

Relocation Deed – Existing TCA Assets

Title	Relocation Deed – Existing TCA Assets
Version	Version 1 (published on 1 July 2018)
Purpose	<p>This document has been uploaded onto ElectraNet Pty Limited’s (ElectraNet’s) website as required by schedule 5.10 of the National Electricity Rules.</p> <p>It is to be used where a transmission network user (TNU) which already has a transmission connection agreement (TCA) with ElectraNet makes a request for ElectraNet to relocate transmission assets owned by ElectraNet and which have been constructed by ElectraNet in order to provide transmission services to the TNU under the terms of the TCA.</p> <p>In such scenarios ElectraNet may, but is not obliged to, consider relocating the relevant assets on the terms and conditions contained in this document. If ElectraNet agrees to the relocation, the TNU must pay the costs of all ElectraNet relocation works to ElectraNet. Such costs will ordinarily be capitalised in to the annual charges payable by the TNU under the terms of the TCA.</p> <p>Before ElectraNet enters into any arrangement for the relocation of its assets, all related preliminary works (including without limitation site studies and assessments) required to assess the extent of the required relocation works and prepare this document (including the scope of works attached to this document) will need to be completed by ElectraNet (at the TNU’s cost) under the terms of a separate consultancy agreement.</p>
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Further Information	<p>For further information in relation to this document or the relocation of any existing ElectraNet assets which are used to provide transmission services to a TNU, please contact our connections team at: connections@electranet.com.au</p>



Relocation Deed

ElectraNet Pty Limited (**ElectraNet**)

and

[INSERT] (**TNU**)

[INSERT] Project

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Date

Parties

ElectraNet **ElectraNet Pty Limited** ACN 094 482 416 of 52-55 East Terrace, ADELAIDE
SA 5000

TNU **[INSERT]** ACN **[INSERT]** of **[INSERT]**

Background

- A ElectraNet owns the Assets which form part of the Transmission System.
- B Under the terms of the TCA, ElectraNet utilises the Assets in order to provide *transmission services* to the TNU.
- C The TNU has requested that the Assets be relocated from their current location for the Specified Purpose.
- D This deed sets out the terms and conditions upon which ElectraNet will perform the ElectraNet Relocation Work and the TNU will perform the TNU Work.
- E The TNU will pay all costs incurred by ElectraNet in performing the ElectraNet Relocation Work in accordance with the terms contained in the TCA (which will be amended as a Precondition to the commencement of this deed).

The parties agree as follows.

1. **Definitions and interpretation**

1.1 **Defined terms**

In this deed, unless the context otherwise requires:

Affected Party has the meaning set out in clause 7.1(a).

Applicable Event of Force Majeure has the meaning set out in clause 7.1(a).

Applicable Laws means the *National Electricity Law*, NER, Electricity Act, Pricing Rules, Transmission Licence, Authorisations, Emissions Requirements and any other legislation, rules, regulations, guidelines, codes, Directives, licence conditions or other regulatory instruments which:

- (a) are directly or indirectly binding on or are expressed to apply to ElectraNet or the TNU (or both) from time to time; or
- (b) relate to the Transmission System, the Assets or the Work.

Asset means the asset (or assets) set out in Item 1 of Schedule 1.

Associate means in relation to a party, that party's officers, employees, 'associated entities' (as defined in the Corporations Act), authorised agents, suppliers, contractors, subcontractors

and professional advisers, and for the avoidance of doubt, ElectraNet is not an Associate of the TNU.

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

Authority means:

- (a) any government or regulatory department, body, instrumentality, minister, agency or other authority; or
- (b) the System Controller, *AER*, *AEMO*, *ESCOSA* or any other person exercising an authority granted to it under an Applicable Law.

Break Costs means:

- (a) all break fees, cancellation fees, early termination fees (and any other fees and costs of a similar nature); and
- (b) all other Damages (including as a result of third party claims),

incurred by ElectraNet in connection with the termination or cancellation of any of its contractual commitments or arrangements in relation to the performance of the ElectraNet Relocation Work (or any part of the ElectraNet Relocation Work).

Business Day means any day except a Saturday, Sunday or public holiday in South Australia.

Claims includes all claims, demands, actions or proceedings for any Damages, including any such claim by way of indemnity, under contract (including any breach of this deed), in equity (including breach of equitable duty or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including negligence or negligent misrepresentation) or otherwise.

Codes of Practice means any 'approved code of practice' as defined in the *Work Health and Safety Act 2012* (SA).

Commencement Date has the meaning set out in clause 2.2.

Confidential Information means all information relating to the disclosing party that is by its nature confidential, has been designated as confidential by the disclosing party or which a receiving party knows or ought to know is confidential, and includes all trade secrets, know-how, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, in tangible or intangible form) and includes the terms of this deed.

Consequential Loss means any:

- (a) indirect or consequential loss, damage, injury or expense;
- (b) loss, damage, injury or expense (whether direct, indirect or consequential in nature) which constitutes, or arises out of, loss of actual or anticipated revenue or profits, loss of, or interruption to, business, loss of production, loss of opportunity, loss of goodwill, loss of contract, loss of anticipated savings or increased costs of working; or
- (c) special, exemplary or punitive damages,

whether or not it was reasonably foreseeable or reasonably within the contemplation of the parties at the date of execution of this deed.

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

Damages includes any liabilities, expenses, losses (including Consequential Losses), damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against a party) whether arising under contract (including any breach of this deed), in equity (including breach of equitable duty or breach of fiduciary duty), under statute (including breach of statutory duty) (to the maximum extent possible), in tort (including negligence or negligent misrepresentation) or otherwise.

Directive means any present or future requirement, instruction, direction, condition or order of an Authority (whether formal or informal) which is binding on or expressed to apply to ElectraNet or the TNU or relates directly or indirectly to the Transmission System, the Assets or the Work.

Dispute means any dispute or difference of opinion between the parties or the absence of agreement by the parties about a matter in connection with this deed or its performance.

Dispute Notice has the meaning set out in clause 13.1(b).

Easement means any easement or option to take an easement granted in favour of ElectraNet over the Land or a portion of the Land on which the Assets are to be relocated to, and which is required by ElectraNet for the purpose of ElectraNet performing the ElectraNet Relocation Work.

Easement Costs means all costs incurred by ElectraNet in relation to any Easement.

ElectraNet means ElectraNet Pty Limited (ACN 094 482 416).

ElectraNet Group means:

- (d) ElectraNet and each of its Related Bodies Corporate;
- (e) each contractor and subcontractor of the persons mentioned in paragraph (a) of this definition; and
- (f) each Associate of the persons in paragraphs (a) and (b) of this definition.

ElectraNet Project Document Default Termination Event means where a Project Document has been terminated by the counterparty to that Project Document due to an ElectraNet default under that Project Document.

ElectraNet Relocation Work means the relocation of the Assets and any associated works to be performed by ElectraNet as specified in the Scope.

Electricity Act means the *Electricity Act 1996* (SA).

Emissions Requirements means any legislation, rules, regulations, codes, Directives, licence conditions or other regulatory instruments which has as one of its purposes the reduction, or limitation of greenhouse gases, reporting greenhouse gas emissions or any related information, trading in greenhouse gas emissions, offsets or other types of greenhouse gas emissions related permits, addressing the effects of climate change, encouraging the generation of renewable energy or the minimisation of the impact on the environment of the electricity industry generally, and includes the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the *National Greenhouse and Energy Reporting Regulations 2008* (Cth).

ESCOSA means the Essential Services Commission of South Australia.

Event of Force Majeure means any event, circumstance, act or omission (or combination of them) which is beyond the reasonable control of the Affected Party, including:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms and other adverse weather conditions, mudslides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war or terrorism, cyber-attacks or computer viruses, acts of public enemies, riots, civil commotions, protest, malicious damage, sabotage, blockades and revolutions;
- (b) industrial disputes (other than industrial disputes which are limited solely to the Affected Party's employees);
- (c) action or inaction by, or an order, Authorisation, determination, Directive or finding of, a Court, government or Authority including any injunction or a denial, refusal or failure to grant any Authorisation;
- (d) where ElectraNet is the Affected Party:
 - (i) a change in (or a change in the application or interpretation of) an Applicable Law;
 - (ii) the repeal of an Applicable Law; or
 - (iii) the introduction of an Applicable Law;
- (e) where ElectraNet is the Affected Party, any mechanical or electrical breakdown, or failure of equipment forming part of, the Transmission System (including the Assets) occurring at any time not attributable to ElectraNet's:
 - (i) negligence; or
 - (ii) breach of its obligations under this deed; or
- (f) a delay of a supplier (being a party with whom the Affected Party contracts from time to time) of goods and services to provide those goods and services, where that supplier is granted an extension of time for the provision of those goods or services due to the occurrence of a force majeure event (or similar event beyond the reasonable control of that supplier) under the terms of its contract with the Affected Party.

Execution Date means the date on which this deed is signed by the last party to do so.

Force Majeure Suspension Notice has the meaning set out in clause 7.1(b).

Force Majeure Suspension Period has the meaning set out in clause 7.2(a).

Freehold Transfer means any freehold transfer of land in favour of ElectraNet by any landowner over the Land or a portion of the Land on which the Assets are to be relocated to, and which is required by ElectraNet for the purpose of ElectraNet performing the ElectraNet Relocation Work.

Freehold Transfer Costs means all costs incurred by ElectraNet in relation to any Freehold Transfer.

Gross Negligence means engaging in conduct which the party in question knew would involve negligence or a breach of a duty of care on its part or where the party had a reckless disregard whether or not the conduct engaged in would involve negligence or a breach of duty of care on its part.

GST Exclusive Consideration has the meaning set out in clause 15(b)(i).

Land means the land described in Item 4 of Schedule 1, being all land on which the Assets are to be located once the ElectraNet Relocation Work has been completed.

Land and Equipment Access Rules means the Land and Equipment Access Rules set out in Schedule 5.

Lease means any lease or option to take a lease granted in favour of ElectraNet by any landowner over the Land or a portion of the Land on which the Assets are to be relocated to, and which is required by ElectraNet for the purpose of ElectraNet performing the ElectraNet Relocation Work.

Lease Costs means all costs incurred by ElectraNet in relation to any Lease.

Licences means any licence (including any access or construction laydown licence) granted in favour of ElectraNet by any landowner over any Land which is required by ElectraNet for the purpose of ElectraNet performing the ElectraNet Relocation Work.

Licence Costs means all costs incurred by ElectraNet in relation to any Licence.

NER means the “National Electricity Rules” as defined in the *National Electricity Law* set out in the schedule to the *National Electricity (South Australia) Act 1996 (SA)*.

Non-financial Obligation means an obligation under this deed other than an obligation to pay or cause to be paid an amount of money.

Notice has the meaning set out in clause 14.1 and **Notify** has a corresponding meaning.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Preconditions means the preconditions set out in Schedule 2.

Pricing Rules means the provisions of Chapter 6A of the NER and (where applicable) a Revenue Decision made in accordance with Chapter 6A of the NER which describes the service being regulated and regulates the manner in which the price payable for the provision of that service by ElectraNet may be determined by ElectraNet from time to time.

Program means the indicative program for the performance of the Work as set out in the Scope (as updated by ElectraNet from time to time in accordance with clause 3.4).

Project Document means:

- (a) this deed;
- (b) the TCA (including the operating protocol under the TCA); and
- (c) any other document which the Parties agree in writing is a Project Document.

Related Body Corporate has the meaning as defined in the Corporations Act and, for the purposes of this deed also includes a partnership comprised of one or more Related Bodies Corporate.

Representing Party has the meaning set out in clause 17.1.

Required Date means, in respect of each Precondition, the corresponding date by which that Precondition must be satisfied as set out in Schedule 2.

Revenue Decision means a decision, determination, order or other ruling made by the *AER* in accordance with the terms of the NER relating to the provision of, and the pricing for, any *transmission services*.

Scope means the scope of work for the Work as set out in Schedule 3 and amended by ElectraNet pursuant to this deed.

Solvency Default means, in relation to a party, the occurrence of any one of the following events in relation to that party:

- (a) an originating process or application for the winding up of that party (other than a frivolous or vexatious application) is filed in a court or a special resolution is passed to wind up that party, and is not dismissed before the expiration of 60 days from service on that party;
- (b) a receiver, receiver and manager or administrator is appointed in respect of all or any part of the assets of that party, or a provisional liquidator is appointed to that party;
- (c) a mortgagee, chargee or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of that party;
- (d) a mortgage, charge or other security interest granted by that party is enforced by its holder or becomes enforceable or can become enforceable with the giving of notice, lapse of time or fulfilment of a condition;
- (e) that party applies for, consents to, or acquiesces in the appointment of a trustee in bankruptcy or receiver of that party or any of its property;
- (f) a court appoints a liquidator, provisional liquidator, receiver or trustee, whether permanent or temporary, of all or any part of that party's property;
- (g) a party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act) in respect of that party;
- (h) a controller (as defined in the Corporations Act) is appointed in respect of any part of the property of the party;
- (i) that party is or states in writing that it is unable to pay its debts when they fall due;
- (j) except to reconstruct or amalgamate while solvent on terms approved by the other party (which approval will not be unreasonably withheld or delayed), a party enters into or resolves to enter into a scheme of arrangement, compromise or re-construction is proposed with its creditors (or any class of them) or with its members (or any class of them) or proposes re-organisation, re-arrangement, moratorium or other administration of that party's affairs; or
- (k) that party is the subject of an event described in section 459C(2) of the Corporations Act.

Specified Purpose means the purpose set out in Item 3 of Schedule 1.

System Controller means the person authorised under an Applicable Law to exercise system control over that part of the *power system* situated in South Australia (and includes a *System Operator* under the NER in relation to that part of the *power system*).

Target Outage Window means the targeted window detailed in Item 5 of Schedule 1 for any *outages* required in order to complete the Work as extended or amended in accordance with clause 3.5.

TCA means the transmission connection agreement identified in Item 2 of Schedule 1.

TNU means the entity stated as the "TNU" under the "Parties" section on page 1 of this deed.

TNU Group means:

- (a) the TNU and each of its Related Bodies Corporate;
- (b) each contractor and subcontractor of the persons mentioned in paragraph (a) of this definition; and
- (c) each Associate of the persons in paragraphs (a) and (b) of this definition.

TNU Work means the work to be performed by the TNU in connection with the ElectraNet Relocation Work as specified in the Scope.

Transmission Licence means the licence issued to ElectraNet under the Electricity Act authorising it to operate a *transmission system* in South Australia.

Transmission System means the *transmission system* operated by ElectraNet and identified in the Transmission Licence from time to time.

WHS Legislation means the *Work Health and Safety Act 2012 (SA)*, *Work Health and Safety Regulation 2012 (SA)* and approved Codes of Practice, as amended from time to time.

Work means the ElectraNet Relocation Work and the TNU Work.

Wilful Misconduct means any act or omission which the party in question knew would be wrongful with the intent to cause harm to the other party or where the party had a reckless disregard whether or not the conduct engaged in would be wrongful on its part and what its consequences might be.

1.2 NER definitions and references

In this deed, unless the context otherwise requires:

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

1.3 Interpretation

In this deed, unless the context otherwise requires:

- (a) words indicating the singular number include the plural number and vice versa;
- (b) words indicating persons only include natural persons, bodies corporate and unincorporated associations;
- (c) where a party or group is constituted by more than one person, a reference to that party or group is a reference to each of those persons jointly and severally;
- (d) other grammatical forms of words or phrases defined in this deed will have a corresponding meaning;
- (e) references to persons include their respective administrators, successors, liquidators and permitted assigns;
- (f) headings are for convenience only and do not affect the interpretation of this deed;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novation of, that document;
- (h) a reference to an annexure, a clause or a schedule is to an annexure, a clause or schedule of this deed;

- (i) the recitals, annexures and schedules form part of this deed;
- (j) mentioning anything after the words “include”, “includes”, “including” or “for example” (or similar expressions) does not limit what else is included;
- (k) a reference to an Authority includes any body which is the successor to the administrative responsibilities of that Authority;
- (l) a reference to a period of time (including, without limitation, a year, a month and a day) is to a calendar period;
- (m) a reference to any act of Parliament or to any section or provision in any act of Parliament extends to and includes:
 - (i) any regulations, codes, orders or other instruments made under that act; and
 - (ii) any statutory modification, re-enactment or substitution for that act, section or provision;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
- (o) a reference to “dollars”, “\$”, “AUD” or “A\$” is to the lawful currency of Australia.

1.4 Consideration

In addition to the mutual promises made in this deed, each party agrees to pay the other party A\$10 upon demand as consideration for the obligations of the other party under this deed.

2. Commencement

2.1 Commencement

Subject to clause 2.2, this deed commences on the Execution Date.

2.2 Preconditions

ElectraNet is not obliged to commence performance of the ElectraNet Relocation Work until the date each of the Preconditions have been satisfied or waived in accordance with clause 2.3 (**Commencement Date**).

2.3 Satisfaction or waiver of Preconditions

- (a) Each party will use its best endeavours to satisfy the Preconditions applying to that party as soon as reasonably possible after the Execution Date but in any event by no later than the Required Date for the satisfaction of the relevant Precondition.
- (b) A Precondition may only be waived in writing by the party who has the right to waive the relevant Precondition as set out in Schedule 2.
- (c) If ElectraNet waives a Precondition applying to the TNU in accordance with clause 2.3(b), it may do so on such conditions as it deems necessary.

2.4 Failure of Preconditions

- (a) If the Preconditions are not satisfied, or waived in accordance with clause 2.3, by the Required Date, then either party may terminate this deed immediately by Notice to the other party.
- (b) Subject to clause 2.4(c), if either party terminates this deed under clause 2.4(a), neither party will be entitled to any Claim against the other party under, or in

connection with, this deed and each party releases the other party from any such Claims.

- (c) If either party terminates this deed under clause 2.4(a), the TNU must pay all amounts owing to ElectraNet under any consultancy agreements under which ElectraNet performed services relating to this deed or the Work.

3. Performance of Work

3.1 ElectraNet Relocation Work

- (a) As soon as reasonably practicable following the Commencement Date, ElectraNet will perform the ElectraNet Relocation Work in accordance with the terms of this deed (including the Scope).
- (b) ElectraNet will use reasonable endeavours to perform the ElectraNet Relocation Work in accordance with *good electricity industry practice*.

3.2 TNU Work

- (a) As soon as reasonably practicable following the Commencement Date, the TNU must perform the TNU Work in accordance with the terms of this deed (including the Scope).
- (b) The TNU must:
 - (i) ensure that the TNU Work is performed with due care, skill and judgement and at all times act in accordance with relevant professional principles and standards (including the NER and *good electricity industry practice*); and
 - (ii) provide all information relating to the TNU Work as reasonably requested by ElectraNet from time to time within 5 Business Days of receiving a written request from ElectraNet for that information.

3.3 Time for performance

- (a) ElectraNet will use its reasonable endeavours to perform the ElectraNet Relocation Work in accordance with the Program.
- (b) The Program is an indicative program only and ElectraNet will not be in breach of this deed or liable for any Claims or Damages incurred by any member of the TNU Group as a result of a failure by ElectraNet to perform the ElectraNet Relocation Work in accordance with the Program however that failure is caused.
- (c) The TNU must perform the TNU Work in accordance with the Program and in such time to enable ElectraNet to comply with clause 3.3(a).

3.4 Updated Program

- (a) ElectraNet may update the Program from time to time by providing a Notice to the TNU attaching a new Program which replaces the then current Program.
- (b) The then current Program will be taken to have been immediately replaced with the new Program at the time the Notice attaching the new Program is provided by ElectraNet to the TNU in accordance with clause 3.4(a).

3.5 Outages

- (a) The parties acknowledge and agree that the Target Outage Window is the proposed period during which all required *outages* necessary to complete the Work is intended to occur and ElectraNet will use its best endeavours to book and obtain such *outages* so that the Work can occur during the Target Outage Window.

- (b) The parties acknowledge and agree that if:
- (i) ElectraNet is unable to obtain any required Authorisations to book or obtain the required *outages* during the Target Outage Window;
 - (ii) ElectraNet considers that, in order to comply with a requirement of any Applicable Law or any requirement of *AEMO*, it is unable to book or obtain the required *outages* during the Target Outage Window; or
 - (iii) ElectraNet considers that any aspect of the Work has not been completed to the extent necessary to enable the required *outages* to occur during the Target Outage Window in order to perform or complete any other aspect of the Work,
- then:
- (iv) without limiting anything in this deed, ElectraNet will not be liable to the TNU or any member of the TNU Group for any Claims for Damages suffered or incurred by the TNU or any member of the TNU Group arising out of, or in connection with, the matters referred to in this clause 3.5; and
 - (v) the parties will meet to negotiate in good faith and agree to an extension to, or an amendment of, the Target Outage Window and book a subsequent *outage* as soon as reasonably practicable within the extended or amended Target Outage Window, or if the parties are unable to agree to an extension to, or an amendment of, the Target Outage Window within 10 Business Days following the first meeting of the parties pursuant to this clause 3.5(b)(v), the Target Outage Window will be extended or amended as determined by ElectraNet.
- (c) Without limiting clause 3.5(b), the TNU acknowledges that *outages* to complete the Work:
- (i) must generally be booked at least 3 months in advance and may only be booked or obtained by ElectraNet during certain times of the year; and
 - (ii) are subject in all respects to Applicable Law and requisite Authorisations from *AEMO*.
- (d) The TNU must not:
- (i) cause any *outage* except as permitted by this clause 3.5; or
 - (ii) cause the prolongation, or otherwise delay, any *outage* permitted by this clause 3.5.

3.6 Notice of completion

As soon as reasonably practicable after the completion of the Work in accordance with this deed (as determined by ElectraNet acting reasonably), ElectraNet will issue a Notice of completion to the TNU.

3.7 Ownership and title in Assets and intellectual property rights

All ownership and title in the Assets (including any intellectual property rights arising out of or in connection with the Assets or the ElectraNet Relocation Work), will at all times be held and remain the property of ElectraNet.

3.8 Specified Purpose

The TNU acknowledges and agrees that ElectraNet:

- (a) does not guarantee, warrant or make any representation in relation to the Specified Purpose or the TNU's ability to achieve the Specified Purpose following the completion of the Work; and
- (b) is not liable for, or in connection with, any Claims or Damages suffered or incurred by any member of the TNU Group, arising out of, or in connection with the Specified Purpose or the failure of the TNU to achieve the Specified Purpose.

3.9 Reasonable assistance

The TNU must provide ElectraNet with such reasonable assistance as requested by ElectraNet in order for ElectraNet to perform the ElectraNet Relocation Work.

3.10 Amendments to TCA

The parties will negotiate any amendments that reasonably need to be made to the TCA in relation to, or as a result of, the Work or this deed (which changes must be formally documented as a Precondition to this deed) in good faith.

4. Costs of ElectraNet Relocation Work

- (a) The TNU acknowledges and agrees that:
 - (i) it must pay all costs incurred by ElectraNet in performing the ElectraNet Relocation Work (including any Easement Costs, Freehold Transfer Costs, Lease Costs and Licence Costs); and
 - (ii) such costs will be payable by the TNU under the terms of the TCA (as amended as a Precondition to this deed).
- (b) In calculating the required changes to the charges payable under the TCA, ElectraNet will:
 - (i) use the same financial model used to calculate the charges payable under the TCA; and
 - (ii) be entitled to recover a reasonable margin in addition to the capital expenditure required to complete the ElectraNet Relocation Work.
- (c) The TNU acknowledges and agrees that it must bear all costs associated with the TNU Work.

5. Access

5.1 Land and Equipment Access Rules

Each party will give the other party and its Associates reasonable access to:

- (a) its *facilities*;
- (b) any land or premises owned or occupied by that party upon which any *facilities* belonging to that party is situated; and
- (c) the Land,

from time to time in accordance with the Land and Equipment Access Rules, for the purpose of allowing the Work to be completed in accordance with this deed.

5.2 Additional requirements

Each party must comply, and ensure that its Associates comply, with any reasonable requirements of the other party relating to the health and safety of people on or near the sites which are controlled by the other party and the protection of the environment and the security of the sites which are controlled by the other party.

6. Work health and safety

6.1 Defined terms

In this clause 6, the terms **Construction Project**, **Principal Contractor** and **Workplace** have the meanings given to them under the WHS Legislation.

6.2 Construction project

The parties acknowledge that the ElectraNet Relocation Work constitutes a separate and discrete Construction Project for the purposes of the WHS Legislation and does not form part of any other Construction Project arising in relation to the works on the TNU's *facility* (including the TNU Work).

6.3 Health and safety obligations

- (a) The TNU must Notify ElectraNet immediately of anything or any circumstance arising in connection with the TNU's activities which may affect ElectraNet's ability to perform the ElectraNet Relocation Work without risk to health or safety of any person.
- (b) The TNU must provide ElectraNet with any information requested by ElectraNet from time to time about hazards and risks arising at or in relation to the TNU's activities or any other safety matters relevant to the conduct of the ElectraNet Relocation Work.
- (c) The TNU must take all reasonably practicable steps to:
 - (i) assist ElectraNet; and
 - (ii) compel any relevant third party whom the TNU has the capacity to influence or control to assist ElectraNet,

to coordinate safety matters in relation to the Construction Project constituted by the ElectraNet Relocation Work.

6.4 Principal Contractor engagement

The parties acknowledge and agree that:

- (a) for the purposes of the WHS Legislation, the "commissioner" of the Construction Project which is constituted by the ElectraNet Relocation Work has the ability to appoint a Principal Contractor for the purposes of that Construction Project;
- (b) to the extent there is any ambiguity as to whether ElectraNet or the TNU is "commissioning" the Construction Project which is constituted by the ElectraNet Relocation Work for the purposes of the WHS Legislation, as between the parties, it is agreed ElectraNet is "commissioning" the Construction Project; and
- (c) ElectraNet will use its best endeavours to procure the person conducting a business or undertaking that is contracted by ElectraNet to construct the ElectraNet Relocation Work to:
 - (i) formally accept that it is engaged as Principal Contractor for the purposes of the relevant Construction Project; and

- (ii) agree to discharge and perform all duties and functions imposed on a Principal Contractor by the WHS Legislation.

7. Applicable Event of Force Majeure

7.1 Notice of Event of Force Majeure

- (a) A party that becomes aware of any matter likely to constitute an Event of Force Majeure in relation to any of its obligations under this deed (**Affected Party**), which:
 - (i) causes delay in, or prevents, the performance by the Affected Party of its obligations; and
 - (ii) which the Affected Party could not have prevented by the exercise of a standard of care and diligence consistent with the observance of *good electricity industry practice*,

(Applicable Event of Force Majeure), must immediately give Notice to the other party of:

 - (iii) that fact; and
 - (iv) all relevant particulars relating to that potential Applicable Event of Force Majeure of which it is aware at that time.
- (b) Within 10 Business Days of an Applicable Event of Force Majeure occurring, the Affected Party must give the other party Notice containing whatever particulars are available at that time of the Applicable Event of Force Majeure, including:
 - (i) its nature and likely duration;
 - (ii) the obligations of the Affected Party affected by the Applicable Event of Force Majeure and the nature and extent of its effect on those obligations; and
 - (iii) the actions taken, or proposed to be taken by the Affected Party to remedy, abate, mitigate or minimise the effects of the Applicable Event of Force Majeure,

(Force Majeure Suspension Notice).
- (c) The Affected Party must Notify the other party of any changes to the particulars of the Applicable Event of Force Majeure (as compared to those set out in the relevant Force Majeure Suspension Notice) as soon as possible after becoming aware of that change in particulars.
- (d) If a party receives a Force Majeure Suspension Notice, it will be deemed to have accepted the contents of that Force Majeure Suspension Notice unless the contents are Disputed by the party receiving the Force Majeure Suspension Notice in accordance with clause 13 within 10 Business Days of the Force Majeure Suspension Notice being sent.

7.2 Suspension of obligations

- (a) Subject to compliance with the Notice requirements under clause 7.1, the Non-financial Obligations of the Affected Party will be suspended in whole or in part as the case may require, to the extent that that the Affected Party is prevented from performing those Non-financial Obligations by the Applicable Event of Force Majeure, from the time that the Applicable Event of Force Majeure prevents the performance of such Non-financial Obligations until the time that such Non-financial Obligations are no longer affected by the Applicable Event of Force Majeure (**Force Majeure Suspension Period**).

- (b) The Affected Party will have no liability to the other party in respect of the failure to perform such Non-financial Obligations during the Force Majeure Suspension Period to the extent that such failure is caused by the Applicable Event of Force Majeure.
- (c) Suspension of any Non-financial Obligation pursuant to clause 7.2(a) will not:
 - (i) affect any rights or obligations in relation to any other Non-financial Obligations which the Affected Party is not prevented from performing by the Applicable Event of Force Majeure; or
 - (ii) suspend the TNU's obligation to pay the costs of the ElectraNet Relocation Work.

7.3 Mitigation

- (a) The Affected Party must, subject to clause 7.3(b), use best endeavours to remedy, abate, mitigate or minimise the effects of the Applicable Event of Force Majeure, and the other party will co-operate and give such assistance as the Affected Party may reasonably request in connection with the removal and mitigation of the effect of that Applicable Event of Force Majeure.
- (b) Nothing in clause 7.3(a):
 - (i) requires the Affected Party to settle any industrial or labour Dispute otherwise than as the Affected Party in its absolute discretion sees fit or to act in a manner which is contrary to the requirements of any Applicable Law; and
 - (ii) where the Affected Party is ElectraNet, requires ElectraNet to spend money in order to remedy, abate, mitigate or minimise the effects of the Applicable Event of Force Majeure, otherwise than as ElectraNet in its absolute discretion sees fit.

7.4 Cessation or abatement of an Applicable Event of Force Majeure

An Affected Party must:

- (a) give immediate Notice to the other party of:
 - (i) the cessation of an Applicable Event of Force Majeure the subject of a Force Majeure Suspension Notice; or
 - (ii) any abatement in the Applicable Event of Force Majeure which permits the Affected Party to resume performance of the suspended Non-financial Obligation; and
- (b) as soon as reasonably possible after the cessation or abatement of that Applicable Event of Force Majeure, resume performance of the suspended Non-financial Obligation.

8. Confidentiality

8.1 Privileged information

Subject to any Applicable Law, a party is not obliged to provide to the other party any information which is subject to legal professional privilege.

8.2 Confidential Information to be kept confidential

- (a) Each party must keep confidential any Confidential Information which comes into the possession or control of that party or of which the party becomes aware as a result of the operation of this deed.

- (b) A party:
 - (i) must not disclose Confidential Information to any person except as permitted by this deed (including clauses 8.3 and 8.4);
 - (ii) must only use or reproduce Confidential Information for the purpose for which it was disclosed or another purpose contemplated by this deed; and
 - (iii) must not permit unauthorised persons to have access to Confidential Information.
- (c) Each party must use all best endeavours:
 - (i) to prevent unauthorised access to Confidential Information which is in the possession or control of that party; and
 - (ii) to ensure that any person to whom it discloses Confidential Information observes the provisions of this clause 8 in relation to that information.
- (d) Subject to clauses 8.2(e), 8.2(f) and 8.2(g), neither party may make any statement or representation in relation to this deed (including, in particular, a statement to the effect that the party has entered into this deed) without the written consent of the other party which consent will not be unreasonably withheld.
- (e) If a party makes a statement or representation in relation to this deed (including, in particular, a statement to the effect that that party has entered into this deed) without the written consent of the other party, the other party will be entitled to make a statement or statements in response to the statement made by the party, clarifying any issues that the other party may have with the statement made by the party.
- (f) Despite clauses 8.2(d) and 8.2(e), a party is entitled to make a statement to the following effect in relation to this deed: *“ElectraNet and [insert] have entered into a relocation works contract in relation to [insert]”*.
- (g) ElectraNet may advertise, publish or release any information, document or article for publication in relation to this deed in any media if ElectraNet has liaised with the TNU regarding the content of such information, document or article and the TNU has consented to such content (such consent not to be unreasonably withheld or delayed).

8.3 Disclosures required under Applicable Laws

Without limiting any other provision of this clause 8, the TNU consents to ElectraNet using any information concerning the TNU's *facility*, electricity usage, *metering* data and any related or similar information for the purpose of complying with ElectraNet's obligations under this deed or any Applicable Law (including the provision of that information to AEMO, the System Controller and any other relevant Authority).

8.4 Other exceptions

Clause 8.2 does not prevent:

- (a) **(public domain)**: the disclosure, use or reproduction of Confidential Information if the relevant information is at the time generally and publicly available other than as a result of breach of confidence by the party (including a breach of this deed) who wishes to disclose, use or reproduce the information or any person to whom the party has disclosed the information;
- (b) **(employees and advisers)**: the disclosure of Confidential Information by a party to:
 - (i) an employee or officer of the party or a Related Body Corporate of the party;
or

- (ii) a legal or other professional adviser, auditor or other consultant of the party, who requires the information for the purposes of this deed, the NER, or for the purpose of advising the party in relation to those matters;
- (c) **(contractors)**: the disclosure of Confidential Information by the TNU to a contractor engaged in relation to the TNU Work or by ElectraNet to a contractor engaged in relation to the ElectraNet Relocation Work;
- (d) **(consent)**: the disclosure, use or reproduction of Confidential Information with the consent of the party who provided the relevant information;
- (e) **(law)**: the disclosure, use or reproduction of Confidential Information to the extent required by law or by a lawful requirement of:
 - (i) any Authority having jurisdiction over a party or its Related Bodies Corporate; or
 - (ii) any stock exchange having jurisdiction over a party or its Related Bodies Corporate;
- (f) **(Disputes)**: the disclosure, use or reproduction of Confidential Information if required in connection with legal proceedings, arbitration, expert determination or other dispute resolution mechanism under this deed or the NER or for the purpose of advising a person in relation thereto;
- (g) **(safety)**: the disclosure of Confidential Information to the extent required to protect the safety of personnel or equipment;
- (h) **(potential investment)**: the disclosure, use or reproduction of Confidential Information by or on behalf of a party to the extent reasonably required in connection with the party's financing arrangements, investment in that party or a disposal of that party's assets or a purchase of that party's shares;
- (i) **(response to potential investment query)**: the disclosure, use or reproduction of Confidential Information by or on behalf of ElectraNet to a person:
 - (i) who has received information from the TNU under clause 8.4(h); and
 - (ii) to the extent reasonably required in order to answer any question by that person concerning the terms and conditions of this deed;
- (j) **(regulator)**: the disclosure of Confidential Information to the AER, AEMO, ESCOSA or any other Authority having jurisdiction over a party;
- (k) **(reports)**: the disclosure, use or reproduction of Confidential Information of an historical nature in connection with the preparation and giving of reports under the NER;
- (l) **(aggregate sum)**: the disclosure, use or reproduction of Confidential Information as an unidentifiable component of an aggregate sum;
- (m) **(profile)**: the publication of a profile;
- (n) **(Connection Applicant)**: the disclosure of any Confidential Information concerning the Assets or the connection of the TNU's *facility* to a *Connection Applicant* where that information is required in order to negotiate the terms of the *connection agreement* with the *Connection Applicant*, or
- (o) **(Applicable Laws)**: the disclosure, use or reproduction of Confidential Information where required or permitted from time to time under an Applicable Law.

8.5 Undertaking to keep confidential

In the case of a disclosure under clause 8.4(b), 8.4(c) or 8.4(h), prior to making the 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 clauses 8.2 and 8.3 and does not use the information for any purpose other than that permitted under clause 8.2(b).

8.6 Survival

This clause 8 survives the termination or expiry of this deed.

9. Termination

9.1 Termination for breach or Solvency Default

- (a) A party may terminate this deed at any time by Notice to the other party, if:
 - (i) subject to clause 9.1(b), a Solvency Default occurs in relation to the other party; or
 - (ii) the other party breaches a material term or condition of this deed and that breach is not remedied within 20 Business Days of receiving a Notice from the other party to remedy that breach.
- (b) The parties agree that to the extent any stay period applies to the termination rights set out in clause 9.1(a)(i) under the Corporations Act or any other Applicable Law, a Notice given under clause 9.1(a) for a Solvency Default of the other party will be deemed to be given and will only take effect from the day after the day on which such stay period under the Corporations Act or any other Applicable Law expires.

9.2 Termination of Project Documents

ElectraNet may terminate this deed immediately by giving Notice to the TNU in the event that any one or more of the other Project Documents is terminated for any reason.

9.3 Consequences of termination

- (a) If this deed is terminated:
 - (i) each party must promptly return to the other party any of the other party's Confidential Information which is in its possession and control as at the date of termination and must use best endeavours to procure the prompt return of any of the other party's Confidential Information which is in the possession and control of the TNU's Associates;
 - (ii) ElectraNet retains all title in the Assets;
 - (iii) ElectraNet may:
 - (A) disconnect, dismantle, *decommission* and remove the Assets and undertake any further decommissioning, rehabilitation or remediation which ElectraNet considers is required; and
 - (B) undertake, complete and commission all other work which ElectraNet reasonably determines is necessary to allow the Transmission System to operate in accordance with *good electricity industry practice* and the other requirements of Applicable Laws following the removal of the Assets referred to in clause 9.3(a)(iii)(A);

- (iv) ElectraNet will use its best endeavours to:
 - (A) terminate any contract with a third party supplier, contractor or consultant relating to the performance of the ElectraNet Relocation Work; and
 - (B) minimise any costs payable as a result of any such cancellation;
 - (v) the TNU must pay any Break Costs which are payable as a result of ElectraNet terminating a contract with a third party in accordance with clause 9.3(a)(iv)(A); and
 - (vi) the TNU must pay to ElectraNet all amounts required to be paid by the TNU in accordance with this deed.
- (b) If this deed is terminated for any reason (other than where this deed is terminated by the TNU due to a Solvency Default of ElectraNet, a breach of this deed by ElectraNet or where this deed has been terminated by ElectraNet under clause 9.2 due to a Project Document being terminated for an ElectraNet Project Document Default Termination Event) the TNU will reimburse ElectraNet for any costs which are incurred by ElectraNet in undertaking the work referred to in clause 9.3(a)(iii) (upon receipt from ElectraNet of reasonable evidence substantiating the amount of costs incurred).
- (c) Despite any other clause of this deed, all amounts which are payable by the TNU to ElectraNet under this clause 9.3 will be payable upon demand.
- (d) Nothing in this clause 9.3 will limit either party's right to recover damages from the other party for breach of contract.
- (e) This clause 9.3 survives termination or expiry of this deed.

10. Warranties, liability and indemnities

10.1 Exclusion of warranties

Subject to clause 10.2 and except as otherwise expressly set out in this deed, ElectraNet does not give any warranties or undertakings, and has not made any representations in relation to the condition, suitability, quality, fitness or safety of the ElectraNet Relocation Work or the Assets.

10.2 Exclusion of implied terms

Each party excludes from this deed, to the maximum extent permitted by Applicable Law or general law, all conditions, warranties and terms implied or imposed by Applicable Law or general law, except for any condition, warranty or term which is expressly set out in this deed or to the extent that any condition, warranty or term the exclusion of which would:

- (a) contravene any Applicable Law or general law which imposed or implied it; or
- (b) cause this clause 10.2 to be void.

10.3 Competition and Consumer Act

A party's liability to the other party for breach of any condition, warranty or term implied into this deed by the *Competition and Consumer Act 2010* (Cth) is limited to the maximum extent permitted by that Act.

10.4 Applicable Laws and limitations on liability

This clause 10 and clauses 11 and 12 will apply in addition to (and will not limit) any exclusion from, or limitation on, liability a party may be entitled to claim the benefit of under an Applicable Law (including without limitation sections 116, 119 or 120 of the *National Electricity Law*).

10.5 Effect on insurance policies

The parties acknowledge and agree that clauses 10.1, 10.2, 10.3, 10.4, 11 and 12 do not, and are not intended to, limit the entitlement of either party under any insurance policies or to limit the concept of loss suffered by either party under those insurance policies.

10.6 Performance incentive scheme

- (a) The TNU acknowledges that an *outage* which is required for the purpose of undertaking and completing the Work or which is caused or contributed to by the TNU or an Associate of the TNU may be taken into account by the AER when determining ElectraNet's performance results for the purposes of the *service target performance incentive scheme*.
- (b) If the AER takes into account an *outage* of the Transmission System which is:
 - (i) required for the purpose of undertaking and completing the Work; or
 - (ii) caused by an act or omission of the TNU or an Associate of the TNU,

when calculating an adjustment to ElectraNet's *maximum allowed revenue* under the *service target performance incentive scheme*, the TNU must pay to ElectraNet the difference between the *maximum allowed revenue* determined by the AER and the *maximum allowed revenue* which would have been determined by the AER if the relevant *outage* had not occurred.
- (c) If the *maximum allowed revenue* ElectraNet is entitled to under the *service target performance incentive scheme* is reduced as a result of any *outage* referred to in clause 10.6(b), the TNU must pay to ElectraNet the difference between the actual *maximum allowed revenue* ElectraNet is entitled to under the *service target performance incentive scheme* and the *maximum allowed revenue* that ElectraNet would have been entitled to under the *service target performance incentive scheme* but for the occurrence of that *outage*.
- (d) ElectraNet will use its best endeavours to minimise the amount payable by the TNU under clause 10.6(c) by seeking to coordinate the *outages* for the Work with planned *outages* in relation to any relevant *Network User* facilities or *transmission elements* during the same general period.

11. Exclusions of liability

11.1 ElectraNet exclusions of liability

- (a) No member of the ElectraNet Group will be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Damages or Claims of whatever kind suffered or incurred by any member of the TNU Group arising directly or indirectly out of, or in connection with, the TNU Work.
- (b) Without limiting clause 11.1(a), but subject to clause 11.1(e), no member of the ElectraNet Group will be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Consequential Loss of whatever kind suffered or incurred by any member of the TNU Group arising directly

or indirectly out of, or in connection with, this deed (including Claims by third parties against any member of the TNU Group for Consequential Loss).

- (c) The TNU indemnifies and holds harmless ElectraNet and each other member of the ElectraNet Group against any Claims from any member of the TNU Group against any member of the ElectraNet Group in respect of:
 - (i) any Damages or Claims of whatever kind suffered or incurred by any member of the TNU Group referred to in clause 11.1(a); and
 - (ii) any Consequential Loss of whatever kind suffered or incurred by any member of the TNU Group referred to in clause 11.1(b).
- (d) ElectraNet holds the benefit of the indemnity in clause 11.1(c) for itself and on trust for each other member of the ElectraNet Group.
- (e) Subject to the ElectraNet Liability Limit referred to in clause 12.1, the exclusion of liability for Consequential Loss contained in clause 11.1(b) does not apply to the liability of ElectraNet to the extent that such Consequential Loss is caused by the Wilful Misconduct, Gross Negligence or fraud of ElectraNet or any other member of the ElectraNet Group.

11.2 TNU exclusions of liability

- (a) Subject to clause 11.2(b), the TNU will not be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Consequential Loss of whatever kind suffered or incurred by any member of the ElectraNet Group arising directly or indirectly out of, or in connection with, this deed.
- (b) The exclusion of liability for Consequential Loss contained in clause 11.2(a) does not apply to:
 - (i) the liability of the TNU to pay ElectraNet for the ElectraNet Relocation Work pursuant to clause 4;
 - (ii) the liability of the TNU under clause 9.3(a)(v) and 9.3(b);
 - (iii) the liability of the TNU under the indemnities it provides under clause 11.1(c) and clause 13.4(d); or
 - (iv) the liability of the TNU to the extent that such Consequential Loss is caused by the Wilful Misconduct, Gross Negligence or fraud of the TNU or any member of the TNU Group.

12. Limitations of liability

12.1 ElectraNet liability limit

- (a) Subject to clauses 11.1 and 12.1(c), ElectraNet's aggregate liability to the TNU and each other member of the TNU Group for any Damages and Claims arising directly or indirectly out of, or in connection with, this deed, will not (to the maximum extent permitted by law) exceed the relevant amount for ElectraNet as specified in Item 6 of Schedule 1 (**ElectraNet Liability Limit**).
- (b) The TNU indemnifies and holds harmless ElectraNet against any Claims from any member of the TNU Group against ElectraNet for any Damages or Claims referred to in clause 12.1(a) to the extent such Claims, when aggregated with all other Claims in respect of which the ElectraNet Liability Limit applies, exceed the ElectraNet Liability Limit.

- (c) The ElectraNet Liability Limit under clause 12.1(a) does not apply to any liability of ElectraNet for or in respect of Claims for Damages caused by the Wilful Misconduct, Gross Negligence or fraud of ElectraNet or any member of the ElectraNet Group (other than such Claims for Damages which are in the nature of Consequential Loss, which is subject to the ElectraNet Liability Limit referred to in clause 12.1(a)).

12.2 TNU Liability Limits

- (a) Subject to clauses 11.2 and 12.2(b), the TNU's aggregate liability to ElectraNet for any Damages and Claims, arising directly or indirectly out of, or in connection with, this deed, will not (to the maximum extent permitted by law) exceed the relevant amount for the TNU as specified in Item 6 of Schedule 1 (**TNU Liability Limit**).
- (b) The limitation on the TNU's liability under clause 12.2(a) does not apply to any liability of the TNU for or in respect of:
 - (i) the liability of the TNU to pay ElectraNet for the ElectraNet Relocation Work pursuant to clause 4;
 - (ii) the liability of the TNU under clause 9.3(a)(v) and 9.3(b);
 - (iii) the liability of the TNU under the indemnity it provides under clause 11.1(c); or
 - (iv) any liability of the TNU for or in respect of Claims for Damages caused by the Wilful Misconduct, Gross Negligence or fraud of the TNU or any member of the TNU Group.

13. Dispute resolution

13.1 Notice of Dispute

- (a) If a Dispute arises between the parties, the Dispute must be dealt with in accordance with this clause 13.
- (b) Where a Dispute arises, either party may give a Notice to the other party specifying:
 - (i) the Dispute;
 - (ii) particulars of the party's reason for being dissatisfied; and
 - (iii) the position that the party believes is correct,**(Dispute Notice)**.

13.2 Negotiation

- (a) During the 20 Business Day period after a Dispute Notice is given (or longer period agreed in writing by the parties), the parties must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- (b) If the parties are unable to resolve the Dispute within the period specified in, or agreed under, clause 13.2(a), they must within an additional 20 Business Days, either:
 - (i) appoint a mediator to mediate the Dispute; or
 - (ii) if they are unable to agree on a mediator refer the Dispute for mediation to a mediator nominated by the Chairman of the Resolution Institute.
- (c) The role of the mediator is to assist in negotiating a resolution of the Dispute. The mediator must not make a decision that is binding on a party unless that party has agreed in writing.

- (d) Each party must bear its own costs of resolving a Dispute under this clause 13 and, unless they otherwise agree, they must bear equally the costs of any mediator engaged.

13.3 Litigation

If a Dispute which has been referred to mediation pursuant to clause 13.2 remains unresolved (in whole or in part) after the expiration of 60 Business Days of receipt of the Dispute Notice under clause 13.1, then either party to the Dispute may commence legal proceedings to resolve any unresolved part of the Dispute.

13.4 Suspension of Relocation Work

- (a) ElectraNet may immediately suspend performance of any of the ElectraNet Relocation Work upon the TNU providing a Dispute Notice to ElectraNet.
- (b) ElectraNet will immediately lift any suspension pursuant to clause 13.4(a) if the Dispute has been resolved to the satisfaction of ElectraNet.
- (c) ElectraNet is not liable for, or in connection with any Claim (and the TNU is not entitled to make any Claim) arising out of, or in connection with any suspension by ElectraNet pursuant to this clause 13.4.
- (d) The TNU must, to the extent permitted by law, indemnify and hold harmless ElectraNet against any Damages which ElectraNet has suffered or incurred, or may suffer or incur, arising out of, or in connection with, any suspension by ElectraNet pursuant to this clause 13.4.

14. Notices

14.1 Giving of Notices

All notices, consents, requests, invoices or other communications required, permitted or appropriate to be given by a party to the other party under or in connection with this deed (**Notice**) must be:

- (a) in writing, which includes email and other electronic communications (unless otherwise specified in Schedule 4 for that type of Notice);
- (b) addressed to the person holding the office identified in Schedule 4 for that type of Notice; and
- (c) sent in the manner identified in Schedule 4 for that type of Notice.

14.2 Timing of receipt

A Notice given to a party in accordance with clause 14.1 will be treated as having been given and received:

- (a) if delivered, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the fourth Business Day after posting; and
- (c) if sent electronically:
 - (i) at the time the sender's computer or other device generates a report confirming that the Notice has been received by the recipient's information system; or

- (ii) if no such report is generated, 1 Business Day after the date on which the Notice is sent, provided that the sender has not by that time received a delivery failure notification (or similar).

14.3 Addresses and Notice details

A party may change any details relating to that party set out in Schedule 4 by Notice to the other party given in accordance with this clause 14.

15. Goods and services tax

- (a) Unless specifically described in this deed as “GST inclusive”, any sum payable (or amount included in the calculation of a sum payable), or consideration to be provided, under or in accordance with this deed does not include any amount on account of GST.
- (b) Where any payment to be made by one party (**supplier**) to another party (**recipient**) under or in accordance with this deed is subject to GST (other than a supply the consideration for which is specifically described in this deed as “GST inclusive”):
 - (i) the consideration payable or to be provided for that supply but for the application of this clause 15 (**GST Exclusive Consideration**) will be increased by, and the recipient will pay to the supplier, an amount equal to the GST payable by the supplier in respect of that supply; and
 - (ii) the Recipient must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.
- (c) If any payment to be made to a party under or in accordance with this deed is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such deduction to be effected before any increase in accordance with clause 15(b).
- (d) The supplier must issue a tax invoice to the recipient in respect of a taxable supply made by the supplier under or in accordance with this deed, such tax invoice to be issued no later than 14 days after the supplier receives the consideration for that taxable supply.
- (e) If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this deed, any party that becomes aware of the occurrence of that adjustment event must Notify the other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the supplier first becomes aware that the adjustment event has occurred.
- (f) A word or expression used in this clause 15 which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 15.

16. Governing law and jurisdiction

16.1 Governing law

This deed is governed by and will be construed according to the laws of South Australia.

16.2 Jurisdiction

- (a) The parties submit to the non-exclusive jurisdiction of the courts of South Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this deed.
- (b) Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

17. General

17.1 Authority to enter into deed

Each party (in this clause 17.1 called the **Representing Party**) represents and warrants to the other party that each of the following statements relating to it is correct:

- (a) the Representing Party is duly constituted and validly existing under the laws of its jurisdiction of incorporation and has full corporate power and authority to enter into, perform and observe its obligations and duties under this deed;
- (b) the Representing Party holds all Authorisations required by Applicable Law to enter into this deed;
- (c) the Representing Party has entered into this deed in its own right and not as trustee of any trust or as an agent or nominee on behalf of any other entity;
- (d) all corporate and other necessary action has been taken to authorise the signing and performance of this deed by the Representing Party, and this deed is a valid and binding agreement of the Representing Party and is enforceable against it, subject to the exercise of judicial discretion and laws concerning insolvency, in accordance with its terms; and
- (e) the entering into of this deed by the Representing Party does not, and the transactions contemplated by this deed will not result in a breach of any Applicable Law or any constituent documents of the Representing Party or any agreement to which the Representing Party is a party.

17.2 Assignment and disposals

Neither party may assign, novate or otherwise dispose of any of its rights or obligations under this deed unless:

- (a) such assignment, novation or disposal occurs in the same circumstances in which the party is permitted to assign, novate or otherwise dispose of any its rights or obligations under the TCA; and
- (b) all of the party's rights and obligations under this deed and the TCA are assigned, novated or otherwise disposed of to the same entity.

17.3 Amendment and waiver

- (a) Unless expressly stated to the contrary in this deed, this deed may only be amended or supplemented in writing signed by the parties.
- (b) The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. Unless expressly stated to the contrary in this deed, a power or right may only be waived in writing, signed by the party to be bound by the waiver.

17.4 Severance

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

17.5 Entire agreement

This deed constitutes the entire agreement between the parties in relation to its subject matter and supersedes any previous arrangements between the parties in relation to that subject matter. All representations, communications and prior agreements in relation to that subject matter are merged in and superseded by this deed.

17.6 No reliance

No reliance is to be placed by the TNU on any representation, promise or other inducement made or given or alleged to be made or given by ElectraNet prior to the Execution Date.

17.7 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this deed and the transactions contemplated by it.

17.8 Costs and expenses

The TNU must bear its own costs (including legal costs) which are incurred in connection with the preparation or negotiation of this deed.

17.9 System Controller

Nothing in this deed is intended to fetter or constrain ElectraNet in the performance of its functions as a System Controller.

17.10 Rights cumulative

Subject to any provision of this deed to the contrary, the rights and remedies provided in this deed do not exclude any rights or remedies provided by law.

17.11 Relationship of the parties

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

17.12 Survival

- (a) If this deed is terminated or expires, then except where this deed expressly provides otherwise:
 - (i) the parties are released from their obligations to continue to perform this deed except the obligations which are expressed to or by their nature, survive termination or expiry;
 - (ii) each party retains the rights and Claims it has against the other party for any past breach of this deed; and

- (iii) the provisions of this deed survive termination or expiry to the extent necessary to give effect to clause 17.12(a)(i).
- (b) Without limiting clause 17.12(a):
 - (i) any warranties provided by the parties under this deed; and
 - (ii) clauses 1, 2.4(b), 3.7, 4, 8, , 9, 10, 11, 12 13, 14 and 16 and this clause 17, survive expiry or termination of this deed.

17.13 Survival of indemnities

Without limiting clause 17.12, each indemnity in this deed is a continuing obligation which survives the termination or expiry of this deed.

17.14 Non merger

The indemnities, covenants and warranties and any other provisions of this deed will not merge on completion or termination of this deed unless expressly set out in this deed.

17.15 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. The parties agree that counterparts may be circulated electronically in PDF format.

EXECUTED as a deed.

Signed for and on behalf of **ElectraNet Pty Limited** by its attorney (who has no notice of the revocation of its power of attorney) in the presence of:

Signature of witness

Name (please print)

Executed by **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Name (please print)

Signature of attorney

Name (please print)

Position held

Signature of director/secretary

Name (please print)

Schedule 1 – Contract details

Table 1-1
Contract details

Issue	Detail
Item 1 - Asset(s)	[Insert]
Item 2 - TCA	Transmission connection agreement between ElectraNet and the TNU dated [insert].
Item 3 - Specified Purpose	[Drafting Note: Insert the purpose for which the TNU is requesting the ElectraNet Relocation Work.]
Item 4 - Land	[Insert]
Item 5 - Target Outage Window	[Drafting Note: Insert details of targeted outage window.]
Item 6 - Limitation of Liability	ElectraNet Liability Limit: A\$1,000,000 TNU Liability Limit: A\$1,000,000

Schedule 2 – Preconditions

**Table 2-1
Preconditions**

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
1.1	<p>Amendment to TCA</p> <p>The TCA has been duly amended by the parties as reasonably necessary in connection with this deed (including without limitation, in order to capitalise ElectraNet's costs in performing the ElectraNet Relocation Work (including any Easement Costs, Freehold Transfer Costs, Lease Costs and Licence Costs) into the annual charges payable by the TNU under the TCA).</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	TNU	ElectraNet
1.2	<p>Undertaking</p> <p>The TNU has provided updated performance security to ElectraNet as required by the TCA (as amended pursuant to Precondition 1.1 above).</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	TNU	ElectraNet
1.3	<p>Freehold Transfers</p> <p>If ElectraNet requires a Freehold Transfer or Freehold Transfers over any portion or portions of the Land, the TNU has procured and delivered to ElectraNet the Freehold Transfer or Freehold Transfers in a form and on terms and conditions acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	TNU	ElectraNet
1.4	<p>Leases</p> <p>If ElectraNet requires a Lease or Leases over any portion or portions of the Land, the TNU has procured and delivered to ElectraNet the Lease or Leases in a form and on terms and conditions acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	TNU	ElectraNet
1.5	<p>Easements</p> <p>If ElectraNet requires an Easement or Easements over any portion or portions of the Land, the TNU has procured and delivered to ElectraNet the Easement or Easements in a form and on terms and conditions acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	TNU	ElectraNet

No	Precondition	Required Date	Party responsible for satisfying	Party with right to waive
1.6	<p>Licences</p> <p>If ElectraNet requires a Licence or Licences over any portion or portions of the Land or any other land for the purpose of undertaking the ElectraNet Relocation Work, the TNU has procured and delivered to ElectraNet the Licence or Licences in a form and on terms and conditions acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	TNU	ElectraNet
1.7	<p>Authorisations for Work</p> <p>The TNU has obtained all Authorisations required for ElectraNet to commence the ElectraNet Relocation Work and for the TNU to commence the TNU Work on terms and conditions acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	TNU	ElectraNet
1.8	<p>FIRB Approval</p> <p>ElectraNet has received confirmation under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) that there is no objection to the acquisition by ElectraNet of any interest in the Land (including any Freehold Transfer, Lease, Easement or Licence) which confirmation must be unconditional or on terms and conditions acceptable to ElectraNet.</p>	20 Business Days after the Execution Date (or such later date as agreed in writing between the parties).	ElectraNet	ElectraNet

Schedule 3 - Scope

[Drafting Note: the Scope (to be prepared under a separate consultancy agreement) must include the following information at a minimum:

- the scope and specifications for the ElectraNet Relocation Work;
- the scope and specifications for any TNU Work (including any interface with the ElectraNet Relocation Work);
- testing and commissioning activities (including any joint commissioning work); and
- an indicative Program for the performance of the Work.]

Schedule 4 – Notices

Table 4-1

Notice details

Type of Notice	Permitted service method	Notice details	
		ElectraNet Description of person to whom Notice must be sent	TNU Description of person to whom Notice must be sent
All Notices before Notice of completion (under clause 3.6)	Written only	<u>Attention:</u> TNU Project Manager <u>Physical address:</u> ElectraNet 52-55 East Terrace Rymill Park Adelaide SA 5000 <u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u> [INSERT]
All Notices after Notice of completion (under clause 3.6)	Written only	<u>Attention:</u> Project Manager <u>Physical address:</u> ElectraNet 52-55 East Terrace Rymill Park Adelaide SA 5000 <u>Email address:</u> To: [INSERT]@electranet.com.au Cc: notices@electranet.com.au	<u>Attention:</u> [INSERT] <u>Physical address:</u> [INSERT] <u>Email address:</u> [INSERT]

Schedule 5 – Land and Equipment Access Rules

1. Definitions

Despite anything to the contrary in this deed, in these Land and Equipment Access Rules, italicised terms have the meanings given to them in the NER and:

ElectraNet Equipment means the Assets and any plant, materials or equipment which is incorporated, or will be incorporated, into the Assets;

ElectraNet Site means the portion of the Land on which the ElectraNet Relocation Work is being undertaken, or will be undertaken, or such areas of land where the ElectraNet Equipment is located, which sites will be occupied and controlled by a member of the ElectraNet Group;

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

Equipment means either or both of the ElectraNet Equipment and the TNU Equipment as the context requires;

High Risk Area means an area which is designated from time to time to be unsafe for work by the member of the relevant Party Group which occupies and controls relevant Site or infrastructure for WHS purposes;

Party Group means in respect of ElectraNet, the ElectraNet Group and in respect of the TNU, the TNU Group;

Personnel means any personnel whom are members of the ElectraNet Group or the TNU Group, as the context requires;

Site means either or both of the ElectraNet Site and the TNU Site as the context requires;

TNU Equipment means all assets, plant and equipment forming part of the TNU's *facility connected*, or to be *connected* to the Assets;

TNU Site means such areas of land which the TNU Work is being undertaken or will be undertaken or such areas of land where the TNU Equipment is are located, which sites will be occupied and controlled by a member of the TNU Group; and

WHS means work, health and safety.

2. General access

The following rules will apply for general access to the Sites and Equipment.

- (a) Each party will ensure that members of the other Party's Group are granted access to its Sites and Equipment from time to time in accordance with this deed and Applicable Law.
- (b) Each party must ensure that before any members of its Party Group access the Sites or Equipment of the other Party Group, 12 hours' Notice is provided to the other party, which Notice must contain:
 - (i) names and photo identification of all personnel who will be accessing the relevant Sites or Equipment; and
 - (ii) reasonable details of why access is required and the proposed times for access.

- (c) At all times whilst accessing the relevant Sites or Equipment, each party must ensure that all members of its Party Group:
 - (i) comply with the other party's reasonable security, WHS and other access directions, policies and procedures;
 - (ii) in respect of access to any ElectraNet Site, comply with the ElectraNet asset access manual (as updated from time to time);
 - (iii) do not carry out any work in any High Risk Areas;
 - (iv) consult in good faith with members of the other Party Group (or its WHS principal contractor) in respect of matters concerning WHS;
 - (v) if required by the member of the other Party Group which occupies and controls the relevant Equipment or Sites:
 - (A) wear a valid visitor's pass and be escorted by a representative or safety observer; and
 - (B) are formally inducted before they obtain access to the relevant Sites or Equipment.
- (d) Other than in the event of any Emergency, access to the Sites and Equipment under this Item 2 will be restricted to the hours of 8:30am to 5:00pm on Business Days and weekends which are not public holidays.

3. Emergency access

In the event of an Emergency, the rules in Item 2 above will apply subject to the following exceptions:

- (a) the notice requirements of Item 2(b) above will not need to be complied with before access is granted, provided they are complied with as soon as reasonably practicable; and
- (b) the access time restrictions Item 2(d) will not apply.