal Station; and
 - (ii) in respect of AusNet Services, the Interface;
 - (m) the words “**component of the Project Works**” means:
 - (i) in respect of TNSP, the Terminal Station Works; and
 - (ii) in respect of AusNet Services, the Interface Works;
 - (n) each party will be severally liable for the performance of its obligations under the Related Agreements to which it is a party;
 - (o) a thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively, and to each of them individually but nothing in this **paragraph (o)** implies that performance of part of an obligation constitutes performance of that obligation;
 - (p) “**dollars**” or “**\$**” means Australian dollars; and
 - (q) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions.
- 1.4 If a word or phrase is defined in a Related Agreement, other parts of speech and grammatical forms of that word or phrase have corresponding meanings in that Related Agreement.
- 1.5 Headings in a Related Agreement are inserted for convenience and do not affect the interpretation of that Related Agreement.

Time

- 1.6 A reference in any Related Agreement to:
- (a) a day is a calendar day and, unless stated otherwise, commences at midnight and ends the following midnight; and
 - (b) time is a reference to Melbourne time.
- 1.7 If a period of time is specified in a Related Agreement 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.
- 1.8 Where the day on or by which any sum is payable under a Related Agreement is a day other than a Business Day, that sum must be paid on the immediately subsequent Business Day.
- 1.9 If a payment prescribed under a Related Agreement to be made by a party on or by a given Business Day is made after 4:00 pm on that day, it is taken to be made on the next Business Day.

Contra Proferentem

- 1.10 In the interpretation of each Related Agreement, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafted that Related Agreement or any provision of that Related Agreement.

Additional Obligations

- 1.11 The parties’ obligations under this Deed supplement their obligations under the Related Agreements to which they are party, and are not intended to derogate from those obligations.

Inconsistency within a Related Agreement

- 1.12 Provided this is consistent with the principles in **clause 1.13**, in the event of any inconsistency between the Operative Provisions and the Schedules within a Related Agreement they are to be construed in the following order of precedence:
- (a) the Operative Provisions; and

- (b) the Schedules.

Inconsistency between Related Agreements

- 1.13 The Related Agreements must be read together and if there is an inconsistency between them, they must be interpreted in a way that supports:
- (a) the provision of the Specified Services in accordance with the UoSA and the Network Services in accordance with the NSAs and, at all times, meeting the Functional Specification;
 - (b) the performance by VicGrid of the VicGrid Functions; and
 - (c) subject to **paragraphs (a) and (b)**, and provided the interpretation is consistent with the *national electricity objective*, due regard will be given to the most cost-efficient approach to address the inconsistency.

Inconsistency between Regulatory Instruments and Related Agreements

- 1.14 A party will not be taken to have breached a Related Agreement in respect of any act or omission performed (or not performed, as applicable) by that party in order to comply with its obligations, or exercise its powers, under any Regulatory Instrument.
- 1.15 In the event of any inconsistency between the Rules, System Code and **clause 28**, the Rules and the System Code (in that order) shall take precedence over **clause 28**.
- 1.16 For the avoidance of doubt, the fact that the Related Agreements contain provisions that expand on, supplement or cover in more detail matters dealt with in the Regulatory Instruments does not give rise to an inconsistency.

Notification and Resolution of Inconsistency

- 1.17 If a party becomes aware of an inconsistency of the type contemplated in **clause 1.11, 1.12, 1.13 or 1.14**, that party must promptly notify the other parties.
- 1.18 Within 5 Business Days of notification of an inconsistency in accordance with **clause 1.17**, the parties must meet with a view to agreeing in good faith on the interpretation of the ambiguity, discrepancy or inconsistency. Failing agreement within 5 Business Days of that meeting, VicGrid may notify each other party about the interpretation that will apply in order to resolve the inconsistency, which will be consistent with the principles detailed in **clauses 1.11, 1.12, 1.13 and 1.15**.
- 1.19 A notification by VicGrid under **clause 1.18** will not entitle a party to make a Claim against VicGrid.

2 Conditions Precedent

Conditions Precedent

- 2.1 This Deed is conditional on:
- (a) execution of each of the Related Agreements;
 - (b) provision of the VicGrid Bank Guarantee to VicGrid;
 - (c) provision of the TNSP Bank Guarantee to TNSP;
 - (d) provision of the AusNet Services Bank Guarantee to AusNet Services; and
 - (e) the execution of the CSA and satisfaction or waiver of all conditions precedent to the CSA (other than those that depend on the conditions precedent to this Deed being satisfied or waived).

Satisfaction or Waiver of Conditions Precedent

- 2.2 A party must promptly notify each other party when it becomes aware that a condition precedent specified in **clause 2.1** has been satisfied, waived or is incapable of being satisfied.
- 2.3 The condition precedent specified in:

- (a) **clause 2.1(a)** is for the benefit of all parties and may only be waived by agreement of the parties;
- (b) **clause 2.1(b)** is for the benefit of VicGrid and may be waived by VicGrid only;
- (c) **clause 2.1(c)** is for the benefit of TNSP and may be waived by TNSP only;
- (d) **clause 2.1(d)** is for the benefit of AusNet Services and may be waived by AusNet Services only; and
- (e) **clause 2.1(e)** is for the benefit of both TNSP and Generator and may only be waived by agreement of TNSP and Generator.

Condition Precedent Fulfilment Date

- 2.4 The parties may extend the Condition Precedent Fulfilment Date by agreement.
- 2.5 Notwithstanding any other provision of this Deed, if all of the conditions precedent referred to in **clause 2.1** have not been satisfied or waived under **clause 2.3** by the Condition Precedent Fulfilment Date (as extended under **clause 2.4**), this Deed may be immediately terminated by any party by notice to each other party.

3 Term

- 3.1 **Clauses 1 to 3, 5.1 to 5.5, 6, 29 to 32, 34, 40, 41, 41.1 to 41.17 and 43 to 47** come into effect on the date this Deed is executed by the last party to do so. The remaining provisions of this Deed come into effect on the Commencement Date.
- 3.2 Subject to earlier termination under **clause 2.5** or **clause 37**, this Deed continues until the Terminal Station is decommissioned.

4 Project Objectives

Construction Obligations

- 4.1 The parties acknowledge that TNSP will build and own the Terminal Station and AusNet Services will build and own the Interface.

Operational Obligations

- 4.2 Once the Project is built:
 - (a) TNSP will use the Terminal Station to provide VicGrid with Network Services in accordance with the TNSP NSA;
 - (b) AusNet Services will use the Interface to provide VicGrid with Network Services in accordance with the Interface NSA; and
 - (c) VicGrid will provide Generator with the Specified Services in accordance with the UoSA.

5 VicGrid's Rights and Obligations

Impact on VicGrid's Functions

- 5.1 No Related Agreement will in any way restrict or otherwise unlawfully affect the unfettered discretion of VicGrid to exercise any of its functions or powers under any Law (other than the VicGrid Functions expressly exercised by VicGrid under the Related Agreements).
- 5.2 Anything VicGrid is required to do or is prevented from doing under any Law (other than the VicGrid Functions expressly exercised by VicGrid under any Related Agreement) will not be, or be deemed to be, an act or omission by VicGrid under any Related Agreement and will not entitle any other party to make any Claim against VicGrid (including for breach of contract or negligence) for any act or omission by VicGrid in relation to any Related Agreement.

- 5.3 Nothing in **clause 5.2** restricts a Constructing Party's right to seek an adjustment in the Transmission Charge, to make a claim for an extension of time or to a Variation, in accordance with a Related Agreement.

Consent or Approval of VicGrid

- 5.4 Unless otherwise provided in a Related Agreement or under any Law, in any case where the doing of anything by a party is dependent on VicGrid's approval or consent, VicGrid may grant or withhold its approval or consent in its absolute unfettered discretion.
- 5.5 The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature by VicGrid does not, except where any Related Agreement expressly provides to the contrary, relieve a party from its obligations under a Related Agreement.

Review by VicGrid and Generator

- 5.6 Notwithstanding any other provision in any Related Agreement the parties agree that:
- (a) VicGrid's and Generator's receipt, or review of, comment on, or input into, any Progress Report, Delivery Program or any other material, documents or other information prepared or provided by a Constructing Party in connection with the Project (**Reviewable Material**) does not:
 - (i) give rise to any responsibility or duty of care or other legal obligation on the part of VicGrid or Generator (as applicable) to the Constructing Party in respect of the Reviewable Material; or
 - (ii) relieve the Constructing Party from any responsibility for any errors or omissions or departures from any Related Agreement; and
 - (b) any inspection by VicGrid or Generator of the Project Land, Project or Project Works or any information set out in any Schedule to a Related Agreement, will not:
 - (i) relieve a Constructing Party from, or alter its responsibility, liabilities or obligations under the Related Agreements for any errors or omissions or departure from the Related Agreements;
 - (ii) evidence or constitute a direction by VicGrid or Generator (as applicable) to accelerate, disrupt, prolong or vary the Project Works;
 - (iii) give rise to any responsibility or duty of care or other legal obligation on the part of VicGrid or Generator (as applicable) to a Constructing Party; or
 - (iv) affect the time for performance of VicGrid's or Generator's obligations (as applicable) under the Related Agreements, including obliging VicGrid or Generator (as applicable) to do anything earlier than is necessary to enable a Constructing Party to achieve a Milestone Event by the Constructing Party's relevant Milestone Date for the Milestone Event,and a failure by VicGrid or Generator to notify a Constructing Party of any Defect, or concern associated with any material, document or information, or following any such inspection, will not relieve that Constructing Party of its liabilities, or constitute a waiver of any of VicGrid's or Generator's (as applicable) rights under any Related Agreement.

Subsequent Augmentation and New Connection Project

- 5.7 For the purposes of **clauses 5.8 to 5.13**:

New Connection Project means any work related to the Connection of a *facility* to the Terminal Station or a Subsequent Augmentation other than at, or through, the Point of Supply.

New TNSP means a person (other than TNSP) that VicGrid proposes to authorise or appoint to carry out a Subsequent Augmentation.

- 5.8 If VicGrid receives a *connection* enquiry or *application to connect* relating to the Terminal Station, VicGrid must notify all parties of the *connection* enquiry or *application to connect* and advise of all relevant details in its possession that a party needs to know in order to assess the impact of the proposed *connection* on that party's use of the Project or Project Land.

- 5.9 If VicGrid proposes to authorise or appoint a New TNSP:
- (a) VicGrid must, to the extent compatible with the VicGrid Functions, negotiate with the New TNSP in good faith to endeavour to agree on the terms by which the New TNSP will enter into an accession deed with the other parties under which the New TNSP becomes a party to this Deed and, as necessary, other relevant Related Agreements in respect of the Subsequent Augmentation, subject to the New TNSP having rights and obligations in respect of the Subsequent Augmentation that are substantially the same as those of TNSP in respect of the Project; and
 - (b) the parties will act in good faith and take all steps reasonably required to make the New TNSP a party to this Deed and, as necessary, other relevant Related Agreements on the terms contemplated by **paragraph (a)**, including agreeing to any necessary amendments to this Deed and those Related Agreements to reflect the accession of the New TNSP on the terms contemplated in **paragraph (a)** and the final terms of any proprietary interest and rights of access contemplated by **clause 5.13**.
- 5.10 If VicGrid proposes to make an offer to *connect* to a New Proponent:
- (a) VicGrid must, to the extent compatible with the VicGrid Functions, negotiate with the New Proponent in good faith to endeavour to agree on the terms by which the New Proponent will enter into an accession deed with the other parties under which the New Proponent becomes a party to this Deed and, as necessary, other relevant Related Agreements in respect of the New Connection Project, subject to the New Proponent's having rights and obligations in respect of the New Connection Project substantially the same as those of Generator in respect of the Project (including in relation to any bank guarantee to secure the performance of the New Proponent's payment obligations, including termination payments); and
 - (b) the parties will act in good faith and take all steps reasonably required to make the New Proponent a party to this Deed and, as necessary, other relevant Related Agreements on the terms contemplated in **paragraph (a)**, including agreeing to any necessary amendments to this Deed and those Related Agreements to reflect the accession of the New Proponent on the terms contemplated in **paragraph (a)** and the final terms of any proprietary interest and rights of access contemplated by **clause 5.13**.
- 5.11 VicGrid agrees to provide the Project Parties with a copy of the proposed terms contemplated by **clauses 5.9** and **5.10** before providing those to a New TNSP or New Proponent whereupon:
- (a) the Project Parties may provide comments to VicGrid on those proposed terms within 10 Business Days of their receipt;
 - (b) the parties may meet upon the request of any party within 10 Business Days of the receipt of any request for a meeting from any party; and
 - (c) if the Project Parties do not provide comments as contemplated by **paragraph (a)** or do not agree on all proposed terms within 10 Business Days' of their last meeting, or last correspondence, VicGrid may submit the proposed terms with appropriate amendments to reflect any agreement on any of those proposed terms to the New TNSP or New Proponent (as applicable).
- 5.12 If Generator or TNSP has a proprietary interest in any land that is required by a New TNSP or New Proponent for the purpose of locating, constructing, operating and maintaining that portion of the New Connection Project required to traverse the Terminal Station Land in order to establish a new Connection with the Terminal Station or a Subsequent Augmentation, on request by VicGrid, Generator or TNSP (as applicable) will negotiate in good faith with a view to granting, at a charge that reflects an efficient market outcome, any necessary and sufficient proprietary interest and rights of access for the purposes contemplated by **clauses 5.9** and **5.10**.
- 5.13 The following matters must be taken into account when determining the necessary and sufficient proprietary interest and rights of access for the purpose of **clause 5.12**:
- (a) VicGrid's and TNSP's obligations under the Regulatory Instruments to grant access to the Terminal Station or the Subsequent Augmentation for the purpose of Connecting the New Connection Project;

- (b) the New Proponent or New TNSP's rights under the Regulatory Instruments to gain access to the Terminal Station and the rights and obligations that will arise as a consequence of any Subsequent Augmentation; and
- (c) the proprietary interest or rights of access granted to the New Proponent or New TNSP must not interfere with:
 - (i) the use of the Project Land or any land adjacent to the Project Land in which a Project Party has an interest at the time VicGrid receives the *application to connect* contemplated by **clause 5.8**;
 - (ii) the Project Parties' reasonable and legitimate intended future use (where that use is an extension or expansion of the use referred to in **sub-paragraph (i)**) of the Project Land or any land adjacent to the Project Land in which a Project Party has an interest; or
 - (iii) the Project Parties' existing obligations concerning the use of the Project Land or any land adjacent to the Project Land in which a Project Party has an interest, including TNSP's obligations under the TNSP NSA and Connection Agreements,

as at the date VicGrid commences negotiations under **clause 5.9(a)** or **5.10(a)**.

6 Relationship of Parties

No Agency, Partnership, Joint Venture or other Fiduciary Relationship

- 6.1 Nothing in a Related Agreement will be construed or interpreted as constituting a relationship between the parties to that agreement as that of partners, joint venturers or any other fiduciary relationship.
- 6.2 Except as expressly permitted or contemplated by a Related Agreement, a Project Party must not make any representation, or do anything by commission or omission, indicating that it is acting on behalf of VicGrid or any other party.

Project Representatives

- 6.3 Each party nominates a Project Representative to be its point of contact for the administration of the Related Agreements to which it is a party. Each party is bound by the actions of its Project Representative as if those actions were taken by that party.
- 6.4 A party may substitute its Project Representative with another person by notice to each other party.

7 Approvals

Responsibility

- 7.1 Each Project Party is responsible for obtaining, maintaining and complying with the Approvals allocated to it, and to the extent specified in, **Schedule 2**.
- 7.2 Subject to each party's rights under **clauses 16, 17 and 18**, each party is solely responsible for all costs, losses, expenses and damages associated with:
 - (a) any application for, or modification of, the Approvals it is required to obtain under **clause 7**; and
 - (b) compliance with the Approval conditions it is required to comply with under **clause 7**.
- 7.3 Upon reasonable notice being given, a Project Party that is required to obtain a particular Approval under **clause 7.1** must permit any other party to review the Approval once it has been obtained.

Assistance

- 7.4 Without limiting **clause 7**, a party will take all reasonable steps requested by Project Party to assist the Project Party to obtain any Approvals required to be obtained by the Project Party under **clause 7.1**.

8 Project Group

Establishment of Project Group

- 8.1 Prior to the commencement of any Project Works, the parties must establish a Project Group consisting of a representative of each party and such other members as VicGrid may invite from time to time.
- 8.2 The Project Group will be disbanded once Practical Completion has been achieved and all Minor Outstanding Items have been completed.
- 8.3 A Project Group member may appoint a delegate to attend Project Group meetings in their absence and to discharge their responsibilities under **clause 8**.

Objectives of Project Group

- 8.4 The objectives of the Project Group are to monitor and review the progress of the Project Works, including to:
- (a) facilitate full and frank discussion on all issues relating to the Project Works; and
 - (b) review all Progress Reports provided under **clause 10** and monitor and review the progress, interaction and co-ordination of the Project Works.

Meetings and Minutes

- 8.5 The Project Group will meet at such times as requested by a party and must meet not less frequently than monthly.
- 8.6 The VicGrid representative on the Project Group will convene and chair meetings of the Project Group.
- 8.7 VicGrid will take minutes of meetings and distribute them to members of the Project Group.

Observers

- 8.8 VicGrid may invite any advisers to attend any meeting of the Project Group as observers.
- 8.9 Each Project Party may invite a representative of any of its contractors, suppliers or consultants to attend any meeting of the Project Group as an observer.

Communications and Media Protocol

- 8.10 The Project Group will use reasonable endeavours to agree a communications protocol within two months of the date of this Deed. The communications protocol must set out the parties' obligations in respect of community relations, media engagements and other communication matters as agreed by the parties.

9 Information

Intellectual Property Rights

- 9.1 The provision of information by a party to any other party under any Related Agreement does not (unless expressly stated) give rise to any intellectual property rights in the recipient party.
- 9.2 Each party grants to each other party a perpetual, irrevocable, royalty-free, transferable and non-exclusive licence (including the right to sub-licence) to copy and use any intellectual property rights in any Design Documentation provided by that party to that other party for the purposes of:
- (a) the Project, the Connection Assets or [Wind/Solar] Farm;
 - (b) meeting their obligations under the Related Agreements and Connection Agreements; and
 - (c) in the case of VicGrid, carrying out its functions under the Regulatory Instruments.
- 9.3 Each party warrants to each other party that use of intellectual property rights as contemplated in **clause 9.2** will not infringe any third party's intellectual property rights.

Moral Rights

9.4 In **clauses 9.5 to 9.8**:

Author means any individual who is the author of any 'work' (as that term is defined in the Copyright Act 1968 (Cth)) forming part of the Design Documentation.

Moral Rights is defined in the Copyright Act 1968 (Cth).

9.5 Subject to **clause 9.8**, each Project Party must procure from every Author engaged by that party a consent authorising VicGrid and any persons to whom VicGrid sub-licences the use of the Design Documentation, to the extent permitted by Law, to any use of the Design Documentation provided to VicGrid by that Project Party that otherwise would infringe the Author's Moral Rights in respect of the Design Documentation.

9.6 The consent required in **clause 9.5** must include consent by the Author to the use of the Design Documentation in accordance with **clause 9.2**:

- (a) without attribution of authorship to the Author;
- (b) bearing the name 'Delburn Terminal Station' and any person associated with the Project;
- (c) even if it results in 'derogatory treatment' (as that term is defined in the Copyright Act 1968 (Cth)) that may be prejudicial to the Author's honour or reputation; and
- (d) by changing, relocating or destroying any three dimensional reproduction of the Design Documentation without notice to, or consultation with, the Author.

9.7 Subject to **clause 9.8**, each Project Party must:

- (a) take steps so that the consent required under **clauses 9.5 and 9.6** is genuinely given and not obtained by duress or by the making of any false or misleading statement; and
- (b) produce all consents to VicGrid upon receipt of a request to do so.

9.8 Where:

- (a) a Project Party is unable to obtain the consent required under **clauses 9.5 and 9.6** despite using its reasonable endeavours to do so;
- (b) the use of the relevant Design Documentation by VicGrid or its sub-licensees in accordance with the licence granted under **clause 9.2** will infringe an Author's Moral Rights; and
- (c) the Author objects to such use of the Design Documentation on the basis it will infringe the Author's Moral Rights,

the Project Party must:

- (i) if requested by VicGrid, provide replacement Design Documentation that complies with the Related Agreements and can be so used without infringing the Author's Moral Rights; and
- (ii) indemnify VicGrid against any Claim made by an Author arising out of the use of the relevant Design Documentation.

10 Progress Reporting

10.1 Each month, each Project Party must provide each other party with a report setting out progress on the Project Works, [Wind/Solar] Farm Works and Connection Asset Works, including any:

- (a) anticipated delays against the Delivery Program;
- (b) changes to any designs, works or other inputs and obligations that may impact another Project Party; and
- (c) proposed and actual mitigating measures.

10.2 A report under **clause 10.1** may be provided during a meeting of the Co-ordination Committee.

10.3 Each month, each Project Party must submit to the other parties:

- (a) updates of the Delivery Program to the extent that they relate to its Works;

- (b) where the Project Party is a Constructing Party, a Progress Report;
- (c) such other information as VicGrid may reasonably request in relation to the delivery of the Project; and
- (d) such other information as a Project Party may reasonably request in relation to the delivery of its Works.

11 Co-ordination during Construction

Co-ordination

- 11.1 Provided the Co-ordination Schedule is consistent with the Functional Specification, each Project Party must comply with the Co-ordination Schedule.
- 11.2 Each Project Party must:
 - (a) exercise reasonable care, skill and diligence and do all things required under the Related Agreements and Connection Agreements related to its Works;
 - (b) use reasonable endeavours to take into account each other Project Party's Works (and the points of interaction between their respective Works) in completing its Works;
 - (c) work co-operatively and harmoniously with each other Project Party and any other person associated with each other Project Party's Works;
 - (d) co-ordinate the performance of its Works with the performance of all other Project Parties' Works; and
 - (e) take reasonable steps to minimise the impact of its Works on each other Project Party's Works.
- 11.3 Each Project Party must use reasonable endeavours to co-operate and work together in good faith to resolve any conflict on a Co-ordination Matter.
- 11.4 Each Project Party must not unduly interfere, obstruct, damage or delay each other Project Party's Works.

Co-ordination Committee

- 11.5 Prior to the commencement of any Works, the Project Parties must establish a Co-ordination Committee consisting of a representative of each Project Party and, if required by a Project Party, a representative of each key contractor engaged by the Project Party to perform its Works.
- 11.6 A member of the Co-ordination Committee may appoint a delegate to attend Co-ordination Committee meetings in their absence and to discharge their responsibilities under **clause 11**.
- 11.7 The Co-ordination Committee will be disbanded once Practical Completion has been achieved in relation to the Project Works and all Minor Outstanding Items have been completed.

Objectives of Co-ordination Committee

- 11.8 The objectives of the Co-ordination Committee are for the Project Parties to consider and discuss Co-ordination Matters, including to:
 - (a) keep each other informed as to the status of their respective Works and to alert each other to any actual or potential co-ordination, health, safety, environmental, native title or cultural heritage issues or risks;
 - (b) plan, review and co-ordinate activities that need to be, or are being, undertaken for the management of the interaction between each other Project Party's Works;
 - (c) take all reasonable steps to minimise the impact of any interference with each other Project Party's Works; and
 - (d) identify any changes to their designs, Works or inputs that may impact another Project Party.

Meetings and Minutes

- 11.9 After Project Works commence, the Co-ordination Committee will meet at such times as requested by a party and must meet not less frequently than fortnightly until the Project Works are completed.
- 11.10 The TNSP representative on the Co-ordination Committee will convene and chair Co-ordination Committee meetings.
- 11.11 TNSP must take minutes of all Co-ordination Committee meetings and distribute them to each other party.

Observers

- 11.12 TNSP must provide VicGrid with reasonable prior notice of Co-ordination Committee meetings and VicGrid may, in its absolute discretion, attend those meetings as an observer.
- 11.13 A Project Party may, with the prior consent of the other Project Parties (such consent not to be unreasonably withheld), invite a representative of any of its contractors, suppliers or consultants

Resolution of Co-ordination Matters

- 11.14 Without in any way limiting a party's obligations under the Related Agreements, the Project Parties must act reasonably to resolve any disagreement concerning a Co-ordination Matter by consensus among the members of the Co-ordination Committee.
- 11.15 If the Co-ordination Committee fails to reach a consensus on any Co-ordination Matter after reasonable efforts at negotiation, the Co-ordination Matter may be referred to the Dispute Resolution Procedure by a Project Party.

Day-to-day Liaison

- 11.16 Each Project Party must use reasonable endeavours to liaise with each other Project Party on the performance and integration of its Works, including:
 - (a) completion dates, Milestone Dates, Milestone Events and any actual or projected changes to those and the interaction between components of the Works;
 - (b) access to and use of the Project Land, use of access routes, transport of goods to and within the Project Land and security of the Project Land;
 - (c) to plan, program and carry out its Works in a manner so as to minimise any interference with the carrying out of the other Works; and
 - (d) monitor, manage and co-ordinate the integration of its Works.

12 Land Issues

Acknowledgement

- 12.1 The parties acknowledge and agree that VicGrid has no capacity to facilitate access by the parties to the Project Land, no responsibilities (including, to the extent permitted by Law, occupational health and safety) in connection with it and no obligation to assist any party to procure or perfect any interest in respect of the Project Land.

Availability of Access Road

- 12.2 Each party which at any time owns the Project Land, or any part of it, grants to each other party a non-exclusive, irrevocable licence to use the Access Road for the purposes of undertaking its Works and operating, maintaining and accessing its Facilities.

Access Road Requirements

- 12.3 The rights granted under **clause 12.2** extend to the right to bring plant, equipment, machinery, vehicles and goods on and over the Access Road, and are at all times subject to compliance with the Road Access Rules.

- 12.4 Subject to **clause 12.5**, TNSP will be responsible for the design, construction, maintenance and repair of the Access Road in accordance with the Road Access Rules.
- 12.5 Generator must reimburse TNSP the reasonable cost of repairing any damage to the Access Road caused by its use of the Access Road.
- 12.6 The Constructing Parties must meet and endeavour to agree a traffic management plan for the Access Road before any Works commence on the Project Land (excluding site investigations and surveys).

OHS Obligations

- 12.7 AusNet Services will ensure that the workplace for all component of the Project Works and the means of access to and from that workplace are safe and without risk to health as required by the OHS Law..
- 12.8 AusNet Services must ensure:
- (a) its nominated contractor is appointed as the 'principal contractor' for the purposes of the OHS Regulations for any 'construction project' (as those terms are defined in the OHS Regulations) carried out as part of the Project Works; and
 - (b) its nominated contractor is authorised to manage or control those areas of the Project Land on which Project Works are being performed to the extent necessary to discharge its duties as the 'principal contractor' for the 'construction project'.
- 12.9 To the extent that a 'principal contractor' is required to be appointed under **clause XX** or **12.8**, the Constructing Party will not commence its component of the Works on the relevant part of the Project Land without the authorisation required by **clause 12.7**.
- 12.10 Once the authorisation required by **clause 12.7** is received, the Constructing Party must ensure its nominated contractor performs the responsibilities, obligations and duties of the 'principal contractor' under the OHS Law for any 'construction project' (as those terms are defined in the OHS Regulations) carried out as part of the Project Works on its component of the Project Land (even if it is not effectively appointed as the principal contractor).
- 12.11 VicGrid and Generator must each ensure that before any of its officers, employees, contractors or agents (or any person acting on their behalf) (**Representatives**) enters any part of the Project Land on which Project Works are being performed (**Site**) for the first time, the Representative undertakes any induction program specified by AusNet Services.
- 12.12 Any induction program specified for the purposes of **clause 12.11** must be reasonable and of general application to all persons entering the Site.
- 12.13 At any time while a Representative is on the Site, that party must use reasonable endeavours to ensure that its Representative:
- (a) causes as little interference to that portion of the Project Land as possible;
 - (b) observes the Constructing Party's requirements on safety, health, environmental and industrial relations matters that are of general application to all persons coming on to that part of the Project Land; and
 - (c) does not give any direction or instruction or advice to any other party in the execution of its obligations under a Related Agreement.

13 Compliance with Legal and Regulatory Requirements

Interrelationship of "Reasonable Endeavours" Standard with Regulatory Instruments

- 13.1 If a standard is expressly provided under any Regulatory Instrument as the standard at which an act should be performed, a term of a Related Agreement requiring a party to use 'reasonable' endeavours to perform or procure the performance of that act must not be construed as requiring that party to perform or procure the performance of that act at any higher standard than that standard prescribed by the Regulatory Instrument.

Good Electricity Industry Practice

- 13.2 Except to the extent to which a relevant standard is expressly or impliedly provided under a Regulatory Instrument as a standard equal to or above which an obligation should be fulfilled, each party must fulfil its obligations under a Related Agreement in accordance with *good electricity industry practice*.
- 13.3 Each party must use reasonable endeavours not to act, or fail to act, in a manner that is likely to result in the *power system* departing from a *satisfactory operating state*.

Compliance with Laws and Best Practice

- 13.4 The parties must comply with the requirements of all applicable Laws.
- 13.5 The parties must demonstrate best practice in the areas of:
- (a) environmental protection with the objective that no Contamination or other harm comes to the environment;
 - (b) occupational health and safety with the objective that no death, injury, or disease is caused to any person or unnecessary damage is caused to any property; and
 - (c) employee relations as expected of reputable and competent operators in the construction and energy industries.

Native Title

- 13.6 If any Native Title Application is made with respect to the Project Land, each Constructing Party must continue to perform its obligations under the Related Agreements, except to the extent ordered by a court or tribunal or required by Law.

Modern Slavery

- 13.7 In performing its obligations under a Related Agreement, a party must:
- (a) take all reasonable steps (including undertaking reasonable due diligence and implementing staff training) to ensure there is no Modern Slavery in its or any of its subcontractor's operations or supply chains;
 - (b) keep appropriate records evidencing the reasonable steps taken to ensure compliance with **clause 13.7(a)** and provide those records to another party on request.
- 13.8 Each party represents and warrants to each other party that, to the best of its knowledge, after having made all reasonable enquiries and undertaken all reasonable due diligence:
- (a) it is not aware of any Modern Slavery in its or any of its subcontractor's operations or supply chains; and
 - (b) neither it nor any of its subcontractors has been or is the subject of any investigation, inquiry or enforcement proceedings by any Authority regarding an offence or alleged offence in connection with Modern Slavery.
- 13.9 Without limiting a party's obligations under this clause, each party must notify each other party if it becomes aware of any information which means that the representation and warranties in **clause 13.8** may no longer be true and correct.

14 Design

Project Design

- 14.1 AusNet Services warrants to the other parties that:
- (a) the design of each component of the Project and the relevant Design Documentation will meet the relevant PFRs and PCRs;
 - (b) no representation or warranty has been given or is given by VicGrid or Generator as to:

- (i) the suitability, completeness or efficacy of any information or data supplied or made available, including anything forming part of the Functional Specification; or
 - (ii) any other drawings, plans, design specifications, reports or other information or data that relate directly or indirectly to the Project; and
- (c) it will ensure a review and evaluation of the suitability and accuracy of the information referred to in **paragraphs (a) and (b)** is conducted, without reliance on VicGrid or Generator.

14.2 AusNet Services:

- (a) acknowledges that VicGrid and Generator are under no obligation to review the Design Documentation submitted in accordance with the Related Agreements; and
- (b) will not make a Claim against VicGrid or Generator alleging that VicGrid or Generator (as applicable) has a duty, responsibility or obligation to review or check the design of the Project or Connection Assets, and further acknowledges that VicGrid and Generator have no such duty, responsibility or obligation.

Design Documentation

AusNet Services agrees that it is responsible for the preparation of the Design Documentation and design of the Terminal Station and Interface.

14.3 AusNet Services must:

- (a) ensure that the design of its component of the Project is completed to meet the relevant PFRs and PCRs;
- (b) ensure that its Design Documentation is prepared in accordance with the Delivery Program; and
- (c) provide to VicGrid a copy of the final version of its Design Documentation.

15 Construction

Project Construction

15.1 AusNet Services must ensure that the Project is constructed:

- (a) with good workmanship and materials;
- (b) in accordance with good electricity industry practice;
- (c) in accordance with the Delivery Program;
- (d) so as to meet the relevant PFRs and PCRs; and
- (e) to comply with all Approvals and relevant Laws.

Review of Construction

- 15.2 VicGrid may review the Delivery Program and the construction of the Project to determine whether each Constructing Party is complying with its obligations as to the construction of its component of the Project and, in particular, whether they are being constructed in accordance with the Related Agreements.
- 15.3 If VicGrid reasonably believes that the Terminal Station or Interface (as applicable) is not being constructed in accordance with the Related Agreements, VicGrid may notify AusNet Services specifying the Defect whereupon AusNet Services must take prompt measures to rectify that Defect.

Quality Assurance

- 15.4 AusNet Services must ensure that a Quality Assurance Plan is implemented for its component of the Project.
- 15.5 AusNet Services is not relieved of any liability as a result of:
- (a) compliance with the Quality Assurance Plan; or
 - (b) anything VicGrid does or does not do with respect to the Quality Assurance Plan.

16 Variation Process

Application

16.1 A Variation will be effective only if made in accordance with **clause 16** or **28.17**.

16.2 For the purposes of clause 16:

Proposing Party means the party issuing a Proposed Variation.

Variation Order means an order in the form of **Attachment 4** issued by VicGrid under **clause 16.14** or **28.17**.

Variation Procedure

16.3 Before the Date of Practical Completion, any party may propose a Variation (**Proposed Variation**) in the form specified in **Attachment 2** by notice to all other parties and will provide, to the extent available to the Proposing Party, the following details:

- (a) a detailed description of the manner in which the Functional Specification is proposed to be varied;
- (b) a detailed description of the reasons for the Proposed Variation and benefits of agreeing to the Proposed Variation; and
- (c) an itemisation of all changes that are likely to be required to any Related Agreement.

16.4 If the Proposing Party is the Constructing Party that will carry out the work to give effect to the Variation, the Proposing Party must also provide, at the same time as the notice under **clause 16.3** is provided:

- (a) details of the scope of works proposed to implement the Proposed Variation;
- (b) an estimate of the net cost that would be incurred, or net savings that would be achieved, if that scope of works were to proceed, which must be calculated in accordance with **clauses 16.19** and **16.20**;
- (c) an estimate of the change that would be required to the relevant Transmission Charge as a result of that net cost or cost saving, which must be calculated in accordance with **clause 16.19** and **16.20**;
- (d) an itemised breakdown of the estimated costs and cost savings taken into account when applying the *Negotiated Transmission Services Principles*;
- (e) reasonable evidence to support the estimated costs and cost savings; and
- (f) where the Proposed Variation is likely to impact progress of the Project Works, details of that impact,

provided the Proposing Party is not required to give pricing details to the other Constructing Party.

16.5 Where the Proposing Party is VicGrid or Generator, that Constructing Party must, within 20 Business Days of receipt of a notice under **clause 16.3**, provide the information required by **clause 16.4** to the other parties, together with details of any other information that would enable the Constructing Party to improve the accuracy of the information in the notice.

16.6 If a party considers that a Proposed Variation is not feasible (including because it is inconsistent with *good electricity industry practice*), it must notify each other party as to the reasons why as soon as reasonably possible and, in any event, within 10 Business Days of receipt of a notice under **clause 16.3**.

16.7 Any party must, if reasonably required by another party, provide each other party with such additional information as might be required to verify the matters described in **clauses 16.3** and **16.4** in relation to the Proposed Variation as soon as reasonably possible.

16.8 Subject to **clause 16.9**, by the later of 10 Business Days following receipt of the information required by **clause 16.4** or, if a party has requested additional information under **clause 16.7**, within 5 Business Days of receipt of that information, the parties must meet to negotiate in good faith to agree on the details of the Proposed Variation, including:

- (a) if a notice under **clause 16.6** has been issued, whether the Proposed Variation is feasible (including whether it is consistent with *good electricity industry practice*);
 - (b) whether the Proposed Variation is the most effective solution (taking into account cost efficiencies and technical considerations) to the issue that led to the Proposed Variation;
 - (c) whether the Proposed Variation will have an adverse impact on the 'ultimate configuration' referred to in the Functional Specification;
 - (d) the net cost or cost saving as a result of the Proposed Variation, which must be calculated in accordance with **clauses 16.19** and **16.20**;
 - (e) the change that would be required to the relevant Transmission Charge as a result of that net cost or cost saving, which must be calculated in accordance with **clause 16.19** and **16.20**; and
 - (f) any acceleration of, or extension to, the Milestone Dates as a result of the Proposed Variation,
- provided that, in respect of pricing details, the agreement of the Constructing Party that is not carrying out the work to give effect to the Proposed Variation is not required.

- 16.9 If VicGrid (acting reasonably) considers that a party will not be affected by a Proposed Variation, VicGrid may request that party to elect whether to participate in the process contemplated by **clause 16.8** and notify VicGrid accordingly within 3 Business Days of VicGrid's request. If the relevant party elects not to participate, that party will have no further obligation under **clause 16.8** with respect to the Proposed Variation.
- 16.10 VicGrid will promptly authorise the Constructing Party under **clause 16.11** to give effect to the Proposed Variation if, before the Date of Practical Completion the parties agree the details of the Proposed Variation or those details are determined in accordance with the Dispute Resolution Procedure.
- 16.11 VicGrid will authorise the Proposed Variation under **clause 16.10** by issuing an instruction to proceed in the form of **Attachment 3** and the Proposed Variation as agreed or determined will have effect from the date of the instruction.
- 16.12 All parties must promptly execute deeds recording a Variation authorised under **clause 16.11**, and the details relating to the Variation agreed or determined, as amendments to this Deed and any other Related Agreement.
- 16.13 If the parties do not agree on the details of the Proposed Variation within 10 Business Days after the first meeting contemplated by **clause 16.8** and VicGrid has not issued a Variation Order in respect of the Proposed Variation, any party may refer the matter for resolution using the Dispute Resolution Procedure unless VicGrid has notified the parties it reasonably considers the Proposed Variation would adversely affect VicGrid's ability to carry out the VicGrid Functions or result in an outcome inconsistent with the *national electricity objective*.

Variation Order

- 16.14 Despite **clauses 16.3** to **16.13**, VicGrid may, before the Date of Practical Completion, issue a Variation Order requiring a Constructing Party to implement a Variation, but only to the extent the Variation is necessary to:
- (a) ensure *power system security* is not placed at risk by the **[Wind/Solar]** Farm, Connection Assets or the Project;
 - (b) ensure the quality or security of *network services* to other *Network Users* is not adversely affected by the **[Wind/Solar]** Farm, Connection Assets or the Project;
 - (c) enable any party to comply with the NEL or Rules in respect of the Project, Connection Assets or Wind Farm; or
 - (d) carry out the VicGrid Functions.
- 16.15 For the avoidance of doubt, nothing in the Related Agreements prevents VicGrid from issuing a Variation Order in respect of the same subject matter as a Proposed Variation.
- 16.16 Prior to, or at the same time as, issuing a Variation Order, VicGrid must advise the other parties of the reasons for issuing the Variation Order by reference to **clause 16.14** or **28.17**.

- 16.17 A Constructing Party must, within 20 Business Days of receipt of a Variation Order, provide the information required by **clause 16.4** to the other parties.
- 16.18 If VicGrid issues a Variation Order:
- (a) the Variation has effect from the date specified in the Variation Order without the need for a deed recording the Variation as an amendment to this Deed and other relevant Related Agreements; and
 - (b) any change to the Transmission Charges under **clauses 16.19** and **16.20**, and any extension to the Milestone Dates, as a result of the Variation will be agreed by the parties in good faith, or determined in accordance with the Dispute Resolution Procedure if the parties are unable to reach agreement.

Valuation of Variations

- 16.19 AusNet Services must ensure that any change to the Transmission Charge as a result of a Variation is determined in accordance with the *Negotiated Transmission Services Principles*.

Variation to Charges as a result of Variation

- 16.20 Notwithstanding any other provision of a Related Agreement or Law, this **clause 16.20** details the only monetary consequences of a Variation:
- (a) where VicGrid has issued an instruction to proceed under **clause 16.11** or a Variation Order:
 - (i) the relevant Transmission Charge payable by VicGrid under the relevant NSA will be increased or decreased as agreed or determined under this Deed; and
 - (ii) the Transmission Underwriting Charge payable by Generator under the UoSA will be increased or decreased (as applicable) by a corresponding amount; and
 - (b) the parties agree that any other costs of any such Variation that are required to be borne by VicGrid will be reimbursed by Generator under the UoSA.

Variation Order or Instruction Required

- 16.21 The parties acknowledge and agree that, until VicGrid issues an instruction to proceed with a Variation in accordance with **clause 16.11** or a Variation Order, the Constructing Party is not obliged to implement the Variation and must, unless the parties agree otherwise, continue to perform the Project Works disregarding any Proposed Variation.

17 Project Assumptions

Acknowledgement

- 17.1 The parties acknowledge and agree that AusNet Services has assumed the Project Assumptions are accurate for the purpose of entering into the Related Agreements.

Notice of Inaccurate Project Assumption

- 17.2 AusNet Services must notify the other parties as soon as reasonably practicable after becoming aware that one of its Project Assumptions is inaccurate, which notice must include, to the extent available to AusNet Services at that time, reasonable details of the impacts the inaccuracy is likely to have on the Project Works.
- 17.3 AusNet Services must, as soon as reasonably possible after giving notice of an inaccurate Project Assumption under **clause 17.2**, give the other parties a notice describing the following (in reasonable detail):
- (a) the action it proposes to take to overcome the inaccuracy; and
 - (b) where the inaccuracy is likely to impact the Delivery Program or the time required to achieve Milestone Completion of a Milestone Event or Practical Completion, details of that impact,

- (c) an estimate of the net cost that would be incurred, or net savings that would be achieved, in taking that action, which must be calculated in accordance with **clause 17.7**;
- (d) an estimate of the change that would be required to the relevant Transmission Charge as a result of that net cost or cost saving, which must be calculated in accordance with **clause 17.7**;
- (e) an itemised breakdown of the estimated costs and cost savings taken into account when applying the *Negotiated Transmission Services Principles*;
- (f) reasonable evidence to support the estimated costs and cost savings; and
- (g) any other information that VicGrid or Generator reasonably requires.

Agreement or Determination of Details

- 17.4 Subject to **clause (a)**, after a notice is given under **clause 17.3**, the Project Parties must negotiate in good faith and seek to agree the following details in relation to the inaccuracy in the Project Assumption:
- (a) the most effective way to overcome the inaccuracy (taking into account cost efficiencies and technical considerations);
 - (b) the net cost or cost saving as a result of the inaccuracy and action required to overcome it, which must be calculated in accordance with **clause 17.7**;
 - (c) the change that would be required to the relevant Transmission Charge as a result of that net cost or cost saving calculated in accordance with **clause 17.7**; and
 - (d) any extension of time to a Milestone Date under **clause 18** caused as a result of the inaccuracy.
- 17.5 If the Project Parties do not agree on the details described in **clause 17.4** within 15 Business Days after notice under **clause 17.3** in relation to the inaccuracy either Project Party may refer the details not agreed for resolution using the Dispute Resolution Procedure.

Consequences of Inaccuracy

- 17.6 To the extent the details described in **clause 17.4** are agreed or determined in accordance with the Dispute Resolution Procedure:
- (a) AusNet Services must take the action agreed or determined;
 - (b) the relevant Transmission Charge payable by VicGrid under the relevant NSA will be increased or decreased as agreed or determined;
 - (c) the Transmission Underwriting Charge payable by Generator under the UoSA will be increased or decreased (as applicable) by a corresponding amount;
 - (d) all parties must promptly execute deeds recording the details agreed or determined as amendments to this Deed and any other Related Agreement; and
 - (e) the Milestone Dates will be extended as agreed or determined.
- Notwithstanding any other provision of a Related Agreement or Law, but subject to **clause 18** and the CSA, this **clause 17.6** details the only monetary consequences of an inaccuracy in a Project Assumption.

Basis for Assessing Costs and Cost Savings

- 17.7 AusNet Services must ensure that any change to the relevant Transmission Charge as a result of an inaccuracy in a Project Assumption is determined in accordance with the *Negotiated Transmission Services Principles*.

No Variation

- 17.8 Nothing in **clause 17** varies or allows the Constructing Party to vary the Functional Specification, or affects its obligation to comply with the Functional Specification. Any proposed variation to the Functional Specification must be dealt with in accordance with **clause 16**.

18 Time for performance

Completion

- 18.1 Each Project Party must use reasonable endeavours to achieve Milestone Completion of each of its Milestone Events on or before the relevant Milestone Date.

Extension of Time and Delay Costs

- 18.2 Any extension of time to the Milestone Dates as a result of a Delay Event and any associated Delay Costs must be claimed under, and will be determined in accordance with, Schedule 5 of the AusNet Services Side Deed.

19 Factory Acceptance Tests

Obligation to Ensure Factory Acceptance Tests are Conducted

- 19.1 The Constructing Party must ensure that each item of plant and equipment listed in **Schedule 5** has, before delivery to the Project Land, passed factory acceptance tests according to the applicable *Australian Standard*, or if there is no applicable *Australian Standard*, any recognised international standard relating to the particular item of plant or equipment.

VicGrid Review of Factory Acceptance Tests

- 19.2 (a) The Constructing Party must with respect to each item of plant and equipment:
- (i) notify the other parties no less than 10 Business Days before the date on which a factory acceptance test is expected to be undertaken; and
 - (ii) as soon as practicable after the relevant test, provide evidence to the other parties that the tests referred to in **clause 19.1** have been successfully conducted.
- (b) The evidence referred to in **paragraph (a)** must, in respect of each test:
- (i) identify the item of plant or equipment to which the test relates;
 - (ii) identify the manufacturer of the item of plant or equipment to which the test relates;
 - (iii) set out the *Australian Standard* (or recognised international standard) and other criteria against which the item of plant or equipment was tested;
 - (iv) state whether the item of plant or equipment passed the test; and
 - (v) be signed and dated by an authorised officer of the manufacturer to confirm that the manufacturer endorses the results of the test.
- (c) VicGrid may notify the Constructing Party that, despite the evidence provided under **paragraph (a)** or **(d)**, VicGrid reasonably considers that:
- (i) evidence of a successful factory acceptance test for the item of plant or equipment has not been provided by that Constructing Party to VicGrid; or
 - (ii) the evidence provided in relation to the item of plant or equipment does not meet the requirements of **paragraph (b)**.
- (d) If VicGrid gives a notice to Constructing Party under **paragraph (c)**, Constructing Party must provide VicGrid with the outstanding information as required by **paragraph (a)** or **(b)** in relation to the item of plant or equipment.
- (e) Constructing Party's obligation to provide VicGrid with evidence under **paragraph (a)** is an ongoing obligation until the requirements of **clause 19.2** are met, or the evidence is determined to be sufficient as a result of the application of the Dispute Resolution Procedure.
- (f) If VicGrid wishes to notify Constructing Party under **paragraph (c)**, VicGrid must do so within 5 Business Days after receiving the relevant item of evidence from the Constructing Party under either **paragraph (a)** or **(d)**.

- (g) VicGrid may, by notice to the Constructing Party, waive the need for Constructing Party to provide evidence under **paragraph (a)** for a particular item of plant or equipment.

20 Outages

20.1 For the purposes of **clause 20**:

Accumulated Outage Hours means:

- (a) for Service Year 1, **XX** hours; and
- (b) for each subsequent Service Year:
- (c) **XX** hours; plus
 - (i) an amount of hours equal to **XX** hours multiplied by the number of prior Service Years (excluding Service Year 1) less the duration (measured in hours) of all Specified Outages taken during those prior Service Years,

capped at a maximum of **XX** hours.

Operational Outage means, during a Service Year, a Specified Outage where the duration of the Specified Outage, together with all other Specified Outages taken in that Service Year, does not exceed the Accumulated Outage Hours for that Service Year.

Performance Incentive Scheme Change means the introduction of a new Performance Incentive Scheme, or a change to or repeal of a Performance Incentive Scheme, that comes into effect after the date of this Deed

Reimbursable Operational Outage has the meaning given in Schedule 8. Relevant **Transmission Line** means **[Insert]**.

Specified Outage means a planned outage of the Interface, Terminal Station or the Relevant Transmission Line taken by a Constructing Party to perform maintenance in relation to the Interface, Terminal Station or the Relevant Transmission Line provided it has been notified in accordance with **clause 20.9**.

STPIS has the meaning given in **Schedule 8**.

STPIS Payment has the meaning given in **Schedule 8**.

Preliminary

20.2 For the purposes of this **clause 20**, the period of an *outage* includes the time taken to switch a *transmission line* out of and into service.

No Liability

20.3 Except where any payment is required to be made in accordance with this **clause 20**, the UoSA or the CSA, no party is liable to compensate another party as a result of any Claim arising out of any *outage* occurring as a result of connecting an *augmentation* to the Victorian Transmission Network.

Planned Outages and Outage Plans

20.4 On the first Business Day of each month occurring prior to Practical Completion, each Constructing Party must provide to VicGrid an *outage* plan in respect of planned *outages* caused by, or that will or may affect, the Project (**Outage Plan**). The Outage Plan must identify, in respect of the relevant Facilities:

- (a) the work likely to require *outages* over the next 12 months;
- (b) the expected periods when *outages* will be required over the next 12 months;
- (c) for each planned *outage*:
 - (i) the expected duration of the *outage*; and
 - (ii) the expected maximum recall time.

- 20.5 The parties agree that the outage plan provided by AusNet Services to VicGrid (in its capacity as *market operator*) under clause 3.8 of the Rules and the Network Agreement will, to the extent it relates to the Interface Works, satisfy AusNet Services' obligation to provide an Outage Plan to VicGrid under **clause 20.4**.
- 20.6 Except with VicGrid's consent, AusNet Services must endeavour to ensure that planned *outages* are taken between the first Friday occurring after 11 March and the Monday preceding 20 November. Despite **clause 44.7**, a Constructing Party must not utilise any form of operational communication, such as VicGrid's 'Network Outage Scheduler', when seeking VicGrid's consent under this **clause 20.6**.
- 20.7 AusNet Services must use reasonable endeavours to utilise *outages* at times originally planned and approved by VicGrid.

Co-operation and timing

- 20.8 Each of the Project Parties must use reasonable endeavours to:
- (a) minimise the number and duration of *outages* in respect of their Facilities;
 - (b) advise each other party in advance if it anticipates that a planned *outage* is expected to vary from the Outage Plan;
 - (c) co-ordinate *outages* in respect of their Facilities with the other Project Parties and other affected persons; and
 - (d) minimise recall times.
- 20.9 Each of the Project Parties must provide to each other party such further information concerning an *outage* as that other party reasonably requests.

Acknowledgement as to Future Outages

- 20.10 Each party acknowledges that there will be a complete loss of Connection between each party's Facilities from time to time:
- (a) as a result of planned and unplanned *outages*;
 - (b) to facilitate future new *connections* to the Victorian Transmission Network; and
 - (c) *outages* may be taken from time to time for *power system security* and reliability reasons,
- and that future *outage* patterns and requirements could vary considerably with new *network* developments.

Unplanned Outages

- 20.11 AusNet Services must use all reasonable endeavours to:
- (a) notify the Generator as soon as reasonably practicable of any unplanned *outage* that will occur or has occurred in respect of the Constructing Party's Facilities;
 - (b) keep Generator reasonably informed regarding the extent and likely duration of the unplanned *outage*; and
 - (c) minimise the duration of the unplanned *outage* and resume provision of the Network Services as soon as practicable after it becomes reasonable to do so.

Outages prior to Practical Completion

- 20.12 VicGrid will waive the Outage Rebate applicable to *outages* taken by AusNet Services that would otherwise be incurred by AusNet Services under the Network Agreement up to a maximum of **Insert** hours.
- 20.13 VicGrid and Constructing Party agree that planned *outages* taken before the later of the Date of Practical Completion and final completion of the **Wind/Solar** Farm, for the purposes of undertaking and completing the Works, Connecting the Interface and the Terminal Station to the Victorian Transmission

Network or Connecting the Connection Assets and the Wind Farm to the Terminal Station will not exceed a maximum of [XX] hours during any 12 month period.

- 20.14 If Constructing Party requires a planned *outage* that would result in the total duration of all planned *outages* taken in any 12 month period exceeding [XX] hours, that Constructing Party must obtain VicGrid's approval for that planned *outage* before it can claim an exemption or otherwise apply for relief under the Performance Incentive Scheme in relation to that planned *outage*.
- 20.15 VicGrid will not withhold or delay its approval to a request for a planned *outage* by a Constructing Party under **clause 20.14** where:
- (a) the *outage* is for the purposes of undertaking and completing Works, Connecting the Interface and the Terminal Station to the Victorian Transmission Network or Connecting the Connection Assets and the [Wind/Solar] Farm to the Terminal Station;
 - (b) the outage is consistent with good electricity industry practice; and
 - (c) in VicGrid's opinion acting reasonably, Constructing Party could not reasonably have accommodated the *outage* within the number of hours allocated to it by **clause 20.13**.
- 20.16 **Schedule 9** will apply in respect of any STPIS Payment Reductions for AusNet Services or TNSP caused by Reimbursable Operation Outages.
- 20.17 Each Project Party must promptly give the other Project Party any information reasonably required by that other Project Party for the purposes of:
- (a) verifying a STPIS Payment Reduction was caused by a Reimbursable Operation Outage; and
 - (b) determining the duration of a Reimbursable Operation Outage and the activities for which the Reimbursable Construction Outage was initiated.
- 20.18 Generator must promptly give AusNet Services any information reasonably required by AusNet Services for the purposes of assessing whether to apply for any relief from a STPIS Payment Reduction, applying for such relief or progressing an application for such relief.

Performance Incentive Scheme Changes

- 20.19 If a Performance Incentive Scheme Change has occurred or will occur, at the request of a party, the parties must negotiate in good faith any amendments required to the Related Agreements as a result of the Performance Incentive Scheme Change.
- 20.20 The amendments to the Related Agreement under **clause 20.19** must be fair and reasonable, and the minimum amendments necessary to preserve the commercial positions of the parties under the Related Agreements as they existed before the Performance Incentive Scheme Change, taking into account all aspects of the Performance Incentive Scheme Change, including any benefits and detriments associated with the introduction of a Performance Incentive Scheme Change.
- 20.21 If the parties are unable to reach agreement under **clause 20.19** on the required amendments within 20 Business Days after the relevant party's request under **clause 20.19**, any party may refer the matter for resolution in accordance with the Dispute Resolution Procedure based on the principles set out in **clause 20.19**.
- 20.22 Any amendments to the Related Agreements agreed under **clause 20.19** or determined under **clause 20.21** will apply on and from the time the relevant Performance Incentive Scheme Change comes into effect. The parties must promptly execute deeds recording the amendments agreed or determined.

21 Preliminary Steps to seeking Practical Completion

Review of Practical Completion Processes and Responsibilities

- 21.1 The parties acknowledge and agree that:
- (a) it is intended that the Practical Completion processes and responsibilities should (to the extent that is possible):
 - (i) be co-ordinated;

- (ii) identify each action a Constructing Party needs to satisfy so that Practical Completion is achieved;
 - (iii) identify and detail the Commissioning Tests;
 - (iv) be expressed as measurable deliverables so as to provide certainty as to when Practical Completion has been achieved; and
 - (v) appropriately reflect and integrate with the requirements set out in any Commissioning Test Program relevant to Practical Completion;
- (b) it will be possible to include more detail on the Practical Completion processes and responsibilities for the Interface and Terminal Station once the final designs for the Project have been developed by a Constructing Party and reviewed by VicGrid in accordance with this Deed;
 - (c) the Practical Completion processes and responsibilities for the Interface will, to the extent they are interrelated to the Practical Completion processes and responsibilities for the Terminal Station, be linked to the Practical Completion processes and responsibilities for the Terminal Station; and
 - (d) it will benefit all parties if the Practical Completion processes and responsibilities for the Project developed can be reviewed and updated by the parties prior to the commencement of the Commissioning Tests for the Project.

21.2

- (a) The development, consideration and refinement of the Practical Completion processes and responsibilities for the Project (including the development of a coordinated Commissioning Test plan) will be a standing agenda item for each meeting of the Co-ordination Committee taking place after the completion of the Design Documentation for the Project.
- (b) Each Constructing Party will provide to the other parties current details concerning:
 - (i) its proposed Commissioning Tests and Commissioning Test Program; and
 - (ii) any agreed changes to the Practical Completion processes and the Practical Completion Criteria.
- (c) TNSP will provide VicGrid with a copy of the minutes of any meeting of the Co-ordination Committee that considers the Practical Completion processes and responsibilities for the Interface and Terminal Station at the same time as it distributes those minutes to the other parties.

21.3

At least 80 Business Days before a Constructing Party anticipates commencing Commissioning Tests in respect of any item of plant or equipment, it must:

- (a) notify the other parties; and
- (b) call a meeting of the Co-ordination Committee (which must take place within 5 Business Days of receipt of the notice) to discuss, review and agree final details concerning:
 - (i) the Practical Completion processes and responsibilities for the Interface and Terminal Station (as applicable) (including in particular, the proposed Commissioning Tests, coordinated Commissioning Test plan and Commissioning Test Program for the Interface and Terminal Station); and
 - (ii) the manner in which each Constructing Party proposes to submit evidence to VicGrid to demonstrate that Practical Completion of the Interface or Terminal Station (as applicable) has been achieved and the type of evidence each party proposes to submit to VicGrid to demonstrate that Practical Completion has been achieved.

21.4

VicGrid will be invited to, and will, attend:

- (a) the meeting referred to in **clause 21.3(b)**; and
- (b) each subsequent meeting of the Co-ordination Committee during which the Practical Completion processes and responsibilities for the Project will be considered.

21.5

Subject to **clause 21.6**, in reviewing the Practical Completion processes and responsibilities for the Interface and Terminal Station, the Co-ordination Committee must have regard to:

- (a) the matters outlined in **clause 21.1**;
- (b) whether the Practical Completion processes and responsibilities should be modified to reflect the final detailed designs for the Interface and Terminal Station, for example by including more detail concerning:
 - (i) the final technical requirements and parameters; and
 - (ii) the evidence which will need to be provided by each Constructing Party to demonstrate that its component of the Project has satisfied the Practical Completion Criteria;
- (c) the proposed timing for the commencement of the first Commissioning Tests and the need to allow sufficient time to effectively and efficiently implement the agreed Practical Completion processes and responsibilities for the Interface and Terminal Station; and
- (d) which parties should be:
 - (i) responsible for identified activities relating to the Commissioning Tests and Practical Completion processes; and
 - (ii) required to be present at the Project Land during the Commissioning Tests.

21.6 For the avoidance of doubt and without limiting **clauses 16** and **18**, any modification to the Practical Completion processes and responsibilities for the Project made under **clause 21** must be:

- (a) consistent with the Functional Specification; and
- (b) agreed by the parties before that modification will become effective for the purposes of any Related Agreement.

Impact of VicGrid's and Generator's Involvement

21.7 The parties agree that no review, comment or other input by VicGrid or Generator in relation to the Practical Completion processes and responsibilities for the Interface and Terminal Station will:

- (a) relieve Constructing Party from, or alter its responsibility, liability or obligations in respect of the Commissioning Tests, Commissioning Test Program or Practical Completion under any Related Agreement or the CSA;
- (b) evidence or constitute a direction by VicGrid or Generator to Constructing Party in respect of the Commissioning Tests, Commissioning Test Program or Practical Completion under any Related Agreement or the CSA;
- (c) give rise to any responsibility or duty of care or other legal obligation on the part of VicGrid or Generator to Constructing Party in respect of the Commissioning Tests, Commissioning Test Program or Practical Completion under any Related Agreement or the CSA;
- (d) affect the time for performance of VicGrid's or Generator's obligations under any Related Agreement or the CSA, including obliging VicGrid or Generator to do anything earlier than is necessary to enable Constructing Party to achieve a Milestone Event by the relevant Milestone Date; or
- (e) prevent VicGrid from requiring additional Commissioning Tests or evidence concerning the observed or measured operation of any item of plant and equipment where any additional Commissioning Test or evidence is reasonably required to demonstrate that the relevant item of plant and equipment will not adversely affect *power system security* or the quality or security of *network services* to other *Network Users*, and
- (f) a failure by VicGrid or Generator to notify Constructing Party of any concern associated with the Commissioning Tests, Commissioning Test Program or Practical Completion does not constitute a waiver of any of VicGrid's or Generator's rights under any Related Agreement or the CSA.

22 First Energisation

Obligation to conduct Pre-First Energisation Tests

22.1 (a) Subject to **paragraph (b)**, before Constructing Party energises any item of plant or equipment, it

must complete tests that demonstrate to VicGrid's reasonable satisfaction that the item of plant or equipment to be energised has been tested to meet the Functional Specification. VicGrid must notify Constructing Party as soon as reasonably practicable and, in any event, within 5 Business Days, if it does not consider that Constructing Party has demonstrated to its reasonable satisfaction that the item of plant or equipment to be energised has been tested to meet the Functional Specification

- (b) **Paragraph (a)** does not apply to tests for those items of plant or equipment for which:
 - (i) tests can only be completed when the plant or equipment has been energised or on- load; or
 - (ii) VicGrid has waived the need for the test by giving prior notice to the Constructing Party.
- (c) Once Constructing Party considers that the requirements of **paragraph (a)** are met in relation to each item of plant or equipment to be energised, it must give the other parties a signed checklist in the form set out in **Schedule 6**.
- (d) Within 5 Business Days of receipt of the signed checklist, VicGrid may request Constructing Party to provide additional supporting evidence reasonably required to verify any matter covered by a checklist given under **paragraph (c)**, and Constructing Party must comply with that request as soon as is reasonably practicable.

Nature of the Pre-First Energisation Tests

- 22.2 Constructing Party must ensure that each item of plant or equipment tested under **clause 22.1** is tested according to the applicable *Australian Standard*, or if there is no applicable *Australian Standard*, any recognised international standard relating to the particular item of plant or equipment.

VicGrid Approval Required Prior to Energisation

- 22.3 (a) Constructing Party must not energise any item of plant or equipment from the Victorian Transmission Network for the first time until VicGrid has given notice to Constructing Party that VicGrid has informed TOC that VicGrid does not have any objection to the energisation of the specific items of plant or equipment for which Constructing Party seeks permission to energise for the first time. VicGrid must give the Constructing Party the notice as soon as reasonably practicable and, in any event, within 5 Business Days after Constructing Party gives notice to VicGrid that it is ready to energise.
- (b) Despite **clause 44**, a notice under **paragraph (a)** may be verbal or in writing. If the notice is verbal, VicGrid must confirm the notice in writing as soon as reasonably practicable.

When VicGrid may give notice to TOC

- 22.4 (a) VicGrid is not obliged to inform TOC under **clause 22.3** unless VicGrid is reasonably satisfied that the First Energisation Criteria are satisfied in relation to the relevant item of plant or equipment to be energised.
- (b) Without limiting the generality of **paragraph (a)**, VicGrid is not obliged to inform TOC under **clause 22.3** unless VicGrid is reasonably satisfied that all *protection systems* in relation to the item of plant or equipment to be energised have been tested, have passed all tests and are operational.

Timing of Notifications

- 22.5 (a) Subject to **clause 22.4**, VicGrid must inform TOC under **clause 22.3(a)** within 3 Business Days after VicGrid is first satisfied that the First Energisation Criteria are satisfied and that all protection systems have been tested, have passed all tests and are operational.
- (b) VicGrid must give Constructing Party the notice referred to in **clause 22.3(a)** at the same time as VicGrid informs TOC as contemplated by **clause 22.3(a)**.

23 Commissioning Tests

Obligation to Perform Commissioning Tests

- 23.1 (a) Constructing Party must ensure that Commissioning Tests are conducted and passed by each item of plant and equipment according to the applicable Australian Standard, or if there is no applicable Australian Standard, any recognised international standard relating to the particular item of plant or equipment.
- (b) The parties acknowledge that, until each item of plant and equipment passes Commissioning Tests, the Project is not ready to be placed into on-going service.

Developing Commissioning Test Program

- 23.2 (a) At least 40 Business Days before Constructing Party commences a Commissioning Test in respect of any item of plant or equipment, Constructing Party must give the other parties a Commissioning Test Program in respect of that item of plant or equipment.
- (b) Constructing Party must ensure that the Commissioning Test Program contains tests necessary to demonstrate that the item of plant or equipment meets the Functional Specification.
- (c) The Commissioning Test Program must set out the dates on which the Constructing Party intends to carry out each Commissioning Test and the test procedures.

Modifying the Commissioning Test Program

- 23.3 (a) If VicGrid reasonably considers that a Commissioning Test Program in respect of an item of plant or equipment:
- (i) omits a Commissioning Test; or
 - (ii) is not otherwise sufficient to enable Constructing Party to demonstrate that the relevant item of plant or equipment will meet the Functional Specification,
- VicGrid may request Constructing Party to modify the Commissioning Test Program and Constructing Party must modify the Commissioning Test Program accordingly before conducting the Commissioning Test.
- (b) VicGrid must give a the notice referred to in **paragraph (a)** no later than 10 Business Days after the date on which VicGrid receives the Commissioning Test Program in respect of the item of plant or equipment.
- (c) The parties acknowledge that, immediately before or while conducting a Commissioning Test, Constructing Party may encounter practical difficulties that may require a departure from the Commissioning Test Program in respect of an item of plant or equipment. If Constructing Party wishes to revise the Commissioning Test Program in respect of an item of plant or equipment, it must first obtain VicGrid's approval to the revision, which must be either provided or rejected within 3 Business Days after a request. VicGrid must not unreasonably withhold or delay giving its approval to a revision proposed by Constructing Party under **clause 23.3**.

VicGrid Review of Commissioning Tests

- 23.4 (a) Constructing Party must provide evidence to VicGrid's reasonable satisfaction that each Commissioning Test in respect of each item of the plant or equipment has been conducted and passed as contemplated in **clause 23.1**.
- (b) The evidence referred to in **paragraph (a)** must, in respect of each test:
- (i) identify the item of plant or equipment to which the test relates;
 - (ii) set out the date on which the test occurred;
 - (iii) state whether the item of plant or equipment passed the test; and
 - (iv) be signed and dated by an authorised officer of Constructing Party to confirm that Constructing Party endorses the results of the test.

- (c) VicGrid may notify Constructing Party that, despite the evidence provided by under **paragraph (a)** or **(d)**, VicGrid reasonably considers that in relation to an item of plant or equipment:
 - (i) the item of plant or equipment has not passed the Commissioning Tests as contemplated in **clause 23.1**;
 - (ii) evidence of a Commissioning Test for the item of plant or equipment has not been provided to VicGrid; or
 - (iii) the evidence provided in relation to the item of plant or equipment does not meet the requirements of **paragraph (b)**.
- (d) If VicGrid gives a notice to Constructing Party under **paragraph (c)**, Constructing Party must provide VicGrid with evidence to VicGrid's reasonable satisfaction, as required by **paragraph (a)** in relation to the item of plant or equipment.
- (e) Constructing Party's obligation to provide VicGrid with evidence under **paragraph (a)** is an ongoing obligation until the requirements of **clause 23.4** are met.
- (f) If VicGrid wishes to notify Constructing Party under **paragraph (c)**, VicGrid must do so as soon as practicable (and, in any event, within 5 Business Days) after receiving the relevant evidence under either **paragraph (a)** or **(d)**.
- (g) VicGrid may, by notice to Constructing Party, waive the need to provide evidence for a particular item of plant or equipment under **paragraph (a)**.

Failure of Commissioning Tests

23.5 If a Commissioning Test is not successful, the Constructing Party must:

- (a) notify the other parties of the failure;
- (b) consider the other parties' views concerning the failure;
- (c) rectify the failure in the shortest practicable time; and
- (d) keep the other parties informed on the rectification of the failure.

24 Commissioning and Practical Completion

Commissioning and Practical Completion Proposal

- 24.1 Constructing Party must develop a proposal for commissioning the Project and Practical Completion and provide a draft of the proposal to VicGrid and Generator to review.
- 24.2 Constructing Party must take into account any comments of VicGrid and Generator on its draft proposal.

Notice of Satisfaction of Practical Completion Criteria

- 24.3 Constructing Party must notify each other party at least 20 Business Days prior to the indicative date when it will likely be providing VicGrid with evidence that its component of the Project satisfies the Practical Completion Criteria.
- 24.4 No earlier than the later date notified under **clause 24.3**, Constructing Party may request VicGrid issue a Certificate of Practical Completion. A request under this **clause 24.4** must be accompanied by:
 - (a) evidence that the Practical Completion Criteria are satisfied; or
 - (b) evidence that the Practical Completion Criteria are satisfied in part, and a request that VicGrid waive the outstanding Practical Completion Criteria.
- 24.5 Constructing Party may also provide a draft list of Minor Outstanding Items with the request under clause 24.4.
- 24.6 The request, evidence and any list under **clause 24.4** or **24.5** must be provided electronically and in hard copy.

Outstanding Completion Items List

- 24.7 Within 10 Business Days of receipt of a request under **clause 24.4**, VicGrid must consider the material submitted and determine (acting reasonably) whether the Practical Completion Criteria are satisfied or should be waived and if:
- (a) Practical Completion has occurred, issue a Certificate of Practical Completion under **clause 24.13**; or
 - (b) Practical Completion has not occurred, provide Constructing Party with an Outstanding Completion Items List.
- 24.8 Upon receipt of an Outstanding Completion Items List, Constructing Party must:
- (a) perform the work specified in that Outstanding Completion Items List as soon as is reasonably practicable; or
 - (b) provide further evidence to VicGrid when it reasonably believes that Practical Completion has been achieved; or
 - (c) notify VicGrid if it disagrees with any item set out in an Outstanding Items List and if VicGrid and Constructing Party cannot resolve the disagreement within 5 Business Days, refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.
- 24.9 Constructing Party must notify VicGrid when, in its view, it has completed the work in an Outstanding Completion Items List and provide any supporting material.
- 24.10 Within 10 Business Days of receipt of a notice under **clause 24.9**, VicGrid must consider the material submitted and determine (acting reasonably) whether the Practical Completion Criteria are satisfied or should be waived and if:
- (a) Practical Completion has occurred, issue a Certificate of Practical Completion under **clause 24.13**; or
 - (b) Practical Completion has not occurred, provide Constructing Party with an update to the Outstanding Completion Items List.

Diminishing Pool

- 24.11 VicGrid must not include in an updated Outstanding Completion Items List any matter unrelated to a matter identified in a previous Outstanding Completion Items List issued under **clause 24.7** or **24.10** (as applicable).
- 24.12 Subject to **clause 24.11**, if VicGrid issues or updates an Outstanding Completion Items List before the expiry of the period within which it is entitled to do so, VicGrid may add matters to that list until the conclusion of that period. Any matters added to the list under **clause 24.12** will be taken to have been included in the original list.

Date of Practical Completion

- 24.13 VicGrid must issue a certificate of Practical Completion certifying that Practical Completion has occurred and confirming the Date of Practical Completion, which must be the last of the following dates to occur:
- (a) the date on which Constructing Party provided the request under **clause 24.4**;
 - (b) the date on which any work required under **clause 24.8(a)** has been performed; or
 - (c) the date on which VicGrid has received the last piece of evidence or documentation Constructing Party is required to provide VicGrid under **clauses 19.2(a), 19.2(d), 23.4(a) and 23.4(d)**.

Effect of Certificate of Practical Completion

- 24.14 Any list, certificate or notice under **clause 24** is not:
- (a) an approval by VicGrid or Generator of Constructing Party's performance of its obligations under the Related Agreements or the CSA; or

- (b) an acknowledgement by VicGrid or Generator that the Terminal Station or Interface (including any matter not identified in an Outstanding Completion Items List) has been constructed in accordance with the Related Agreements or the CSA.

25 Minor Outstanding Items

Completion of Minor Outstanding Items

- 25.1 Constructing Party must complete all Minor Outstanding Items identified in the Outstanding Completion Items List within a reasonable period after Practical Completion.

VicGrid's Payment Obligations

- 25.2 (a) Despite VicGrid's obligation to commence payment of the Transmission Charges under a NSA with effect on and from the Date of Practical Completion:
- (i) VicGrid is entitled to withhold:
 - (A) if there are Minor Outstanding Items which relate to the Terminal Station, 17.5% of the Transmission Charges otherwise payable under the TNSP NSA each month until the date on which VicGrid is reasonably satisfied that all such Minor Outstanding Items have been completed; and
 - (B) if there are Minor Outstanding Items which relate to the Interface, 17.5% of the Transmission Charge otherwise payable under the Interface NSA each month until the date on which VicGrid is reasonably satisfied that such Minor Outstanding Items have been completed; and
 - (ii) VicGrid must pay the accrued but withheld Transmission Charges once VicGrid is so satisfied.
- (b) For the avoidance of doubt:
- (i) VicGrid is not liable for interest or other costs in relation to withheld payments, whether under any Related Agreement or otherwise; and
 - (ii) VicGrid is not a trustee in respect of any withheld payments.

26 First Energisation of [Wind/Solar] Farm

- 26.1 For the purposes of **clause 26**:

Design Checklist means the document set out in **Attachment 5**.

Readiness for Energisation Checklist means the document set out in Attachment 6.

- 26.2 Generator must not allow the first energisation or *synchronisation* of the Connection Assets or a *generating unit* from the Point of Supply until one or more persons nominated by Generator as being responsible for commissioning the Connection Assets or the *generating unit* (**Authorising Person**) (as applicable) has:
- (a) answered each question in each Design Checklist and Readiness for Energisation Checklist in the affirmative without qualification;
 - (b) forwarded a signed copy of each completed checklist to VicGrid in accordance with the instructions set out at the foot of each checklist; and
 - (c) provided evidence satisfactory to VicGrid that the Authorised Person is a suitably qualified engineer or a chartered engineer of at least 10 years' experience,
- and VicGrid has accepted each checklist as complete and accurate and notified TOC that it has received each checklist.
- 26.3 Generator must prepare, sign and forward all completed checklists as described in **clause 26.2**:
- (a) for the Design Checklist no later than 3 months prior to the date reasonably anticipated as the Network Services Commencement Date; and

- (b) for the Readiness for Energisation Checklist no later than 1 Business Day prior to first energisation of the **Wind/Solar** Farm.
- 26.4 Generator must submit a separate Readiness for Energisation Checklist as each plant item or group of plant items is energised. Plant items subject to this requirement are limited to primary plant items.
- 26.5 Generator must reimburse VicGrid for all costs and expenses reasonably incurred by VicGrid in connection with the commissioning of the **Wind/Solar** Farm, including all technical studies VicGrid conducts on the performance of a *generating unit* and its impact on the *power system*.
- 26.6 Generator acknowledges that it is responsible for the content of all checklists that Generator must complete and provide to VicGrid under **clause 26**, including compliance with the Protection and Control Requirements applicable to the Connection Assets.

27 Records and Audit

Records

- 27.1 Each party must keep accurate and complete records necessary to demonstrate its compliance with the Related Agreements, including any records, data or information required to be maintained by a Related Agreement.
- 27.2 Records may be maintained in writing or electronically. Each party must maintain the records referred to in **clause 27.1** for at least 7 years after the date of their creation and must provide VicGrid with reasonable access to those records.
- 27.3 Each party must give the other parties not less than 20 Business Days' notice of its intention to dispose of any records referred to in **clause 27.1**. If VicGrid notifies a party within the 20 Business Days' notice period that VicGrid objects to that party's disposal of its records, that party must either retain those records or allow VicGrid to collect those records within a reasonable period of time and use them in its business (subject to **clauses 9** and **34**).

Audit

- 27.4 If VicGrid considers that a Project Party could be in breach of a Related Agreement, VicGrid may audit that Project Party's records and any other information during normal business hours of any Business Day. No more than 1 audit in any 12-month period may be carried out by VicGrid under this **clause 27.4** in respect of a single party. The audited party must reimburse VicGrid's reasonable costs of carrying out an audit.
- 27.5 VicGrid must give a party at least 3 Business Days' notice of its intention to carry out an audit under **clause 27.4** and include the following information in the notice:
 - (a) the nature of the audit;
 - (b) the names and offices of the representatives appointed by VicGrid to conduct the audit; and
 - (c) the time at which the audit is planned to commence.
- 27.6 Audits will occur at the location at which the relevant records are maintained by the audited party. The audited party must co-operate and provide VicGrid with such access to all relevant records and personnel as is reasonably necessary for VicGrid to conduct the audit.
- 27.7 If VicGrid audits Constructing Party's records under **clause 27.4**, VicGrid must provide notice of the audit to Generator and, if requested by Generator, a copy of the outcome of the audit to Generator.

28 Co-operation during Operation

Operating Protocol

- 28.1 The Project Parties (acting reasonably) will agree on an operating protocol in relation to the Project Parties' Facilities by the Date of Practical Completion covering (amongst other things):
 - (a) the operational responsibilities of each Project Party;
 - (b) practical arrangements for access;

- (c) information provision requirements, and the related processes and systems, including incident reporting and arrangements for special investigations;
- (d) operational voice and data communications requirements;
- (e) practical arrangements for co-ordination, scheduling and utilisation of planned *outages*;
- (f) the practical arrangements if any for co-ordination of maintenance activities; and
- (g) any other matters contemplated by **clause 28, (Operating Protocol)**.

28.2 If a provision in the Operating Protocol is inconsistent with or conflicts with any provision in this Deed, the provision in this Deed will prevail for the purposes of **clause 28**.

Maintenance

- 28.3 Constructing Party warrants to the other parties that, on and from the Date of Practical Completion, it will operate and maintain the Project so that the Project continues to meet the relevant PFRs and PCR and are capable of providing the Network Services in accordance with the NSAs.
- 28.4 Each Project Party must, for its Facilities, prepare and keep updated a maintenance program identifying, for each part of the Facilities, the timing and nature of maintenance work to be undertaken (**Maintenance Program**).
- 28.5 The Maintenance Program prepared by each Project Party must provide for each part of the Facilities to be maintained in accordance with *good electricity industry practice* and, in the case of a Constructing Party's Maintenance Program, with consideration of relevant manufacturer recommendations.
- 28.6 Each Project Party must, from time to time, review and update its Maintenance Program in light of *good electricity industry practice* and, in the case of a Constructing Party's Maintenance Program, with consideration of relevant manufacturer recommendations to ensure that it complies with **clause 28.5**.
- 28.7 If requested to do so by another party, a Project Party must provide its current Maintenance Program to that other party. If the other party provides reasonable comments on the Maintenance Program, the Project Party must review the Maintenance Program taking into account those comments.
- 28.8 Each Project Party must ensure that each part of its Facilities is maintained in accordance with its current Maintenance Program.

Co-ordinated Equipment Replacement

- 28.9 The Project Parties must co-operate in replacing and adjusting both primary (high voltage) equipment and secondary (control, communication and *protection systems*) equipment at their Facilities where compatibility must be maintained to ensure the Project Parties remain satisfied that the intended functionality and interaction of the equipment at their respective Facilities is maintained.
- 28.10 A Project Party must replace the equipment at its Facilities at its own cost in order to maintain compatibility and co-ordinated functionality with the equipment at each other Project Party's Facilities, provided that the Project Party is replacing existing functionality and not augmenting capability or service levels.
- 28.11 Where a Project Party intends to replace equipment at its Facilities, and, acting reasonably, could determine that another Project Party may also be required to replace equipment at the other Project Party's Facilities, the first Project Party must give sufficient notice to each other Project Party of the intended equipment replacement to allow the other relevant Project Party reasonable time to meet its obligations under **clauses 28.9 and 28.10**.

Changing Settings of Equipment

- 28.12 From time to time, VicGrid may require changes to secondary equipment settings. Constructing Party agrees to make the changes to secondary equipment settings requested by VicGrid.

Requirement to Upgrade Generator Performance Standards

- 28.13 The parties acknowledge that:

- (a) some of the [Wind/Solar] Farm's *performance standards* detailed in Schedule 2 of the UoSA are set at the *negotiated access standard*; and
 - (b) a *negotiated access standard* negotiated under clause S5.2.5.2(d) of the Rules must not prevent VicGrid from meeting either the *system standards* or its contractual obligations to other *Network Users*.
- 28.14 Where clause S5.1.5 or S5.1.6 of the Rules apply, VicGrid may require the affected *performance standards* detailed in Schedule 2 of the UoSA to be reviewed if:
- (a) VicGrid considers that a *performance standard* detailed in Schedule 2 of the UoSA needs to be upgraded to an *automatic access standard* to meet the planning levels at any *connection point* on the Victorian Transmission Network; or
 - (b) it is necessary to allow VicGrid to *connect* other *Network Users* to the Victorian Transmission Network.
- 28.15 If VicGrid requires a review as contemplated by **clause 28.14**, VicGrid must notify each other party of the need to review the relevant *performance standard*, including giving details of the affected *performance standard* and reasons for the review, whereupon the parties must meet to determine the solution that best meets VicGrid's requirements and provides either the highest net present value or the lowest present cost. For the purposes of this determination, the preferred solution may consist of any, or any combination of, the following:
- (a) an upgrade of the relevant performance standard to the automatic access standard;
 - (b) an upgrade of the relevant performance standard to a level between the negotiated access standard and the automatic access standard; or
 - (c) works on the Victorian Transmission Network (**VTN Work**) or the [Wind/Solar] Farm (**[Wind/Solar] Farm Work**), or both, to alleviate the need for an upgrade to the relevant performance standard to the automatic access standard.
- 28.16 The parties must negotiate in good faith to agree as promptly as possible on one of the solutions contemplated by **clause 28.15**. If the parties do not agree on one or more solution as contemplated by **clause 28.15** within 2 months from the date of the notice given by **VicGrid** under **clause 28.15**, the matter must be referred for resolution using the Dispute Resolution Procedure.
- 28.17 To the extent that it is agreed in accordance with **clause 28.16** or determined following the conclusion of the Dispute Resolution Procedure that:
- (a) VTN Work is required:
 - (i) AusNet Services must perform the VTN Work;
 - (ii) VicGrid will issue a Variation Order to AusNet Services in respect of the VTN Work;
 - (iii) the costs of the VTN Work will be determined in accordance with **clause 16.19** and accounted for in accordance with **clause 16.20**; and
 - (b) If [Wind/Solar] Farm Work is required, Generator must, at its own cost, perform and co-ordinate the Wind Farm Work with any VTN Work.

Emergencies

- 28.18 If, in a party's reasonable opinion, the provision or acceptance of the services from, or the condition or method of, operation of one or more of the Facilities:
- (a) poses an immediate threat of injury or material damage to any person or to another party's Facilities;
 - (b) jeopardises the safety or integrity of the Victorian Transmission Network of the *facilities* of any *Network User*;
 - (c) causes the party to breach its contractual obligations to any user of the Victorian Transmission Network; or
 - (d) causes the party to breach the technical provisions of the Rules,

(each an **Emergency**), the party may do any, or any combination of, the following:

- (e) *disconnect* the Connection Assets or Point of Supply;
- (f) enter the property under the control of the other party; or
- (g) take any other reasonable action,

if it is necessary to deal with the Emergency.

- 28.19 The parties must reconnect the Connection Assets or Point of Supply *disconnected* under **clause 28.18** as soon as reasonably practicable after the Emergency has passed.
- 28.20 If a party requests assistance from any other party during an Emergency, the requested party must advise the requesting party whether it can provide the requested assistance and if it can, the requested party must provide the assistance requested at no cost to the requesting party.
- 28.21 Where the Emergency was caused by an act or omission of Generator, Generator must reimburse VicGrid or Constructing Party (as applicable) for any reasonable costs and expenses VicGrid or Constructing Party incurs as a result of the *disconnection* and reconnection under **clause 28.18** or **28.19**.

Safety

- 28.22 A party must notify each other party promptly after the information becomes available of any safety concern related to any other party's Facilities that requires remedial action or equipment changes to the other party's Facilities. The notifying party must specify the nature of the concern and the required remedial action or equipment changes in a reasonable degree of detail.
- 28.23 Upon the receipt of the notice under **clause 28.22**, the notified party must act promptly to undertake the specified reasonable remedial action or equipment changes. The notified party must undertake all such remedial actions and equipment changes at its own expense and in a timely manner.
- 28.24 Subsequent to completion of the remedial actions and equipment changes required under **clause 28.23**, the notified party may refer any disagreement as to the need for the remedial actions and equipment changes for resolution in accordance with the Dispute Resolution Procedure. If resolution includes a determination that the remedial actions and equipment changes were not justifiable by the safety concern raised in the notice under **clause 28.22**, the notifying party will become liable for the direct costs incurred by the notified party in complying with **clause 28.23**.

Right to Access

- 28.25 Each party (**Host Party**) acknowledges that each other party (**Accessing Party**) will require access to the property over which the Host Party has control and to each other's Facilities from time to time and grants to each Accessing Party an irrevocable licence to access the property over which the Host Party has control and its Facilities for the purposes of the Related Agreements.
- 28.26 Subject to **clause 28.27**, an Accessing Party is entitled, and the Host Party must give, access to the property over which the Host Party has control and the relevant Facilities of the Host Party for the purposes of:
- (a) inspecting the property over which the Host Party has control and the relevant Facilities of the Host Party for the purposes of confirming whether the Host Party is complying with any Related Agreement;
 - (b) carrying out work on the Accessing Party's Facilities that are or are to be located on the property over which the Host Party has control; or
 - (c) any other purpose contemplated by any Related Agreement to which the Host Party and Accessing Party are parties.
- 28.27 Prior to exercising any access rights given under **clause 28.26**, the Accessing Party must provide the Host Party with at least 1 Business Day's notice specifying:
- (a) its intention to access the property over which the Host Party has control and the relevant Facilities of the Host Party (or both);

- (b) the part of the property over which the Host Party has control and the relevant Facilities of the Host Party (or both) the Accessing Party intends to access;
- (c) the purpose for which access is being sought;
- (d) the names of the Accessing Party's representatives who will be accessing the property over
- (e) which the Host Party has control and the relevant Facilities of the Host Party (or both); and
- (f) the proposed commencement time of the access and its estimated duration.

Obligations during Access

- 28.28 The Host Party must provide all reasonable assistance requested by the Accessing Party while the Accessing Party is on the property over which the Host Party has control or near the Host Party's Facilities to enable the Host Party to meet the purpose of the access.
- 28.29 Subject to **clause 28.18**, an Accessing Party must not intentionally interfere with the Host Party's Facilities.
- 28.30 At any time when the Accessing Party is exercising its access rights under **clause 28.26**, the Accessing Party must:
- (a) not cause any loss or damage to the Host Party's Facilities;
 - (b) not interfere with the operation of the Host Party's business (provided that the access does not
 - (c) of itself constitute interference);
 - (d) observe those requirements of the Host Party on occupational health and safety, electrical safety and industrial relations matters that are of general application to all invitees and as advised by the Host Party to the Accessing Party, including any requirement for supervision or oversight by a representative of the Host Party;
 - (e) observe the Code of Practice on Electrical Safety in the Victorian Electricity Supply Industry
 - (f) known as the "Blue Book"; and
 - (g) not ask any questions of, or give any direction, instruction or advice to, any person involved in the operation or maintenance of any property, equipment or Facilities over which the Host Party has control other than to the person designated for that purpose by the Host Party.
- 28.31 Without limiting the rights or remedies the Host Party may otherwise have under or in connection with the Related Agreements, Connection Agreements, at law or in equity, the Accessing Party must reimburse the Host Party for reasonable costs and expenses suffered or incurred by the Host Party due to loss or damage caused by the Accessing Party when given access under this Deed.
- 28.32 VicGrid is an Accessing Party for the purposes of **clauses 28.25 to 28.31**.

29 Loss or Damage and Insurance

Risk

- 29.1 Except as otherwise provided in this Deed AusNet Services:
- (a) bears the risk of loss or damage to the Project; and
 - (b) must, at its cost, promptly make good any loss or damage to the Project caused during the period it bears that risk of loss or damage.

Insurances prior to Completion of Minor Outstanding Items

- 29.2 From the Commencement Date until the date of completion of the Minor Outstanding Items, Generator must effect and maintain, or cause to be effected and maintained, the following insurance policies:
- (a) contract works insurance in respect of the Project and all temporary works and construction equipment brought on to the Project Land for the Project Works:

- (i) with a sum insured of not less than the capital value of the Project, plus reasonable allowances for demolition, the removal of debris, professional fees, expediting expenses and increases to the cost of work;
 - (ii) which is subject to a deductible not exceeding [\$50,000] with respect to each claim;
 - (iii) naming Generator, AusNet Services and AusNet Services' Key Contractor, as insureds; and
 - (iv) noting the interests of VicGrid with respect to the Related Agreements; and
- (b) to the extent that coverage is not provided by the contract works insurance referred to in **paragraph (a)**, transit insurance (including wet marine insurance) in respect of relevant items intended to be incorporated in the Project:
- (i) with a sum insured of not less than the full replacement value of those items;
 - (ii) which is subject to a deductible not exceeding [\$50,000] with respect to each claim;
 - (iii) naming Generator, AusNet Services and AusNet Services' Key Contractor as insureds; and
 - (iv) noting the interests of VicGrid with respect to the Related Agreements.

29.3 From the Commencement Date until the date of completion of the Minor Outstanding Items, AusNet Services must effect and maintain, or cause to be effected and maintained, the following insurance policies:

- (a) public liability insurance covering claims in respect of:
 - (i) damage to real or personal property; and
 - (ii) injury to, or death of, persons,

(including in relation to the use of all unregistered vehicles, but except to the extent covered by any workers' compensation insurance) arising out of or in connection with its component of the Project Works:

 - (A) with a sum insured of not less than \$50 million per occurrence, which must be unlimited in the aggregate in each annual term of the policy, but may be limited in the aggregate in each annual term of the policy with respect to legal liability for or arising out of electromagnetic radiation, bushfire, sudden and accidental pollution and completed operations or products or goods sold; and
 - (B) noting the interests of VicGrid, Generator and any Generator Financiers with respect to the Related Agreements;
- (b) professional indemnity insurance for any breach of a duty owed in a professional capacity with a sum insured of \$10 million for any one claim and in the aggregate for each annual term of the policy;
- (c) employer's liability and workers' compensation insurance to the extent required by Law;
- (d) compulsory third party motor vehicle insurance as required by Law for all vehicles used to perform its component of the Project Works; and
- (e) motor vehicle insurance covering third party property damage for all registered vehicles used to perform its component of the Project Works (but excluding any insured under the public liability insurance required by **paragraph (a)**), with a sum insured of \$20 million for any one occurrence with unlimited occurrences for each annual term of the policy.

29.4 AusNet Services must ensure the insurances required by **clause 29.3** are maintained until:

- (a) in the case of the professional indemnity insurance, 7 years from the date of completion of all Minor Outstanding Items; and
- (b) in the case of other insurances, the date of completion of Minor Outstanding Items.

Insurances after Practical Completion

- 29.5 From the Date of Practical Completion of the Project, AusNet Services must effect and maintain, or cause to be effected and maintained, insurance in respect of damage to the Project:
- (a) for an amount not less than its replacement cost at any time, as approved by VicGrid and Generator (acting reasonably and without unreasonable delay); and
 - (b) noting the interests of VicGrid, Generator and any Generator Financiers with respect to the Related Agreements.
- 29.6 From the Date of Practical Completion of the Project, AusNet Services must effect and maintain, or cause to be effected and maintained, the following:
- (a) public liability insurance covering claims in respect of:
 - (i) damage to real or personal property; and
 - (ii) injury to, disease or death of, persons,(including in relation to the use of all unregistered vehicles, but except to the extent covered by any workers' compensation insurance) arising out of or in connection with the operation and maintenance of the Project:
 - (A) with a sum insured of \$50 million per occurrence, which must be unlimited in the aggregate in each annual term of the policy, but may be limited in the aggregate in each annual term of the policy with respect to legal liability for or arising out of electromagnetic radiation, bushfire, sudden and accidental pollution and completed operations or products or goods sold; and
 - (B) noting the interests of VicGrid, Generator and any Generator Financiers with respect to the Related Agreements;
 - (b) employer's liability and workers' compensation insurance to the extent required by Law;
 - (c) compulsory third party motor vehicle insurance as required by Law for all vehicles used in connection with the operation and maintenance of the Project; and
 - (d) motor vehicle insurance covering third party property damage for all registered vehicles used in connection with the operation and maintenance of the Project, but excluding any insured under the public liability insurance required by **paragraph (a)**, with a sum insured of not less than \$20 million for any one occurrence and unlimited in the aggregate for each annual term of the policy.

Premiums

- 29.7 Each party must pay all premiums in respect of each of its insurance policies punctually and, if requested by another party, give the other party copies of receipts for payment of premiums (but the amounts paid may be redacted by the party providing the receipt).

General requirements

- 29.8 All insurances required to be effected under this Deed:
- (a) must be effected with insurers of good repute with a minimum Standard & Poor's long term credit rating of A- (or equivalent rating with another recognised international rating agency); and
 - (b) must be on normal commercial terms applicable in the electricity industry.
- 29.9 Each party must:
- (a) give each other party a copy of the relevant certificates of currency for the insurance it must ensure is effected under **clause 29** before the Commencement Date;
 - (b) promptly give each other party a copy of relevant certificates of currency for the insurance it must ensure is effected under **clause 29** upon request; and
 - (c) promptly notify each other party of any material change to the insurance policies it must ensure are effected under **clause 29** that might adversely affect the rights of the other party.

- 29.10 The certificates of currency provided under **clause 29.9** must contain at least the following information:
- (a) the names of the parties insured;
 - (b) the name of the insurer, or, if the insurance is co-insured or layered, the name of the lead co-insurer (which is the insurer or lead co-insurer in the primary layer of insurance where the insurance is layered);
 - (c) the policy number;
 - (d) the period of insurance;
 - (e) the sum insured or limit of indemnity for an amount at least sufficient to show compliance with **clause 29**;
 - (f) the amount of the deductibles where a maximum deductible is specified under **clause 29.2(a)** or **29.2(b)**; and
 - (g) for insurance required by **clauses 29.2(a)** and **29.2(b)**, confirmation that the insurance policy includes multiple insureds provisions as required by **clause 29.13**.
- 29.11 Where a certificate of currency provided under **clause 29.9** only names the lead co-insurer, if requested by a party, the insuring party must ensure its insurance broker gives the requesting party's nominated professional insurance adviser details of all other insurers and co-insurers as reasonably required by the nominated professional insurance adviser to verify the insuring party's compliance with **clause 29.8(a)**.
- 29.12 Generator must promptly give the other parties certified copies of each insurance policy it must ensure is effected under **clauses 29.2(a)** and **29.2(b)** and any amendments to those policies.

Multiple insureds

- 29.13 The insurance policies required by **clauses 29.2(a)** and **29.2(b)** must include a waiver of subrogation in favour of all parties who are insureds by virtue of this Deed and other provisions such that:
- (a) any non-disclosure, breach of duty or other act or omission of one insured does not prejudice the right of any other insured to claim under the insurance;
 - (b) the insurer must accept a notice of claim given by one insured as a notice of claim given by each of the insureds;
 - (c) the insurer must give each named insured notice in writing before giving a cancellation notice in relation to the insurance; and
 - (d) the insurer must, when giving a cancellation notice in relation to the insurance policy, give each named insured a copy.

Reinstatement

- 29.14 If the Project (or any part of it) is damaged or destroyed, AusNet Services must:
- (a) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work as soon as reasonably practicable;
 - (b) promptly consult with each other party to agree on steps to be taken to ensure the prompt repair or replacement of the damage so that:
 - (i) it complies with the relevant PFRs and PCR's and applicable Laws; and
 - (ii) there is minimal disruption to the Project, **Wind/Solar** Farm and Connection Assets;
 - (c) promptly give effect to the steps referred to in **paragraph (b)**;
 - (d) manage all repair and replacement activities so as to minimise the impact on the Project, **Wind/Solar** Farm and Connection Assets; and
 - (e) apply all insurance proceeds received in connection with the damage or destruction towards the repair or reinstatement of the Project.

30 Liability

Liability of VicGrid

- 30.1 Each party acknowledges that VicGrid is a not-for-profit entity and, as a result of the operation of Law, cannot fund liabilities arising out of or related to the Project from revenue sources other than those provided under the Related Agreements. As a result, each party agrees that, subject to **clause 30.2** and **30.3**:
- (a) no party shall have a Claim against VicGrid under a Related Agreement, or otherwise at Law in relation to the Related Agreements or the Project, by reason of any act or omission (whether a default or negligence) of VicGrid or a party; and
 - (b) to the maximum extent permitted by Law, each party severally releases and indemnifies, and must keep indemnified on demand, VicGrid from and against any Claim VicGrid suffers, incurs or for which it becomes liable in connection with an act or omission by that party in relation to the Related Agreements, except to the extent that the Claim arises from VicGrid's Wilful Breach.
- 30.2 The only Claims that VicGrid may be liable to pay the parties in connection with any Related Agreement, or otherwise at Law in relation to the Related Agreements or the Project, are those that arise as a direct result of VicGrid's Wilful Breach, and any such liability shall be limited to the relevant Cap Amount for VicGrid.
- 30.3 Nothing in **clauses 30.1** or **30.2** is intended to affect another party's right to seek non-monetary compensation or relief against VicGrid.

Liability of Project Parties

- 30.4 Subject to **clauses 30.10** and **30.11**:
- (a) each Project Party's liability to another party arising out of or in connection with any Related Agreement or the Connection Agreements (however arising) during the Construction Period is limited in the aggregate to the Construction Period Cap Amount that applies between those parties;
 - (b) each Project Party's liability to another party arising out of or in connection with any Related Agreement or the Connection Agreements (however arising) in respect of each Service Year is limited in the aggregate to the Service Year Cap Amount that applies between those parties; and
 - (c) for the avoidance of doubt:
 - (i) each Project Party's Construction Period Cap Amount is independent of, and separate from, its Service Year Cap Amount but may operate concurrently;
 - (ii) a Project Party's liability arising during the Construction Period will count towards its Construction Period Cap Amount;
 - (iii) a Project Party's liability in respect of a Service Year will count towards its Service Year Cap Amount; and
 - (iv) if a Service Year is less than a 12-month period, the Service Year Cap Amount in respect of each Project Party's liabilities will still apply in full.
- 30.5 The Service Year Cap Amounts will be CPI Adjusted on each anniversary of the Date of Practical Completion.

Timing

- 30.6 For the purposes of **clause 29**, liability is attributable to:
- (a) the Construction Period if the act, omission, default or event giving rise to the liability occurred during the Construction Period; and
 - (b) a Service Year if the act, omission, default or event giving rise to the liability occurred in that Service Year.

Mitigation and Repayment

- 30.7 Each party must use reasonable endeavours to mitigate any damage or loss for which it is indemnified under any Related Agreement.
- 30.8 The liability of a party under any indemnity provided under a Related Agreement will be reduced:
- (a) to the extent that the loss would not have occurred or would have been reduced if that party had complied with its obligations under **clause 30.6**; and
 - (b) proportionately to the extent that the indemnified party caused or contributed to the loss or damage the subject of the indemnity.
- 30.9 Where a party enforces a right of indemnity under any Related Agreement in respect of a loss or damage and that party is subsequently compensated for that loss or damage by a third party, it must repay the amount paid under the indemnity in respect of that loss or damage, to the extent that it has otherwise been compensated, to the indemnifying party.

Cap Amount Exclusions

- 30.10 Nothing in any Related Agreement or the CSA limits the liability of a party to any other party:
- (a) to pay a Transmission Charge, Transmission Underwriting Charge or Transmission Use of System Charge;
 - (b) to pay a Pay-Out Amount;
 - (c) to pay any amount expressly required by the CSA, including the 'Charges', the 'Preliminary Costs', the 'Initial Payment', the 'Asset Stranding Charge' or other termination-related charges referred to in the CSA;
 - (d) to pay an amount under **clause 16, 17, 18 or 20**;
 - (e) to pay interest or Tax under any Related Agreement or the CSA;
 - (f) for loss or damage that, by Law, a party cannot limit or exclude by contract;
 - (g) arising from any injury to, disease or death of, any person; or
 - (h) arising from the party's breach of its obligations in a Related Agreement or the CSA relating to intellectual property or confidentiality,
- and these amounts will not be taken into account when determining whether, for the purposes of **clause 30.2 and 30.4**, the total liability to a party has reached the relevant Cap Amount.
- 30.11 Nothing in any Related Agreement or the CSA limits the liability of a Project Party to any other Project Party:
- (a) arising from any Wilful Breach;
 - (b) arising from any damage to, or loss or destruction of, any third party's property; or
 - (c) to the extent:
 - (i) the insurance proceeds the first mentioned Project Party recovers; and
 - (ii) the insurance proceeds the first mentioned Project Party would have recovered if it had complied with this Deed, the CSA, the terms of the relevant insurance policy, and used its best endeavours to recover the insurance proceeds,exceed the relevant Cap Amount (or any remaining part of it), but only up to the limit of insurance required by this Deed, and these amounts will not be taken into account when determining whether, for the purposes of **clause 30.2 and 30.4**, the total liability to the Project Party to that other Project Party has reached the relevant Cap Amount.

Supremacy of Cap Amounts

- 30.12 In the event of any inconsistency between **clauses 30.1 to 30.6, 30.10 and 30.11** on the one hand, and any other provision of a Related Agreement on the other, **clauses 30.1 to 30.6, 30.10 and 30.11** prevail.

General Provisions regarding Indemnities

- 30.13 Any indemnity in a Related Agreement is a continuing obligation, separate and independent from the other obligations of the parties.
- 30.14 Costs, fees and expenses covered by indemnification include legal costs and disbursements incurred by the indemnified party on a solicitor-own client basis and are not subject to taxation on a party-and-party or any other basis.
- 30.15 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by a Related Agreement.
- 30.16 Each indemnity survives the Related Agreements.

National Electricity Law

- 30.17 This Deed does not vary or exclude the operation of section 119, 120 or 120A, or any similar section, of the NEL.

31 Consequential Loss

Exclusion of Consequential Loss

- 31.1 Subject to **clause 31**, in no event will any party be liable, directly or indirectly, to another party in respect of Consequential Loss arising out of or in connection with any Related Agreement or the CSA (however arising).

Consequential Loss

- 31.2 For the purposes of **clause 31**, **Consequential Loss** means one or more of the following: loss of profit, loss of production, loss of use, loss of access to markets, loss or denial of opportunity or loss of bargain in relation to a third party agreement, loss of, or damage to, goodwill, reputation or future reputation, business interruption, loss of revenue, damage to credit rating, and loss of anticipated savings.

Carve-outs from Consequential Loss Exclusion

- 31.3 Subject to **clause 29**, the following categories of loss, damage or liability will not be regarded as Consequential Loss and are recoverable by a party despite **clause 31.1** and **31.2**:
- (a) liability:
 - (i) under an indemnity in favour of VicGrid, or an obligation to pay or reimburse VicGrid, arising under any Related Agreement;
 - (ii) for loss or damage suffered or incurred by VicGrid as a result of VicGrid being liable to another party for that loss or damage;
 - (iii) for loss or damage which, by Law, a party cannot limit or exclude by contract;
 - (iv) arising from any injury to, or disease or death of, any person;
 - (v) arising from the party's breach of its obligations in a Related Agreement or the CSA relating to intellectual property or confidentiality; or
 - (vi) arising from any Wilful Breach;
 - (b) the liability of:
 - (i) VicGrid to pay Transmission Charges under the NSAs; or
 - (ii) Generator to pay Transmission Underwriting Charges or Transmission Use of System Charges under the UoSA;
 - (iii) Generator to pay to AusNet Services any amount expressly required by this Deed, including any Pay Out Amount;
 - (iv) Generator to indemnify another party under **clause 32.9**;

- (v) Generator to pay to any amount expressly required by the CSA;
- (vi) a party to pay another party an amount under **clause 16, 17, 18 or 20**;
- (c) as between two Project Parties, the liability:
 - (i) arising from any damage to, or loss or destruction of, any third party's property; or
 - (ii) to the extent the party recovers insurance proceeds in respect of the Consequential Loss under a policy of insurance required to be maintained under this Deed or, in relation to Generator and TNSP, under the Connection Agreements, or would have recovered insurance proceeds if the party had complied with its obligations under this Deed and the Connection Agreements related to insurance, complied with the terms of the relevant insurance policy and used best endeavours to recover the proceeds, but only up to the limit of insurance required by this Deed; and
- (d) as between Generator and Constructing Party, the Constructing Party's liability to pay liquidated damages to Generator or, where Constructing Party's obligation to pay liquidated damages is unenforceable, damages in respect of the breach for which liquidated damages would have been payable, up to the amount of liquidated damages that would have been payable.

Consistency

- 31.4 In the event of any inconsistency between **clauses 29 and 31** and any other provision in a Related Agreement or the Connection Agreements, **clauses 29 and 31** prevail.

32 Direct Liability and Indemnities

Undertakings

- 32.1 AusNet Services undertakes to Generator that it will perform all of its obligations under the NSAs in accordance with the terms of those NSAs.
- 32.2 Generator undertakes to AusNet Services that it will perform all of its obligations under the UoSA in accordance with its terms.

General

- 32.3 The parties agree that the undertakings provided under **clauses 32.1 or 32.2** will not relieve any of them of their respective obligations under any Related Agreement.
- 32.4 Each Project Party must, on becoming aware of:
- (a) in the case of a Constructing Party, a breach of the relevant NSA; and
 - (b) in the case of Generator, a breach of the UoSA,
- give notice to each other party of the breach along with reasonable particulars of the breach.
- 32.5 For the avoidance of doubt, **clauses 29 and 31** will apply to any liability arising under **clauses 32.1 to 32.2**.

Cross Indemnity

- 32.6 Each Project Party releases and indemnifies each other Project Party against all Claims the indemnified Project Party suffers or incurs in respect of:
- (a) personal injury, death or disease; or
 - (b) loss or damage caused to property, including the Project, Connection Assets and **[Wind/Solar]** Farm, to the extent it is caused, or contributed to, by the indemnifying Project Party.

Related Trading Entity Indemnity

- 32.7 For the purposes of **clauses 32.8 and 32.9: Related Trading Entity** means any entity:

- (a) registered as a *Generator* under the Rules in relation to any of the *generating units* that make up the [Wind/Solar] Farm;
- (b) that would have been required under the NEL and Rules to be registered as a *Generator* in relation to any of the *generating units* making up the [Wind/Solar] Farm if another party had not been registered as an *intermediary* under the NEL and Rules in relation to the [Wind/Solar] Farm; or
- (c) otherwise deals with or enters into contracts with either Generator or an entity described in **paragraphs (a) or (b)** in relation to the provision of any services associated with any of the *generating units* making up the [Wind/Solar] Farm, including a contract;
 - (i) for the purchase of electricity generated by the [Wind/Solar] Farm; or
 - (ii) under which the entity has a right to otherwise deal with the electricity *generated* by the [Wind/Solar] Farm.

32.8 Generator will not enter into any agreement or arrangement with a Related Trading Entity in relation to the [Wind/Solar] Farm without first requiring the Related Trading Entity to enter into a deed with the other parties under which the Related Trading Entity and Generator agree that the limitations on the other parties' liability to Generator set out in this Deed will also apply to limit the parties' liability to the Related Trading Entity as if:

- (a) the Related Trading Entity and Generator were together named as 'Generator' under this Deed; and
- (b) the Related Trading Entity and Generator were together bringing a Claim against the other parties.

32.9 If a Related Trading Entity does not enter into a deed of the type described in **clause 32.8**, Generator must indemnify and continue to indemnify the other parties from and against any Claims made against the other parties by that Related Trading Entity to the extent that the Claim would not have been recoverable from the other parties if **clause 32.8** had been complied with.

33 Force Majeure

Effect on Performance of Obligation

33.1 Subject to **clause 33.2(b)** and to compliance with **clause 33.3**, if any party is unable to perform on time and as required any obligation under a Related Agreement (except an obligation to pay money, or co-ordinate or consult with other parties) by reason of the occurrence of an Event of Force Majeure (**Affected Party**), that obligation (**Affected Obligation**) will be suspended to the extent the Affected Party's ability to perform that obligation is affected by that Event of Force Majeure.

Obligation to Mitigate

- 33.2 (a) If an Event of Force Majeure occurs, the Affected Party must, as soon as practicable after the occurrence of that Event of Force Majeure, use reasonable endeavours to mitigate the consequences of that Event of Force Majeure and minimise any resulting delay in the performance of the Affected Obligation. The consequence of a failure by the Affected Party to comply with its obligation under this **paragraph (a)** to minimise delay is limited to a reduction in the period of suspension in accordance with **paragraph (b)**.
- (b) The degree to which an obligation is suspended under **clause 33.1** shall be reduced to the extent of the Affected Party's inability to perform the obligation attributable to a failure by the Affected Party to comply with **clause 33.2**.
- (c) Notwithstanding the obligation to mitigate and minimise the consequences of an Event of Force Majeure imposed by **paragraph (a)**, the settlement of a Labour Dispute constituting an Event of Force Majeure is a matter which is within the absolute discretion of the Affected Party and nothing in **clause 33.2** requires the Affected Party to settle or compromise a Labour Dispute where the Affected Party, in its sole and absolute discretion, considers that course to be inappropriate.
- (d) Notwithstanding anything in **clause 33.2** to the contrary, an Affected Party is not obliged to incur any expenditure insofar as an Event of Force Majeure is caused by the breach of any Related Agreement by the other party.

- (e) The Affected Party shall bear the onus of proving that it has complied with its obligations under **paragraph (a)**.

Obligation to Notify

- 33.3 If an Affected Party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in an Event of Force Majeure in relation to it, the Affected Party must:
- (a) as soon as reasonably practicable thereafter (but not later than 3 Business Days following the date on which the Affected Party became aware of the occurrence of the circumstance), give the other parties notice of that circumstance and of the Affected Obligations or likely Affected Obligations; and
 - (b) keep the other party informed both at reasonable intervals and upon reasonable request by the other party, as soon as practicable following the receipt of that request, of:
 - (i) the Affected Party's estimate of the likely duration of the Event of Force Majeure;
 - (ii) the action taken and the action proposed to be taken by the Affected Party in complying with its obligations under **clause 33.2**;
 - (iii) the cessation of that Event of Force Majeure or the successful mitigation or minimisation of the effects of that Event of Force Majeure; and
 - (iv) any other matter which the other party may reasonably request in connection with the occurrence of the Event of Force Majeure.
 - (c) Failure to give notice in accordance with **clause 33.3(a)** will not affect the operation of **clause 33.1** if the Affected Party failed to give the notice because it reasonably considered in good faith that the occurrence of the circumstance did not constitute and was not likely to constitute or result in an Event of Force Majeure.

Extensions of Time

- 33.4 Any extension to a Milestone Dates as a result of an Event of Force Majeure must be claimed under, and will be determined in accordance with, **clause 18**.

34 Confidentiality

General Obligation

- 34.1 Subject to **clauses 34.2** and **34.3**, the Related Agreements and all information exchanged between the parties under a Related Agreement or during the negotiations preceding the signing of a Related Agreement is confidential and must not be disclosed to any person except:
- (a) by a party:
 - (i) to its Associated Entities, legal and other professional advisers, auditors and other consultants, employees, officers and authorised agents of that party or that party's Associated Entities requiring the information for the purposes of:
 - (A) a Related Agreement;
 - (B) performing functions under the Regulatory Instruments; or
 - (C) advising that party;
 - (ii) to another party to the extent necessary to enable the other party to perform its obligations under a Related Agreement;
 - (iii) to its sub-contractors to the extent necessary for the purpose of performing the relevant sub-contract;
 - (iv) to bona fide financiers, investors or prospective financiers or investors and such of the financiers' or investors' professional advisers as necessary or commercially desirable for the purposes of any proposed financing or investment;

- (v) to bona fide purchasers or prospective purchasers and such of the purchasers' professional advisers or financiers and their professional advisers as necessary or commercially desirable for the purposes of selling the party's Facilities;
 - (vi) with the consent of the party who provided the information;
 - (vii) as required by Law or by a Lawful requirement of an Authority;
 - (viii) to the extent required by a lawful requirement of any stock exchange having jurisdiction over a party or its Associated Entity;
 - (ix) if required in connection with legal proceedings or any other form of dispute resolution process relating to a Related Agreement; and
 - (x) if the information is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information or a person to whom it has disclosed the information;
- (b) by VicGrid:
- (i) to TOC; and
 - (ii) for the purposes of VicGrid Functions, including provision of the Functional Specification and any material breach of any Related Agreement to any *Network User* or *Connection Applicant*; and
- (c) by Generator or AusNet Services to the extent required for the performance of the **Wind/Solar** Farm Works or Connection Asset Works, or the operation or maintenance of the **Wind/Solar** Farm or the Connection Assets.

Representatives to Keep Information Confidential

34.2 A party wishing to disclose information under **clause 34.1** must:

- (a) inform the proposed recipient of the confidentiality of the information to be disclosed; and
- (b) unless disclosure is under **clause 34.1(a)(vii)**, **34.1(a)(viii)** or **34.1(a)(ix)**, require the proposed recipient to take effective precautions to ensure the proposed recipient keeps the information to be disclosed confidential and only discloses it in the circumstances specified in **clause 34.1**.

Notice to other Parties

34.3 If a party receives a request from an Authority or stock exchange, and compliance with the request would result in the disclosure of confidential information under **clauses 34.1(a)(vii)** or **34.1(a)(viii)**, the party must promptly inform the other parties of the request.

VicGrid's Systems and VicGrid Data

34.4 If a party accesses VicGrid's Systems or deals with VicGrid Data in connection with a Related Agreement, that party must:

- (a) comply with VicGrid's Cyber Security Policy and Cyber Security Standards as notified by VicGrid;
- (b) ensure that its physical and system controls only permit properly its authorised and trained employees or contractors to access VicGrid Data and then only to the minimum extent necessary to perform that party's obligations under the Related Agreement;
- (c) treat VicGrid Data as Confidential Information;
- (d) implement and maintain appropriate technical and organisational measures and controls in accordance with good industry practice that secure that party's access to VicGrid Data and VicGrid's Systems, and that prevent and protect against unauthorised:
 - (i) access to, or disclosure of;
 - (ii) interference with, or modification or corruption of;
 - (iii) loss or destruction of, or damage to; and

- (iv) use or processing of,
VicGrid Data or VicGrid's Systems.

35 Adjustments to Charges under NSAs

Liability to pay interest on Tax and overdue third-party payments

- 35.1 Where AusNet Services fails to pay any amount to any person, including any Tax, by the due date for payment of that amount and, as a result becomes liable to pay any interest, fine or penalty, that interest, fine or penalty will be borne by AusNet Services and will not be passed on to any other party.

Change in Law

- 35.2 For the purposes of **clause 35.3**:

Change Event means, after the date of this Deed:

- (a) a change in an existing Tax, or introduction of any new Tax, calculated by reference to the Network Services or the assets or resources used to provide the Network Services, or any change in the interpretation, administration or application to Constructing Party of such a Tax;
 - (b) a change in an existing Law, or introduction of any new Law, that:
 - (i) requires a modification to the Terminal Station or Interface (as applicable);
 - (ii) increases or decreases the cost to Constructing Party of performing its obligations under the Related Agreements; or
 - (iii) affects the manner in which Constructing Party performs its obligations under a Related Agreement; or
 - (c) a change in *Australian Standards* or *good electricity industry practice* that, as a matter of Law, or to achieve compliance with a Related Agreement, requires a modification to the Terminal Station or Interface (as applicable) or affects the manner in which Constructing Party performs its obligations under a Related Agreement.
- 35.3 The Transmission Charges and Transmission Underwriting Charge will not be adjusted as a result of a change in, introduction or repeal of any Law or Tax, or any change in the interpretation, administration or application of any Law or Tax, other than as set out in **clause 17** where the change, introduction or repeal results in a Project Assumption being inaccurate or where the adjustment is part of any amendments to the Related Agreements required under **clauses 20.19 to 20.22**. **Clauses 35.5 to 35.7** will not adjust the Transmission Charge or Transmission Underwriting Charge, but do not exclude or reduce the parties' rights under the other provisions of the Related Agreements in relation to a Change Event.

Change of Electricity Law

- 35.4 For the purposes of **clauses 35.5 to 35.7**:

Change of Electricity Law means the introduction of a new Law, or a change to or repeal of a Law, that regulates the electricity industry in Victoria and comes into effect after the date of this Deed, including a change to the NEL or Rules.

- 35.5 If a Change of Electricity Law has occurred or will occur, at the request of any party, the parties must negotiate in good faith the minimum necessary amendments to the Related Agreement required to enable:
- (a) the parties and the Related Agreements to comply with the Change of Electricity Law; and
 - (b) the Related Agreements to continue to have the same commercial effect they had before the Change of Electricity Law, to the extent reasonably practicable,

however, no amendment may be made under this **clause 35.4** that alters the Transmission Charges, Transmission Underwriting Charges or otherwise has the effect of increasing or decreasing the costs recoverable by one party from the other party under the Related Agreements.

- 35.6 If the parties are unable to reach agreement under **clause 35.4** on the required amendments within 20 Business Days after the relevant party's request under **clause 35.4**, any party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.
- 35.7 Any amendments to the Related Agreements agreed under **clause 35.4** or determined under **clause 35.6** will apply on and from the time the relevant Change of Electricity Law comes into effect. The parties must promptly execute deeds recording the amendments agreed or determined.

36 Extension of Term of NSAs

- 36.1 Generator may, by notice given to the other parties at least 3 years before the end of the Initial Term, request an extension to the Initial Term of up to 30 years. The notice must specify the extension requested (**Extension Period**).
- 36.2 If Generator requests an extension under **clause 36.1**, the parties will enter into good faith negotiations with a view to agreeing the fair and reasonable commercial arm's length terms and conditions on which the Network Services will be provided to VicGrid under the NSAs, and the Specified Services will be provided to Generator under the UoSA, during the Extension Period.
- 36.3 In negotiating under **clause 36.2** the fair and reasonable commercial arm's length terms and conditions, the parties must take into account (amongst other things) the following matters and principles:
- (a) the Transmission Charge for the Extension Period should not include any amount on account of the capital cost of the Project originally installed by Constructing Party during the Initial Term;
 - (b) the Transmission Charge should take into consideration the value of any new assets or material refurbishment of the existing assets that will be reasonably required to provide the Network Services to VicGrid during the Extension Period in accordance with the requirements of the NSAs and the applicable Laws at the relevant time;
 - (c) the Transmission Charge should include a fair and reasonable allowance for Constructing Party's estimated costs of performing its obligations under the NSAs during the Extension Period, including the cost of any likely refurbishment and replacement of components of the Project and the likely ongoing operation, maintenance and insurance costs associated with the Project taking into account its age and condition at that time;
 - (d) the Transmission Charge should take into account the potential risk of having to replace any existing assets that would be required to provide the Network Services during the Extension Period;
 - (e) the Transmission Charge should include an allowance for Constructing Party to make a fair and reasonable return from the provision of Network Services during the Extension Period taking into account the matters listed in **paragraphs (a) to (d)**, but without regard to the value to Generator of the provision of the Network Services;
 - (f) the terms and conditions proposed by VicGrid to apply to the provision of Network Services, and to the operation and maintenance of the Project during the Extension Period;
 - (g) the contents of the NSAs during the Extension Period must be fair and reasonable having regard to the commercial interests of the parties;
 - (h) at all times, the Network Services must be provided in accordance with all other NSA requirements and applicable Laws at the relevant time; and
 - (i) the NSAs should be consistent with the prevailing practices and standards in the electricity industry at that time.
- 36.4 If the parties are unable to reach agreement on the terms of the extended NSAs and UoSA on or before the date being 20 months prior to the end of the Initial Term, a party may refer the matter for resolution in accordance with the Dispute Resolution Procedure based on the principles set out in **clause 36.3**.

Generator may Extend

- 36.5 Generator must, by notice to the other parties, elect whether to extend the Initial Term by the Extension Period no less than 12 months prior to the expiry of the Initial Term and within 20 Business Days after:

- (a) the terms of the extended NSAs and UoSA have been agreed under **clause 36.2** or determined in accordance with the Dispute Resolution Procedure; and
- (b) if Generator has requested an extension to the initial term of the CSA, the terms of the extended CSA have been agreed or determined under the CSA.

VicGrid's Costs

- 36.6 To the extent that those costs and disbursements will not be recovered through payment of the Transmission Charge during the Extension Period, or where Generator does not make an election under **clause 36.5**, Generator must reimburse VicGrid for its costs, including all legal costs and disbursements (calculated on a solicitor-own client basis) incurred in relation to VicGrid taking any action contemplated by **clause 36** (including the costs incurred in any Dispute Resolution Procedure).
- 36.7 Where Generator requests an extension under **clause 36.1** but does not elect to extend the Initial Term under **clause 36.5**, Generator must reimburse Constructing Party its reasonable costs and expenses of preparing a proposal for the provision of Network Services during the Extension Period in accordance with **clause 36**.

37 Breach and Termination

Default Notice

- 37.1 If a party reasonably considers that a circumstance has arisen that constitutes a Default Event, it must give each other party notice of that circumstance (**Default Notice**). A Default Notice must:
 - (a) state that it is a Default Notice;
 - (b) identify the Defaulting Party and the obligations that have been breached, including the Related Agreement that has been breached; and
 - (c) identify the date by which the Default Event must be remedied, which:
 - (i) in the case of Default Events other than a Financial Defaults must be not less than 30 Business Days from receipt of the Default Notice; and
 - (ii) in the case of Financial Defaults must be not less than 5 Business Days from receipt of the Default Notice.

Non-Financial Default

- 37.2 **Clauses 37.3 to 37.9** apply to Default Events other than Financial Defaults.
- 37.3 Following the issue of a Default Notice under **clause 37.1** the Defaulting Party must notify the other parties of:
 - (a) the Defaulting Party's estimate of the likely duration of the Default Event;
 - (b) the steps the Defaulting Party intends to take to mitigate or minimise the effects of the Default Event;
 - (c) updates at reasonable intervals and upon request by the other parties as to the Defaulting Party's progress in taking steps to mitigate or minimise those effects;
 - (d) any other information the other parties may reasonably request in connection with the Default Event; and
 - (e) the cessation of the Default Event.
- 37.4 If the Defaulting Party believes that the Default Event detailed in a Default Notice is not capable of remedy within the time specified in the Default Notice, the Defaulting Party may, within 10 Business Days of receiving the Default Notice, provide the other parties with the following information:
 - (a) a detailed explanation of the reasons for the Default Event;
 - (b) how the Defaulting Party plans to remedy the Default Event; and

- (c) the earliest date by which the Defaulting Party reasonably anticipates that the Default Event can be remedied,

(Cure Plan).

- 37.5 Unless a party reasonably considers that the Cure Plan does not demonstrate that the Defaulting Party will take all reasonable steps to remedy the Default Event as soon as reasonably possible and notifies the other parties within 10 Business Days of the date of receipt of the Cure Plan, the parties will be deemed to have consented to the Cure Plan.
- 37.6 If the Defaulting Party is Generator and a Default Event is not remedied within:
- (a) where a Cure Plan is agreed by the parties, the time specified in the agreed Cure Plan; or
 - (b) where a Cure Plan is not provided under **clause 37.2** or is not agreed between the parties in accordance with **clause 37.5**, the time specified in the Default Notice,
- VicGrid may direct that the [Wind/Solar] Farm be *disconnected* until the Default Event is remedied, provided such *disconnection* will mitigate any adverse impact the Default Event has on a party or any Network User.
- 37.7 If the Defaulting Party is TNSP and a Default Event is not remedied within:
- (a) where a Cure Plan is agreed by the parties, the time specified in the agreed Cure Plan; or
 - (b) where a Cure Plan is not provided under **clause 37.2** or is not agreed between the parties in accordance with **clause 37.5**, the time specified in the Default Notice,
- VicGrid may do any, or all, of the following:
- (i) appoint an alternative transmission network services provider (**Alternative TNSP**) to review the Default Event, inspect the Terminal Station Land and Terminal Station if necessary (whereupon the Alternative TNSP will be deemed to be an Accessing Party for the purposes of **clauses 28.25 to 28.31**), to ascertain whether the Default Event can be remedied and, if so, how it may be remedied and at what cost;
 - (ii) review how any proposal to remedy the Default Event could be carried out; and
 - (iii) finalise a proposal on how the Default Event may be remedied, at what cost and timeframe (**Proposal**) and provide the Defaulting Party with a copy of the Proposal.

Co-operation

- 37.8 AusNet Services must co-operate in any review or investigation of a Default Event and reimburse VicGrid's expenses in taking any action permitted by **clause 37.7**.
- 37.9 VicGrid will direct AusNet Services to take the remedial action specified in the Proposal and, if the Defaulting Party fails to do so within:
- (a) where the [Wind/Solar] Farm has been *disconnected* or constrained, 14 days of being directed by VicGrid to do so; or
 - (b) otherwise, 30 days of being directed by VicGrid to do so,
- VicGrid may, and will if requested by another Project Party, direct AusNet Services to permit the Alternative TNSP to take the remedial action specified in the Proposal, in which case, AusNet Services must:
- (i) permit and reasonably assist the Alternative TNSP to take the remedial action; and
 - (ii) enter into a contract in respect of the remedial action with Alternative TNSP, whose scope, cost and timeframe will be as detailed in the Proposal.

Financial Default

- 37.10 If a Financial Default occurs, the party to whom the debt represented by the Financial Default is owed may exercise any, or any combination of, the following remedies:

- (a) if the Defaulting Party does not cure the Financial Default within 5 Business Days of receiving a Default Notice, sue the Defaulting Party for:
 - (i) recovery of the debt represented by the Financial Default plus any interest owing in relation to the Financial Default under **clause 37.15**; and
 - (ii) any loss (other than payment of interest) incurred as a result of the Financial Default;
- (b) if the Defaulting Party is VicGrid and the debt is owed to Constructing Party:
 - (i) give Generator notice requiring Generator to pay the outstanding amount to the Constructing Party; and
 - (ii) if Generator fails to pay the outstanding amount as required by **clause 37.11**, give Generator notice requiring Generator to terminate the UoSA; and
- (c) if the Defaulting Party is Generator, VicGrid may, if Generator does not cure the Financial Default within:
 - (i) 5 Business Days of receiving the Default Notice, call on the VicGrid Bank Guarantee without further notice to Generator;
 - (ii) 15 Business Days of receiving the Default Notice, *disconnect* the Point of Supply; or
 - (iii) 10 Business Days of receiving the Default Notice, give Generator 10 Business Days' notice of termination of the UoSA and, subject to **clause 37.13**, if Generator has not cured the Financial Default before the end of that notice period, the UoSA will terminate.

Subject to **clause 37.13**, VicGrid must give notice under **paragraph (c)(iii)** to terminate the UoSA if requested by AusNet Services.

37.11 Where Constructing Party gives notice under **clause 37.10(b)(i)**:

- (a) to the extent an amount is or becomes due and payable by Generator to VicGrid under a Related Agreement, Generator must pay the outstanding amount to Constructing Party within 1 month after receipt of the notice or 5 Business Days after the amount becomes due and payable to VicGrid (whichever is later); and
- (b) despite anything to the contrary in the UoSA, Generator may set off any amount paid to Constructing Party under **paragraph (a)** from the amount due and payable by Generator to VicGrid under the Related Agreement.

37.12 Where Constructing Party gives notice under **clause 37.10(b)(ii)**, Generator must terminate the UoSA by notice to VicGrid within 5 Business Days, unless there exists a bona fide dispute about the existence of the relevant Financial Default or whether Generator would be entitled to set off the relevant amount under **clause 37.11(b)**.

37.13 VicGrid cannot terminate the UoSA or *disconnect* the Point of Supply under **clause 37.10** if VicGrid is reasonably satisfied there exists a bona fide dispute about the existence of the Financial Default.

37.14 Nothing in **clause 37** prejudices VicGrid's rights under the VicGrid Bank Guarantee.

Default Interest

37.15 The Defaulting Party must pay interest on any amount that is the subject of a Financial Default. The interest will:

- (a) accrue daily at the Bank Bill Rate plus 2% on that amount from the date on which the amount became due and payable until the date of payment of the amount plus any accrued interest on the amount;
- (b) be payable on the first Business Day of each month;
- (c) be calculated on actual days elapsed and a 365-day year; and
- (d) be capitalised on the first Business Day after the due date for payment of such interest if not paid when due.

- 37.16 The Defaulting Party's obligation to pay the outstanding amount on the date it becomes due for payment under a Related Agreement is not affected by **clause 37.15**.
- 37.17 Where:
- (a) a party disputes whether an amount is payable to another party under a Related Agreement but is, notwithstanding the Dispute, obliged to pay and pays the amount in Dispute; and
 - (b) it is subsequently determined that the disputed amount was not payable under the Related Agreement to the payee,
- the payee must pay interest on the disputed amount. The interest will:
- (i) accrue daily at the Bank Bill Rate plus 2% on the disputed amount from the date on which the dispute amount was paid until the date of repayment of the dispute amount plus any accrued interest on the disputed amount;
 - (ii) be payable on the first Business Day of each month;
 - (iii) be calculated on actual days elapsed and a 365-day year; and
 - (iv) be capitalised on the first Business Day after the due date for payment of such interest if not paid when due.

Other Obligations Unaffected

- 37.18 Despite the existence of a Default Event, the parties must continue to perform their obligations under the Related Agreements, including the making of payments required under Related Agreements.

Termination for Insolvency Event

- 37.19 If an Insolvency Event occurs, the insolvent party must notify each other party.
- 37.20 If the Insolvency Event is constituted by the appointment of a person referred to in paragraph (a) or (b) of the definition of that term and that person has not given each other party such assurances as each other party reasonably requires that the Related Agreements to which the insolvent party is a party will be performed within 20 Business Days of the event, VicGrid may, and must if requested by Generator, terminate the Related Agreements to which the insolvent party is a party by giving notice to the other parties.
- 37.21 If the Insolvency Event is constituted by an event other than the appointment of a person referred to in paragraph (a) or (b) of the definition of that term and the condition that gave rise to the Insolvency Event still applies 20 Business Days after the date of the event, VicGrid may, and unless to do so would breach section 415D of the Corporations Act, must if requested by Generator, terminate the Related Agreements to which the insolvent party is a party by giving notice to the other parties.
- 37.22 Where VicGrid terminates a NSA under **clause 37.20** or **37.21** as a result of an Insolvency Event in relation to Constructing Party:
- (a) VicGrid may terminate the UoSA by notice to Generator, copying the other parties; and
 - (b) for the purposes of determining the Pay-Out Amount, the UoSA is taken to have been terminated as a result of Constructing Party's Default Event.

Termination for Permanent Event of Force Majeure

- 37.23 Generator may terminate the UoSA if an Event of Force Majeure occurs that has the effect of suspending a material obligation of Constructing Party under any Related Agreement for a continuous period of more than 6 months, on not less than 10 Business Days' notice to all parties.

Termination where CSA terminated

- 37.24 Generator may terminate the UoSA by giving VicGrid (copying the other parties) at least 10 Business Days' notice if the CSA is terminated.

Termination for failure to provide VicGrid Bank Guarantee

- 37.25 If, at any time, VicGrid is not the recipient and beneficiary of one or more VicGrid Bank Guarantees as required by the UoSA, in addition to all other rights and remedies available to it, VicGrid may notify Generator that, if Generator does not provide VicGrid Bank Guarantees sufficient to comply with the UoSA within 20 Business Days of VicGrid's notice, VicGrid may terminate the UoSA immediately or at such later date set out in the notice.

Mitigation

- 37.26 A Defaulting Party must exercise reasonable endeavours to remedy a Default Event.
- 37.27 Each party must take all reasonable action to mitigate any loss it suffers or is likely to suffer because of a Default Event.
- 37.28 The Defaulting Party may inspect any other party's assets and records as reasonably required to:
- (a) verify whether they have mitigated its loss in accordance with **clause 37.27**; and
 - (b) assess any Claim made as a result of the Default Event.
- 37.29 Any loss recoverable by a party for a Default Event is reduced:
- (a) to the extent that the loss would not have been incurred if that party had complied with its obligations under **clause 37.27**; or
 - (b) if that party fails to comply with its obligations under **clause 37.27**, to the extent that any loss would have been reduced if the party had so complied.

Termination for Convenience

- 37.30 Generator may terminate the UoSA at any time by giving VicGrid (copying the other parties) at least 30 Business Days' notice to that effect.

Consequences of Termination of UoSA

- 37.31 If the UoSA is terminated for any reason:
- (a) subject to satisfying any continuing obligations of Generator, the parties agree that Generator will be deemed no longer to be a party to this Deed and the parties agree to execute all necessary documents to effect Generator's withdrawal from this Deed; and
 - (b) VicGrid may, by notice to AusNet Services, terminate the NSAs with effect from the date of termination of the UoSA.

Termination rights intended to be exhaustive

- 37.32 The express provisions of this Deed are intended to codify and exhaustively specify the circumstances in which a party has the right to terminate a Related Agreement.

Disconnection and Reconnection

- 37.33 The Defaulting Party must reimburse VicGrid for any costs and expenses VicGrid incurs in giving effect to a *disconnection* under **clause 37.10**.
- 37.34 During the period of the *disconnection*, the Defaulting Party must continue to cure the Default Event.
- 37.35 The Point of Supply must be reconnected promptly after a Default Event has been remedied and is not expected to recur.
- 37.36 The Defaulting Party must reimburse any other party for any reasonable costs and expenses it incurred in relation to the *disconnection* and reconnection under **clause 37.10**.

Dismantling of Project

- 37.37 If the UoSA is terminated before the Date of Practical Completion, AusNet Services must Dismantle the Project and reinstate and make good the affected parts of the Project Land and Victorian Transmission Network.
- 37.38 In anticipation of expiry of the Term, VicGrid may require AusNet Services to Dismantle the Project and reinstate and make good the affected parts of the Project Land and Victorian Transmission Network, if the UoSA is terminated on or after the Date of Practical Completion and either:
- (a) no New Proponent seeks Connection at the Terminal Station within 12 months of the date of termination of the UoSA; or
 - (b) the parties agree the Project should be Dismantled because it is unlikely that any New Proponent will seek to Connection at the Terminal Station within 12 months of the date of termination of the UoSA.
- 37.39 Constructing Party must perform any Dismantling and reinstatement work required by **clause 37.37**, or **37.37** with due expedition and without unreasonable delay.

38 Termination and Expiry Payments

Definitions

- 38.1 For the purposes of **clause 38**:
- Dismantling Costs** means the direct costs reasonably incurred by AusNet Services in Dismantling the Project and reinstating and making good the affected parts of the Project Land and Victorian Transmission Network.
- Expiry Amount** has the meaning given in **clauses 38.24, 38.25 and 38.26**.
- Post-Termination O&M Costs** means the direct costs reasonably incurred by AusNet Services in operating and maintaining the Project from the termination of the UoSA up to the earlier of:
- (a) when AusNet Services becomes obliged to Dismantle the Project under **clause 37.38**; or
 - (b) 12 months after the UoSA is terminated.

Transmission Charges

- 38.2 If the UoSA is terminated for any reason:
- (a) the only charge payable under a Related Agreement is the Transmission Underwriting Charge and Transmission Charge up to the date of termination;
 - (b) the only Claim that can be made by AusNet Services for a payment arising out of termination is for a Pay Out Amount as provided for in **clause 38**; and
 - (c) termination does not in any way prejudice any party's rights to claim and recover damages for any prior breach of contract by another party.

Pay-Out Amounts

- 38.3 If the UoSA is terminated for any reason, Generator must pay AusNet Services the Pay-Out Amounts.
- 38.4 If **clause 38.3** applies AusNet Services must:
- (a) provide Generator with a statement setting out the details of the Pay-Out Amounts within 20 Business Days of termination of the UoSA. The statement must:
 - (i) be in sufficient detail to demonstrate to Generator's reasonable satisfaction that the Pay-Out Amounts have been calculated in accordance with this Deed; and
 - (ii) be certified as true and correct; and
 - (b) promptly provide to Generator any further information reasonably requested by Generator:

- (i) to substantiate the contents of the statement of the Pay-Out Amounts in order to enable Generator to verify those matters; and
- (ii) to demonstrate how AusNet Services has used or will use reasonable endeavours (including paying cancellation fees and redirecting materials to other projects) to mitigate and limit the amounts included in the Pay-Out Amounts.

Recovery of Costs from Other Users

- 38.5 AusNet Services must, to the extent it is paid or recovers any amount included in the Pay-Out Amounts paid under **clause 38.15**, through charges from any other *Network User*, reimburse Generator for that amount.
- 38.6 VicGrid must, to the extent that it recovers the costs of dismantling the Project and reinstating and making good the Project Land and the Victorian Transmission Network from other *Network Users*, pay such amounts to Generator.
- 38.7 Generator's right to reimbursement under **clause 38.5** and **38.6** is subject to there being no double-payment from AusNet Services and VicGrid in respect of the same recovery of costs of Dismantling the Project and reinstating and making good the Project Land and the Victorian Transmission Network.

Dismantling Costs

- 38.8 Where AusNet Services is required to Dismantle the Project **clause 37.37** or **37.38**, it must, to the extent that its Dismantling Costs are:
- (a) less than the estimate of Dismantling Costs included in its Pay-Out Amounts, reimburse Generator for that difference plus interest at the Bank Bill Rate for each day from the date of payment by Generator until the date they are reimbursed (calculated on actual days elapsed and a 365-day year); or
 - (b) more than amount the estimate of Dismantling Costs included in the Pay-Out Amounts, invoice Generator for that difference plus any interest at the Bank Bill Rate for each day from the date payment of the invoice for the difference is due until the date of payment for that difference by Generator (calculated on actual days elapsed and a 365-day year).
- 38.9 Where AusNet Services is not required to Dismantle the Project under **clause 37.37** or **37.38**, that Constructing Party must pay Generator the estimate included in its Pay-Out Amounts for the Dismantling Costs plus interest at the Bank Bill Rate for each day from the date of payment by Generator until the date of payment of that difference to Generator (calculated on actual days elapsed and a 365-day year).

Operation and maintenance costs

- 38.10 AusNet Services must, to the extent that its Post-Termination O&M Costs are:
- (a) less than the estimate of Post Termination O&M Costs included in the Pay-Out Amounts, reimburse Generator for that difference plus interest at the Bank Bill Rate for each day from the date of payment by Generator until the date of they are reimbursed (calculated on actual days elapsed and a 365-day year); or
 - (b) more than amount the estimate of Post Termination O&M Costs included in the Pay-Out Amounts, invoice Generator for that difference plus any interest at the Bank Bill Rate for each day from the date payment of the invoice for the difference is due until the date of payment of that difference by Generator (calculated on actual days elapsed and a 365-day year).
- 38.11 Where AusNet Services becomes obliged to Dismantle the Interface under **clause 37.38** less than 12 months after the date of termination of the UoSA, AusNet Services must pay Generator an amount determined as follows:

$$A = A_{o\&m} \times \frac{Po\&m}{p_{12months}}$$

where:

- A = the amount payable by AusNet Services to Generator;
- A_{O&M} = the estimate included in the Pay-Out Amount for Post-Termination O&M Costs;

- P_{O&M} = the period from the date of termination of the UoSA until the date AusNet Services becomes obliged to Dismantle the Interface under **clause 37.38**; and
- P_{12 months} = the 12 months period from the date of termination of the UoSA.
plus interest on that amount at the Bank Bill Rate for each day from the date Generator pays the Pay- Out Amount until the date of payment of that amount by AusNet Services (calculated on actual days elapsed and a 365-day year).

Review of Pay-Out Amounts

- 38.12 Generator may request that the contents of the statement provided under **clause 38.4**, or the calculation of a Pay-Out Amount (as adjusted under this **clause 38**) be referred for resolution in accordance with the Dispute Resolution Procedure.
- 38.13 AusNet Services must prepare and retain records of the estimated Dismantling Costs and Post-Termination O&M Costs included in its Pay-Out Amounts. AusNet Services is not required to disclose such records to Generator.
- 38.14 Generator may have an independent auditor acceptable to AusNet Services (acting reasonably) review and verify:
- (a) the estimate of Dismantling Costs and Post-Termination O&M Costs included in a Pay-Out Amount; and
 - (b) the Dismantling Costs and Post-Termination O&M Costs incurred by AusNet Services.

Due Date for Termination Payment

- 38.15 Generator must pay a Pay-Out Amount on or before 10 Business Days after Generator receives the statement under **clause 38.4**.
- 38.16 If there is a Dispute concerning a Pay-Out Amount that is not resolved before Generator is required to pay the Pay-Out Amount under **clause 38.15**, Generator will pay the amount by the due date for payment, but may withhold any amount in respect of which Generator has a bona fide objection. Following resolution of the Dispute, AusNet Services will make any adjustment to the relevant Pay-Out Amount to give effect to the resolution within 20 Business Days of the resolution. Any adjustment payment a party is required to pay as a result of the resolution of the Dispute will incur interest daily at the Bank Bill Rate plus 2% for each day from the due date for payment under **clause 38.15** until it is paid (calculated on actual days elapsed and a 365-day year).

Termination Payments where there is a New Proponent

- 38.17 If *shared transmission services* are provided to a New Proponent at the time of termination of the UoSA, the Pay-Out Amount will be allocated as agreed between the parties and a New Proponent as contemplated by **clause 5.10**.

Dismantling Proposal Following Expiry

- 38.18 No later than 11 months and 15 Business Days before the Term is due to expire, VicGrid must provide a detailed request to AusNet Services to provide a proposal to perform the Dismantling and rectification
- 38.19 work required by **clause 37.37 or 37.38** and provide Generator with a copy of the requests.
- 38.20 Within 60 Business Days after receipt of a request under **clause 38.18**, AusNet Services must give VicGrid and Generator a proposal to perform the required Dismantling and rectification work.
- 38.21 A proposal under **clause 38.19** must set out the following, in reasonable detail:
- (a) the scope of work required for AusNet Services to comply with **clause 37.37 or 37.38**;
 - (b) the timeframes for performing the work, which must be reasonable;
 - (c) the Expiry Amounts, which must comply with **clauses 38.25 and 38.26**;
 - (d) an itemised breakdown of the Expiry Amounts; and
 - (e) reasonable evidence to support the Expiry Amounts.

- 38.22 After a Constructing Party provides a proposal under **clause 38.19**, Generator, VicGrid and that Constructing Party must (acting in good faith) seek to agree the details of the proposal. If those parties are unable to agree on all details within 20 Business Days after the proposal is provided, any of the parties may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

Generator to pay Expiry Amounts

- 38.23 If AusNet Services is required to Dismantle the Project upon the expiry of the Term AusNet Services may give Generator an invoice for the relevant Expiry Amount.
- 38.24 Generator must pay an Expiry Amount within 10 Business Days after receipt of an invoice in accordance with **clause 38.22**.

Valuation of Expiry Amounts

- 38.25 The Expiry Amounts will be agreed or determined under **clause 38.21**.
- 38.26 The Expiry Amounts must be a fair and reasonable estimate of the Dismantling Costs which will be incurred in performing the minimum scope of work reasonably required to comply with **clause 37.37** or **37.38**.
- 38.27 The Expiry Amounts must be determined on the assumption that AusNet Services will take all reasonable steps to mitigate the Dismantling Costs.

39 Entering into new Agreements following Expiry or Termination

- 39.1 If the UoSA has been terminated and either NSA is due to expire within the next 6 months, VicGrid may request AusNet Services to enter into new network services agreements in respect of the Terminal Station or Interface (as applicable).
- 39.2 If VicGrid makes a request under **clause 39.1**, the parties will negotiate in good faith new network services agreements in respect of the Project on the basis of the following principles:
- (a) to the fullest extent possible, the new agreement will be on like terms and conditions to relevant NSA;
 - (b) AusNet Services will provide VicGrid with network services using the Terminal Station or Interface (as applicable) in accordance with the arrangements in place between the parties prior to termination, so that VicGrid will continue to be in a position to provide *shared transmission services to Network Users*; and
 - (c) the transmission charge and termination payments under the new agreements will be reduced to reflect the fact that AusNet Services received a Pay-Out Amount, and that payment is designed to reimburse it for certain costs that would normally be taken into account when setting transmission charges and termination payments.
- 39.3 If the parties are unable to agree the terms and conditions of the new network services agreement within 120 days after the request from VicGrid under **clause 39.1**, any affected party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

40 Assignment and other Dealings

Definition

- 40.1 For the purposes of **clause 41**:

Permitted Security Interest means, in relation to a Project Party:

- (a) a lien arising solely by operation of Law and in the ordinary course of the Project Party's
- (b) ordinary business, provided there has been no Default Event on the part of the Project Party;
- (c) any Security Interest created by the finance documents between the Project Party and its financiers to which VicGrid and Generator have given their consent;

- (d) any Security Interest over TNSP's property and rights created by TNSP in favour of Generator;
- (e) any Security Interest arising out of title retention provisions in a supplier's conditions of supply of goods acquired in the ordinary course of business, provided that there has been no Default Event on the part of the Project Party; or
- (f) any Security Interest over any asset of the Project Party created by operation of Law in favour of any Authority for the purpose of securing payment of Taxes provided that the Security Interest has not been created under, or as a consequence of, a default on the part of the Project Party in the due payment of those Taxes.

No Disposal or Security Interest

- 40.2 Unless it is in accordance with a Permitted Security Interest and, subject to **clauses 41.4 to 41.7**, a party must not, without each other party's consent (which must not be unreasonably withheld):
- (a) create or allow to exist or alter the terms of a Security Interest over the Project, or rights in a Related Agreement; and
 - (b) Dispose of or deal with its rights in a Related Agreement.
- 40.3 The parties will consent to a AusNet Services's Disposing of its interest in the Terminal Station or Interface or its rights under any Related Agreements to any other person if they are reasonably satisfied that the proposed disposee:
- (a) has executed a deed in form and substance reasonably satisfactory to the other parties under which the disposee becomes a party to the Related Agreements, and is bound to perform the relevant Constructing Party's obligations under the Related Agreements;
 - (b) is capable Lawfully, financially and technically of undertaking the relevant Constructing Party's obligations under the Related Agreements;
 - (c) has the necessary registrations, consents and Approvals to:
 - (i) in the case of a Disposal by a Constructing Party, own, operate and maintain the relevant interest in the Terminal Station or Interface (as applicable); and
 - (ii) undertake the relevant Constructing Party's obligations under the Related Agreements, or will do so by the time of the Disposal.

Conditions

- 40.4 The parties may impose reasonable conditions on any consent given under **clause 41**, including a condition that any person having the benefit of a proposed Security Interest execute and deliver a deed (in form and substance reasonably satisfactory to the parties) setting out the terms on which the holder of the Security Interest may exercise its rights in relation to the Security Interest).

Costs

- 40.5 The Disposing party must reimburse all of the continuing parties' costs associated with giving consent, or considering a request that it give consent, under **clause 41**.

Replacement for VicGrid

- 40.6 VicGrid may assign any Related Agreement to which it is a party to a person who performs similar functions to VicGrid's *declared network functions* in relation to the Victorian Transmission Network.
- 40.7 If VicGrid proposes an assignment under **clause 40.6**, VicGrid must procure that the proposed assignee enters into a deed of assignment and assumption with the other parties in terms reasonably satisfactory to the other parties. For the avoidance of doubt, VicGrid will not be taken to have decided to propose an assignment if legislation is enacted that requires such an assignment.

Reconstruction whilst Solvent

- 40.8 Notwithstanding anything to the contrary, each party consents to the transfer of the other party's property, rights, liabilities and obligations in the Related Agreements to an Associated Entity of that other party where:
- (a) the transfer is made under a compromise or arrangement that has been proposed in connection with a scheme for the reconstruction or amalgamation of that party and approved by a Court under Part 5.1 of the Corporations Act; and
 - (b) the transferee is or will become a *Registered Participant* under the Rules in relation to the activities for which registration is required.

41 Dispute Resolution Procedure

Related Disputes

- 41.1 The parties agree that a Dispute may concern the respective rights and obligations of multiple parties under one or more of the Related Agreements.
- 41.2 Each party must inform each other party immediately of any Dispute that is or has the potential to become a Related Dispute.
- 41.3 For the purposes of resolving Disputes quickly and efficiently, with minimal disruption to any party's operations, each party:
- (a) consents to join any Dispute with any Related Dispute;
 - (b) agrees that the Dispute and any Related Dispute will be resolved concurrently in accordance with **clause 41**; and
 - (c) agrees that it will be bound, to the extent applicable, by such a resolution.

Activation of Dispute Resolution Process

- 41.4 If a party claims that a Dispute has arisen it must give each other party a notice (**Dispute Notice**).
- 41.5 A Dispute Notice must include details of:
- (a) the nature of the Dispute and the circumstances giving rise to the Dispute;
 - (b) any Related Dispute or the potential for there to be a Related Dispute;
 - (c) the other parties to the Dispute;
 - (d) the party's proposed resolution of the Dispute; and
 - (e) contact details of the relevant delegate of that party with authority to resolve the Dispute (**Delegate**).

Referral to Delegates

- 41.6 If a Dispute Notice is given by a party, the Delegates of each party to the Dispute and any Related Dispute (**Recipient Party**) must meet on a "without prejudice" basis within 5 Business Days of receipt of the Dispute Notice and use their reasonable endeavours to agree to a resolution of the Dispute and any Related Dispute.

Referral to Chief Executive Officers

- 41.7 If the Delegates do not resolve the Dispute and the Related Dispute within 5 Business Days of their first meeting, any party may, by notice to the other parties, refer the Dispute and the Related Dispute to the Chief Executive Officer of each Recipient Party, who must meet on a "without prejudice" basis within 5 Business Days of the referral and use their reasonable endeavours to agree to a resolution of the Dispute and the Related Dispute.

Referral to Independent Expert

- 41.8 If the Chief Executive Officers do not resolve a Dispute and any Related Dispute within 5 Business Days of their first meeting and the total amount, or financial impact, of the Dispute is less than \$**[insert amount]**, any party may, by notice to the other parties, refer the Dispute and the Related Dispute to an independent expert for determination, where:
- (a) the independent expert must be nominated by agreement of the parties within a further 5 Business Days, or failing agreement by the Chairman, Resolution Institute;
 - (b) provided they are held in Melbourne, Victoria, any meetings required by the independent expert may be held at a venue and time as reasonably determined by the independent expert in consultation with the parties; and
 - (c) the referral will be performed in accordance with the Resolution Institute's rules and standard form agreement, subject to the following amendments:
 - (i) any nominated independent expert must disclose to the parties any relationship or interest with the parties prior to accepting any appointment and the parties must notify the nominated independent expert of any objection to that appointment within 5 Business Days of nomination, whereupon an alternative independent expert will be nominated; and
 - (ii) the independent expert must make a determination on the Dispute within 20 Business Days of the submission of all required information and documents by the parties.
- 41.9 Unless otherwise agreed, the costs of the independent expert are to be borne equally by the parties.
- 41.10 The parties agree that the independent expert will act as an expert and not as an arbitrator and the Commercial Arbitration Act 2011 (Vic) will not apply.
- 41.11 In the absence of a manifest error of fact or Law, the independent expert's decision will be binding on the parties.
- 41.12 A party has no recourse to litigation in relation to a Dispute to which **clause 41.8** applies in relation to a Related Agreement unless that party has complied with **clause 41**.

Referral to Mediation

- 41.13 If the Chief Executive Officers do not resolve a Dispute and any Related Dispute within 5 Business Days of their first meeting and **clause 41.8** does not apply, any party may, by notice to the other parties, refer the Dispute to mediation on the basis that:
- (a) the mediator must be nominated by agreement of the parties within a further 5 Business Days, or failing agreement by the Chairman, Resolution Institute;
 - (b) provided they are held in Melbourne, Victoria, any meetings required by the mediator may be held at a venue and time as reasonably determined by the mediator in consultation with the parties; and
 - (c) the referral will be performed in accordance with the Resolution Institute's rules and standard form agreement, subject to the following amendments:
 - (i) any nominated mediator must disclose to the parties any relationship or interest with the parties prior to accepting any appointment and the parties must notify the nominated mediator of any objection to that appointment within 5 Business Days of nomination, whereupon an alternative mediator will be nominated; and
 - (ii) the mediation will terminate if the Dispute is not resolved within 20 Business Days of the submission of all required information and documents by the parties to the mediator.
 - (d) Unless otherwise agreed, the costs of the mediator are to be borne equally by the parties.

Urgent Interlocutory Relief

- 41.14 A party has no recourse to litigation in relation to a Dispute or Related Dispute in relation to a Related Agreement unless that party has complied with **clause 41**.
- 41.15 **Clause 41.14** does not prevent a party seeking an urgent interlocutory injunction or declaration from a court of competent jurisdiction.

Performance of Obligations Pending Resolution of Dispute

- 41.16 The parties must continue to perform their obligations under a Related Agreement despite the existence of a Dispute.
- 41.17 The parties agree that the existence of a Dispute under a Related Agreement shall not impede the progress of the Project.

Consultation by VicGrid with Indemnifying Party

- 41.18 If VicGrid becomes aware that legal proceedings or other dispute resolution proceedings commence or are contemplated in respect of a Claim for which VicGrid believes it is indemnified under a Related Agreement, VicGrid must:
- (a) notify the party VicGrid believes is obliged to indemnify VicGrid (for the purposes of **clauses 41.8 to 41.13**, the **Indemnifying Party**), of the proceedings or its grounds to believe that such proceedings are contemplated;
 - (b) provide to the Indemnifying Party all information relating to the dispute VicGrid reasonably believes the Indemnifying Party would have regard to if the Indemnifying Party was itself a party to the proceedings;
 - (c) invite the Indemnifying Party to make submissions to VicGrid regarding the strategy for the conduct of those proceedings; and
 - (d) not make any admission, settlement, agreement, compromise, concession (either on behalf of VicGrid or the Indemnifying Party) in relation to the relevant cause of action prior to having consulted with the Indemnifying Party.
- 41.19 Within 3 Business Days of receipt of a notice under **clause 41.18**, the Indemnifying Party must notify VicGrid to confirm whether it wishes to be consulted in the defence of the proceedings.
- 41.20 If the Indemnifying Party elects to not be consulted as contemplated by **clause 41.18**, VicGrid must:
- (a) diligently defend the proceedings and enforce its rights and entitlements under any Related Agreement to minimise any costs to the Indemnifying Party or, where applicable, recover any relevant amounts for which VicGrid or the Indemnifying Party is entitled to in respect of the proceedings; and
 - (b) keep the Indemnifying Party reasonably informed of the progress of the proceedings.
- 41.21 If the Indemnifying Party elects to be consulted as contemplated by **clause 41.18**, VicGrid must:
- (a) do the things set out in **clause 41.18**;
 - (b) consult in good faith with the Indemnifying Party in relation to all aspects of the proceedings; and
 - (c) not make any admission, settlement, agreement, compromise, concession (either on behalf of VicGrid or the Indemnifying Party) prior to having consulted with the Indemnifying Party.
- 41.22 Nothing in **clauses 41.18 to 41.24** will require VicGrid to provide any information to the Indemnifying Party, or act in a manner that would:
- (a) breach any obligation of confidentiality;
 - (b) erode VicGrid's legal professional privilege; or
 - (c) materially disadvantage VicGrid.
- 41.23 Except in the case of Wilful Breach, VicGrid shall not be liable to the Indemnifying Party for any failure by VicGrid to:
- (a) exercise any of VicGrid's discretions in accordance with **clauses 41.18 to 41.22**; or
 - (b) follow any or all aspects of an Indemnifying Party's submissions under **clause 41.18 to 41.22**, and no act or omission by VicGrid in that regard will, of itself, prejudice VicGrid's rights to indemnity under any Related Agreement.
- 41.24 For the avoidance of doubt, nothing in **clause 41.23** affects the parties' obligations under **clause 30.7**.
- Defence to claims by Project Party**

- 41.25 Each Project Party (for the purposes of **clauses 41.25 to 41.30**, the **Indemnified Party**) must, as soon as practicable, notify the other party (for the purposes of **clauses 41.25 to 41.30**, the **Indemnifying Party**) of any third party Claim for which it has the benefit of an indemnity from the Indemnifying Party, and for which it requires the Indemnifying Party to indemnify it against, under a Related Agreement.
- 41.26 The Indemnified Party must give the Indemnifying Party the option to conduct the defence of, and any settlement negotiations in relation to, the Claim at the Indemnifying Party's cost.
- 41.27 If the Indemnifying Party elects to conduct the defence of, or settlement negotiations in relation to, the Claim, the Indemnifying Party must:
- (a) keep the Indemnified Party informed of the defence of the Claim and any settlement negotiations;
 - (b) consult with the Indemnified Party in relation to the defence of the Claim and any settlement negotiations;
 - (c) involve the Indemnified Party in the defence of the claim and any settlement negotiations to the extent reasonably practicable;
 - (d) allow the Indemnified Party to observe any dispute resolution proceeding or meetings with the third party in relation to the Claim; and
 - (e) take any reasonable steps requested by the Indemnified Party to avoid any adverse impact on the Indemnified Party's business, reputation, public image or business relationships.
- 41.28 If the Indemnifying Party elects to conduct the defence of, or settlement negotiations in relation to, the Claim, the Indemnified Party must give the Indemnifying Party reasonable assistance as required by the Indemnifying Party to defend or settle the Claim.
- 41.29 The Indemnifying Party must not settle the Claim without the Indemnified Party's consent (not to be unreasonably withheld) where:
- (a) the settlement requires the Indemnified Party to do anything other than pay money for which it will be indemnified by the Indemnifying Party; or
 - (b) the terms of the settlement do not provide for the full release of the Indemnified Party in respect of the Claim.
- 41.30 The Indemnified Party must not settle or prejudice its defence of the Claim without the Indemnifying Party's consent.

42 Terms Implied by Statute

- 42.1 Except as expressly provided to the contrary in a Related Agreement, all terms, conditions, warranties, undertakings, inducements or representations, whether express, implied, statutory or otherwise, relating in any way to the subject matter of a Related Agreement (other than any duty of good faith) are excluded unless contained as an express term of that Related Agreement.
- 42.2 Where any Law implies in any Related Agreement any term, condition or warranty that avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability in connection with such a term, condition or warranty, it is deemed to be included in a Related Agreement, however, the liability of a party for breach is limited to the circumstances set out in **clause 29**.

Moratorium

- 42.3 Unless application is mandatory, no future Law applies to a Related Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect the rights, powers, remedies or discretions given or accruing to a party under that Related Agreement.
- 42.4 Where any future Regulatory Instrument affects any Related Agreement but its application is not mandatory, the parties will negotiate in good faith to amend the Related Agreements to the extent necessary to ensure that they remain consistent with the relevant Regulatory Instrument, however, a failure to reach agreement will not be a breach of this **clause 42.4** or be a Dispute.

43 Governing Law and Jurisdiction

Governing Law

43.1 This Deed and the transactions contemplated by this Deed are governed by the Law of Victoria.

Submission to Jurisdiction

43.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

44 Notices

Types of Notices

44.1 Unless otherwise specified in a Related Agreement, a notice, approval, consent, agreement, or other communication (**Communication**) required by a Related Agreement must be:

- (a) in writing;
- (b) given by, or to the contacts nominated for this purpose in the Related Agreement; and
- (c) left at, sent by electronic message to, the address or email address specified in the Related Agreement.

44.2 A Dispute Notice and a notice of termination must not be sent by email.

Notice Takes Effect

44.3 Unless a later time is specified in it, a Communication takes effect from the time it is received.

Deemed Receipt

44.4 A Communication:

- (a) delivered by hand to the address of a party is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at that address who, in the reasonable judgement of the person making the delivery (upon making appropriate enquiries), represents themselves and appears to be an officer of the party; or
- (b) sent by email is deemed to be received upon receipt of a delivery notice or other explicit acknowledgment of receipt.

44.5 If a Communication is received on a day that is not a Business Day or after 5:00pm on a Business Day, it is taken to be received on the next Business Day.

Substitute Contacts

44.6 A party may substitute its contact and address for service of notices by notice to the other party.

Operational Communications

44.7 Subject to the Rules, any operational communications given in the course of the day-to-day running of the *national grid* or the *National Electricity Market* by or on behalf of a party to the other may be made by automated electronic process, telephone or other instantaneous means of communication.

44.8 Unless operational communications under **clause 44.7** are recorded in some other way satisfactory to both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those communications record brief details of their substance and timing.

45 Representations and Warranties

Representations and Warranties by all parties other than VicGrid

- 45.1 Each party to each Related Agreement, other than VicGrid, makes the following continuing representations and warranties for the benefit of each other party to that Related Agreement:
- (a) it is legally entitled and has all corporate power to enter into and perform its obligations under that Related Agreement;
 - (b) subject to **clause 7**, except for any Approvals that a party may obtain after the date of this Deed, it has all Approvals at the time the representation and warranty is made necessary to enter into and perform its obligations under that Related Agreement and to the extent Approvals have not already been obtained and effected, such Approvals will be obtained and effected by the time necessary so as to ensure that it may undertake its obligations under that Related Agreement to which the Approvals relate;
 - (c) the execution, delivery and performance of that Related Agreement does not:
 - (i) violate its constituent documents or any applicable Law; or
 - (ii) cause a limitation on its powers to be exceeded;
 - (d) it does not have immunity from legal process; and
 - (e) no litigation (that has not been disclosed to the other party prior to the date of that Related Agreement), arbitration, tax claim, dispute or administrative or other proceeding has been commenced or, to its knowledge, is threatened against it that is likely to have a material adverse effect on it or its ability to perform its obligations under that Related Agreement.
- 45.2 Each party other than VicGrid:
- (a) acknowledges that VicGrid has not made or makes any representation, and has not assumed or assumes any duty of care and has not made or gives any warranty:
 - (i) as to the accuracy, completeness, suitability or efficacy of any information or data supplied or made available to the Project Parties, including any geotechnical reports on the Project Land;
 - (ii) that all information or data in VicGrid's possession relating to the Project Land has been provided to the Project Parties; or
 - (iii) in respect of potential revenue of the Terminal Station or Interface;
 - (b) acknowledges that to the extent permitted by Law, VicGrid is not liable and no Project Party will have any rights whatsoever to make any Claim against VicGrid (including negligence) for anything any other party may suffer or incur in connection with any matter referred to in **paragraph (a)**;
 - (c) warrants that prior to entering into the Related Agreements, they carried out all investigations and examinations necessary to ascertain the risks associated with the Project and the Related Agreements, including careful and complete examinations and assessments of the Terminal Station Land, including all geotechnical issues;
 - (d) warrants that it did not rely on any representation, information or data made, or provided to it by VicGrid in entering into the Related Agreements; and
 - (e) acknowledges that it is aware that VicGrid entered into the Related Agreements in reliance on the acknowledgments and warranties set out in **clause 45.2**.

Representations and Warranties by VicGrid

- 45.3 VicGrid makes the following continuing representations and warranties for the benefit of each party with whom it is entering into each Related Agreement:
- (a) it has all authorisations necessary under its constituent documents to enter into and perform its obligations under that Related Agreement; and

- (b) it is legally entitled and has all corporate power to enter into and perform its obligations under that Related Agreement.

46 General

Further Assurance

- 46.1 Each party must, at its own cost and expense (apart from VicGrid), immediately on demand by another party perform all such acts and execute all such agreements, assurances and other documents and instruments as the second party reasonably requires to perfect the rights and powers afforded, created or intended by the parties to be afforded to, or created in favour of, that other party by a Related Agreement. In the case of VicGrid, its cost and expense of complying with this **clause 46.1** are to be met by Generator, including legal costs on a solicitor-own client basis within 10 Business Days of receipt of an invoice from VicGrid.

Amendments to Related Agreements

- 46.2 Subject to **clause 46.3**, an amendment to a Related Agreement shall not be binding unless it is in writing and executed by all counterparties to that Related Agreement.
- 46.3 Each party undertakes to VicGrid that it shall not materially amend any Related Agreement in a manner adverse to the interests of VicGrid without VicGrid's consent, such consent not to be unreasonably withheld or delayed.
- 46.4 Each Project Party undertakes to each other Project Party that it shall not materially amend any Related Agreement in a manner adverse to the interests of the other Project Party without the other Project Party's consent.

Waiver

- 46.5 A right under a Related Agreement may only be waived in writing, signed by the party giving the waiver and:
 - (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right, or otherwise prevents the exercise of the right;
 - (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
 - (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

Exercise of Rights

- 46.6 Subject to the express provisions in any Related Agreement, a party may exercise a right, power or remedy in its absolute discretion, including separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party will not prevent a further exercise of that, or of any other, right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy will not prevent its exercise.

Severability of provisions

- 46.7 If a provision of a Related Agreement is void, unenforceable, or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of the Related Agreement remains effective and the validity or enforceability of that provision in any other jurisdiction is not affected. **Clause 46.7** has no effect if the severance alters the basic nature of the Related Agreement, or is contrary to public policy.

Counterparts

- 46.8 Related Agreements may consist of a number of copies, each signed by one or more parties to the relevant Related Agreement. If so, the signed copies make up one document and the date of the relevant Related Agreement will be the date on which the last counterpart was signed.

Non-merger

- 46.9 The warranties and undertakings in a Related Agreement do not merge on the expiry or termination of the Related Agreement.

Building and Construction Industry (Security of Payment) Act

- 46.10 The parties agree that the date on which any Transmission Charge becomes payable under a NSA is a 'reference date' for the purposes of section 9 of the Security of Payment Act.
- 46.11 If any party makes an adjudication application under the Security of Payment Act, the authorised nominating authorities for the purposes of section 18(4) of the Security of Payment Act are:
- (a) Resolution Institute;
 - (b) Building Adjudication Victoria Inc; and
 - (c) Rialto Adjudications Pty Ltd.
- 46.12 In dealing with any adjudication application made under the Security of Payment Act referred to in **clause 46.11**, the parties will ensure, to the extent that the Security of Payment Act permits it, that the adjudicator will:
- (a) act impartially and in accordance with the law; and
 - (b) include in the adjudication determination the reasons for the determination and the basis on which any amount has been decided.

GST

- 46.13 Terms used in **clauses 46.13 to 46.18** have the meanings given to them in the GST Act.
- 46.14 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided in accordance with any Related Agreement are exclusive of GST.
- 46.15 If GST is imposed on any supply made in accordance with any Related Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Related Agreement.
- 46.16 If any Related Agreement requires a party to pay, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:
- (a) the amount of the reimbursable expense net of any input tax credits to which the other party is entitled in respect of the reimbursable expense (**net amount**); and
 - (b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply under **clause 46.15**,
- such that after the other party meets the GST liability, it retains the net amount.
- 46.17 If the supplier has an adjustment for a supply under the GST Act that varies the amount of the GST payable by the supplier, the supplier will adjust the amount payable by the recipient to take account of the varied GST amount. The supplier must issue an adjustment note to the receiver within 28 days of becoming aware of the adjustment.

Impact of increases in GST on index

- 46.18 If a charge under any Related Agreement is to be adjusted by reference to movements in any index, such as the Consumer Price Index, in carrying out the adjustment any increase in the index attributable to any increase in the rate of GST is to be excluded from the index. If the Australian Statistician does not publish the increase in the index attributable to an increase in the rate of GST and the parties cannot agree on the increase in the index attributable to the increase in the rate of GST, either party may refer the matter for resolution in accordance with the Dispute Resolution Procedure.

Entire Agreement

- 46.19 The Related Agreements together contain the entire agreement between the parties with respect to their subject matter. The Related Agreements together set out the only conduct, representations, warranties, covenants, conditions, agreements or understanding (collectively **Conduct**) relied on by the parties and supersede all earlier Conduct by or between the parties in connection with their subject matter. None of the parties has relied on or is relying on any other Conduct in entering into the Related Agreements to which they are a party or in completing the transactions contemplated by them.

Survival

- 46.20 Without limiting **clause 46.21**, termination of a Related Agreement for any reason does not affect:
- (a) any rights of a party to that Related Agreement against another party to that Related Agreement that:
 - (i) arose prior to the time at which termination occurred; and
 - (ii) otherwise relate to or may arise in the future from any breach or non-observance of the Related Agreement occurring prior to the termination; or
 - (b) the rights and obligations of the parties to that Related Agreement under the provisions relating to rights to property and liability.
- 46.21 Without limiting **clause 46.20, clauses 1, 9, 27, 29.3(a), 29.6-29.18** (to the extent those provisions relate to professional indemnity insurance only), **29 to 32, 34, 37-46** survive the end of this Deed.

EXECUTED AS AN AGREEMENT

EXECUTED by **VICGRID** in accordance with)
section 127(1) of the *Corporations Act 2001* (Cth))
by authority of its directors:)
)

Signature of director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

EXECUTED by **AUSNET TRANSMISSION**)
GROUP PTY LTD in accordance with section)
127(1) of the *Corporations Act 2001* (Cth) by)
authority of its directors:)

Signature of director

Signature of director/secretary

Name of director (please print)

Name of director/secretary (please print)

Schedule 1 – Site Plan

Schedule 2 – Approvals

Schedule 3 – Single Line Diagram

The Point of Supply is shown on the Single Line Diagram below:

Schedule 4 – Delivery Program

Table S4.1 – Delivery Program

Milestone Number	Party Responsible	Milestone Event	Milestone Date
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Table S4.2 – Access Windows

Table S4.2 is provided for information only and details the proposed access arrangements between Constructing Parties. A staging plan will be developed by the Co-ordination Committee that will detail the specific work areas and activities that will occur within an access window.

The access windows may move as necessary to accommodate the Delivery Program and progress of the Project.

Access Number	Access Window Description	Window Start Date	Window Finish Date
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Schedule 5 – Equipment subject to Factory Acceptance Tests

- S5.1 If any of the following types of items of plant and equipment are to be installed as part of its component of the Project, the relevant Constructing Party must provide VicGrid with factory acceptance test results for each, as contemplated by clause 19:
- (a) current transformers;
 - (b) capacitor voltage transformers;
 - (c) circuit breakers;
 - (d) disconnecting switches; and
 - (e) insulators.

Schedule 6 – First Energisation Criteria

S6.1 The First Energisation Criteria are as follows:

- (a) A Constructing Party has successfully completed the Commissioning Tests for each item of plant or equipment for which it is responsible in accordance with the Commissioning Test Program;
- (b) The Constructing Party has confirmed that the item of plant or equipment to be energised or placed into service (as referred to in **paragraph (a)**) is safe to operate and will not cause harm to any person or damage to property;
- (c) The Constructing Party has completed all checks required to complete the table set out in **Figure S6.1** and has provided it to VicGrid's Group Manager System Capability after:
 - i) completing all questions truthfully and completely; and
 - ii) signing and dating by a duly authorised officer of the Constructing Party (**Authorised Person**); and
 - iii) provided evidence satisfactory to VicGrid that the Authorised Person is a suitably
 - iv) qualified engineer or a chartered engineer of at least 10 years' experience.
- (d) To the extent it is relevant to its component of the Project, the Constructing Party provides VicGrid with the following information in final form at least 4 months prior to the proposed date of commissioning the relevant item of plant or equipment:
 - i) any update to the SLD;
 - ii) Terminal Station site plan;
 - iii) earth grid design report;
 - iv) secondary system schematic and methodology;
 - v) fault clearance sheet outlining protection systems with expected clearance times;
 - vi) structural design report;
 - vii) circuit breaker transient recovery voltage and rate of rise voltage calculations;
 - viii) insulation co-ordination study report;
 - ix) fault level report;
 - x) a compliance mapping table detailing how each of the PFRs has been met;
 - xi) earth grid test report;
 - xii) factory acceptance test reports;
 - xiii) handover certificates; and
 - xiv) commissioning program; and
- (e) each Constructing Party is a *declared transmission system operator* and is registered under Chapter 2 of the Rules as a *Transmission Network Service Provider*.

S6.2 Practical Completion Criteria

The Practical Completion Criteria are as follows:

- (a) A Constructing Party has successfully energised its component of the Project from the Victorian Transmission Network in accordance with this Deed;
- (b) The Constructing Party has completed Commissioning Tests for each item of plant or equipment for which it is responsible and demonstrated that the relevant item of plant or equipment meets the Functional Specification;

- (c) The Constructing Party has demonstrated to VicGrid's reasonable satisfaction that the relevant item of plant or equipment is capable of operation in accordance with the Functional Specification;
- (d) The Constructing Party has provided VicGrid with details of proposed Minor Outstanding Items and the plan referred to in **clause 24.5**; and
- (e) The Constructing Party has demonstrated to VicGrid's reasonable satisfaction that the Constructing Party's component of the Project can be used to deliver Network Services safely, without risk to *power system security* or have any adverse impact on the quality of supply to existing *Network Users*.

Figure S6.1: Pre-Energisation Completion Checklist

PRE-ENERGISATION COMPLETION CHECKLIST FORM		
TO BE PROVIDED TO VICGRID BEFORE ENERGISING ANY ITEM OF PLANT OR EQUIPMENT		
Relevant Item of Plant or Equipment		[insert name/other reference]
1	Can you monitor data concerning the relevant item of plant or equipment through the control and monitoring facilities (including alarms, status indications and measurements)?	YES/NO
2	Can you control the relevant item of plant or equipment (including both local and remote controls)?	YES/NO
3	Have all communications systems been tested and found to be functioning in accordance with the Functional Specification?	YES/NO
4	Have all local and remote controls been tested and found to be functioning in accordance with the Functional Specification?	YES/NO
5	Have any special control schemes (including auto-reclose) been tested and found to be functioning in accordance with the Functional Specification?	YES/NO
6	Have all <i>protection systems</i> been tested and found to be functioning completely and correctly and to be ready for energisation, all in accordance with the Functional Specification? (This includes insulation resistance checks, secondary injection tests and trip checks).	YES/NO
Name of Authorising Person:		[insert name]
Title of Authorising Person:		[insert title]
Signature of Authorising Person:		
Date of Signing:		[Insert Date]
Please forward this signed, completed Checklist to the Manager, Network Models at VicGrid via fax - (03) 9609 8080 during business hours.		

Schedule 7 – Road Access Rules

[Note: road access arrangements and responsibility to be confirmed]

S7.1 TNSP's initial obligations

- S7.1.1 TNSP will be responsible for the design and construction of the Terminal Station Access Road so that it (once constructed) is fit for the following purposes:
- (a) the construction of the Project to be located on the Terminal Station Land; and
 - (b) the operations of the Project to be located on the Terminal Station Land, in accordance with the Related Agreements.
- S7.1.2 TNSP will be responsible for the design and construction of the Interface Access Road so that it (once constructed) complies with the requirements set out in the Site Plan.

S7.2 Use of Terminal Station Access Road and Interface Access Road

- S7.2.1 The Project Party Project Representatives must meet within 20 Business Days of the signing of this Deed and endeavour to agree any procedures, protocols, rules or requirements to be observed when using the Terminal Station Access Road and Interface Access Road (including TNSP's requirements in relation to safety, health and environmental matters that are of general application to all persons using the Terminal Station Access Road and Interface Access Road).
- S7.2.2 The TNSP Project Representative will be responsible for co-ordinating access to and use of the Terminal Station Access Road and Interface Access Road in accordance with the traffic management plan and any other procedures, protocols, rules or requirements agreed between the Project Party Project Representatives from time to time.
- S7.2.3 Each Project Party Project Representative must:
- (a) liaise with the Project Representative concerning the relevant Project Party's proposed use of the Terminal Station Access Road and Interface Access Road; and
 - (b) ensure that the relevant Project Party's use of the Terminal Station Access Road and Interface Access Road complies with the traffic management plan and any other procedures, protocols, rules or requirements agreed between Project Party Project Representatives from time to time.
- S7.2.4 Nothing in these Road Access Rules will prevent a party using the Terminal Station Access Road or Interface Access Road in an Emergency.

S7.3 Maintenance

- S7.3.1 TNSP will be responsible for maintaining the Terminal Station Access Road so that it continues to satisfy the requirements set out in **clause S7.1.1** and in any routine maintenance program agreed under **clause S7.2**.
- S7.3.2 Until the Date of Practical Completion (or earlier date that the Interface Access Road is no longer required for the Interface Works), TNSP will be responsible for maintaining the Interface Access Road so that it continues to satisfy the requirements set out in **clause S7.1.2** and in any routine maintenance program agreed under **clause S7.2**.
- S7.3.3 Following Practical Completion, the Project Party Project Representatives must meet and endeavour to agree on a routine maintenance program for the Terminal Station Access Road.

S7.4 General

S7.4.1 Each party must:

use the Terminal Station Access Road and Interface Access Road in accordance with the traffic management plan and any other procedures, protocols, rules or requirements agreed between Project Party Project Representatives from time to time.

Schedule 8 – STPIS Formula for outages incurred after Project Completion

S8.1 For the purposes of this **Schedule 8**:

- (a) Capitalised terms not otherwise defined in this **clause S8.1** or elsewhere in this Deed are defined in the AER's Electricity Transmission Network Service Providers Service Target Performance Incentive Scheme Version 5 (**STPIS**); and
- (b) **Reimbursable Operational Outage** means an Operational Outage where, in relation to any
- (c) *dispatch interval* in which that Operational Outage occurred, one or more the following applies:
 - i) an action was taken by Generator or a person acting on behalf of Generator (whether before or during the *dispatch interval*) which was designed to result in the *dispatch* of the Generator or the **[Wind/Solar]** Farm in that *dispatch interval*; or
 - ii) a *dispatch offer* in accordance with Chapter 3 of the Rules was submitted for that *dispatch interval* in connection with Generator or the **[Wind/Solar]** Farm and not withdrawn prior to the commencement of the Operational Outage.

S8.2 Within 20 Business Days of the AER's approving the increment or decrement to AusNet Services' or TNSP's *maximum allowable revenue* in a *financial year* resulting from the impact of the Market Impact Component for the calendar year in which one or more Reimbursable Operational Outages occur (the **relevant calendar year**) Generator will pay AusNet Services or TNSP (as applicable) an amount (**STPIS Payment Reduction**) equal to the difference between:

- (a) the value of the increment or decrement to AusNet Services' or TNSP's (as applicable) *maximum allowable revenue* in a *financial year* resulting from the impact of the Market Impact Component for the relevant calendar year would have been in the absence of the Reimbursable Operational Outages; and
- (b) the value of the increment or decrement to AusNet Services' or TNSP's (as applicable) *maximum allowable revenue* in a *financial year* resulting from the impact of the Market Impact Component for the relevant calendar year taking into account the Reimbursable Operational Outages.

S8.3 The payment calculated in accordance with clause **S9.2** will be the STPIS Payment Reduction.

S8.4 As soon as reasonably possible after the end of the calendar year in which the Payment Commencement Date occurs, and after each subsequent calendar year during the Term, each of AusNet Services and TNSP will use its reasonable endeavours to minimise the STPIS Payment Reduction by applying for any available relief under STPIS in relation to the Reimbursable Operational Outages.

S8.5 Without limiting **clause S8.4** and **clauses 20.15** and **20.16**, AusNet Services and TNSP must:

- (a) promptly provide to Generator all information available to AusNet Services and TNSP (as applicable) concerning claim relief under STPIS in relation to the Reimbursable Operational Outage; and
- (b) take into account Generator's views concerning the available options.

S8.6 Generator and AusNet Services or TNSP (as applicable) must, acting reasonably, endeavour to agree the STPIS Payment Reduction under **clause S8.3**. If they are unable to reach agreement, either Generator, AusNet Services or TNSP (as applicable) may refer the matter for resolution using the Dispute Resolution Procedure

Schedule 9 – Co-ordination Schedule

Attachment 1 – Form of Progress Report

PROGRESS REPORT		[LOGO OF PROJECT PARTY]	
NAME OF PROJECT	[Insert Name of Project]		
DATE OF REPORT	[Insert Date]	REPORT PREPARED BY	[Insert Name/Title]
ACTIVITIES CARRIED OUT LAST MONTH			
Activity	Due Date	Status	
[Insert Activity]	[Insert Date]	[Insert Status Report including Interdependencies]	
<i>One item per line. Insert more lines in the table if you need to add more items</i>			
MILESTONES			
Milestone Event	Due Date	Status	Revised Due Date
[Insert Milestone Event]	[Insert Date]	[Insert Status Report including Interdependencies]	[Insert Date]
<i>One item per line. Insert more lines in the table if you need to add more items</i>			
OUTAGES			
Outages Taken Last Month	Outages to be taken this month	Outages to be taken next month	
OUTAGE REBATES			
Is Rebate Payable? (YES/NO)	Rebate payable to: (VicGrid or AER)	Amount of Rebate	
DELAYS			
Particulars Of Delay	Impact of Delay on Delivery Program	Action Taken to Mitigate Effects of Delay	Delay Costs
[Insert Particulars]	[Insert Report on Impact]	[Insert Report on Actions to Mitigate Effects of Delay]	[If Delay Costs will be Claimed, Insert Details]
<i>One item per line. Insert more lines in the table if you need to add more items</i>			

OTHER ISSUES, INCLUDING VARIATIONS & NON-CONFORMANCES UNDER QA PLAN		
Issue or Non-Conformance	Will it have a Material Adverse Impact on Delivery Program?	If YES, Identify Corrective Action
[Insert Particulars]	YES/NO	[Insert Details]
One item per line. Insert more lines in the table if you need to add more items		
[Insert Gantt Chart Extract or Free Text Description]		

Attachment 2 – Form of Proposed Variation

PROPOSED VARIATION		
(clause 16.4 Project Construction & Co-ordination Deed)		
NAME OF PROJECT	[Insert Name of Project]	
PARTY PROPOSING VARIATION	[Insert Name of Party]	DATE [Insert Date]
DETAILS OF PROPOSED VARIATION		
Primary Functional Requirements proposed to be varied		
Subject	Reference	Details of proposed Variation
[Insert Particulars]	[Insert Particulars]	[Insert Particulars]
<i>One item per line. Insert more lines in the table if you need to add more items</i>		
Protection and Control Requirements proposed to be varied		
Subject	Reference	Details of proposed Variation
[Insert Particulars]	[Insert Particulars]	[Insert Particulars]
<i>One item per line. Insert more lines in the table if you need to add more items</i>		
IMPACTS OF PROPOSED VARIATION		
Details of Costs to be incurred if Proposed Variation is accepted	[Insert details of costs – attached detailed quote of costs, if available]	
Details of any anticipated delays to the Project if Proposed Variation is accepted	[Provide details of anticipated delays and requests for extensions of time]	
Changes to Related Agreements	[Insert details of each provision to be amended in each Related Agreement] <i>One item per line. Insert more lines in the table if you need to add more items</i>	
Any other relevant information	[Insert Particulars] <i>One item per line. Insert more lines in the table if you need to add more items</i>	

Attachment 3 – Instruction to Proceed with Variation

INSTRUCTION TO PROCEED		
(clause 16.9 Project Construction & Co-ordination Deed)		
NAME OF PROJECT	[Insert Name of Project]	
ADDRESSED TO	[Insert Name of Party]	DATE [Insert Date]
DETAILS OF PROPOSED VARIATION		
Changes to Related Agreements		
[Insert Name of Agreement]	[Insert clause reference]	[Insert details of each provision to be amended in each Related Agreement, or attach document with the variations]
	One item per line. Insert more lines in the table if you need to add more items	
FURTHER INFORMATION REQUIRED BY VicGrid		
[insert particulars of further information required]		
One item per line. Insert more lines in the table if you need to add more items		
THIS IS AN INSTRUCTION FROM VICGRID TO PROCEED WITH THE VARIATION DETAILED IN THIS DOCUMENT PENDING EXECUTION OF A DEED OF VARIATION TO THE RELATED AGREEMENTS BY ALL PARTIES		

Attachment 4 – Form of Variation Order

VARIATION ORDER		
(clause 16.12 Project Construction & Co-ordination Deed)		
NAME OF PROJECT	[Insert Name of Project]	
DATE	[Insert Date]	
DETAILS OF VARIATION ORDER		
Primary Functional Requirements to be varied		
Subject	Reference	Details of proposed Variation
[Insert Particulars]	[Insert Particulars]	[Insert Particulars]
One item per line. Insert more lines in the table if you need to add more items		
Protection and Control Requirements to be varied		
Subject	Reference	Details of proposed Variation
[Insert Particulars]	[Insert Particulars]	[Insert Particulars]
One item per line. Insert more lines in the table if you need to add more items		
IMPACTS OF PROPOSED VARIATION		
Changes to Related Agreements		
[Insert Name of Agreement]	[Insert clause reference]	[Insert details of each provision to be amended in each Related Agreement, or attach document with the variations]
	One item per line. Insert more lines in the table if you need to add more items	
FURTHER INFORMATION REQUIRED BY VicGrid		
[insert particulars of further information required]		
One item per line. Insert more lines in the table if you need to add more items		

Attachment 5 – Design Checklist

DESIGN CHECKLIST		
TO BE PROVIDED TO VICGRID BEFORE ENERGISING ANY ITEM OF PLANT OR EQUIPMENT		
Relevant Item of Plant or Equipment	[insert name/other reference]	
1	Does the design permit the operator of the [Wind/Solar] Farm (Operator) to monitor the [Wind/Solar] Farm at the time of connection (including alarms, status indications and measurements)?	YES/NO
2	Does the design permit the Operator to exercise control over the operation of [Wind/Solar] Farm (includes both local and remote controls)?	YES/NO
3	Does the design include all communication systems required in the PCRs for the Connection Assets and under the Rules?	YES/NO
4	Does the design include all local and remote controls required in the PCRs for the Connection Assets and under the Rules?	YES/NO
5	Does the design include all <i>protection systems</i> required in the PCRs for the Connection Assets?	YES/NO
6	Does the design meet all other requirements of the PCRs for the Connection Assets?	YES/NO
7	Does the design meet the <i>performance standards</i> and clause S5.5 of the Rules?	YES/NO
8	Does the [Wind/Solar] Farm comply with the <i>power station</i> technical parameters set out in clause S5.5 of the Rules?	YES/NO
Name of Authorising Person:		[insert name]
Title of Authorising Person:		[insert title]
Signature of Authorising Person:		
Date of Signing:		[Insert Date]
Please forward this signed, completed Checklist to the Manager, Network Models at VicGrid via fax - (03) 9609 8080 during business hours.		

Attachment 6 – Readiness for Energisation Checklist

READINESS FOR ENERGISATION CHECKLIST TO BE PROVIDED TO VICGRID BEFORE ENERGISING ANY PART OF THE WIND FARM OR CONNECTION ASSETS		
Relevant Item of Plant or Equipment	[insert name/other reference]	
1	Is the operator of the relevant facilities (Operator) able, or will the Operator be able, to monitor the facilities to be energised or Connected (including alarms, status indications and measurements) prior to first energisation?	YES/NO
2	Does the Operator, or will the Operator, have control over the facilities to be Connected (includes both local and remote controls) prior to first energisation?	YES/NO
3	Have or will all communications with the facilities been tested, proven compliant with the PCRs for the Connection Assets and the Rules and proven functional prior to first energisation?	YES/NO
4	Have or will all local and remote controls be tested, proven compliant with the PCRs for the Connection Assets and the Rules and proven functional prior to first energisation?	YES/NO
5	Have or will all special control schemes be tested, proven compliant with the PCRs for the Connection Assets and the Rules and proven functional prior to first energisation?	YES/NO
6	Have or will all <i>protection systems</i> be tested and proven functional and ready for service prior to first energisation? (This includes insulation resistance checks, secondary injection tests and trip checks. Does not include on-load checks)	YES/NO
Name of Authorising Person:		[insert name]
Title of Authorising Person:		[insert title]
Signature of Authorising Person:		
Date of Signing:		[Insert Date]
Please forward this signed, completed Checklist to the Manager, Network Models at VicGrid via fax - (03) 9609 8080 during business hours.		