

Deed of Guarantee of Minimum Revenue

Dated

Ausgrid Operator Partnership (ABN 78 508 211 731) (**Ausgrid**)

[insert name] (ABN/ACN/ARBN **[insert]**) (**Customer**)

In relation to **[insert site details]**

Deed of Guarantee of Minimum Revenue

Contents

Details	1
General terms	3
1 Definitions and Interpretation	3
1.1 Definitions	3
1.2 Interpretation	5
2 Bank Guarantee is Condition Precedent to Connection	5
3 Notice of DSC	6
3.1 Ausgrid to provide notice	6
3.2 Finalisation of DSC Notice for a Revenue Year	7
4 Customer's Obligation to Pay Minimum Revenue	7
4.1 Revenue Years and minimum revenue amounts	7
4.2 Minimum DSC requirements – take or pay	8
4.3 Replacement of Bank Guarantee for Revenue Year	9
5 Payment and invoicing	10
5.1 Invoicing and payment of difference payments	10
5.2 Acceleration	10
5.3 Right to make call under Issued Bank Guarantee	10
5.4 No steps to seek injunction	11
5.5 Copy of demand to Customer	11
5.6 Acknowledgement	11
6 Events of Default	11
7 Return of Issued Bank Guarantee	12
8 Notices	12
9 General	13
9.1 No waiver	13
9.2 No disclosure	13
9.3 Assignment	13
9.4 Counterparts	14
9.5 Entire agreement	14
9.6 No agency or partnership	14
9.7 Governing law	14
9.8 Effect of change in law	14
Schedule Bank Guarantee	16
Signing page	18
Annexure Connection Contract	20

Deed of Guarantee of Minimum Revenue

Details

Parties	Ausgrid and Customer	
Ausgrid	Name	Ausgrid Operator Partnership , trading as Ausgrid , a partnership carried on under that name by: (a) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust; (b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1; (c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2; (d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and (e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.
	ABN	78 508 211 731
	Address	24-28 Campbell Street, Sydney
	Customer	Name
	ABN/ACN/ARBN	[insert]
	Address	[insert]
Governing law	New South Wales	

Recitals

- A** Ausgrid and the Customer are parties to a *connection agreement* entered into on or about the date of this Deed. The *connection* provided to the Customer under that *connection agreement* requires that Ausgrid must undertake *augmentation* of its *distribution network*. If not for the Customer's *connection*, Ausgrid would not otherwise undertake that augmentation of its *distribution network*.
- B** Ausgrid is prepared to carry out the above *augmentation* work only if:

- (a) the Customer enters into this Deed under which the Customer accepts a minimum Distribution Services Charges payment obligation for the Period equal to the Minimum Revenue Amount; and
 - (b) the Customer provides Ausgrid with a Bank Guarantee to secure the payment obligation for the Minimum Revenue Amount during the Period.
- C** This Deed sets out the agreement between the parties in relation to the above matters.

Deed of Guarantee of Minimum Revenue

General terms

1 Definitions and Interpretation

These meanings apply unless the contrary intention appears.

1.1 Definitions

acceleration notice is defined in clause 5.2.

Annual Difference is defined in clause 4.2(d)(i).

Bank means a body which is authorised under the *Banking Act 1959* (Cth) to carry on a banking business in Australia and to call itself a “bank”.

Bank Guarantee means a bank guarantee given by a Bank in the form set out under the schedule, or such other form as is agreed to by Ausgrid in writing.

Connection Contract means the *connection agreement* between the Customer and Ausgrid signed on or about the date of this Deed, as amended or replaced from time to time, a copy of which (as at the date of this Deed) is annexed to this Deed.

Cumulative Difference is defined in clause 4.2(d)(ii).

Date of Connection or **DOC** means the date on which Services have commenced.

Distribution Service Charges or **DSC** means any charges by Ausgrid for *distribution services*, which are calculated and applied in accordance with the Rules at specific rates that are:

- (d) set out in the “Ausgrid Network Price List”; or
- (e) individually calculated by Ausgrid for customers who satisfy the eligibility conditions or exceed the thresholds set out in the “Ausgrid ES7 Network Price Guide”,

both of which are published on Ausgrid’s website as required under rule 6.18.9 of the Rules as submitted by Ausgrid and approved by the AER and are subject to Regulatory Requirements from time to time.

In addition, DSC charges may include any charges associated with negotiated distribution services that the customer has requested, that are above Ausgrid’s licence requirements.

Event of Default means an event which is defined in clause 6 to be an “event of default”.

Existing Bank Guarantee means the Issued Bank Guarantee that Ausgrid holds prior to being provided a Replacement Bank Guarantee under clause 4.3.

Expiry Date means the day prior to the fifth anniversary of the DOC.

Final DSC Notice means, for a given Revenue Year, a notice which is defined in clause 3.2 to be a “Final DSC Notice” for that Revenue Year.

Guaranteed Amount has the meaning given to that term in clause 4.2(b).

Issued Bank Guarantee means a Bank Guarantee which has been provided by the Customer, or a Bank to Ausgrid on the Customer’s behalf, and has not been returned by Ausgrid to the Customer under clause 4.3.

Minimum Annual Revenue Amount means, for a given Revenue Year, the amount specified as the “Minimum Annual Revenue Amount” for that Revenue Year in the table in clause 4.1(a).

Minimum Cumulative Revenue Amount means, for a given Revenue Year, the amount specified as the “Minimum Cumulative Revenue Amount” for that Revenue Year in the table in clause 4.1(a).

Minimum Revenue Amount means, for the Period, the amount of \$**[insert amount]**.

Minimum Revenue Requirement has the meaning given to that term in clause 4.2(a).

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

Period means a period of 5 years commencing on the DOC.

Period Difference is defined in clause 4.2(d)(iii).

Regulatory Requirements means any decision of the Independent Pricing and Regulatory Tribunal of New South Wales or the Australian Energy Regulator which affects the prices that Ausgrid may charge its customers or any decision of any other regulator under the National Electricity Law or the Rules or under any State legislation having the same effect.

Replacement Bank Guarantee has the meaning given to that term in clause 4.3(a).

Revenue Year means each financial year during the Period except:

- (a) the first year, which is that period of time measured in days commencing on the DOC and ending on the next 30 June; and
- (b) the last year, which is that period of time measured in days commencing on the last 1 July to occur during the Period and ending on the last day of the Period.

Rules means the “National Electricity Rules” made under the “National Electricity Law”.

Services has the same meaning given to that term under the Connection Contract.

Site or Your Premises means **[insert address of premises (and NMI if available) to which this guarantee of minimum revenue relates]**.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a body corporate, an unincorporated body or other entity and conversely.
- (e) A reference to a clause, annexure or schedule is to a clause of, or annexure or schedule to this Deed, unless stated otherwise.
- (f) A reference to any party to this Deed or any other agreement or document includes the party's successors and permitted assigns.
- (g) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed or that other agreement or document.
- (h) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (i) A reference to **dollars** or **\$** is to Australian currency.
- (j) A reference to a **right** or **obligation** of any 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (k) Each schedule and each document delivered under this Deed forms part of this Deed.
- (l) A reference to **conduct** includes any omission and any statement or undertaking, whether or not in writing.
- (m) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (n) Mentioning anything after **include**, **includes** or **including** does not limit what else might be included.
- (o) italicised words and phrases *like this* have the meaning ascribed to them in the glossary which comprises Chapter 10 of the Rules. If a word in italics is no longer defined in the Rules, it will have the meaning last assigned to it by the Rules until the parties otherwise agree.

2 Bank Guarantee is Condition Precedent to Connection

- (a) The Customer acknowledges and agrees that:

- (i) Ausgrid, in the exercise of its rights under clause **[insert clause number]** of the Connection Contract, has requested the Customer to arrange for Ausgrid to be provided with a Bank Guarantee to secure the Customer's payment obligation for the Minimum Revenue Amount in accordance with Ausgrid's rights provided under clause 6.21.1(b) and 6.21.2(2) of the Rules; and

[Note to Ausgrid: Ausgrid needs to ensure that in every Connection Contract where this Deed will apply, Ausgrid has a provision that provides the right to request a financial guarantee for its future revenue related to the provision of DSC for the connection's augmentation.]
 - (ii) the Bank Guarantee is in addition to any other credit support obligations the Customer has under the Connection Contract. Procuring, and delivering the Bank Guarantee under this Deed does not relinquish the Customer of any of its obligations to procure and deliver other forms of credit support required under the Connection Contract.
- (b) In addition to the conditions precedent in clause **[insert clause number]** of the Connection Contract, Ausgrid is under no obligation to *augment* its *distribution network*, *connect* the Site to Ausgrid's *distribution network* or provide Services under the Connection Contract until the Customer procures and delivers to Ausgrid a Bank Guarantee.

3 Notice of DSC

3.1 Ausgrid to provide notice

- (a) Ausgrid must provide a notice to the Customer within 28 days of the end of each Revenue Year setting out:
 - (i) the total DSC incurred by the Customer for that Revenue Year in respect of the Site;
 - (ii) the Minimum Annual Revenue Amount for that Revenue Year;
 - (iii) the total DSC incurred by the Customer, for that Revenue Year and all previous Revenue Years, in respect of the Site;
 - (iv) the Minimum Cumulative Revenue Amount for that Revenue Year; and
 - (v) where the Revenue Year is Revenue Year 6:
 - (A) the total DSC incurred by the Customer for the Period in respect of the Site; and
 - (B) the Minimum Revenue Amount.
- (b) A notice under this clause 3.1 may set out DSC amounts in relation to the same period that have been or will be separately invoiced by Ausgrid.
- (c) A notice under this clause 3.1 is not an invoice for payment.

3.2 Finalisation of DSC Notice for a Revenue Year

- (a) Subject to clauses 3.2(b) and (c) below, a notice given under this clause 3.1(a) for a given Revenue Year will be the Final DSC Notice for that Revenue Year unless disputed by the Customer within 7 days of receipt of that notice.
- (b) If the Customer provides Ausgrid (within 7 days of receipt of the Final DSC Notice under clause 3.1(a)) with a notice disputing a notice given under clause 3.1(a), then Ausgrid must consider the reasons for dispute provided and issue a new notice (for that Revenue Year) to the Customer together with a response to the Customer's notice of dispute. That new notice will be the Final DSC Notice for that Revenue Year.
- (c) A new notice given under clause 3.2(b) for a given Revenue Year may provide that the DSC incurred for that Revenue Year and any previous Revenue Years is the same as that originally set out in the previous notice given under clause 3.1(a) for that Revenue Year.

4 Customer's Obligation to Pay Minimum Revenue

4.1 Revenue Years and minimum revenue amounts

- (a) The following table sets out the:
 - (i) time period to which each Revenue Year applies;
 - (ii) the Minimum Annual Revenue Amount for each Revenue Year; and
 - (iii) the Minimum Cumulative Revenue Amount for each Revenue Year.:

Revenue Year	Time Period to which Revenue Year applies	Minimum Annual Revenue Amount for Revenue Year "n" ("ARn")	Minimum Cumulative Revenue Amount for Revenue Year "n" ("CRn")
Revenue Year 1	DOC to [insert date]	AR1 = \$ [insert amount] * days/365	CR1 = AR1
Revenue Year 2	[insert date] to [insert date]	AR2 = \$ [insert amount]	CR2 = AR1 + AR2
Revenue Year 3	[insert date] to [insert date]	AR3 = \$ [insert amount]	CR3 = AR1 + AR2 + AR3
Revenue Year 4	[insert date] to [insert date]	AR4 = \$ [insert amount]	CR4 = AR1 + AR2 + AR3 + AR4
Revenue Year 5	[insert date] to [insert date]	AR5 = \$ [insert amount]	CR5 = AR1 + AR2 + AR3 + AR4 + AR5
Revenue Year 6	[insert date] to Expiry Date	AR6 = \$ [insert amount] * days/365	CR6 = AR1 + AR2 + AR3 +

			AR4 + AR5 + AR6
--	--	--	-----------------

4.2 Minimum DSC requirements – take or pay

- (a) The Customer agrees that:
- (i) for each Revenue Year, either:
 - (A) the total DSC incurred by the Customer for that Revenue Year in respect of the Site must be no less than the Minimum Annual Revenue Amount for that Revenue Year; or
 - (B) the total DSC incurred by the Customer, for that Revenue Year and all previous Revenue Years, in respect of the Site must be no less than the Minimum Cumulative Revenue Amount for that Revenue Year; and
 - (ii) for the Period, the total DSC incurred by the Customer for in respect of the Site must be no less than the Minimum Revenue Amount,
- (Minimum Revenue Requirement)**
- (b) If the Customer does not take sufficient electricity:
- (i) during a Revenue Year to satisfy one of the alternative requirements set out in clause 4.2(a)(i), then the Customer must pay Ausgrid, if Ausgrid requests this payment under clause 5.1(a), an amount equal to the lesser of:
 - (A) the Annual Difference for that Revenue Year; and
 - (B) the Cumulative Difference for that Revenue Year,

(Guaranteed Amount), and
 - (ii) during the Period to ensure that the DSC incurred by Customer for the Period in respect of the Site is no less than the Minimum Revenue Amount, then the Customer must pay Ausgrid the Period Difference, if Ausgrid requests this payment under clause 5.1(b).
- (c) To the extent paid to Ausgrid, the Guaranteed Amount will be taken to be “DSC incurred by the Customer” for the purposes of determining compliance with clause 4.2(a)(i) for future Revenue Years (and the calculation of any associated Annual Difference or Cumulative Difference) and compliance with 4.2(a)(ii) at the end of the Period (and the calculation of any associated Period Difference).
- (d) For the purposes of this Deed:
- (i) **“Annual Difference”** for a Revenue Year is calculated by the following formula:

$$AD = MAR - YDSC$$

where

AD means Annual Difference

MAR means the Minimum Annual Revenue Amount for that Revenue Year

YDSC means the total DSC incurred by the Customer for that Revenue Year in respect of the Site

- (ii) “**Cumulative Difference**” for a Revenue Year is calculated by the following formula:

$$CD = MCRA - CDSC$$

where:

CD means the Cumulative Difference

MCRA means the Minimum Cumulative Revenue Amount for that Revenue Year

CDSC means the total DSC incurred by the Customer for that Revenue Year and all previous Revenue Years (as at that Revenue Year), in respect of the Site as specified in the Final DSC Notices for those Revenue Years

- (iii) “**Period Difference**” is calculated by the following formula:

$$PD = MRA - TDSC$$

where

PD means the Period Difference

MRA means the Minimum Revenue Amount

TDSC means the total DSC incurred by the Customer for the Period in respect of the Site as set out in the notice under clause 3.1(a)(v).

4.3 Replacement of Bank Guarantee for Revenue Year

- (a) Within 5 Business Days of receiving the Final DSC Notice under clause 3.2 from for a Revenue Year, the Customer may provide, or arrange to provide on its behalf, to Ausgrid a Bank Guarantee (**Replacement Bank Guarantee**) for a face value calculated in accordance with the following:

$$BG = MRA - CDSC$$

where

BG means the face value of the Bank Guarantee

MRA means the Minimum Revenue Amount

CDSC means the total DSC incurred by the Customer for that Revenue Year and all previous Revenue Years (as at that Revenue Year), in respect of the Site as specified in the Final DSC Notices for those Revenue Years.

- (b) If the value of ‘BG’ is less than zero as calculated in accordance with the formula set out in paragraph (a), then:

- (i) the Customer does not have to provide or arrange to provide on behalf to Ausgrid a Bank Guarantee in accordance with paragraph (a); and
 - (ii) the parties will follow the processes in clause 7 of this Deed.
- (c) Subject to Ausgrid exercising any rights under this deed to call on the Existing Bank Guarantee, Ausgrid must immediately return the Existing Bank Guarantee to the Customer upon receipt of the Replacement Bank Guarantee.

5 Payment and invoicing

5.1 Invoicing and payment of difference payments

- (a) Subject to clause 5.1(b), where the Final DSC Notice for a Revenue Year sets out that the total DSC incurred by the Customer for that Revenue Year in respect of the Site is less than the Minimum Annual Revenue Amount for that Revenue Year, then Ausgrid may issue a notice to the Customer seeking payment of the Guaranteed Amount and the Customer must pay that Guaranteed Amount within 7 days after the date of the notice.
- (b) Where the total DSC incurred by the Customer for the Period in respect of the Site (as set out in the last Final DSC Notice to be issued in accordance with 3.1(a)(v)) is less than the Minimum Revenue Amount, then Ausgrid may issue a notice to the Customer seeking payment of an amount equal to the Period Difference and the Customer must pay that amount within 7 days after the date of the notice.

5.2 Acceleration

If:

- (a) this Deed terminates before **[insert date]** for any reason other than due to a default by Ausgrid; or
- (b) an Event of Default occurs,

then Ausgrid may serve a notice (“**acceleration notice**”) on the Customer demanding immediate payment of the following amounts:

- (i) the difference between the Minimum Revenue Amount for the Period and the total DSC incurred by the Customer up to the date of the acceleration notice in respect of the Site; and
 - (ii) any other amounts which have been incurred by the Customer under this Deed up to the date of the acceleration notice but which have not been paid by the Customer.
- (c) The amount stated in the acceleration notice will become immediately due and payable by the Customer upon receipt by the Customer of the acceleration notice.

5.3 Right to make call under Issued Bank Guarantee

Ausgrid may draw or claim on the Issued Bank Guarantee if the Customer has failed to pay, by the due date for payment, any amount due under this Deed, including :

- (a) the payments payable under clauses 4.2 and 5.1 to satisfy the Minimum Revenue Requirement; and
- (b) the “accelerated amount” payable under clause 5.2.

5.4 No steps to seek injunction

The Customer must not take any steps to seek an injunction or otherwise restrain:

- (a) the issuer of an Issued Bank Guarantee from paying Ausgrid under the Issued Bank Guarantee;
- (b) Ausgrid from taking any steps for the purposes of making a demand for payment under an Issued Bank Guarantee; or
- (c) Ausgrid from using the money obtained from making a demand for payment under an Issued Bank Guarantee.

5.5 Copy of demand to Customer

Ausgrid must provide the Customer with a copy of any demand for payment which Ausgrid makes to the relevant Bank under an Issued Bank Guarantee within 7 days of issuing such a demand.

5.6 Acknowledgement

The Customer acknowledges that:

- (a) Ausgrid would not have entered into any contract relating to the augmentation of its *distribution network* or the connection of the Site to its *distribution network* but for it being able to rely on clause 2 and the provision of a Bank Guarantee; and
- (b) the Minimum Revenue Amount is not a penalty but is a fair and reasonable estimate of the total revenue which Ausgrid could reasonably expect to derive during the Period from the *augmentation* carried out to its *distribution network* to provide the requested *distribution services* to the Customer under the Connection Contract.

6 Events of Default

Each of the following is an Event of Default (whether or not it is in the control of the Customer). For the purposes of this clause, “the Customer” includes any related body corporate or associate (as those terms are defined in the Corporations Act) of the Customer that uses the energy that incurs the DSC or is responsible for paying the DSC:

- (a) An administrator of the Customer is appointed.
- (b) the Connection Contract is terminated;
- (c) the Site is disconnected due to the Customer’s payment default under the Connection Contract;
- (d) the Customer repudiates the Connection Contract or this Deed or evidences an intention to repudiate the Connection Contract or this Deed;

- (e) a provision of the Connection Contract or this Deed is or becomes or is claimed by any person to be wholly or partly invalid, void, voidable or unenforceable in any material respect;
- (f) Except for the purpose of a solvent reconstruction or amalgamation previously approved by Ausgrid:
 - (i) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting, an application to a court or other steps are taken for the winding up or dissolution of the Customer (other than frivolous or vexatious applications, proceedings, notices and steps); or
 - (ii) the Customer ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its assets.
- (g) The Customer:
 - (i) is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute); or
 - (ii) stops or suspends or threatens to stop or suspend payment of all or a class of its debts.

7 Return of Issued Bank Guarantee

- (a) This Deed terminates on, and Ausgrid must return the Issued Bank Guarantee to the Customer by, the earlier of:
 - (i) 28 days after:
 - (A) all DSC incurred by the Customer for any part of the Period in respect of the Site; and
 - (B) all amounts due under this Deed by the Customer, have been paid and the aggregate of those amounts paid to Ausgrid is not less than the Minimum Revenue Amount; or
 - (ii) 28 days after receiving payment from the relevant Bank under an Issued Bank Guarantee of an amount which, alone or in combination with previous payments from that Bank under that Issued Bank Guarantee, is equal to the entire Minimum Revenue Amount.
- (b) As soon as reasonably practical after Ausgrid returns an Issued Bank Guarantee to the Customer, the Customer must return the Issued Bank Guarantee to the relevant Bank.
- (c) This clause 7 survives the termination of this Deed.

8 Notices

Any notice given under this Deed:

- (a) must be in writing addressed to the intended recipient at:

	Ausgrid	Customer
Address	Shown Above	Shown Above
Email address	[insert]	[insert]
Attention	[insert]	[insert]

or such other contact details as last notified by the intended recipient to the sender;

- (b) must be hand delivered or sent by prepaid post or email to the above address or email address (or such other address or email address as last notified by the intended recipient to the sender);
- (c) must be signed by:
- (i) a person duly authorised by Ausgrid, where Ausgrid is the sender; or
 - (ii) an officer of the Customer, where the Customer is the sender; and
- (d) will be taken to have been given:
- (i) if hand delivered - on delivery;
 - (ii) if sent by prepaid post - three days after the date of posting; or
 - (iii) if sent by email, when the addressee's email system logs the email message as having been received,

except that if delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 4pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

9 General

9.1 No waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

9.2 No disclosure

Subject to any requirement of the law or a governmental agency, each party must keep the terms of this Deed confidential unless disclosure is consented to in writing by the other party.

9.3 Assignment

- (a) The Customer may not assign or otherwise transfer any of its rights or obligations under this Deed without Ausgrid's prior written consent.

- (b) Ausgrid may, without the consent of the Customer, assign or transfer all or any of Ausgrid's rights and obligations under this Deed to any entity which takes over all or any of the business or activities of Ausgrid under any law or as a result of a reorganisation or restructure of Ausgrid, a disaggregation of Ausgrid, an industry restructure involving Ausgrid, a privatisation of Ausgrid or any sale or statutory transfer of any part of Ausgrid or any part of Ausgrid's business.
- (c) Ausgrid must promptly advise the Customer if it makes an assignment or transfer in accordance with paragraph (b) above other than by means of a deed of novation to which the Customer is a party.
- (d) The Customer must, on request by Ausgrid, enter into a deed of novation transferring all or any of Ausgrid's rights and obligations under this Deed (as requested by Ausgrid) to any entity to which all or any of Ausgrid's rights and obligations under this Deed have been or are entitled to be assigned or transferred in accordance with paragraph (b) above.

9.4 Counterparts

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

9.5 Entire agreement

This Deed contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.

9.6 No agency or partnership

This Deed does not constitute any party the agent of another or imply that the parties intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of another. No party has authority to pledge the credit of another.

9.7 Governing law

This Deed is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.

9.8 Effect of change in law

- (a) Subject to clauses 9.8(b) and 9.8(c), the parties acknowledge their intention that:
 - (i) any change in any law (including to the "National Electricity Law" or the Rules);
 - (ii) any decision or determination of any governmental agency; or
 - (iii) any change to the terms of the Connection Contract,which alters or impacts on:
 - (iv) the ability of an owner or operator of an *distribution network* to recover the costs of augmenting that network from a customer; or

- (v) the manner in which an owner or operator of an *distribution network* recovers the costs of augmenting that network from a customer,

will not affect the continued operation of this Deed to enable Ausgrid to recover the Minimum Revenue Amount from the Customer for the Period or the Guaranteed Amount for the Relevant Revenue Year.

- (b) Clause 9.8(a) above will not apply to the extent that any provision of this Deed becomes prohibited or unenforceable in New South Wales.
- (c) If any provision of this Deed becomes prohibited or unenforceable in New South Wales then:
 - (i) the affected provision will be ineffective to the extent of the prohibition or unenforceability and the remaining provisions of this Deed will continue to have effect; and
 - (ii) to the extent that the affected provision relates to the right of Ausgrid to recover the Minimum Revenue Amount from the Customer - the parties agree to negotiate in good faith and use reasonable endeavours to agree such changes to this Deed as may be necessary to enable Ausgrid to receive an amount equal to the Minimum Revenue Amount during the Period without either party being in breach of any applicable law.

EXECUTED as a Deed.

Deed of Guarantee of Minimum Revenue

Schedule Bank Guarantee

Bank Guarantee

BY: [BANK]

TO: AUSGRID

Ausgrid of 570 George Street, Sydney (**Ausgrid**) and [insert name of Customer and ACN] (the **Customer**) have entered into a "Deed of Guarantee of Minimum Revenue" (the **Revenue Agreement**) under which the Customer is required to submit security for performance of the Revenue Agreement.

At the request of the Customer, [insert name and address of Bank] (the **Bank**) unconditionally and irrevocably undertakes to pay on demand any sum which may from time to time be demanded by Ausgrid up to a maximum aggregate sum of [insert sum in words] (\$insert amount) (the **Guaranteed Sum**).

Subject to the provisions below, this Bank Guarantee is to continue until:

- (a) a written notification has been received by the Bank from Ausgrid that the Guaranteed Sum is no longer required by Ausgrid; or
- (b) payment to Ausgrid by the Bank of the whole of the Guaranteed Sum or such part of that amount as Ausgrid notifies in writing to the Bank that it requires to discharge this Bank Guarantee.

Should the Bank be notified in writing, purporting to be signed for and on behalf of Ausgrid, that Ausgrid desires payments to be made of the whole or any part or parts of the Guaranteed Sum, it is unconditionally agreed that such payment or payments will be made to Ausgrid (in the time and manner reasonably requested by Ausgrid):

- (a) without further reference to the Customer;
- (b) despite any notice given by the Customer to the Bank not to make such payment or payments;
- (c) irrespective of the performance or non-performance by the Customer or Ausgrid of the terms of the Revenue Agreement;
- (d) irrespective of whether the whole, or any part of, the Revenue Agreement is enforceable or valid; and
- (d) with no obligation on the Bank to enquire as to the correctness or validity of any demand made by Ausgrid under this Bank Guarantee.

The Bank's liability under this Bank Guarantee is not affected or discharged in any way by:

- (a) any variation to, or the enforceability or validity of, the Revenue Agreement; or
- (b) the coming into effect of any additional or substitute agreement or by any extension of time or other forbearance on the part of Ausgrid to the Customer.

Where a demand and payment is made under this Bank Guarantee for a sum less than the Guaranteed Sum, the Bank may issue to Ausgrid a replacement guarantee for the balance of the Guaranteed Sum then remaining after such part payment or payments. Upon Ausgrid receiving a valid replacement guarantee for the correct remaining balance of the Guaranteed Sum, this Bank Guarantee will cease to have effect.

The Bank may at any time, without being required to do so, pay to Ausgrid:

- (a) the Guaranteed Sum less any amount or amounts it may previously have paid under this Bank Guarantee; or
- (b) such lesser sum as may be required by Ausgrid.

If the Bank makes the above payment then the Bank's liability under this Bank Guarantee will immediately cease and determine upon receipt by Ausgrid of that payment.

Ausgrid may assign the benefit of this Bank Guarantee to another person (Permitted Assignee) only on the basis that Ausgrid and the Bank organise for the return and cancellation of this Bank Guarantee together with the simultaneous issue of a new guarantee in favour of the Permitted Assignee on the same terms as this Bank Guarantee except with amendments which replace references to Ausgrid with references to the Permitted Assignee and any changes to the Guaranteed Sum for part payments which have already been paid to Ausgrid. The assignment will only be effective upon the issue of the new guarantee.

This Bank Guarantee is governed by and is to be construed in accordance with the laws of New South Wales.

Executed and delivered as a Deed in [Sydney]

[Execution clause]

Date:

Deed of Guarantee of Minimum Revenue

Signed sealed and delivered for and on behalf of the Ausgrid Operator Partnership (ABN 78 508 211 731) by its Attorney under Registered Power of Attorney Bk 4734 No 368 who declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

Signature of Attorney

Signature of Witness

Name of Attorney

Name of Witness

Signature of Attorney

Signature of Witness

Name of Attorney

Name of Witness

Deed of Guarantee of Minimum Revenue

Annexure Connection Contract

[Describe the annexure here]