



Generator Connection Agreement: General Conditions

**Ausgrid and
Generator
May 2011**



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Generator Connection Agreement: General Conditions

Background

This document is to be read in conjunction with the "Generator Connection Agreement: Instrument of Agreement" entered into between Ausgrid and the Generator (**Instrument of Agreement**).

- A Ausgrid owns and operates a *transmission and distribution system* (Ausgrid's Distribution System) which is located within Ausgrid's Distribution District and which *connects* to the *transmission system* owned and operated by TransGrid.
- B Ausgrid is registered with AEMO under Chapter 2 of the Rules as a *Network Service Provider* and holds a Distribution Network Service Provider's Licence.
- C The Generator has requested Ausgrid to:
- Connect the Generating Facilities to Ausgrid's Distribution System;
 - provide Power Transfer Capability to the Generator at the Connection Point(s); and
 - provide *use of system services* to the Generator,
- to enable the Generator to export electricity into Ausgrid's Distribution System and to import electricity from Ausgrid's Distribution System.
- D Ausgrid has offered to provide, and the Generator has agreed to accept the above services on the terms and conditions set out in this Agreement.

The parties agree

1 Definitions and Interpretation

1.1 Italicised words and phrases

Italicised words and phrases (other than references to legislation) have the meaning given to them in the Rules.

1.2 Capitalised words and phrases

Capitalised words and phrases are defined in the Dictionary.

1.3 General interpretation

The rules of interpretation in the Dictionary apply to this Agreement.

2 Approvals and Property Rights

2.1 Generator Approvals and Property Rights

(a) The Generator must, at its cost:

- (1) obtain all Approvals and Financing Arrangements necessary or desirable for the Generating Facilities and the Contestable Works;
- (2) obtain all Property Rights necessary or desirable for the Generating Facilities and the Contestable Works (other than the Transferred Works);
- (3) obtain or grant, for the benefit of Ausgrid (as a prescribed authority under section 88A *Conveyancing Act 1919* (NSW)), all Easements necessary or desirable for the Transferred Works, in accordance with paragraph (b); and
- (4) obtain or grant, for the benefit of Ausgrid, all leases and Licences necessary or desirable for the Transferred Works, in accordance with paragraph (b),

(collectively referred to as **Generator Approvals and Property Rights**), as soon as reasonably possible after the Date of this Agreement.

Note to Generators: *Under clause 7.2(a), the relevant Generator Approvals and Property Rights for the Contestable Works must generally all be in place before Connection.*

(b) For all Easements, leases and Licences for the Transferred Works referred to in paragraph (a), the Generator must:

- (1) for all Easements, leases and Licences over third party land:
 - i) negotiate and reach agreement with landowners and any other relevant persons on the terms of the Easements, leases and Licences (being terms acceptable to Ausgrid);
 - ii) prepare the Easement, lease and Licence documentation (in a form acceptable to Ausgrid);
 - iii) pay all required compensation to, and undertake any other agreed actions for the benefit of, landowners and other relevant persons in consideration for the Easements, leases and Licences;
 - iv) undertake all surveys and prepare all plans necessary or desirable for the Easements, leases and Licences (including obtaining all Approvals for them);
 - v) provide the relevant Easement, lease and Licence documents and plans, in registrable form (if relevant) and executed by the landowners and any other relevant persons, to Ausgrid; and
 - vi) arrange for the stamping and registration (if relevant) of the Easement, lease and Licence documents and plans.
 - (2) for all Easements, leases and Licences over land owned by the Generator:
 - i) prepare the Easement, lease and Licence documentation (in a form and on terms acceptable to Ausgrid);
 - ii) undertake all surveys and prepare all plans necessary or desirable for the Easements, leases and Licences (including obtaining all Approvals for them);
 - iii) provide the relevant Easement, lease and Licence documents and plans, in registrable form (if relevant) and executed by the Generator and any other relevant persons, to Ausgrid; and
 - iv) arrange for the stamping and registration (if relevant) of the Easement, lease and Licence documents and plans.
 - (3) for all Easements and Leases: prepare and provide to Ausgrid a Survey Plan together with a copy of the Survey Plan showing in red ink the centre line of the electricity cables (or cable ducts if used) as installed with offsets to the Easement boundaries and the location of any substation. This copy of the Survey Plan must be signed by the Registered Surveyor with an accompanying statement to certify that the information shown in red ink has been accurately located to the Registered Surveyor's satisfaction.
- (c) For the purposes of paragraph (a) and clause 7.2(a), Easements, leases and Licences for the Transferred Works include Easements, leases and Licences for the construction and ongoing presence of the Transferred Works and for access to those works. If there is any disagreement between the parties as to which Approvals are necessary or desirable for the Contestable Works, or which Easements, leases and Licences are necessary or desirable for the Transferred Works, Ausgrid's opinion on the matter prevails.

Note to Generators: *Without limiting Ausgrid's discretion, Ausgrid would generally require easements for transmission or distribution lines (including any areas required for overhang or buffer zones) and kiosk type substations, and leases for substations and associated plant. Licences may be required in a number of other circumstances as advised by Ausgrid.*

2.2 Ausgrid Approvals and Property Rights

- (a) Ausgrid must, at its cost, use its best endeavours to obtain all Approvals, Financing Arrangements and Property Rights which in Ausgrid's opinion are necessary or desirable for the Non-Contestable Works (**Ausgrid Approvals and Property Rights**).
- (b) As soon as reasonably possible after Ausgrid has obtained the last of the Ausgrid Approvals and Property Rights, Ausgrid will give the Generator a notice confirming that Ausgrid has obtained them.
- (c) Ausgrid will have no obligation to undertake the Non-Contestable Works before the date on which Ausgrid gives the Generator a notice under paragraph (b), unless specifically agreed between the parties in relation to any particular work.
- (d) Either party may terminate this Agreement, immediately by notice to the other party given at any time after the Ausgrid Approvals and Property Rights Satisfaction Date, if, at the time the notice of termination is given, Ausgrid has not obtained all Ausgrid Approvals and Property Rights under paragraph (a).

2.3 When Approvals and Property Rights are deemed to be obtained

- (a) The Generator will be deemed to have obtained the required Approvals for the Contestable Works and the required Easements, leases and Licences for the Transferred Works, and Ausgrid will be deemed to have obtained the Ausgrid Approvals and Property Rights, only when:
 - (1) the relevant Approvals and Property Rights have been obtained or granted, either unconditionally or on conditions reasonably acceptable to Ausgrid; or
 - (2) the need for any particular Approval or Property Right (or stage of it), either at all or by any particular time, has been waived by Ausgrid.
- (b) An Approval or Property Right will only be deemed to be obtained when any rights by a third party of appeal or review have been exhausted.

3 Generating Facilities

3.1 Construction of Generating Facilities

- (a) The Generator will, at its own cost, construct and install, or procure the construction and installation of, the Generating Facilities, in accordance with this Agreement, including the specifications in Schedule 1 of the Instrument of Agreement (subject to this clause).
- (b) No input, advice, comments, directions or inspection from Ausgrid in relation to the Generating Facilities will relieve the Generator from any of the Generator's responsibilities under this Agreement.

3.2 Status of Schedule 1 of the Instrument of Agreement

The Generator acknowledges that Ausgrid has assessed the Generator's *application to connect*, and negotiated the terms of this Agreement, on the basis of the information in Schedule 1 of the Instrument of Agreement (which the Generator has provided to Ausgrid).

3.3 Validating and updating data in Schedule 1 of the Instrument of Agreement

- (a) In addition to any other requirements of this clause, if, at any stage before the Generating Facilities are commissioned, the Generator becomes aware of any inconsistency between the (existing or proposed) Generating Facilities and the provisions of this Agreement, the Generator must give Ausgrid notice of the inconsistency.
- (b) Before the Generating Facilities are Connected, the Generator (in consultation with Ausgrid) must validate the data in Schedule 1 of the Instrument of Agreement which Ausgrid requires to be validated before connection, based on manufacturers' data, detailed design calculations, works or site tests (as approved by Ausgrid), and the Generator will give Ausgrid notice of the results of that validation and any differences between that data and the data in Schedule 1 of the Instrument of Agreement.
- (c) As soon as practicable after the Generating Facilities are Connected, the Generator must conduct on-site testing to validate the data in Schedule 1 of the Instrument of Agreement which Ausgrid requires to be validated after connection, and the Generator will give Ausgrid notice of the results of that validation and any differences between that data and the data in Schedule 1 of the Instrument of Agreement.
- (d) If, within 20 Business Days after the Generator provides Ausgrid with the information in paragraphs (a), (b) and (c) respectively, Ausgrid does not object (on reasonable grounds) to amending this Agreement to reflect that information, then Schedule 1 of the Instrument of Agreement will be taken to be accordingly amended on and from the expiration of that 20 Business Day period. The parties agree to document those amendments as soon as possible thereafter by signing a replacement Schedule 1.
- (e) If, within 20 Business Days after the Generator provides Ausgrid with the information in paragraphs (a), (b) and (c) respectively, Ausgrid objects (on reasonable grounds) to amending this Agreement to reflect that information, the parties must negotiate in good faith to amend either the Generating Facilities or this Agreement. If the parties are unable to agree on such amendments within 60 Business Days, either party may terminate this Agreement immediately by notice to the other party.

Note: See also clause 14.1 for general obligations regarding information and technical data.

4 Capital Works

4.1 Capital Works

The parties agree that it is necessary for the Capital Works to be constructed and installed in order for Ausgrid to provide the Network Services to the Generator.

4.2 Non-Contestable Works

Ausgrid will construct and install, or procure the construction and installation of, the Non-Contestable Works.

Note to Generators: *The Generator is liable to pay the Non-Contestable Works Charge (if specified in the Instrument of Agreement, at the time specified in the Instrument of Agreement). See clause 9 and Schedule 3 of the Instrument of Agreement.*

4.3 Contestable Works

- (a) The Generator will design, construct and install the Contestable Works, in accordance with this clause and other relevant provisions of this Agreement.
- (b) Unless the Generator is an Accredited Service Provider and will undertake the work in paragraph (a) itself, the Generator must (by separate contract) engage the services of an Accredited Service Provider to design, construct and install the Contestable Works (except for the civil works). That contract will be separate to this Agreement, even if the Generator chooses to engage Ausgrid.
- (c) If required by Ausgrid, the Generator will enter into a further separate contract with Ausgrid and the Accredited Service Provider (in a form approved by Ausgrid) for the delivery of the Contestable Works.
- (d) The scope of the Contestable Works will be determined by Ausgrid. The Contestable Works must be designed and constructed to specifications and standards determined and advised by Ausgrid.
- (e) Ausgrid may inspect and give reasonable directions in relation to the construction of the Contestable Works.
- (f) No input, advice, comments, directions or inspection from Ausgrid under this clause will relieve the Generator from any of the Generator's responsibilities under this Agreement.
- (g) The Transferred Works will be owned by Ausgrid, free of all Encumbrances, upon Connection, and the Generator will do all things necessary to ensure that ownership of those works is transferred to Ausgrid at that time.
- (h) The Generator will indemnify Ausgrid for any loss, damage, liability, claim or expense suffered by Ausgrid as a result of Connection occurring before all of the requirements in clause 7.2(a) are met.
- (i) The Generator warrants that the Contestable Works will, once completed, be of a high standard of workmanship, be fit for their intended use, and comply with all relevant Ausgrid standards and *Australian standards and good electricity industry practice*. The Generator will indemnify Ausgrid for any loss, damage, liability, claim or expense arising from a breach of any such warranty.
- (j) Without limiting the Generator's obligations under paragraph (i), if, during the conduct of the Transferred Works or before the expiration of the Warranty Period, the Generator becomes aware, or Ausgrid notifies the Generator, that there is a defect in any of the Transferred Works, the Generator will, at its own risk and cost, procure the prompt rectification of that defect. In the case of Major Defects, the rectification must be immediate. In the case of Minor Defects, the rectification must occur within two weeks of notification. The rectification work must be in accordance with the requirements of Ausgrid. If the rectification work is not commenced or completed by

the required time, or where urgent action is necessary, Ausgrid may carry out the rectification work at the expense of the Generator. The Generator must promptly pay any amounts for which Ausgrid invoices the Generator under this clause.

- (k) If required by the Instrument of Agreement, the Generator will, prior to Connection, arrange for the deposit of a Warranty Bond as surety for rectification of any defects in the Transferred Works during the Warranty Period.
- (l) Ausgrid may have recourse to the Warranty Bond, without notice to the Generator:
 - (1) to apply against costs incurred by Ausgrid if Ausgrid carries out rectification work under paragraph (i) and the Generator does not promptly pay Ausgrid's invoice; or
 - (2) to apply against any other loss or damage suffered or incurred by Ausgrid as a result of the Generator's failure to observe its obligations in respect of the Warranty Period, failure to complete the Contestable Works, or as a result of a breach of any warranty given by the Generator under this Agreement.
- (m) The Generator will ensure that Ausgrid has the benefit of all warranties given, and obligations to be performed, by the Accredited Service Provider under the relevant construction contract, and may make a claim directly on the Accredited Service Provider for any breach of these.
- (n) If the Generator accepts any limitation or exclusion of liability of the Accredited Service Provider under the relevant construction contract, the Generator will indemnify Ausgrid to the extent that Ausgrid is unable to recover any loss from the Accredited Service Provider due to that limitation or exclusion.

Note to Generators: *The Generator is liable to pay the Contestable Works O&M Charge (if specified in the Instrument of Agreement, at the time specified in the Instrument of Agreement). See clause 9 and Schedule 3 of the Instrument of Agreement.*

5 Construction Timetable

5.1 Construction Timetable

The parties will:

- (a) in consultation with each other, develop (and review and amend where necessary on a regular basis) a timetable for the construction and installation of the Generating Facilities and the Capital Works (**Works**);
- (b) use reasonable endeavours to coordinate the construction and installation of the Works in accordance with that timetable (without incurring any liability to the other party for any failure to do so); and
- (c) regularly keep each other informed of progress of the Works.

5.2 Termination after Latest Ready for Connection Date

- (a) If Ausgrid is not satisfied under clause 7.2(a) that the Generating Facilities and the Contestable Works are ready for Connection by the Latest Ready for Connection Date, Ausgrid may terminate this Agreement immediately at any time after the Latest Ready for Connection Date by notice to the Generator.
- (b) If Ausgrid is satisfied under clause 7.2(a) that the Generating Facilities and the Contestable Works are ready for Connection after the Latest Ready for Connection Date (and gives the Generator a notice to that effect) but before it serves a notice under paragraph (a), then Ausgrid will cease to have the right under paragraph (a) to terminate this Agreement.

6 Term and Termination

6.1 Term

This Agreement will commence on the Date of this Agreement and will continue until:

- (a) if there is a Fixed Period of Connection under this Agreement, the end of that period (unless it is terminated earlier under this clause 6, clause 2.2(d), clause 3.3(e), clause 5.2, clause 15.4(b) or under any other right of termination a party may lawfully have); or
- (b) if there is no Fixed Period of Connection under this Agreement, until it is terminated under this clause 6, clause 2.2(d), clause 3.3(e), clause 5.2, clause 15.4(b) or under any other right of termination a party may lawfully have.

6.2 Termination after end of Minimum Period of Connection

- (a) If there is a Minimum Period of Connection under this Agreement, either party may terminate this Agreement at any time after the end of the Minimum Period of Connection by giving no less than 12 months' notice to the other party.
- (b) Termination under this clause is without prejudice to accrued rights, but neither party will be liable to the other party with respect to that termination.

6.3 Termination where no Fixed or Minimum Period of Connection

- (a) If there is no Minimum Period of Connection or Fixed Period of Connection under this Agreement, either party may terminate this Agreement at any time after Connection by giving no less than 12 months' notice to the other party.
- (b) Termination under this clause is without prejudice to accrued rights, but neither party will be liable to the other party with respect to that termination.

6.4 Termination for default

- (a) Ausgrid may terminate this Agreement by giving one month's notice to the Generator if:
 - (1) the Generator fails to make a payment under this Agreement, 90 days have elapsed since the due date for payment and the procedures for resolving any dispute over payment in clause 20 have been complied with;
 - (2) the Generator fails to cure any other default under this Agreement within 120 days of receiving a notice of default from Ausgrid; or
 - (3) an Insolvency Event occurs in relation to the Generator.
- (b) The Generator may terminate this Agreement by giving one month's notice to Ausgrid if Ausgrid fails to cure any default under this Agreement within 120 days of receiving a notice of default from the Generator.
- (c) Termination under this clause is without prejudice to accrued rights or any legal or equitable rights that a party may otherwise have with respect to that termination.
- (d) Where there is more than one Connection Point under this Agreement, termination under this clause may be with respect to one or more of those Connection Points.

6.5 Consequences of termination under certain clauses

- (a) If a party terminates this Agreement under clauses 2.2(d), 3.3(e) or 5.2, the Generator will be liable to pay Ausgrid:

- (1) any accrued charges up to the date of termination, including the Connection Studies Charge and any applicable Connection Management Charge;
 - (2) Ausgrid's costs (whether or not the Generator would have been liable for a Non-Contestable Works Charge had the Connection proceeded) in:
 - i) obtaining (and, if applicable, subsequently divesting) the Ausgrid Approvals and Property Rights; and
 - ii) undertaking (and, if applicable, subsequently divesting) the Non-Contestable Works (including any cancellation costs), to the extent that the Non-Contestable Works cannot be used by Ausgrid for another purpose; and
 - (3) any other costs incurred by Ausgrid in relation to the proposed Connection before the termination of this Agreement.
- (b) In the case of termination under clause 2.2(d), the costs in paragraph (a)(2)(ii) will only apply to work that the parties agree under clause 2.2(c) that Ausgrid will undertake before the date that Ausgrid obtains the Ausgrid Approvals and Property Rights.
- (c) Other than the payments in paragraph (a), neither party will be liable to the other party with respect to termination under those clauses.

7 Network Services

7.1 Completion of Contestable Works and Generating Facilities

The Generator will notify Ausgrid when it has completed the construction of the Contestable Works and the Generating Facilities to the stage where the Generator is able to commence the acceptance testing for the Generating Facilities, by:

- (a) notifying Ausgrid of the planned time for conducting the acceptance tests;
- (b) providing Ausgrid with any information and certificates in relation to the completion of the Contestable Works required by Ausgrid; and
- (c) inviting Ausgrid to witness the acceptance tests and carry out Ausgrid's final inspection of the Contestable Works.

The Generator will provide at least 4 weeks notice to Ausgrid in each case.

7.2 Connection services

- (a) Ausgrid will Connect the Generating Facilities to Ausgrid's Distribution System at the Connection Point(s) upon the latest of the following to occur:
 - (1) the Generator informing Ausgrid that the Generating Facilities and the Contestable Works are ready for Connection;
 - (2) the Generating Facilities and the Contestable Works being accepted by Ausgrid for Connection (after Ausgrid has inspected them and performed any necessary testing);
 - (3) Practical Completion of the Contestable Works being reached;
 - (4) Ausgrid being satisfied that:
 - i) all Approvals necessary or desirable for the Contestable Works are in place; and
 - ii) the Contestable Works have been constructed in accordance with those Approvals and relevant laws;
 - (5) the Transferred Works being free from Encumbrances;
 - (6) all Easements, leases and Licences required by Ausgrid under this Agreement having been granted to and vested in Ausgrid and registered at Land and Property Information NSW (if registrable);
 - (7) the Survey Plans and copies contemplated by clause 2.1(b)(3) having been provided to Ausgrid;
 - (8) the Non-Contestable Works being completed to Ausgrid's satisfaction;
 - (9) the following fees and charges having been paid to Ausgrid:
 - i) the Non-Contestable Works Charge, the Connection Studies Charge and any applicable Connection Management Charge; and
 - ii) any other charge that the Instrument of Agreement specifies is payable on, from or before Connection, or in respect of a service delivered on or before that date;
 - (10) the Generator having lodged a Warranty Bond in accordance with clause 4.3(k) (if required by that clause);
 - (11) Ausgrid being satisfied that appropriate metering arrangements are in place; and

(12) the Generator providing Ausgrid with any credit support required by Ausgrid under this Agreement,

other than any aspects of those requirements that Ausgrid notifies the Generator that Ausgrid does not require before Connection.

(b) Ausgrid will allow the Generating Facilities to remain Connected at those Connection Point(s) for the remainder of the Term, on the terms set out in this Agreement.

7.3 Power Transfer Capability

Ausgrid will provide Power Transfer Capability at the Connection Point(s) to enable the Generator to:

(a) deliver electricity into Ausgrid's Distribution System, up to but not exceeding the lesser of:

(1) the Agreed Maximum Export into Ausgrid's Distribution System; and

(2) the Capacity of Ausgrid's Distribution System from time to time; and

(b) take electricity from Ausgrid's Distribution System, for the sole purposes of commissioning the Generating Facilities or starting up the Generating Facilities from time to time, up to but not exceeding the lesser of:

(1) the Agreed Maximum Import from Ausgrid's Distribution System; and

(2) the Capacity of Ausgrid's Distribution System from time to time.

7.4 Use of System Services

Ausgrid must provide the Generator with those *use of system services* which are necessary to enable Ausgrid to provide the Generator with the Power Transfer Capability specified in this Agreement.

7.5 Operations by Generator

(a) The Generator will:

(1) not operate the Generating Facilities so that:

i) electricity delivered from the Generating Facilities into Ausgrid's Distribution System exceeds the lesser of the Agreed Maximum Export or the Capacity of Ausgrid's Distribution System from time to time; and

ii) electricity taken from Ausgrid's Distribution System exceeds the lesser of the Agreed Maximum Demand or the Capacity of Ausgrid's Distribution System from time to time; and

(2) immediately notify Ausgrid if the Generator becomes aware of any material and probable threat of a breach of paragraphs (a)(1)(i) or (ii), and take immediate steps to avoid that threat or remedy that breach.

(b) Ausgrid may take such steps as it reasonably considers necessary to limit or interrupt the delivery of electricity:

(1) from the Generating Facilities to Ausgrid's Distribution System; or

(2) to the Generating Facilities from Ausgrid's Distribution System,

if Ausgrid reasonably believes that such steps are necessary so as to avoid an Emergency or a breach of paragraphs (a)(1)(i) or (ii).

7.6 Run Back Emergency Control System

The Generator acknowledges that Ausgrid may require a Run Back Emergency Control System to be installed, whether or not such a system was required to be installed at the commencement of this Agreement, and if so, the parties will ensure that such a system is installed and operational. The Generator will pay all costs associated with the installation of

that system. The parties will amend the Operating Protocol Agreement as necessary in order to reflect the operation of the Run Back Emergency Control System.

8 Metering

8.1 Application of clause

This clause applies if any of the charges that are or become payable under this Agreement are to be calculated by reference to *metering data*.

8.2 Market Generator

The parties acknowledge that if the Generator is a *Market Generator*, the parties must comply with Chapter 7 of the Rules, and the parties agree to so comply.

8.3 Rules procedures for Responsible Person

- (a) The parties agree to comply with the relevant Rules procedures in relation to the *responsible person* (being clauses 7.2.2 to 7.2.5 of the Rules and associated definitions), whether or not the Generator is a *Market Generator*, as if references in those provisions to "the *Market Participant*" were references to "the Generator".
- (b) For the purpose of paragraph (a), where the Generator is a *Non-Market Generator*, the provisions of those clauses regarding providing AEMO with relevant details of the *metering installation* will not apply.
- (c) It is the Generator's responsibility to either request an offer from Ausgrid in respect of the provision, installation and maintenance of the *metering installation*, or to engage another *Metering Provider* to do this. Those arrangements will be outside this Agreement. The Generator will advise Ausgrid of the relevant arrangements and any changes in those arrangements.

8.4 Meter type, accuracy and location

- (a) The type of *metering installation* and the accuracy requirements for that *metering installation* which must be installed in respect of each Connection Point are as set out in the Instrument of Agreement.
- (b) However, if the Generator is a *Market Generator*, the Rules will prevail over the Instrument of Agreement in respect of the required type and accuracy of *metering installation(s)* to the extent of any inconsistency.
- (c) The location of the *metering installation(s)* will be as specified in the Instrument of Agreement.

8.5 Rules procedures for testing and inspection

- (a) The parties agree to comply with Schedule 7.3 of the Rules in relation to testing and inspection of the *metering installation*, whether or not the Generator is a *Market Generator*, as if references in those provisions to "the *Market Participant*" were references to "the Generator".
- (b) For the purpose of paragraph (a), where the Generator is a *Non-Market Generator*, the provisions of that Schedule regarding providing AEMO with relevant approval certificates and test results will not apply.
- (c) If the Generator is the *responsible person*, the Generator must provide all test results to Ausgrid.

8.6 Metering Data Agent and Metering Data

- (a) The Generator will, at its cost, appoint an appropriately accredited Metering Data Agent to arrange for all relevant metering data to be collected from the *metering installation(s)* and provided to Ausgrid. The Generator will advise Ausgrid of the relevant arrangements and any changes in those arrangements.
- (b) The Generator must ensure that the Metering Data Agent converts the original *meter* readings into *settlements ready data* using the validation and substitution procedures developed by AEMO in accordance with the Rules.
- (c) The *settlements ready data* provided to Ausgrid by the Metering Data Agent will be used to calculate any charges payable under this Agreement that are to be calculated by reference to *metering data*.

9 Charges and Payments

9.1 Charges and Payments

(a) Amount of charges

Each party agrees to pay the charges specified in Schedule 3 of the Instrument of Agreement as being payable by it, during the Term.

(b) Invoices

During such times as any charges are payable under this Agreement, Ausgrid will be entitled to render invoices on a monthly basis. Ausgrid must provide sufficient information in the invoices to enable the Generator to fully assess the accuracy of the charges specified in each invoice.

(c) Payments

Each party must direct to the other party all payments due under this Agreement to the other party, unless otherwise specified in this Agreement or otherwise directed by the other party. Unless otherwise specified in this Agreement or otherwise directed by the other party, all payments to the other party must:

- (1) be for the amount of each invoice; and
- (2) be made into an account or accounts and by a process nominated by the other party; and
- (3) be made such that clear funds are to be available in the nominated account by 9.30 am on the 30th day after the final invoice has been rendered.

(d) Disputed invoices

- (1) Subject to paragraph (e) below, where there is a dispute as to the accuracy of any invoice, the party who disputes the invoice must notify the other party of the dispute prior to the date for payment of the invoice.
- (2) The parties must use their best endeavours to resolve the dispute in accordance with clause 20.
- (3) If the dispute is not resolved by the time payment is due, the parties must make all payments in full. Any changes resulting from the resolution of the dispute must be made at a later stage as an adjustment of accounts in accordance with paragraph (e) below.

(e) Adjustment of accounts

- (1) No dispute in relation to any invoice rendered pursuant to this Agreement may be brought by either party after 2 years from the date of the invoice.
- (2) If within 2 years after the date of the relevant invoice it is found that a party has been undercharged or overcharged:
 - i) that invoice may be referred by either party to the other party for consideration; and
 - ii) the amount payable as an additional payment or refund to correct the undercharge or overcharge (as the case may be) must be agreed between the parties and a revised invoice issued; and
 - iii) the additional payment or refund must be made within 15 Business Days of the amount being determined and a revised invoice being issued and (unless otherwise directed) must be paid in accordance with paragraph (c)(2) above.

- (f) Late or non payment

In addition to any other remedies the receiving party (**Payee**) may have under this Agreement, if payment is not made by a party (**Payer**) in accordance with paragraph (c) above, the Payer must pay to the Payee default interest on the amount. Default interest must be calculated in accordance with clause 9.2 and will commence on the day the payment was due.

- (g) Settlements

A party may choose to bill and clear its charges through an agent.

9.2 Default Interest

Any default interest payable will:

- (a) accrue daily at the *bank bill rate* on the relevant day plus 2.5% per annum; and
- (b) be calculated:
 - (1) for each day from the date due until the date of payment; and
 - (2) on a daily compounding basis; and
 - (3) assuming a 365 day year.

9.3 Credit Support

- (a) Without prejudice to any rights Ausgrid may have under this Agreement, if the Generator has not complied with its obligations in clause 9.1(c) or 9.1(e) on one or more occasions then Ausgrid may require the Generator to procure credit support in accordance with clause 10 within 10 Business Days of being requested to do so by Ausgrid.
- (b) Ausgrid must review the requirement for the Generator to maintain credit support on at least an annual basis.

9.4 Avoided TUOS

Ausgrid will only be liable to pay Avoided TUOS to the Generator for so long as Ausgrid is obliged to pay this to *Registered Participants* under the Rules.

9.5 Taxes

- (a) Amounts payable under this Agreement are exclusive of any applicable Taxes.
- (b) If a party (**Payee**) who is entitled to be paid an amount under this Agreement by another party (**Payer**) in consideration for making a Taxable Supply, incurs a GST liability in respect of that Taxable Supply then:
 - (1) the Payee may, in addition to the amount expressed as payable elsewhere in this Agreement, but subject to issuing a valid Tax Invoice, recover from the Payer an additional amount on account of GST; and
 - (2) that additional amount will be equal to the amount of the Payee's GST liability in respect of the Taxable Supply; and
 - (3) that additional amount will be payable to the Payee in the same manner as the relevant amount and either at the same time as the relevant amount or when the Payee is required to remit the GST (at the Payee's option); and
 - (4) the Payee must, at the Payer's expense, take all reasonable steps to assist the Payer in claiming any Input Tax Credit or refund available to the Payer in relation to that additional amount.

- (c) The parties must comply with all relevant provisions of the GST Act.
- (d) A party must issue to another party all Tax Invoices, Adjustment Notes and other related documentation which are either required by the GST Act or reasonably requested by that other party in relation to Taxable Supplies occurring between the parties under this Agreement.
- (e) In addition to the obligation in paragraph (b), if other Taxes are levied on the provision of goods or services under this Agreement or on amounts payable under this Agreement then the recipient of the goods or services or the payer of the relevant amount (as the case may be) must pay directly (if applicable) or reimburse the other party for those Taxes.

9.6 Variations to Charges

- (a) This clause 9.6 applies to those charges in the table in Schedule 3 of the Instrument of Agreement which the Instrument of Agreement states will be subject to CPI indexation.
- (b) Each charge referred to in paragraph (a) will be varied for the year commencing on each Review Date (if the relevant charge applies during that year) in accordance with the following formula:

$$\text{New Charge} = \text{Schedule Charge} \times (\text{CPI}_{\text{new}}/\text{CPI}_{\text{start}})$$

where:

New Charge means the amount for the relevant charge applying for the year commencing on the Review Date

Schedule Charge means the amount for the relevant charge specified in the table in Schedule 3 of the Instrument of Agreement

CPI means consumer price index, All Groups, Sydney, published by the Australian Bureau of Statistics, but if there is any suspension or discontinuance of that CPI or if its method of calculation is materially altered, then an index which reflects movements in the cost of living in Sydney will be substituted by Ausgrid

CPI_{new} means the CPI for the quarter ending 31 March immediately before the relevant Review Date

CPI_{start} means the CPI for the quarter ending 31 March immediately before the Date of this Agreement

Review Date means each 1 July to occur during this Agreement

provided that if the result of applying the formula would be that the New Charge would be less than the relevant charge applying for the year ending immediately before the Review Date (**Previous Charge**), then the New Charge will instead be the same as the Previous Charge.

9.7 Changes in Applicable Laws and Service Standards

- (a) In this clause:
 - (1) **Change in Applicable Law Event** means a change in (or change in application or interpretation of) the Rules, an *applicable regulatory instrument* or any other law (**Applicable Law**), the introduction of an Applicable Law or the repeal of an Applicable Law after the Date of this Agreement to the extent that the change, repeal or introduction directly or indirectly results in Ausgrid incurring materially higher costs in providing any of the Services than Ausgrid would have incurred but for the occurrence of that event;

(2) **Service Standards Event** means in relation to a Service, a decision made by an Authority or any amendment to an Applicable Law after the Date of this Agreement that has the effect of:

- i) imposing a set of minimum standards on Ausgrid in relation to any of the Services that are different from the set of minimum standards imposed on Ausgrid in respect of that Service as at the Date of this Agreement;
- ii) requiring Ausgrid to undertake any activity as part of a Service in addition to those activities required to be undertaken as part of that Service as at the Date of this Agreement; or
- iii) substantially varying the manner in which Ausgrid is required to undertake any activity forming part of a Service as at the Date of this Agreement,

as a result of which Ausgrid incurs materially higher costs in providing the Services than it would have incurred but for that event.

(b) Ausgrid may adjust the charges under this Agreement by an amount reasonably reflecting the increased costs to it as a result of a Change in Applicable Law Event or Service Standards Event (unless Ausgrid is prohibited by the Rules, *applicable regulatory instruments* or any other law applying at that time from recovering that amount from the Generator).

10 Credit Support

10.1 Acceptable Credit Criteria

The Generator must, during the term of this Agreement, satisfy all of the following criteria:

- (a) it must be resident in, or have a permanent establishment in Australia;
- (b) it must not be under external administration (as defined in the *Corporations Act 2001* (Cth)) or under a similar form of administration under any laws applicable to it in any jurisdiction;
- (c) it must not be immune from suit;
- (d) it must be capable of being sued in its own name in a court of Australia; and
- (e) it must have an acceptable credit rating.

10.2 Acceptable Credit Rating

- (a) Ausgrid may from time to time in its discretion determine its acceptable credit rating for the Generator.
- (b) Where the Generator does not meet Ausgrid's acceptable credit rating, the Generator must procure credit support to the satisfaction of Ausgrid.

10.3 Credit Support

Where the Generator is required to procure credit support, that credit support must comply with the following requirements:

- (a) the credit support provider must be an entity which in the reasonable opinion of Ausgrid meets the acceptable credit criteria;
- (b) it must be a guarantee or bank letter of credit in a form reasonably acceptable to Ausgrid;
- (c) it must be duly executed by the credit support provider and delivered unconditionally to Ausgrid;
- (d) it must constitute valid and binding subordinated obligations of the credit support provider to Ausgrid; and
- (e) it must permit drawings or claims by Ausgrid to a stated certain amount acceptable to Ausgrid.

10.4 Amount of Credit Support

If the Generator is required to procure credit support, the Generator must ensure that at all times the aggregate undrawn or unclaimed amounts of credit support is not less than the current maximum credit limit for the Generator.

10.5 Changes to Credit Support

Where any credit support ceases to be current or valid, whether by reason of the credit support provider ceasing to meet the acceptable credit criteria or otherwise, the Generator must procure the immediate replacement of that credit support so as to comply with its obligation to maintain aggregate undrawn current and valid credit support of not less than the current maximum credit limit for the Generator.

10.6 Drawings on Credit Support

Where Ausgrid draws or claims upon credit support, the Generator must procure the immediate issue of further credit support in the amount drawn or claimed so as to comply with its obligation to maintain aggregate undrawn current and valid credit support of not less than the current maximum credit limit for the Generator.

10.7 Maximum Credit Limit

- (a) Ausgrid may determine the maximum credit limit for the Generator.
- (b) The maximum credit limit will be the dollar amount which is the reasonable estimate of the aggregate average payments for a 60 day period, unless paragraph (c) applies.
- (c) In relation to any period before Connection during which Ausgrid incurs costs for which the Generator will or may be liable, then Ausgrid may determine a maximum credit limit for the Generator that is commensurate with the liability incurred by Ausgrid.

10.8 Changes in Maximum Credit Limit

- (a) Ausgrid must review the maximum credit limit of the Generator not less than once per year.
- (b) Any change to the maximum credit limit will apply with effect from 10 Business Days after the time of notification.

11 Operating and Asset Management

11.1 Operating

Operating by either party may be necessary to provide isolation, and where applicable earthing of the high or low voltage equipment, to allow the other party to carry out work.

- (a) Operating for planned maintenance or other work
 - (1) Each party (**Party X**) must perform Operating on its Equipment as requested by the other party (**Party Y**) to allow planned maintenance or other work by Party Y, subject to Party Y complying with the requirements of paragraph (2).
 - (2) Party Y must provide Party X with at least 5 Business Days written notice of any operating requirements for planned maintenance or other work by Party Y.
- (b) Operating for Emergency conditions

Each party must have operating staff available to ensure minimal delay in performing any Operating on its Equipment which is requested at short notice by the other party due to an Emergency condition.
- (c) Operating for urgent maintenance or other work
 - (1) Each party must have operating staff available to ensure minimal delay in performing any Operating on its Equipment which is requested at short notice by the other party in order to perform urgent maintenance or other work.
 - (2) Paragraph (1) above will only apply if a mutually agreed and documented arrangement has been implemented (such as that set out in the Instrument of Agreement).

11.2 Operating Protocol Agreement

- (a) The Instrument of Agreement specifies the Operating Protocol Agreement between Ausgrid and the Generator. The Operating Protocol Agreement is a standard agreement or a site-specific agreement and must comply with Ausgrid's Electrical Safety Rules (as amended from time to time). The situations where a site specific Operating Protocol Agreement may be required are where Ausgrid requires, or the parties agree to, additional or alternative operating arrangements from those in the standard agreement.

11.3 Safety Information

- (a) The Generator must provide Ausgrid with reasonably detailed information concerning the safety and security of any of its Equipment or other facilities to which *representatives* of Ausgrid may require access in order to fulfil Ausgrid's obligations under this Agreement.
- (b) Ausgrid must provide the Generator with reasonably detailed information concerning the safety and security of any of its Equipment to which *representatives* of the Generator may require access in order to fulfil the Generator's obligations under this Agreement.
- (c) Each party must promptly notify the other party of the existence of any hazard, including any precautions which should be taken, regardless of on which party's property the hazard may exist.

11.4 Asset Management Strategies

- (a) Each party must, in a manner which is consistent with *good electricity industry practice*, develop and update asset management strategies, standards and plans covering all of its Equipment. These strategies will include the maintenance of all facilities in accordance with clause 5.2.1(b) of the Rules.
- (b) Each party must make the above asset management strategies, standards and plans available for review by the other.

11.5 Coordination of Planned Maintenance

(a) General

The parties must:

- (1) use reasonable endeavours to ensure the coordination of maintenance programs so as to maximise the legitimate interests of all *Network Users*;
- (2) not unreasonably delay or restrict the other party from performing maintenance work which is necessary for that party to conform with *good electricity industry practice*; and
- (3) not unreasonably delay or restrict the other party from performing maintenance work which forms part of an asset management strategy or plan made available under clause 11.4.

(b) Requests for rescheduling of maintenance or other work

In relation to any maintenance or other work which is being or is to be carried out on Ausgrid's Distribution System:

- (1) Ausgrid must give reasonable consideration to a request by the Generator to reschedule the work where this may bring benefits to the Generator;
- (2) Ausgrid must (where required) advise AEMO of any rescheduling of the work and (where necessary) obtain approval;
- (3) the Generator accepts the responsibility for all additional and any consequential costs associated with the rescheduling of the work;
- (4) the Generator accepts any consequential lower reliability, Power Transfer Capability and availability afforded to the Generator by the rescheduling of the work; and
- (5) the parties must use reasonable endeavours to ensure that the work is rescheduled so as to be completed at the earliest available opportunity.

(c) Notification of recall time

- (1) Prior to the commencement of any planned *outage* of Equipment that has the potential to restrict the Power Transfer Capability of a Connection Point or the surrounding *network*, the party who requested the *outage* must advise the other party of:
 - i) the recall time of the Equipment; and
 - ii) any expected or potential deficiencies and restrictions which may exist in the Equipment if it were to be recalled prior to the completion of work.
- (2) Where the above circumstances surrounding the recall of Equipment alter during an *outage*, the changes must be reported to the other party as soon as they become known.

(d) Recall of Equipment

The return to service of any Equipment at the request of the Generator prior to the completion of any maintenance or other work will be deemed to be rescheduled work for the purpose of paragraph (b) above.

11.6 Minimisation of Outages

The parties must use *good electricity industry practice* to minimise the duration of any Equipment *outage* which is having an impact or has the potential to have an impact on the legitimate interests of the other party.

12 Performance and Development

12.1 Forecasts and Scenarios

The Generator must provide to Ausgrid data, forecasts and information as required by Ausgrid to assist the planning and development of Ausgrid's Distribution System in accordance with the Rules.

12.2 Reactive Power Capability

- (a) To facilitate the transmission of real power and maintain acceptable *network voltage* levels, the Generator must make available to Ausgrid a *reactive power* capability which is no less than that specified in the Instrument of Agreement.
- (b) Subject to paragraph (a) above, the Generator must advise Ausgrid at least annually of the *reactive power* capability which the Generator intends to make available to Ausgrid to facilitate the transmission of real power and maintain acceptable *network voltage* levels.
- (c) The Generator must advise Ausgrid of any significant change in *reactive power* capability at any Connection Point, including the circumstances resulting from the change, as soon as possible after such a change occurs.
- (d) Ausgrid may only use this information for *network* planning and development purposes, to assess *connection* and *network* capability and performance and as required under the Rules.

12.3 Meeting of Parties

- (a) The parties must meet when it is mutually agreed, but (if required by Ausgrid) not less than once in each calendar year of the term of this Agreement, to:
 - (1) review the performance at the Connection Point(s); and
 - (2) discuss and resolve any other issues which may be relevant to the parties' ongoing relationship.
- (b) The parties must meet at more frequent intervals where this is necessary to fulfil their obligations as set out in this Agreement and the Rules.

12.4 Incidents

- (a) Where a significant incident occurs within the Generating Facilities, and the incident had or has the potential to impact on Ausgrid's ability to fulfil its obligations under this Agreement or the Rules, then the parties must meet as soon as possible after the occurrence of the incident to discuss and resolve any relevant issues.
- (b) The parties at this time must provide each other with all known relevant information in relation to the incident. Within 7 days following the meeting, the party who is responsible for the incident must make available to the other party a written report which contains the following:
 - (1) a description of the incident and its impact;
 - (2) the cause of the incident and any relevant findings; and
 - (3) recommendations to mitigate or prevent a recurrence.

12.5 Provision of Operational Reports

- (a) Ausgrid may, in its discretion, make available to the Generator reports on operational matters which are produced by Ausgrid which contain information relevant to the relationship between the Generator and Ausgrid which is not commercially sensitive or confidential.
- (b) The Generator agrees to make available to Ausgrid reports on operational matters which are produced by the Generator which contain information relevant to the relationship between Ausgrid and the Generator which is not commercially sensitive or confidential.

13 Access, Inspection and Testing

13.1 Access to other Party's Property

(a) Rights of access

A party must provide the other party with access to its property where access is necessary to fulfil that other party's obligations under this Agreement. Examples of when access may be necessary to fulfil a party's obligations under this Agreement include:

- (1) to install or remove Equipment necessary for the provision of Network Services;
- (2) to gain access to installed Equipment for the purpose of maintenance;
- (3) to gain access to installed Equipment for the purpose of operating either Ausgrid's Distribution System or the Generating Facilities respectively; or
- (4) to gain access to install, read, inspect, maintain or remove *meters*.

(b) Provisions applying to access

The procedures set out in:

- (1) the Schedule to this Agreement;
- (2) the Instrument of Agreement (which may add to or modify the principles in (1)); and
- (3) any other documented controlled record of access procedures agreed between the parties from time to time (which may add to or modify the principles in (1) and (2)),

apply to access to the parties' respective sites.

(c) Survives expiration or termination of Agreement

Paragraphs (a) and (b) will survive for a period of 6 months after the expiration or termination of this Agreement.

13.2 Inspection and testing

The parties must comply with clause 5.7 of the Rules in respect of inspection and testing of Equipment.

14 Information, Records and Audit

14.1 Information and data

(a) Provision of technical data

- (1) The Generator must provide to Ausgrid, promptly on request, the technical data specified in the Instrument of Agreement and any other technical data of the kinds specified in Schedule 5.5 of the Rules required by AEMO or Ausgrid.
- (2) The parties must:
 - i) regularly review this technical data to ensure its accuracy is maintained in accordance with *good electricity industry practice*;
 - ii) promptly advise the other party of any material *change* in the data; and
 - iii) use their best endeavours to reach agreement on the terms of any amendments to this Agreement which become necessary if any variation in data has an impact on the legitimate interests of the other party.

(b) Provision of information

The Generator must provide to Ausgrid or AEMO any information required to be produced to a *Network Service Provider* or AEMO under the Rules.

14.2 Records

(a) General

A party must maintain records, data and other information which is reasonably requested by the other party. The records must be maintained in sufficient detail to permit the performance of this Agreement.

(b) Types of records

The parties must use their best endeavours to agree on the classification of any retained records. Retained records must be classified as either:

- (1) controlled records - being records containing information which the other party may require from time to time, for example, records setting out protection relay settings and operating diagrams; or
- (2) auditable records - being records retained for the purpose of being scrutinised during an audit, for example, records of *metering data* and maintenance history.

(c) Form and retention

- (1) The records may be maintained in writing or electronically and must be maintained for as long as agreed by the parties.
- (2) The records to be maintained include those specified in clause 13 of the Instrument of Agreement.

(d) Access to records

- (1) The parties must make controlled records available to the other party as reasonably requested from time to time.
- (2) The parties must make auditable records available to the other party when audits are conducted in accordance with clause 14.3.

14.3 Audits

(a) Right to audit

A party will have the right to audit the other party on 2 occasions in any 12 month period. The audit must be undertaken during normal business hours. The audit will be restricted to only those retained records classified as auditable records as defined in clause 14.2(b)(2).

(b) Audit notice

The auditing party must give at least 7 days notice of its intention to carry out an audit. A notice must include the following information:

- (1) the nature of the audit;
- (2) the name of the officers and/or their *representatives* appointed by the auditing party to conduct the audit; and
- (3) the time or times at which the auditing party would prefer the audit to commence.

(c) Conduct of audit

- (1) The parties must use their best endeavours to agree to a mutually acceptable and reasonable time for commencement of the audit, the period of the audit and the procedure for the conduct of the audit.
- (2) The audit must occur at the location at which the relevant information is maintained by the party being audited.
- (3) The party being audited must provide the auditing party and its *representatives* with access to all relevant documentation, data and records provided these are classified as auditable records as defined in clause 14.2(b)(2) and are reasonably necessary for conduct of the audit.

15 Force Majeure

15.1 Effect of Force Majeure Event

If either party is prevented from performing or observing any of its substantial obligations under this Agreement (other than obligations to pay money) by a Force Majeure Event, its obligations (other than obligations to pay money) will be suspended by giving notice to the other party in accordance with clause 15.2.

15.2 Notice obligations

If a party invokes clause 15.1 it must:

- (a) notify the other party;
- (b) as soon as practicable after providing the above notice, give particulars to the other party of the Force Majeure Event and of the obligations of the affected party under this Agreement which have been, will be or are likely to be affected by the Force Majeure Event;
- (c) keep the other party informed, both at reasonable intervals and upon request by the other party, as soon as practicable following the receipt of that request, of:
 - (1) the affected party's estimate of the likely duration of the Force Majeure Event;
 - (2) the action taken and the action proposed to be taken to mitigate the effect of the Force Majeure Event;
 - (3) the cessation of that Force Majeure Event or the successful mitigation or minimisation of the effects of that Force Majeure Event; and
 - (4) any other matter which the other party may reasonably request in connection with the occurrence of the Force Majeure Event.

15.3 Mitigation of effect of Force Majeure Event

The party invoking clause 15.1:

- (a) must use its best endeavours to mitigate the effects of the Force Majeure Event;
- (b) must use its best endeavours to overcome or remove the Force Majeure Event; and
- (c) will not be required against its will to settle a strike, lock-out or other industrial disturbance by acceding to the demands of the disputants.

15.4 Amendment or expiration of Agreement on account of Force Majeure Event

If the Force Majeure Event continues to prevent a party from performing or observing its substantial obligations under this Agreement for 6 months from the date of its occurrence, either party may upon not less than 10 Business Days' notice either:

- (a) amend the Schedules to this Agreement to remove the Connection Point(s) from the operation of this Agreement; or
- (b) terminate the entire Agreement.

15.5 Effect on various dates

Neither the Ausgrid Approvals and Property Rights Satisfaction Date nor the Latest Ready for Connection Date will be extended due to a Force Majeure Event.

16 Limitation of Liability

16.1 Effect of Legislation

Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

16.2 Exclusion of implied Warranties

Any representation, warranty, condition or undertaking which (but for this clause) would be implied in this Agreement by law, is excluded to the fullest extent permitted by law.

16.3 Limitation of liability for breach of Warranties implied by the Trade Practices Act

The liability of Ausgrid for breach of a non-excludable condition or warranty implied by the *Trade Practices Act 1974* (Cth) (other than under section 69) in relation to the supply of goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption, is limited, at Ausgrid's option, to:

- (a) in the case of goods – the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods, the payment of the cost of acquiring equivalent goods or the payment of the cost of having the goods repaired; or
- (b) in the case of services – the supplying of the services again or the payment of the cost of having the services supplied again.

16.4 Statutory immunity

The Generator acknowledges that the terms of this Agreement do not represent a waiver by Ausgrid of, nor an agreement to vary or exclude, any limitation of its liability under sections 119 or 120 of the NEL.

16.5 Limitation of Ausgrid's liability in relation to System Operations Functions and Powers

To the extent permitted by law, Ausgrid will not be liable to the Generator for any loss, injury, damage, liability or expense arising from any act or omission of Ausgrid in relation to the performance, non-performance or purported performance of any System Operations Function or Power.

16.6 Exclusion of certain types of liabilities

Despite any other provision of this Agreement (except clauses 16.1 and 16.3, which prevail over this clause), and to the fullest extent permitted by law, Ausgrid will not be liable to the Generator for any of the following (which may not be mutually exclusive):

- (a) financial or economic loss, including loss of profit, loss of revenue, business interruption, loss or corruption of data, loss of use, loss of agreement, loss of goodwill, or increased cost of working;
- (b) indirect, consequential or special loss; or
- (c) contractual liability of the Generator to any third person, arising from any:
 - (d) breach by Ausgrid of this Agreement (including any implied term);
 - (e) breach by Ausgrid of any other obligation or duty (including in negligence or under statute) in relation to the subject matter of this Agreement; or
 - (f) circumstance in relation to which Ausgrid must indemnify the Generator under this Agreement.

16.7 Cap on remaining Liability

- (a) Any liability of Ausgrid to the Generator arising from the circumstances referred to in clause 16.6(d) to (f) that is not excluded under this Agreement will be limited (in the aggregate) in any year to \$5 million, including GST (if any).
- (b) For the purposes of this clause 16.7:
 - (1) a year is a calendar year (beginning on 1 January and ending on 31 December);
 - (2) Ausgrid's aggregate liability for the period from the commencement of this Agreement until the beginning of the next calendar year will be calculated on a pro rata basis; and
 - (3) liability is attributable to a calendar year if the occurrence giving rise to the liability occurred in that year.
- (c) This clause 16.7 does not apply to any obligation under this Agreement (other than an indemnity) expressly providing for Ausgrid to make a payment to the Generator.

16.8 Officers, Employees and Agents

A reference in this clause 16 to liability of Ausgrid includes liability of Ausgrid's officers, employees and agents.

17 Breach of Agreement

17.1 Default Notice

If a party defaults in the performance of any obligations under this Agreement or breaches any term of this Agreement, the party not in default may give the party in default a written notice specifying the default and requiring that party to cure the default.

17.2 Remedies

- (a) If the party in default does not cure the default within 7 days of receiving the notice of default, then the party in default must:
 - (1) notify the other party of the expected duration of the default; and
 - (2) present to the party not in default a satisfactory program for the mitigation and rectification of the default.
- (b) If within 60 days of receiving the notice of default:
 - (1) the default has not been cured; and
 - (2) the party in default has not made a substantial and genuine attempt to cure the default, then the other party may at its discretion *disconnect* the Connection Point(s) until such time that the party in default can demonstrate that the default has been cured.

Note: *the parties also have various rights of termination for default under clause 6.4.*

18 Disconnection and Dismantling

- (a) If this Agreement is terminated or expires, Ausgrid will be entitled to *disconnect*, dismantle, *decommission* and remove any of its Equipment.
- (b) If the Generator requires a reduction in the Network Services, then Ausgrid will be entitled to *disconnect*, dismantle, *decommission* and remove any of Ausgrid's Equipment no longer required to provide the reduced Network Services.

Note to Generators: *Ausgrid also has rights under clause 7.5(b) to take such steps as it reasonably considers necessary to limit or interrupt the delivery of electricity if Ausgrid reasonably believes that such steps are necessary so as to avoid an Emergency or a breach of clause 7.5(a)(1)(i) or (ii).*

19 Insurance

19.1 Public Liability Insurance

- (a) The Generator must keep and maintain (or ensure that another person so keeps and maintains) at its own expense one or more public liability policies with reputable insurers, covering the liability of the insured parties to third parties for all types of loss or damage ordinarily covered by a public liability policy, in relation to the Generating Facilities and the Contestable Works, for an amount not less than the amount specified in the Instrument of Agreement.
- (b) The insurance in paragraph (a) must be on an occurrence basis and must cover the period from:
 - (1) in the case of the Generating Facilities: the commencement of construction of the Generating Facilities to the termination of this Agreement;
 - (2) in the case of the Transferred Works: the commencement of construction of the Transferred Works to the date that is 3 years after the date that those works become the property of Ausgrid; and
 - (3) in the case of any other Contestable Works: the commencement of construction of those works to:
 - i) in the case of works that accommodate electrical Equipment: the termination of this Agreement; and
 - ii) in the case of other works: when those works are no longer owned, operated or controlled by the Generator.
- (c) The insurance in paragraph (a) must:
 - (1) be in the joint names of the Generator, Ausgrid, the Accredited Service Provider and any other contractor or consultant engaged in the construction of the Generating Facilities and/or the Contestable Works; and
 - (2) contain:
 - i) a cross-liability clause (providing that claims between insureds are covered and that the contract of insurance acts as if it were a separate policy in respect of each insured party (other than for the purposes of the limit of indemnity)); and
 - ii) a waiver of subrogation clause (providing that the insurer waives its rights of subrogation against insured parties).

19.2 Contractors Works Insurance

- (a) The Generator must ensure that the Accredited Service Provider carrying out the Contestable Works (and any civil works contractor engaged in the construction of the Contestable Works) keeps and maintains a contractors works insurance policy, to cover:
 - (1) the reinstatement costs of the Contestable Works (including the design cost and the goods and materials on the site of the Contestable Works intended for incorporation in the Contestable Works), for the period from the commencement of construction of the Contestable Works to:
 - i) in the case of the Transferred Works, the date that those works become the property of Ausgrid; and
 - ii) in the case of any other Contestable Works, when those works are finally completed; and

- (2) the repair or replacement of the Transferred Works, for the period from date that those works become the property of Ausgrid until the date that is 3 years after that date.
- (b) The insurance in paragraph (a) must be in the joint names of the Accredited Service Provider, any civil works contractor engaged in the construction of the Contestable Works, the Generator and Ausgrid, for their respective rights and interests. Payments from the insurers must be held or allocated between the insured parties for the sole purpose of rectifying the relevant loss or damage.

19.3 Other Insurances

The Generator will keep and maintain all other insurances (if any) specified in the Instrument of Agreement.

19.4 Evidence of Insurance

The Generator will, upon Ausgrid's reasonable request, provide Ausgrid with:

- (a) certificates evidencing that the insurance policies required by this clause have been effected and all premiums have been paid; and
- (b) such other reasonable documentation as Ausgrid may require from time to time to confirm that the insurance policies are valid, current and meet the requirements of this clause.

20 Dispute Resolution

20.1 Amicable Resolution

The parties acknowledge their desire that all questions or disputes which arise between the parties concerning this Agreement or its subject matter be resolved amicably by bona fide discussions between them.

20.2 Dispute Resolution Procedures

If a dispute between the parties arises, the parties must use their best endeavours to resolve the dispute using the Dispute Resolution Procedures.

20.3 Continued Performance

Despite the fact that any matter between the parties is to be referred or has already been referred to the Dispute Resolution Procedures, or is subject to legal proceedings, the parties must continue to comply with, observe and perform their respective obligations and duties and may exercise their respective rights under this Agreement as if the matter had not arisen.

21 Confidentiality

21.1 General Obligation

- (a) Information exchanged between the parties under this Agreement or during negotiations for this Agreement is deemed to be confidential. All information received from the other party must be kept confidential, must only be used for the purpose of implementing this Agreement, and may not be disclosed to any third party except with the prior written consent of the non-disclosing party and on such terms as may be stipulated.
- (b) Paragraph (a) does not prevent the disclosure by a party of confidential information in the circumstances contemplated by clause 8.6.2 of the Rules. For the purposes of this paragraph (b):
 - (1) a reference in clause 8.6.2 of the Rules to the "Recipient" will be deemed to be a reference to a party to this Agreement;
 - (2) the words "in relation thereto" in clause 8.6.2(b) of the Rules will be deemed to be deleted;
 - (3) the words "under the Rules" in clause 8.6.2(c) of the Rules will be deemed to be deleted;
 - (4) the words "relating to the Rules" in clause 8.6.2(e) of the Rules will be deemed to be deleted; and
 - (5) in the case of a disclosure in the circumstances contemplated by clause 8.6.2(h) of the Rules, prior to making a disclosure, the party who wishes to make the disclosure must inform the proposed recipient of the confidentiality of the information and must take appropriate precautions to ensure that the recipient keeps the information confidential in accordance with the provisions of this clause 21.1 and does not use the information for any purpose other than that permitted under this clause 21.1.
- (c) The parties must observe the provisions of clause 8.6 of the Rules relating to confidential information.

21.2 Employees and representatives to keep information confidential

Each party will be responsible for ensuring that its employees, agents, contractors and *representatives* who are at any time in possession of confidential information observe and comply with the provisions of the above clause.

21.3 Compulsory disclosure

Subject to clause 21.4, if any party to this Agreement is required by law to disclose confidential information of any kind, that party must:

- (a) promptly give notice to the other party of the need to disclose information, details of the information to be disclosed, and the third party to whom it is to be disclosed; and
- (b) inform the other party as soon as reasonably practicable after information is disclosed by the party or their *representative*; and
- (c) not disclose any information unless and until the other party has been informed of the proposed disclosure.

21.4 Disclosure to AEMO, IPART and AER

The Generator acknowledges that Ausgrid:

- (a) jointly with the Generator is required to notify AEMO of this Agreement and forward relevant technical details under it under Chapter 5 of the Rules, and
- (b) may be required to disclose this Agreement to IPART (including under Part 3 Division 3 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW)), or to the AER,

and Ausgrid is not obliged to comply with clause 21.3 in respect of any such disclosure.

21.5 Obligations to survive termination

The obligations contained in this clause 21 will survive the termination of this Agreement.

22 Publication

- (a) Neither party may knowingly make, agree or permit to be made any inaccurate or misleading statement concerning the other party on matters related to this Agreement.
- (b) Any published document in relation to this Agreement must be published after consultation with and containing an acknowledgment of the contribution (if any) of the other party.
- (c) This clause 22 will survive the termination of this Agreement.

23 Notices

23.1 Authorised person

Only a communication (whether in writing or verbal) given by a person who is specifically authorised to give a communication of that type by:

- (a) the Chief Executive of Ausgrid; or
- (b) the Chief Executive of the Generator (or, where the Generator is comprised of more than one party, the Chief Executive of the party that owns the Generating Facilities),

will be a valid communication for the purpose of this Agreement. All authorities for persons to give or receive communications are to be in writing and forwarded to the other party.

23.2 Forms of Communication

- (a) All communications, other than those for day to day operational purposes, must be in writing and marked for the attention of an Authorised Person.
- (b) The communication is to be:
 - (1) delivered by hand to the address of the addressee;
 - (2) sent by prepaid, registered or certified post (airmail if posted to or from a place outside Australia);
 - (3) hand delivered by a reputable courier service to the address of the addressee;
or
 - (4) sent by facsimile to the facsimile number of the addressee.

23.3 Operational Communications

- (a) Any communications given in the course of the day to day running of Ausgrid's Distribution System, the Generating Facilities or the *facilities* of either party by or on behalf of a party (in this clause 23.3 called "operational communications") may be by telephone or other instantaneous means of communication.
- (b) Operational communications must be recorded in a manner satisfactory to both parties. The parties must ensure that logs are kept in which persons giving and receiving operational communications record brief details of their substance and timing.

23.4 Address

The street address, postal address, phone number and facsimile number of each party's principal business office and the relevant contact person are specified in the Instrument of Agreement.

23.5 Notice takes effect

A communication will be effective from the later of:

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

23.6 Deemed receipt

- (a) Other than operational communications pursuant to clause 23.3, a communication delivered by hand to the address of a party will be deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at that address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries), represents themselves and appears to be an officer or employee of the party.
- (b) A communication sent by facsimile will be deemed to be received on receipt of a transmission report confirming successful transmission.
- (c) If a communication is received on a day which is not a Business Day or after 5.00 pm on a Business Day, it is taken to be received on the next Business Day.

23.7 Change of address

- (a) Any party may at any time, by notice in writing given to the other party, designate a different person, address, phone number or facsimile number. The Instrument of Agreement will be taken to be amended to record the notified revised details.
- (b) The address, phone number and facsimile number of a party must always be an address, phone number and facsimile number within Australia.

24 Governing Law and Rules

24.1 Governing law

This Agreement will be governed by the law of the State of New South Wales.

24.2 No precedent

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

24.3 No third party rights

Except as specifically provided in this Agreement, the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement and all covenants, stipulations, promises and agreements contained in this Agreement will be for the sole and exclusive benefit of the parties to this Agreement and their respective successors and permitted assigns.

24.4 Submission to Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, the Federal Court of Australia (New South Wales district registry) and courts of appeal from them for determining any dispute concerning this Agreement.

24.5 Service of process

Any document in any action may be served on any other party by delivering it to the party at its address for service of notices as specified in the Instrument of Agreement.

24.6 National Electricity Rules and applicable regulatory instruments

- (a) The Rules provides a regime for the regulation of the *market*. The Rules and *applicable regulatory instruments* regulate or contain terms and conditions relating to access to a *network*, *connection* to a *network*, the provision of *network services*, *network service price* or *augmentation* of a *network*.
- (b) Subject to paragraph (c) and clause 8, the parties must comply with the Rules (whether or not the parties are registered as *Registered Participants*) and with the *applicable regulatory instruments* and other applicable laws.
- (c) If this Agreement imposes an obligation on a party which exceeds those obligations under the Rules, the *applicable regulatory instruments* and other applicable laws, and the imposition of that greater obligation is not prohibited by the Rules, or *applicable regulatory instruments* or other applicable laws, then the party must comply with that greater obligation.
- (d) If this Agreement imposes an obligation on a party and compliance by that party with that obligation would cause that party to breach the Rules, the *applicable regulatory instruments* or other applicable laws, then the party need not comply with that obligation to the extent necessary to avoid breaching the Rules, the *applicable regulatory instruments* or other applicable laws.

25 Amendment of Agreement

25.1 Amendments to be in writing

Any amendments or alterations to this Agreement will have effect and be operational only upon the amendments being made in writing and executed by both parties.

25.2 Co-operation of the parties

Each party must consider and negotiate in good faith any specific proposal of the other party that this Agreement be amended to the extent that the proposed amendment may better achieve the legitimate business interests of at least one party but without damaging the legitimate business interests of any other party.

25.3 Amendment of terms of this Agreement due to changes in the National Electricity Rules or the applicable regulatory instruments

- (a) The parties acknowledge that the Rules, the *applicable regulatory instruments* and other applicable laws may be the subject of ongoing changes and that those changes may require amendments to be made to this Agreement.
- (b) The parties agree to negotiate in good faith any amendments to this Agreement that may be reasonably required as a consequence of those changes.
- (c) If, within one month from one of the parties initiating a process of negotiation for those changes, the parties have not been able to reach agreement then a dispute will be taken to have arisen between the parties and the provisions of clause 20 will apply to the resolution of the dispute.

26 Assignment

26.1 No Assignment

The Generator may not, without the prior written approval of Ausgrid and except on such terms and conditions as are determined in writing by the parties, assign this Agreement or any payment under this Agreement.

26.2 Deemed assignment

It will be deemed to be an assignment of this Agreement if, without the prior approval of Ausgrid (such consent not to be unreasonably withheld), by transfer or allotment of shares or amendment of constitution or by some other act or deed, the effective control of any of the parties comprising the Generator passes to any party not having effective control of it as at the Date of this Agreement.

26.3 Change in ownership, operation or AEMO registration in respect of the Generating Facilities

- (a) The Generator will notify Ausgrid of any proposed changes to the party who is the owner or operator, or the person registered with AEMO in respect of the Generating Facilities.
- (b) The parties will act reasonably in considering and (if appropriate) implementing a proposed novation of this Agreement in the circumstances in (a).

27 Trading Company Indemnity

- (a) In this clause, **Trading Company** means any person or company which:
- (1) is not a party to this Agreement; and
 - (2) is registered or would have been required under the NEL and the Rules to be registered as a *Generator* in relation to the Generating Facilities (or any part of them) if another party had not been registered under the NEL and the Rules in relation to the Generating Facilities (or that part of the Generating Facilities), other than a retailer that is not a Related Body Corporate of the Generator to whom the Generator sells the output of the Generating Facilities on an arm's length commercial basis.
- (b) The Generator will indemnify Ausgrid against any claims made against Ausgrid by a Trading Company as a result of any act or omission (including negligent act or omission) of Ausgrid relating directly or indirectly to the provision of services or the operation of Ausgrid's Distribution System generally (including any claims relating to the inability of a Trading Company to participate in the *spot market* in relation to the Generating Facilities as a result of any negligent act or omission of Ausgrid or any breach by Ausgrid of its obligations under this Agreement).

28 General

28.1 Operation of a dynamic system

The parties acknowledge that:

- (a) the Generating Facilities and Ausgrid's Distribution System are each an element of an interconnected system to which the facilities of many other industry participants are directly and indirectly connected;
- (b) the behaviour of the system is dynamic and will vary from moment to moment;
- (c) system behaviour depends on the interaction of all industry participants; and
- (d) other industry participants can impact on the operation, performance and outcomes of the parties.

28.2 Good electricity industry practice

- (a) Ausgrid and the Generator must perform their obligations under this Agreement in accordance with:
 - (1) applicable standards of *good electricity industry practice* (including the NSW Service and Installation Rules, where relevant); and
 - (2) applicable *Australian standards* (including AS/NZS 3000:2000, known as the "Wiring Rules", where relevant).
- (b) If there is at any time any inconsistency between the above standards then the former will prevail over the latter to the extent of the inconsistency.

28.3 Advice on environmental and planning risks and obligations

The Generator acknowledges that Ausgrid has discharged its obligations under clause 5.3.5(b) of the Rules in relation to advice on environmental and planning risks and obligations.

28.4 Rules registration or exemption

- (a) The Generator will comply with any applicable conditions of registration or exemption under the Rules.
- (b) The Generator will notify Ausgrid if:
 - (1) it does not comply with such conditions; or
 - (2) it changes its registration or exemption status, including any change in category of registration or exemption.

28.5 Waiver

Failure by either party to enforce any right or obligation with respect to any matter arising in connection with this Agreement will not constitute a waiver as to that matter or any other matter either then or in the future. Any waiver of any right or obligation under this Agreement will only be of any force and effect if the waiver is in writing signed by an Authorised Person and is expressly stated to be a waiver of a specified right or obligation under this Agreement.

28.6 Entire Agreement

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

28.7 Severability

The inability or unenforceability of any one or more of the provisions of this Agreement will not invalidate or render unenforceable the remaining provisions of this Agreement. Any illegal or invalid provisions of this Agreement will be severed and all other provisions will remain in full force and effect.

28.8 Multiple parties comprising the Generator

Where the Generator is comprised of more than one party, each party comprising the Generator is jointly and severally liable for the obligations of the Generator under this Agreement.

Dictionary

Definitions

In this Agreement, unless the context requires otherwise:

Accredited Service Provider means a person accredited under Part 10 of the *Electricity Supply (General) Regulation 2001* (NSW).

Adjustment Note has the meaning given to that expression in the GST Act.

AEMO means:

- (a) for the period prior to 1 July 2009, NEMMCO;
- (b) for the period from 1 July 2009 the Australian Energy Market Operator Limited, as defined in the NEL,

being the company which operates and administers the "National Electricity Market" in accordance with the Rules, or any successor or replacement body which exercises that function.

AER means the Australian Energy Regulator, established by section 44AE of the *Trade Practices Act 1974* (Cth).

Agreed Maximum Export into Ausgrid's Distribution System is the level so named and specified in clause 8 of the Instrument of Agreement.

Agreed Maximum Import from Ausgrid's Distribution System is the level so named and specified in clause 8 of the Instrument of Agreement.

Approval means any approval, authorisation, certificate, consent, exemption, filing, licence, notarisation, permit, registration, ruling, statutory required policy of insurance or waiver (and any renewal or variation of any of them) by or with an Authority.

Ausgrid means the statutory State owned corporation of that name, constituted under the *Energy Services Corporations Act 1995* (NSW), ABN 67 505 337 385.

Ausgrid Approvals and Property Rights is defined in clause 2.2.

Ausgrid Approvals and Property Rights Satisfaction Date means the date of that name specified in clause 6 of the Instrument of Agreement.

Ausgrid's Distribution System is defined in paragraph A of the Background. Depending on the context, it may include the Capital Works owned by Ausgrid.

Authorised Person means any person authorised to communicate on behalf of a party in accordance with clause 23.1.

Authority means any government or regulatory department, body, instrumentality, minister, agency or other authority.

Avoided TUOS means *avoided Customer TUOS usage charges*, calculated in accordance with clause 5.5(i) of the Rules.

Business Day means a day which is not a Saturday, Sunday or public holiday in New South Wales.

Capacity of Ausgrid's Distribution System means at any time, the actual *power transfer capability* of Ausgrid's Distribution System to deliver electrical power to, or receive electrical power from, the Generating Facilities as determined by AEMO or Ausgrid (as the case may be) in accordance with the requirements of this Agreement and the Rules (including Schedule 5.1, as amended by this Agreement (where applicable)).

Capital Works are the works so named and specified in clause 5 of the Instrument of Agreement.

Chief Executive means a person holding a position of that name or equivalent position.

Connection means physical connection of the Generating Facilities (via the Contestable Works) to Ausgrid's Distribution System and electrification of the Contestable Works, and **Connect** and **Connected** have corresponding meanings.

Connection Management Charges are the charges so named and specified in Schedule 3 of the Instrument of Agreement, which the parties acknowledge are for:

- (a) any "Monopoly Services" provided, as defined and described in clause 4 of Annexure 3 of IPART's determination entitled "NSW Electricity Distribution Pricing 2004/5 to 2008/9" (whether or not that document applies to this Agreement), for the period prior to 1 July 2009;
- (b) any "Monopoly Services" provided, as defined and described in the AER's distribution determination applicable to the period from 1 July 2009 to 30 June 2014 (whether or not that document applies to this Agreement); and
- (c) Ausgrid's costs in negotiating this Agreement.

Connection Point(s) means the *connection point(s)* specified in clause 8 and Schedule 1 of the Instrument of Agreement.

Connection Studies Charge is the charge so named and specified in Schedule 3 of the Instrument of Agreement, which the parties acknowledge is for technical investigations undertaken by Ausgrid to determine connection requirements.

Contestable Works are the works so named and specified in clause 5 of the Instrument of Agreement (being works to be constructed and funded by the Generator, not forming part of the Generating Facilities).

Contestable Works O&M Charge is the charge so named and specified in Schedule 3 of the Instrument of Agreement, which the parties acknowledge covers the operation and maintenance of the Transferred Works.

Date of this Agreement means the date specified in the Instrument of Agreement, or if no date is specified, the date on which the last party to execute this Agreement does so.

Dispute Resolution Procedures means the procedures for resolving disputes established under clause 8.2 of the Rules.

Distribution District means Ausgrid's distribution district as defined in Schedule 3 of the ES Act.

Distribution Network Service Provider's Licence means a "Distribution Network Service Provider's Licence" granted under section 14 of the ES Act.

Easement includes an easement for infrastructure (including powerlines) or a right of way.

Emergency means the actual or imminent occurrence of an event which in any way poses or has the potential to pose a threat to the safety of persons, hazard to any equipment or property or a threat to *power system security*.

Encumbrance means an interest or power:

- (a) reserved in or over any interest in any asset, including any retention of title; or
- (b) created or otherwise in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created.

Equipment means all equipment, *facilities*, works and plant owned or operated by a party.

ES Act means the *Electricity Supply Act 1995* (NSW).

Financing Arrangements means any loan and related charge agreements (including related interest rate or currency hedging instruments) or any other financial arrangements reasonably necessary for the undertaking of the Generating Facilities, Contestable Works or Non-Contestable Works (as applicable).

Fixed Period of Connection is the time period so named and specified in clause 9 of the Instrument of Agreement.

Force Majeure Event means any event or circumstance beyond the reasonable control of a party and includes:

- (a) act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency, martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the relevant party), epidemic, quarantine, radiation or radioactive contamination;
- (b) action or inaction of government or other competent authority (including a court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; or
- (c) breakdown of facilities, machinery or equipment or shortages of labour, transportation, fuel, power or material.

General Conditions means this document.

Generating Facilities means the generating units described in the Instrument of Agreement, and includes all associated Equipment (including cabling).

Generator is defined in clause 1.2(b) of the Instrument of Agreement.

Generator Approvals and Property Rights is defined in clause 2.1.

GST means any tax imposed by or through the GST Act or any broad based tax on goods and services imposed by or through any other Act of the Parliament of the Commonwealth of Australia.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), the *A New Tax System (Goods and Services Tax) Transition Act 1999* (Cth) and any related Tax impositions Act of the Parliament of the Commonwealth of Australia.

Input Tax Credit has the meaning given to that expression in the GST Act.

Insolvency Event, in relation to the Generator, is where:

- (a) the Generator or any party comprising the Generator enters into an arrangement or compromise with, or assignment for the benefit of, all or a class of its creditors or members or a moratorium involving any of them;
- (b) the Generator or any party comprising the Generator is or states that it is unable to pay its debts as and when they fall due;
- (c) a liquidator, provisional liquidator, official manager, receiver, receiver and manager, controller or administrator is appointed in respect of the Generator or any party comprising the Generator or the property of the Generator or any party comprising the Generator (other than any such appointment under the Generator's Financing Arrangements for the Generating Facilities); or
- (d) the Generator or any party comprising the Generator ceases or threatens to cease to carry on its business.

Instrument of Agreement is referred to in the Background, and includes all Schedules to that document.

IPART means the Independent Pricing and Regulatory Tribunal of New South Wales, established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

Latest Ready for Connection Date is the date so named and specified in clause 7 of the Instrument of Agreement.

Licence means a right to occupy land that is not an interest in land.

Major Defect means a defect which, in the opinion of Ausgrid, has the consequences that the relevant works are unsafe or not suitable to energise or leave energised.

Metering Data Agent means a person who collects and processes *metering data* and delivers it to AEMO (if applicable), Ausgrid and the relevant *financially responsible market participant* and provides various related services.

Metering Services means any services provided by Ausgrid under clause 8 or under the Instrument of Agreement clause 12.

Minimum Period of Connection is the time period so named and specified in clause 9 of the Instrument of Agreement.

Minor Defect means a defect which, in the opinion of Ausgrid, is not a Major Defect.

NEL means the *National Electricity (NSW) Law*.

NEMMCO means National Electricity Market Management Company Limited ACN 072 010 327.

Network Services means any or all of the *network services* which Ausgrid must provide to the Generator under this Agreement including Connection to Ausgrid's Distribution System, Power Transfer Capability at the Connection Point(s), *use of system services* and other services under clause 7.

Non-Contestable Works are the works so named and specified in clause 5 of the Instrument of Agreement (being works to be constructed and owned by Ausgrid).

Non-Contestable Works Charge is the charge so named and specified in Schedule 3 of the Instrument of Agreement.

NSW Service and Installation Rules means the document of that name published by the Department of Energy, Utilities and Sustainability, as amended from time to time.

Operating means the switching or electrical isolation of equipment, and where applicable, earthing of high or low voltage equipment.

Period of Connection means the Fixed Period of Connection or the Minimum Period of Connection, as applicable.

Power Transfer Capability means the ability of Ausgrid's Distribution System to deliver electrical power to, or receive electrical power from, the Generating Facilities.

Practical Completion of the Contestable Works means the date on which Ausgrid determines that:

- (a) the Contestable Works have been completed in accordance with this Agreement;
- (b) the Contestable Works are free from Major Defects;
- (c) satisfactory test certificates have been produced in relation to the Contestable Works; and
- (d) the Generator has provided Ausgrid with as built drawings with respect to the Contestable Works (including field recordings prepared after trenching and before backfilling of the exact locations of any underground cable ducts, cables and joints).

Property Right means any estate, interest or right in relation to land.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Registered Surveyor means a person registered as a surveyor under the *Surveying Act 2002* (NSW).

Rules means the National Electricity Rules approved under Part 7 of the NEL.

Run Back Emergency Control System is defined in clause 8 of the Instrument of Agreement.

Services means any or all of the Network Services, the Metering Services and any other services provided by Ausgrid under this Agreement.

Survey Plan means a plan satisfactory to Ausgrid prepared by a Registered Surveyor to permit registration of Easements or leases.

System Operations Function or Power has the meaning given to that expression in section 119 of the NEL.

Tax Invoice has the meaning given to that expression in the GST Act.

Taxable Supply has the meaning given to that expression in the GST Act.

Taxes means all taxes, charges, duties and similar imposed by a government or statutory body relating to the supply and use of goods and services or otherwise arising out of this Agreement including sales tax, GST, fringe benefits tax, undistributed profits tax, withholding tax, financial institutions duty, stamp duties and any interest or penalty imposed in connection with any of the preceding items but does not include any tax payable on the income or capital gains of a party.

Term is the term of this Agreement referred to in clause 6.1.

Transferred Works are the works so named and specified in clause 5 of the Instrument of Agreement (being those of the Contestable Works that are to be transferred to Ausgrid).

Warranty Bond means an unconditional undertaking issued by a bank or insurance company in favour of Ausgrid for the amount specified in clause 11 of the Instrument of Agreement.

Warranty Period means a period of 3 years commencing upon Connection.

Interpretation

In this Agreement, unless the contrary intention is specifically expressed:

- (a) headings are inserted for convenience and do not affect the interpretation of this Agreement; and
- (b) a reference to the background or a clause, paragraph, schedule or attachment is a reference to the background or a clause or paragraph of or schedule or attachment to this Agreement and references to this Agreement include any schedule or attachment; and
- (c) a reference to this Agreement, any other agreement or instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, instrument or provision; and
- (d) a reference to a statute, ordinance, licence, code or other law includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements of that statute, ordinance, licence, code or law; and
- (e) a reference to a thing (including an amount) is a reference to the whole and each part of it; and
- (f) the singular includes the plural and vice versa; and
- (g) the word "person" includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, an unincorporated association and any authority; and
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns; and
- (i) a reference to one gender includes all genders; and
- (j) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**Defunct Body**), means the agency or body which performs most closely the functions of the Defunct Body; and
- (k) a reference to an accounting term is to be interpreted in accordance with the accounting standards under the *Corporations Act 2001* (Cth) and any regulations under that Act and, if not inconsistent with those accounting standards, generally accepted principles and practices applied from time to time in Australia; and
- (l) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day; and
- (m) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight; and
- (n) a reference to a month is a reference to a calendar month; and
- (o) a reference to time is a reference to Sydney time; and
- (p) if a word or phrase is specifically defined in this Agreement, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (q) if a payment prescribed under this Agreement is to be made by a party on or by a given Business Day, the payment is to be made so that cleared funds are available at 9.30 am on that day; and
- (r) mentioning anything after "include", "includes" or "including" does not limit what else might be included; and

- (s) any reference to a party complying with the requirements of the Rules will, in the case of the Generator, include all requirements of the Rules which are expressed to apply to a *Generator* in relation to the Generating Facilities even if the Generator (or one of the parties comprising the Generator) ceases to be registered as the *Generator* for the Generating Facilities under the Rules or appoints an *intermediary* for the Generating Facilities under the Rules.

Schedule: Provisions applying to Access

(clause 13.1(b))

General

In addition to the rights a party may have under the terms of a lease or easement a party (**owning party**) must provide access to the other party (**accessing party**), for any of the purposes set out in clause 13.1(a), at all times during the normal business hours of the owning party on not less than 24 hours prior notice.

Emergency Access

In an Emergency, a party may enter the premises of the other party at any time without notice, in order to take such action (as is consistent with *good electricity industry practice*) that is reasonably necessary to deal with the Emergency.

Site Procedures

The accessing party must comply with all reasonable site procedures communicated to the accessing party by the owning party.

Occupational Health and Safety

The accessing party must ensure that it complies with all occupational health and safety laws, and any reasonable directions issued by the owning party from time to time concerning occupational health and safety issues.

The accessing party must immediately notify the owning party if an accident involving its personnel occurs on the owning party's premises or in relation to any of the owning party's Equipment.

Environment

The accessing party must ensure that it complies with all environmental laws, and any reasonable directions issued by the owning party from time to time concerning environmental issues.

A party and its personnel, when exercising a right of access, must take all reasonable precautions to prevent pollution, damage or injury to air, soil, water, animal or plant life and property.

Each party must immediately notify the other party of the existence of any environmental hazard or the occurrence of any environmental incident which has or may potentially impact upon the other party.

No Proprietary Rights

The rights granted to the accessing party under this Agreement are contractual only and will not create or vest in the accessing party any estate, interest or right of a proprietary nature in the property of the owning party.

Any equipment belonging to the accessing party which is situated on the owning party's premises will remain the property of the accessing party.