

# LEASE

Leave this space clear. Affix additional pages to the top left-hand corner.

New South Wales  
Real Property Act 1900

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**STAMP DUTY**

Office of State Revenue use only

(A) **TORRENS TITLE**

Property leased  
The land identified in Schedule 3 of Annexure A.

(B) **LODGED BY**

Document Collection Box <b>27C</b>	Name, Address or DX, Telephone, and Customer Account Number if any Herbert Smith Freehills DX 361 Sydney NSW, Phone (02) 9225 5000 LLPN: 124217E  Reference: _____	CODE <b>L</b>
---------------------------------------	--	------------------

(C) **LESSOR**

TransGrid (ABN 19 622 755 774)

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) **LESSEE**

NSW Electricity Networks Assets Pty Limited (ACN 609 169 922)  
  
**TENANCY:**

(G) 1. **TERM** 99 years

2. **COMMENCING DATE** 16 DECEMBER 2015

3. **TERMINATING DATE** 15 DECEMBER 2114

4. With an **OPTION TO RENEW** for a period of 99 years set out in clause 17.1 of Annexure A

5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.

8. Incorporates the provisions set out in N.A.  
No. N.A.

9. The **RENT** is set out in item No. 9 of Schedule 1

DATE

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company:

Authority: For execution by Lessor, see page 164 of Annexure A

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company:

Authority: For execution by Lessee, see page 164 of Annexure A

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

(I) STATUTORY DECLARATION\*

I

solemnly and sincerely declare that—

- 1. The time for the exercise of option to in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on

in the presence of of

[ ] Justice of the Peace (J.P. Number: ) [ ] Practising Solicitor

[ ] Other qualified witness [specify]

# who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a [Omit ID No.]

Signature of witness:

Signature of applicant:

\* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

**Contents**

<b>1</b>	<b>Definitions and interpretation</b>	<b>8</b>
1.1	Definitions	8
1.2	Interpretation	22
1.3	Survival	23
1.4	Business Days	23
1.5	Trustee capacity	23
1.6	Discretions	24
1.7	Lessor's consent	24
1.8	Lessee acknowledgements of State rights	24
1.9	Lessee's Representatives	24
<b>2</b>	<b>Lease</b>	<b>25</b>
2.1	Lease Premium	25
2.2	Lease	25
2.3	Head Leases	25
2.4	Private Easements	28
2.5	NSW Easements in Gross	28
2.6	Non-NSW Easements in Gross	29
2.7	Transfer of Private Easements and Easements in Gross as at Lease End Date	29
2.8	Parties' obligations under Private Easements and Easements in Gross	30
2.9	Contractual Licences	31
2.10	Right to locate assets	32
2.11	New Land and statutory land acquisition functions	32
2.12	Statutory Rights	34
2.13	Authorisations	35
2.14	Operator of Leased Transmission Network	35
2.15	Permitted Sublessee	35
2.16	Lessee supply of telecommunications services	35
2.17	New Network Technologies	37
2.18	Non-NSW Leases	37
2.19	Sublessee Leases	38
2.20	Slip provision	40
<b>3</b>	<b>Concurrent Lease</b>	<b>41</b>
3.1	Concurrent Lease	41
3.2	Relevant Lease Covenants	42
3.3	Lessee's dealing with Existing Tenant Leases	42
3.4	Lessor not to deal with Existing Tenant Leases	43
3.5	Assignment of Existing Lease Guarantees	43
3.6	Existing Lease Guarantees that are not assignable	43
<b>4</b>	<b>Power of attorney</b>	<b>44</b>
<b>5</b>	<b>As is where is</b>	<b>45</b>
5.1	Condition	45
5.2	Exclusion of warranties	45
<b>6</b>	<b>Rent and other payments</b>	<b>46</b>
6.1	Rent	46
6.2	Other payments	46
6.3	Rates and taxes	46

6.4	Lessee to pay for Services	46
6.5	Payment of rent and other payments	46
6.6	Default Interest	46
6.7	Rates and Taxes assessments	46
6.8	No Abatement	47
6.9	Recipient created tax invoices	47
<b>7</b>	<b>Use of Leased Assets and Land</b>	<b>47</b>
7.1	Use	47
7.2	Operation, Repair and Maintenance	47
7.3	Improvements	48
7.4	Removal of Obsolete Parts and Obsolete Non-Network Assets	49
7.5	Operational disruption	49
7.6	Works in last 10 years	50
7.7	Transition Plan	50
<b>8</b>	<b>Records, Information and Inspection</b>	<b>51</b>
8.1	Records	51
8.2	Information	52
8.3	Inspection	53
8.4	Access to third parties	53
8.5	Notifications	53
8.6	Asset register	54
8.7	No release from liability or responsibility	54
8.8	Cooperation of Permitted Sublessee	54
<b>9</b>	<b>Title and Quiet Enjoyment</b>	<b>55</b>
9.1	Lessor's title	55
9.2	Protection of title	55
9.3	Quiet Enjoyment	55
9.4	Encumbrances	56
9.5	Assistance by Lessor	56
9.6	Cancellation of Sydney Water Easement	56
<b>10</b>	<b>Insurance</b>	<b>56</b>
10.1	Required insurance policies	56
10.2	Requirements for Policies taken out by the Lessee	57
10.3	Notification and Provision of Information	58
10.4	Failure to Insure	58
10.5	Uninsurable risks	59
10.6	Compliance and enforcement	59
10.7	Notice of claims	59
10.8	Use of insurance proceeds	60
10.9	Payment of premiums	60
<b>11</b>	<b>Risk and Indemnities</b>	<b>60</b>
11.1	Risk	60
11.2	Indemnity and release	61
11.3	Indemnity continuing	63
11.4	Insurance not to limit indemnity	63
11.5	No requirement for expense before enforcement of indemnity	63
<b>12</b>	<b>Work Health and Safety</b>	<b>63</b>

<b>13</b>	<b>Heritage and cultural heritage</b>	<b>63</b>
<b>14</b>	<b>Native Title</b>	<b>63</b>
<b>15</b>	<b>Aboriginal Land Claim</b>	<b>65</b>
<b>16</b>	<b>Termination by Lessor</b>	<b>66</b>
	16.1 Lessor Termination Event	66
	16.2 Termination by the Lessor	69
	16.3 Notification	70
	16.4 No other termination	70
	16.5 Forfeiture	70
	16.6 Application despite Laws	70
<b>17</b>	<b>Lessor's election to renew</b>	<b>70</b>
	17.1 Election	70
	17.2 Option Fee	70
	17.3 Where election to extend does not apply	71
<b>18</b>	<b>Return on Expiry or Termination</b>	<b>71</b>
	18.1 Return condition	71
	18.2 Failure to return assets in required condition	73
	18.3 Actions during the Term	73
	18.4 Third Party Telecommunications Network	73
<b>19</b>	<b>Acquisition and Transfer of Additional Network Assets and Additional Network Land</b>	<b>73</b>
<b>20</b>	<b>Dealings with Leased Assets and Leased Land on Expiry</b>	<b>74</b>
	20.1 Removal of parts of the Leased Assets and Leased Land on Expiry	74
	20.2 Compensation	74
	20.3 Exclusion of land value	75
	20.4 Lessor Termination Event	75
<b>21</b>	<b>Surrender</b>	<b>75</b>
	21.1 Surrender Notice	75
	21.2 Surrendered Area	76
	21.3 Effect of surrender	76
	21.4 Lessee's obligations	76
	21.5 Lessor's obligations	77
	21.6 Disposal of Surrendered Area	77
	21.7 Variation	78
	21.8 Government Property NSW	78
<b>22</b>	<b>Force Majeure</b>	<b>78</b>
	22.1 Force Majeure Event	78
	22.2 Claims for relief	78
	22.3 Suspension of obligations	79
	22.4 Mitigation	79
	22.5 Permitted Sublessee	79
	22.6 Effect on Term	79
<b>23</b>	<b>Security Interests, Assignments and Subletting</b>	<b>79</b>
	23.1 Security Interests	79
	23.2 Permitted assignments	80
	23.3 Subletting	81
	23.4 Change of Control of Lessee	83
	23.5 State ownership of Lessor	84

<b>24</b>	<b>Taxes and Costs</b>	<b>84</b>
<b>25</b>	<b>Dispute resolution</b>	<b>84</b>
	25.1 Dispute resolution process	84
	25.2 Independent expert	85
<b>26</b>	<b>Confidentiality</b>	<b>86</b>
	26.1 General Obligations	86
	26.2 Exceptions	86
	26.3 Notice	87
<b>27</b>	<b>Notices</b>	<b>87</b>
<b>28</b>	<b>Entire agreement</b>	<b>87</b>
<b>29</b>	<b>No waiver</b>	<b>88</b>
<b>30</b>	<b>Rights cumulative</b>	<b>88</b>
<b>31</b>	<b>Amendment</b>	<b>88</b>
<b>32</b>	<b>Further assurances</b>	<b>88</b>
<b>33</b>	<b>No merger</b>	<b>88</b>
<b>34</b>	<b>Severability of provisions</b>	<b>88</b>
<b>35</b>	<b>GST</b>	<b>88</b>
	35.1 GST to be added to amounts payable	88
	35.2 Liability net of GST	89
	35.3 Timing of the payment of the GST Amount	89
	35.4 Off-set of GST Amount in integrated accounts	89
	35.5 Revenue exclusive of GST	90
	35.6 Cost exclusive of GST	90
	35.7 Adjustment Event	90
	35.8 GST Group	90
	35.9 Non-monetary Consideration	90
	35.10 Lessee acquisitions on behalf of Lessor	90
	35.11 Supply under existing arrangements	90
	35.12 Recipient created tax invoices	91
	35.13 Definitions	91
<b>36</b>	<b>Moratorium Legislation</b>	<b>91</b>
<b>37</b>	<b>Representations and warranties</b>	<b>91</b>
<b>38</b>	<b>Caveats</b>	<b>92</b>
<b>39</b>	<b>Set-off</b>	<b>92</b>
<b>40</b>	<b>General PPSA Provisions</b>	<b>92</b>
<b>41</b>	<b>Exclusion of legislative provisions</b>	<b>93</b>
<b>42</b>	<b>Notification system</b>	<b>93</b>
<b>43</b>	<b>Governing law and jurisdiction</b>	<b>93</b>
	<b>Schedule 1 – Reference Schedule</b>	<b>94</b>
	<b>Schedule 2 – Transmission Network Infrastructure as at the Commencement Date</b>	<b>95</b>
	<b>Schedule 3 – Leased Land</b>	<b>108</b>
	<b>Schedule 4 – Existing Non-Network Assets</b>	<b>121</b>
	<b>Schedule 5 - Original non-NSW Easements in Gross</b>	<b>122</b>
	<b>Schedule 6 - Contractual Licences as at the Commencement Date</b>	<b>124</b>

<b>Schedule 7 – Third Party Telecommunications Network as at the Commencement Date</b>	<b>128</b>
<b>Schedule 8 - Sublease Deed</b>	<b>130</b>
<b>Signing Page</b>	<b>164</b>

This and the following pages comprise Annexure A to Lease dated 16 December 2015 from TransGrid (*Lessor*) to NSW Electricity Networks Assets Pty Limited as trustee of the NSW Electricity Networks Assets Trust (*Lessee*)

## 1 Definitions and interpretation

### 1.1 Definitions

The following definitions together with those in the Reference Schedule apply unless the context requires otherwise.

**Aboriginal Land Claim** means a claim under the *Aboriginal Land Rights Act 1983* (NSW).

**ACMA** means the Australian Communications and Media Authority.

**Act** means the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW).

**Additional Network Assets** means any assets (including contractual and other rights) of the Lessee, a Permitted Sublessee or an Associate of the Lessee or of such Permitted Sublessee that are reasonably required to enable the Leased Transmission Network to be operated as a fully functioning electricity transmission network in the geographical areas over which it extends, but excludes any Leased Assets or Leased Land. For the avoidance of doubt, Additional Network Assets may include assets such as contractual, intellectual property and other rights that are used in connection with access to or the management, operation, repair, maintenance, alteration, modification, change or replacement of the Leased Transmission Network.

**Additional Network Land** means:

- (a) any land owned by; and
- (b) any rights in, over or in respect of land (including proprietary or contractual rights, rights of way, easements and rights under leases or licences) that are held by, or the benefit of which is enjoyed by,

the Lessee, a Permitted Sublessee or an Associate of the Lessee or of such Permitted Sublessee, being land or rights that is or are reasonably required to enable:

- (c) the operation of the Leased Transmission Network as a fully functioning electricity transmission network in the geographical areas over which it extends; or
- (d) access to or the management, operation, repair, maintenance, alteration, modification, change or replacement of any Leased Network Assets or any Additional Network Assets,

but excludes any Leased Assets or Leased Land.

**AEMC** means the Australian Energy Market Commission established under section 5 of the *Australian Energy Market Commission Establishment Act 2004* (SA).

**AEMO** means Australian Energy Market Operator Limited (ACN 072 010 327).

**AER** means the Australian Energy Regulator established under section 44AE of the *Competition and Consumer Act 2010* (Cth).

**Associate**, in relation to the Lessee or a Permitted Sublessee (each an "entity"), means:

- (a) each of that entity's Related Bodies Corporate;
- (b) each person who has a relevant interest (as that term is defined in the Corporations Act) in 20% or more of the voting shares in that entity;

- (c) each other entity in which that entity has a relevant interest (as that term is defined in the Corporations Act) in 20% or more of the voting shares in that other entity as if that other entity were a 'company' as defined in the Corporations Act and its securities were shares;
- (d) each other entity that Controls that entity;
- (e) each other entity that is Controlled by that entity;
- (f) each trust of which the entity, or a person or entity described in paragraph (a), (b), (c), (d) or (e), is a trustee; and
- (g) each trust in which that entity holds 20% or more of voting rights of voting securities, as if that trust were a 'company' as defined in the Corporations Act and its securities were shares,

except that, for the purposes of this Lease a relevant interest (as that term is defined in the Corporations Act) that has arisen merely because the person is a party to a shareholders' agreement or consortium agreement, or a constitution, in respect of the entity that gives members pre-emptive rights on the transfer of securities if all members have pre-emptive rights on the same terms, will be disregarded. A reference to the Corporations Act in this definition is to that Act as in force as at the Commencement Date.

**ATO** means the Australian Tax Office.

**Authorisation** means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by Law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Bank Bill Rate** means the average mid rate for 90 day bills as displayed on the 'BBSY' page of the Reuters Monitor System on the due date for payment. However, if the average mid rate is not displayed by 10.30am on that day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means the rate set by the Lessor in good faith at approximately 10.30am on that day having regard, to the extent possible, to the mid rate otherwise bid and offered for bills of that tenor at or around that time (including any displayed on the 'BBSW' page of the Reuters Monitor System).

**Business Day** means a day other than a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.

**Carriage Service** has the meaning given in the Telecommunications Act.

**Carrier Licence** has the meaning given in the Telecommunications Act.

**Change of Control**, in relation to an entity, means a change in a person who is able to Control the entity.

**Claim** means a claim, cause of action, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising or caused, and whether direct or indirect, present, fixed or unascertained, consequential, incidental, future, actual or contingent or economic, whether at law, in equity, under statute or otherwise, and whether involving a third party or otherwise.

**CLM Act** means the *Contaminated Land Management Act 1997* (NSW).

**Commencement Date** means the commencement date of this Lease referred to in item 6 of the Reference Schedule.

**Contamination** has the meaning set out in the CLM Act.

**Contractual Licence** means any agreement which contains a contractual right or entitlement (whether existing as at the Commencement Date or subsequently created during the Term) that enables the location of any Leased Network Assets on, above or under any land or access to any Leased Network Assets, but does not include:

- (a) this Lease, any sublease under clause 23.3 or any Non-NSW Lease, Head Lease, Sublessee Lease or Lessor Lease; or
- (b) any agreement the primary purpose of which is not to enable the location of any Leased Network Assets on, above or under any land or access to any Leased Network Assets.

As at the Commencement Date, the Contractual Licences are the agreements listed in Schedule 6.

**Control** of an entity means the definition of 'control' in section 50AA of the Corporations Act as in force as at the Commencement Date and:

- (a) in the case of a corporation, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation; and
- (b) in the case of a unit trust, includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the appointment or removal of the trustee of the trust, the composition of the board of directors of the trustee, the voting rights of the majority of the units of the trust or the management of the affairs of the trust or the business operated by the trust.

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

**CPI** means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics. If that index ceases to be published or is substantially changed, CPI shall be such other index as may be determined by the Lessor as a suitable benchmark for recording general movements in prices.

**CPI-Adjusted Amount** means, in respect of an amount, the amount calculated in accordance with the formula below:

$$\text{Amount}_{t-1} \times (\text{CPI}_t / \text{CPI}_{t-1})$$

where:

Amount<sub>t-1</sub> is the amount of the relevant amount for the Year (Y<sub>t-1</sub>) that precedes the relevant Year (Y<sub>t</sub>);

CPI<sub>t</sub> is the CPI for the Quarter ending 30 September of the relevant Year; and

CPI<sub>t-1</sub> is the CPI for the Quarter ending 30 September of the Year that precedes the relevant Year.

**Default Rate** means a rate equivalent to 4% per annum above the Bank Bill Rate during any period in which an amount payable under this Lease remains unpaid.

**Easement in Gross** means any easement in gross created pursuant to section 88A of the *Conveyancing Act 1919* (NSW) or similar legislation, whether of New South Wales or of another State or Territory, that enables the location of any Leased Network Assets on, above or under any land, access to any Leased Network Assets or the provision by the Lessor, the Lessee or any

Permitted Sublessee of Services in connection with any Leased Network Assets, whether such easement in gross is registered or unregistered.

**EISS – New Employer Payment Deed** means the EISS New Employer Payment Deed dated on or about the date of this Deed 2015 between the State and NSW Electricity Networks Operations Pty Limited (as trustee for the NSW Electricity Networks Operations Trust) as the New Employer.

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

**Encumbrance** means:

- (a) all statutory rights relating to Services passing through or over the Leased Land, whether or not protected by a registered easement; and
- (b) any easements (including statutory easements), and any rights or permits to pass over or occupy any part of the Leased Land or to access or use any Leased Network Assets or any Leased Land, whether registered or unregistered, where the grantor is the Lessor, the Lessee or any Permitted Sublessee or those easements, rights or permits are as against the Lessor, the Lessee or any Permitted Sublessee,

but does not include this Lease, any sublease under clause 23.3 or any Non-NSW Lease, Head Lease, Sublessee Lease or Lessor Lease.

**Existing Lease Guarantee** means a security given to the Lessor with respect to an Existing Tenant's obligations under an Existing Tenant Lease and includes:

- (a) a guarantee or guarantee and indemnity given by a person;
- (b) a bank guarantee; and
- (c) a bond.

**Existing Non-Network Assets** means all plant and machinery that, immediately prior to the Commencement Date, was owned by the Lessor and includes the assets set out in Schedule 4, but does not include any:

- (a) motor vehicles; or
- (b) Leased Network Assets.

**Existing Tenant** means a person or entity that holds an estate or interest in any part of the NSW Leased Land pursuant to an Existing Tenant Lease.

**Existing Tenant Lease** means:

- (a) a lease or sublease (registered or unregistered), or an agreement to lease or sublease, in respect of which the Lessor is the lessor or sublessor (as applicable) and that permits a person other than the Lessee to occupy any part of the NSW Leased Land as at the Commencement Date; and
- (b) in the case of an agreement to lease or sublease referred to in paragraph (a), the lease or sublease entered into pursuant to that agreement to lease or sublease that comes into effect after the Commencement Date.

**Expiry Date** means the date of expiry specified in item 7 of the Reference Schedule.

**Force Majeure Event** has the meaning given in clause 22.1.

**Good Operating Practice** means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a prudent, efficient and experienced electricity network operator in Australia under conditions comparable to those applicable to the Leased Network Assets, the Leased Land and the Transmission Network Land.

**Governmental Agency** means a government (whether federal, state, territorial or local), a department, office or minister of a government acting in that capacity or a commission, delegate, instrumentality, agency, board or other governmental, semi-governmental, judicial, administrative, regulatory, monetary or fiscal authority, whether statutory or not (including, for the avoidance of doubt, AEMO, the AER, the AEMC, IPART, the ICRC and the Victorian ESC). It also includes a self-regulatory organisation established under statute.

**Head Lease** means any lease pursuant to which the Lessor derives its interest in any Leasehold Land, as described in Parts 2, 4 or 6 of Schedule 3, including a lease the details of which are deemed to be included in Parts 2, 4 or 6 of Schedule 3 by virtue of clause 2.11 or 2.20 (as applicable).

**ICRC** means the Independent Competition and Regulatory Commission established under section 5 of the *Independent Competition and Regulatory Commission Act 1997 (ACT)*.

**Improvements** means all fixtures (including buildings, earthworks and other improvements of whatever nature) affixed to the Leased Land, whether structural, permanent or temporary and whether constructed before or after the Commencement Date, but excluding any Leased Assets.

**Initial Lease Premium** means the Premium as at the Commencement Date before any adjustment under the Sale and Purchase Agreement.

**Insolvency Event** means, in relation to a party:

- (a) an Insolvency Official is appointed over all or any of the party's assets or undertaking; or
- (b) any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to the event listed above.

**Insolvency Official** means an administrator, a controller or a liquidator (all as defined in section 9 of the Corporations Act) or any similar officer under the laws of any relevant jurisdiction.

**IPART** means the Independent Pricing and Regulatory Tribunal of New South Wales established under section 5 of the *Independent Pricing and Regulatory Tribunal Act 1992 (NSW)*.

**land** includes an interest in land.

**Law** means:

- (a) any statute, regulation or subordinate legislation;
- (b) any principles of common law or equity as applied from time to time; and
- (c) any code, ruling, guideline, policy, condition or other instrument issued by a Governmental Agency that is legally binding on the persons to which it applies.

**Lease End Date** means the date on which the lease of the Leased Assets and the NSW Leased Land under this Lease comes to an end for any reason.

**Leased Assets** means:

- (a) the Leased Network Assets; and
- (b) the Existing Non-Network Assets.

**Leased Land** means:

- (a) the NSW Leased Land;
- (b) the Non-NSW Leased Land; and
- (c) the Sublessee Leased Land.

**Leased Network Assets** means:

- (a) the assets that form part of the Transmission Network;

- (b) the Network-Related Equipment;
- (c) the assets that form part of the Transmission Telecommunications Network; and
- (d) the assets that form part of any New Network Technology.

**Leased Network Land** means:

- (a) the NSW Network Leased Land;
- (b) the Non-NSW Leased Land; and
- (c) the Sublessee Leased Land.

**Leased Property** means:

- (a) the Leased Assets; and
- (b) the NSW Leased Land,

which are collectively leased together under this Lease.

**Leased Transmission Network** means the Transmission Network as supplemented or replaced by any New Network Technology.

**Leasehold Land** has the meaning given in clause 2.3(a).

**Lessee Leased Land** means such of the Leased Land as is leased by the Lessor to the Lessee under this Lease or a Non-NSW Lease.

**Lessee's Representatives** means any officer, employee, agent, contractor, consultant, adviser, licensee or invitee of the Lessee, including any Permitted Sublessee and its officers, employees, agents, contractors, consultants, advisers, licensees and invitees.

**Lessor Lease** has the meaning given in the Sublease Deed.

**Lessor's Representatives** means any officer, employee, agent, contractor, consultant, adviser or invitee of the Lessor, but does not include the Lessee or the Lessee's Representatives.

**Lessor Termination Event** has the meaning given in clause 16.1.

**Loss** means any and all losses, actions, claims (including claims involving a third party or otherwise), suits, liabilities, damages, compensation, costs, expenses, diminutions in value or deficiencies of any kind or character, including all interest and other amounts payable to third parties, all liabilities on account of taxes and all legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any claims or actions, whether or not resulting in any liability and all amounts paid in settlement of claims or actions, including consequential or indirect losses and losses of profit, contract, opportunity, revenue and production. It includes the reasonable internal costs of the party (including of time spent).

**LPI** means Land and Property Information New South Wales.

**Major Authorisation** means:

- (a) any licence under the Electricity Supply Act to operate the Leased Transmission Network;
- (b) any registration (or exemption from the requirement to register) under the National Electricity Law or the National Electricity Rules as a network service provider in relation to the Leased Transmission Network; and
- (c) any similar or equivalent Authorisation that is required for the purpose of controlling or operating the Leased Transmission Network in New South Wales.

**National Electricity Law** means the National Electricity Law as set out in the *National Electricity (South Australia) Act 1996 (SA)*.

**National Electricity Rules** means the National Electricity Rules made under the National Electricity Law.

**Native Title** has the meaning given in section 223 of the *Native Title Act 1993* (Cth).

**Native Title Claim** means any determination, claim or application in respect of Native Title.

**Network Unit** has the meaning given in the Telecommunications Act.

**Network-Related Equipment** means all communications, monitoring, control and metering equipment that is used in connection with the operation of the Leased Transmission Network and that is located in a place (such as a system control centre) from which the operation of the Leased Transmission Network is or may be controlled, where such equipment is owned by the Lessor immediately prior to the Commencement Date or becomes owned by the Lessor, after the Commencement Date, pursuant to clause 7.3(f), but does not include any:

- (a) Temporary Parts;
- (b) Replaced Parts;
- (c) Removed Obsolete Parts; or
- (d) part of any Third Party Telecommunications Network.

**New Employer** has the meaning given in the EISS – New Employer Payment Deed.

**New Land** has the meaning given in clause 2.11(b).

**New Network Technology** means all apparatus, equipment, plant, buildings and other structures that comprise a system or other means primarily for the purposes of conveying, or controlling the conveyance of, electricity and which are installed or acquired after the Commencement Date where:

- (a) that system or other means is used for the purposes of conveying, or controlling the conveyance of, electricity in addition to or in place of all or part of the then-existing Leased Transmission Network;
- (b) as at the time that system or means is implemented:
  - (i) its cost-effective implementation or operation requires access to or use of, or depends upon the existence or operation of, the then-existing Leased Transmission Network, the Network-Related Equipment or the Transmission Telecommunications Network; or
  - (ii) if that system or means were to be implemented or operated by a person unrelated to the owner or operator of the then-existing Leased Transmission Network, the Network-Related Equipment or the Transmission Telecommunications Network, that person would reasonably require the cooperation of that owner or operator in order to enable the cost-effective implementation or operation of that system or means; and
- (c) as at the time that system or means is implemented, there is no Law under which the owner or operator of the then-existing Leased Transmission Network, the Network-Related Equipment or the Transmission Telecommunications Network may be required to provide access to or use of the then-existing Leased Transmission Network, Network-Related Equipment or Transmission Telecommunications Network in order to enable such implementation or operation,

but does not include any:

- (d) Temporary Parts;
- (e) Replaced Parts;

- (f) Removed Obsolete Parts; or
- (g) part of any Third Party Telecommunications Network.

**Nominated Carrier Declaration** has the meaning given in the Telecommunications Act.

**Non-NSW Easement in Gross** means an Easement in Gross existing outside New South Wales.

**Non-NSW Lease** has the meaning given in clause 2.18.

**Non-NSW Leased Land** means:

- (a) the freehold interests described in Part 5 of Schedule 3;
- (b) the leasehold interests described in Part 6 of Schedule 3; and
- (c) all freehold and leasehold interests in land that are included in the definition of Non-NSW Leased Land by virtue of clause 2.11,

including the Improvements on such land, but excluding such of that land (and the Improvements on such of that land):

- (a) as ceases to be leased by the Lessor to the Lessee as contemplated by clause 2.3(b)(iv) or by virtue of the application of clause 21; or
- (b) as is the subject of a Sublessee Lease.

**NSW Easement in Gross** means an Easement in Gross existing in New South Wales.

**NSW Leased Land** means:

- (a) the NSW Network Leased Land; and
- (b) the NSW Non-Network Leased Land.

**NSW Network Leased Land** means:

- (a) the freehold interests described in Part 1 of Schedule 3;
- (b) the leasehold interests described in Part 2 of Schedule 3;
- (c) all land existing in New South Wales that is leased by the Lessor to the Lessee pursuant to clause 2.11; and
- (d) land that forms part of the NSW Network Leased Land pursuant to clause 2.20,

including the Improvements on such land, but excluding such of that land (and the Improvements on such of that land):

- (e) as ceases to be leased by the Lessor to the Lessee pursuant to clause 2.3(b)(iii) or 21; or
- (f) as is the subject of a Sublessee Lease.

**NSW Non-Network Leased Land** means:

- (a) the freehold interests described in Part 3 of Schedule 3;
- (b) the leasehold interests described in Part 4 of Schedule 3; and
- (c) land that forms part of the NSW Non-Network Leased Land pursuant to clause 2.20,

including the Improvements on such land, but excluding such of that land (and the Improvements on such of that land):

- (d) as ceases to be leased by the Lessor to the Lessee as contemplated by clause 2.3(b)(iii); or
- (e) by virtue of the application of clause 21 or as is the subject of a Sublessee Lease.

**Obsolete Part** means any Leased Network Asset that is no longer required for the effective, safe and efficient operation of the Leased Transmission Network as a fully functioning electricity transmission network.

**Obsolete Non-Network Asset** means any Existing Non-Network Asset that:

- (a) is no longer used in connection with the use, operation or maintenance of the Leased Network Assets; or
- (b) has come to the end of its useful life.

**Offset Notification Letter to the ATO** means a letter to the ATO regarding the GST offset arrangement in the form of the letter attached in Annexure I of the Sale and Purchase Agreement.

**Option Fee**, for an extension of the Term, means the amount payable by the Lessee for the grant of the extension, calculated in accordance with clause 17.2(b).

**Original non-NSW Easement in Gross** means a Non-NSW Easement in Gross existing as at the Commencement Date which is held in the name of the Lessor, and includes the easements in gross described in Schedule 5.

**Original NSW Easement in Gross** means a NSW Easement in Gross existing as at the Commencement Date which is held in the name of the Lessor.

**Original NSW Private Easement** means a Private Easement existing in New South Wales as at the Commencement Date which is held in the name of the Lessor.

**Permitted Change of Control**, in relation to an entity, means a Change of Control in relation to that entity:

- (a) where a person ceases to be able to Control the entity without another person acquiring the ability to Control that entity;
- (b) as a result of a transfer of securities (whether of the entity or a holding company or holding trust of the entity) that are quoted on a recognised public securities exchange;
- (c) where any person who has a relevant interest (as that term is defined in the Corporations Act) in 20% or more of the voting shares in the entity as at the Commencement Date (and as if references to shares extended to units in a unit trust) subsequently acquires the ability to Control the entity;
- (d) where there is a change to the trustee, responsible entity or manager of any trust, but no change in the beneficial ownership of securities or units in that trust (as the case may be) and the trustee, responsible entity or manager of that trust is under a legal obligation to act in that capacity only for the benefit of the beneficial owners of those securities or units; or
- (e) where there is merely the appointment, removal or replacement of the custodian of any entity.

A reference to the Corporations Act in this definition is a reference to that Act as in force as at the Commencement Date.

**Permitted Lien** means:

- (a) a repairer's lien arising in the ordinary course of business; or
- (b) a lien or charge which arises in favour of a Governmental Agency by operation of Law, which, in either case, relates to a payment obligation that is:
  - (c) not yet due for payment; or

- (d) due for payment but being contested in good faith and by appropriate proceedings that are being conducted diligently and do not involve a material risk of the foreclosure, sale, forfeiture or loss of or material interference with any asset or any title to, use of or interest in any asset.

**Permitted Security Interest** means:

- (a) a Permitted Lien; and  
 (b) any other Security Interest consented to by the Lessor under a Tripartite Deed.

**Permitted Sublessee** means a sublessee referred to in clause 23.3(a).

**Policy** means an insurance policy effected or required to be effected in accordance with clause 10.

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

**Premium** means the amount specified in item 8 of the Reference Schedule as adjusted under the Sale and Purchase Agreement.

**Private Easement** means any right, entitlement or interest granted or conferred by a person holding an interest in land (whether or not in the nature of or expressed to be an easement and whether existing as at the Commencement Date or subsequently created during the Term) that enables the location of any Leased Network Assets on, above or under that land, access to any Leased Network Assets or the provision by the Lessor, the Lessee or any Permitted Sublessee of Services in connection with any Leased Network Assets, whether or not such right, entitlement or interest is registered or unregistered, but does not include this Lease or any Easement in Gross, Contractual Licence, Non-NSW Lease, Sublessee Lease, Head Lease or Lessor Lease.

**Proportionate Liability Regime** means the proportionate liability regime established under Part 4 of the *Civil Liability Act 2002* (NSW) and any equivalent regime under the Commonwealth of Australia or any other State or Territory.

**Rates and Taxes** means all amounts paid or payable in respect of the Leased Assets, the Leased Land or the Transmission Network Land, whether levied against the Lessor, the Lessee or any Permitted Sublessee, for:

- (a) charges, taxes (including land tax), rates (including land rates, water rates and sewerage rates), assessments, duties or levies imposed by any Governmental Agency, and any fees, penalties or interest related to them; and  
 (b) all other amounts, costs or expenses levied or imposed by Law on the Lessor, the Lessee or the Permitted Sublessee because of:  
 (i) the use or occupation of the Leased Assets, the Leased Land or the Transmission Network Land;  
 (ii) the ownership or lease of the Leased Assets or the Leased Land by the Lessor;  
 or  
 (iii) the existence of Improvements on the Leased Land,

but excluding:

- (c) taxes on the overall income or profits of the Lessor (such as income tax, capital gains tax or fringe benefits tax), or goods and services tax, and other similar taxes; and  
 (d) any amount which this Lease expressly provides is to be paid by the Lessor.

**Regulatory Asset Base**, for the transmission system of which the Leased Transmission Network forms a part, means the regulatory asset base for that transmission system as determined in accordance with the Regulatory Regime.

**Regulatory Regime** means the regulatory regime established to regulate the conduct of the electricity supply industry in New South Wales and any other jurisdiction into which the Leased Transmission Network extends and includes the Act, the Electricity Supply Act, the National Electricity Law and the National Electricity Rules, and regulations, statutory instruments and Authorisations made or issued under them.

**Related Body Corporate** has the meaning given to that term in the Corporations Act as in force as at the Commencement Date.

**Removed Obsolete Part** means any Obsolete Part that has been permanently removed from service as a Leased Network Asset.

**Rent** means the amount specified in item 9 of the Reference Schedule.

**Replaced Part** means an asset that:

- (a) prior to its removal from service, was a Leased Network Asset;
- (b) is permanently removed from service as a Leased Network Asset; and
- (c) is replaced in service with another asset which is of at least equivalent functionality.

**Sale and Purchase Agreement** means the sale and purchase agreement between the State, the Lessor, the Lessee and NSW Electricity Networks Operations Pty Limited as trustee for the NSW Electricity Networks Operations Trust dated 25 November 2015.

**Security Interest** means any mortgage, pledge, lien, charge, encumbrance or any security or preferential interest or arrangement of any kind. It includes:

- (a) a 'security interest' as defined in the PPSA;
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security,

but excludes a deemed security interest under section 12(3) of the PPSA which does not secure a payment or the performance of an obligation.

**Services** means all utility services from time to time available for use, and includes the provision of any electronic medium, energy source, lighting, gas, fuel, power, water, sewerage, drainage and telecommunications and the fittings, fixtures, appliances, plant and equipment utilised for any of them.

**State** means the State of New South Wales but does not include any State bodies which are separate legal entities.

**Statutory Right** means any right conferred by or under any statute (including with respect to the functions of a network operator under section 45 of the Electricity Supply Act) that enables the location of any Leased Network Assets on, above or under any land or access to any Leased Network Assets, but does not include any Easement in Gross.

**Sublease Deed** means:

- (a) a deed in the form set out in Schedule 8 (once executed); or
- (b) any other deed entered into between the Lessor, the Lessee and any Permitted Sublessee, for the purpose of conferring rights on the Lessor directly against the Permitted Sublessee in relation to (among other things) the management, operation, repair, maintenance and use of the Leased Assets and Leased Land, in a form that is satisfactory to the Lessor.

**Sublessee Lease** has the meaning given in clause 2.19.

**Sublessee Leased Land** means land that must be leased by the Lessor to a Permitted Sublessee under a Sublessee Lease, including the Improvements on such land, but excluding such of that land (and the Improvements on such of that land) as ceases to be leased by the Lessor to the Permitted Sublessee as a result of the termination of the relevant Lessor Lease for any reason (as contemplated by clause 4.7(e) of the Sublease Deed) or by virtue of the application of clause 21.

**Surrender Date** has the meaning given in clause 21.1.

**Surrender Notice** has the meaning given in clause 21.1.

**Surrendered Area** has the meaning given in clause 21.1.

**Taxable Supply** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) excluding the reference to section 84-5 of that Act.

**Tax Written Down Value** means:

- (a) in relation to a depreciating asset (other than capital works), its adjustable value; or
- (b) in relation to any other asset, its cost base.

The terms used in this definition have the meanings given to them in section 995-1 of the *Income Tax Assessment Act 1997* (Cth) as in force as at the Commencement Date.

**Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

**Telecommunications Services** means Carriage Services supplied to a third party using any of the Leased Assets that is a Network Unit.

**Temporary Part** means any replacement of, or alteration, modification, change or addition to, the Leased Network Assets that is installed on a temporary basis pending completion of permanent repairs or the installation of any permanent replacement part (for these purposes, if a replacement, alteration, modification, change or addition continues to be in place for more than 24 months, it will not be considered to be installed on a temporary basis).

**Term** means 99 years from the Commencement Date, as extended from time to time in accordance with clause 17.1(a).

**Third Party Telecommunications Network** means:

- (a) all communications equipment the purpose of which, as at the Commencement Date or when it is commissioned (whichever is later), is solely to carry communications that are not required for the operation of the Leased Transmission Network as a fully functioning electricity transmission network; and
- (b) all apparatus, equipment, plant, buildings and supporting or protective structures and conduits that are used in connection with the operation of the equipment referred to in paragraph (a) and are not used in connection with the operation of the Leased Transmission Network as a fully functioning electricity transmission network.

As at the Commencement Date, the Third Party Telecommunications Network includes the assets set out in Schedule 7.

**Transmission Network** means:

- (a) all the Transmission Network Infrastructure that, immediately prior to the Commencement Date, was owned by the Lessor and was operated by the Lessor as an integrated electricity transmission network primarily for the purposes of conveying, and controlling the conveyance of, electricity at nominal voltages of 132 kV or more in New South Wales, the Australian Capital Territory and Victoria, including the assets set out in Schedule 2;

- (b) all Transmission Network Infrastructure that, after the Commencement Date, is incorporated into the electricity transmission network referred to in paragraph (a), irrespective of whether that Transmission Network Infrastructure is located in New South Wales, the Australian Capital Territory, Victoria or elsewhere;
- (c) all assets that provide services to facilities that are directly connected to the electricity transmission network referred to in paragraph (a) as modified as described in paragraph (b), or that connect that electricity network to other electricity transmission or distribution networks;
- (d) all metering equipment, including that used to measure the consumption or supply of electricity by or to facilities, or to other electricity transmission networks or distribution networks, that are directly connected to the electricity transmission network referred to in paragraph (a) as modified as described in paragraph (b);
- (e) all equipment incorporated or installed in or attached to any Transmission Network Infrastructure referred to in paragraphs (a) or (b), any assets referred to in paragraph (c) or any equipment referred to in paragraph (d) or this paragraph (e); and
- (f) all replacements of, and alterations, modifications, changes and additions to, any Transmission Network Infrastructure, assets or equipment referred to in paragraphs (a) to (e),

where such assets are owned by the Lessor immediately prior to the Commencement Date or become owned by the Lessor, after the Commencement Date, pursuant to clause 7.3(f), but does not include any:

- (g) Temporary Parts;
- (h) Replaced Parts;
- (i) Removed Obsolete Parts;
- (j) part of any Third Party Telecommunications Network; or
- (k) any part of any network for the transmission or distribution of electricity where, as at the Commencement Date or immediately prior to its connection to the Leased Transmission Network (whichever is later), that network:
  - (i) is principally located outside New South Wales and the Australian Capital Territory and is not reasonably characterised as either an extension of the transmission network comprising such part of the Leased Transmission Network as is located in New South Wales; or
  - (ii) is primarily used to convey electricity at a nominal voltage of 66kV or less.

**Transmission Network Infrastructure** means all apparatus, equipment, plant, buildings and other structures that are used to convey, and control the conveyance of, electricity, and include:

- (a) electricity power lines;
- (b) towers, poles and other structures that support electricity power lines;
- (c) conduits and cables that contain or protect electricity power lines;
- (d) electricity substations;
- (e) electricity switchyards;
- (f) transformers;
- (g) capacitors;
- (h) reactive plant;

- (i) protection equipment, including circuit breakers;
- (j) secondary systems;
- (k) network communications equipment;
- (l) monitoring equipment; and
- (m) control equipment.

**Transmission Network Land** means any land (including, in the case of Leased Land, Improvements) on, above or under which any Leased Network Assets are located or which provides for access to any Leased Network Assets.

**Transmission Telecommunications Network** means:

- (a) all communications equipment the purpose of which, as at the Commencement Date or when it commences operation (whichever is later), is to carry communications that are required for the operation of the Leased Transmission Network, whether or not such equipment also carries other communications; and
- (b) all apparatus, equipment, plant, buildings and supporting or protective structures and conduits that are used in connection with the operation of the equipment referred to in paragraph (a),

where such assets are owned by the Lessor immediately prior to the Commencement Date or become owned by the Lessor, after the Commencement Date, pursuant to clause 7.3(f), but does not include any:

- (c) Temporary Parts;
- (d) Replaced Parts;
- (e) Removed Obsolete Parts; or
- (f) part of any Third Party Telecommunications Network.

**Tripartite Deed** means:

- (a) where the Lessee has granted a Security Interest in respect of its rights under this Lease, a deed in the form attached to the Sale and Purchase Agreement (once executed); or
- (b) any other deed which the Lessor and the Lessee agree in writing is a deed entered into with persons from whom the Lessee or a Permitted Sublessee has borrowed funds, or otherwise raised finance, or to whom the Lessee or a Permitted Sublessee has granted a Security Interest in respect of its rights under this Lease (in the case of the Lessee) or in respect of its rights under a sublease (in the case of the Permitted Sublessee), for the purpose of agreeing terms as to the interaction of the exercise of the respective rights of the Lessor, the Lessee and the Permitted Sublessee (if applicable) under this Lease and the sublease (if applicable) and the terms of the provision of the financial accommodation or the grant of that Security Interest (if applicable).

**Trust** means the trust established by deed poll by NSW Electricity Networks Assets Pty Limited dated 16 November 2015.

**Trust Deed** means the constitution of the Trust.

**Victorian ESC** means the Essential Services Commission established under section 7 of the *Essential Services Commission Act 2001* (Vic).

**WHS Act** means the *Work Health and Safety Act 2011* (NSW).

**WHS Law** means the WHS Act and the WHS Regulation and any similar laws, whether of New South Wales, of another State or Territory or of the Commonwealth.

**WHS Regulation** means the *Work Health and Safety Regulation 2011* (NSW).

**Year** means each 12 month period from the Commencement Date and each anniversary of the Commencement Date.

## 1.2 Interpretation

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

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a **person** or **entity** includes a corporation, fund, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a **clause**, **schedule** or **annexure** is a reference to a clause of, or schedule or annexure to, this Lease.
- (f) A reference to an **agreement** or **document** (including a reference to this Lease) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Lease or that other agreement or document.
- (g) A reference to **writing** includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a **party** to this Lease or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to a **Governmental Agency** which ceases to exist includes the Governmental Agency that replaces it or substantially performs the same role and functions.
- (j) A reference to **legislation** or to a **provision** of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. Where legislation or a provision of legislation referred to in this Lease is modified, repealed or otherwise amended, the clauses of this Lease will be deemed to be amended to the extent necessary for the terms of this Lease to be given force and effect consistent with their intent, so far as that is reasonably possible.
- (k) A reference to an **Authorisation** means, where this Lease requires the Authorisation to be obtained, kept current or complied with at any time, such Authorisation as is required to be obtained, kept current or complied with in order to comply with the Law as at that time.
- (l) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (m) A reference to an **agreement** includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a **document** includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (n) A reference to **dollars** and **\$** is to Australian currency.
- (o) A reference to a **right** or **obligation** of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them

severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).

- (p) A reference to an **asset** includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (q) Mentioning anything after ***includes, including, for example***, or similar expressions, does not limit what else might be included.
- (r) Nothing in this Lease is to be interpreted against a party solely on the ground that the party put forward this Lease or a relevant part of it.
- (s) A reference to an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises.

### 1.3 Survival

In addition to this clause 1.3, any indemnities contained in this Lease, and any provisions that confer rights that are exercisable, or impose obligations that are required to be performed, on or after the Lease End Date, the following clauses survive the expiry or earlier termination of this Lease: clauses 1.1, 1.2, 1.5 to 1.9 (inclusive), 4, 7.7, 8.1(c), 10.6, 10.7, 10.8, 11, 18, 19, 20, 24 to 36 (inclusive), 39, 41 and 43.

### 1.4 Business Days

If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### 1.5 Trustee capacity

- (a) The Lessee enters into and performs this Lease as trustee of the Trust and in no other capacity.
- (b) Subject to clause 1.5(d), any liability of the Lessee arising under or in connection with this Lease is limited to the extent to which the Lessee is entitled to be indemnified for that liability out of the assets of the Trust.
- (c) Subject to clause 1.5(d), no person will be entitled to:
  - (i) claim from or commence proceedings against the Lessee in respect of any Loss under this Lease in any capacity other than as the trustee of the Trust;
  - (ii) seek the appointment of an Insolvency Official to any assets of the Lessee, or prove in any liquidation, administration or arrangement of or affecting the Lessee, except in relation to the assets of the Trust; or
  - (iii) enforce or seek to enforce any judgment in respect of a Loss under this Lease against the Lessee in any capacity other than as Trustee of the Trust.
- (d) The provisions of this clause 1.5 do not apply to any obligation or liability of the Lessee to the extent that it is not satisfied because there is (whether under the Trust Deed or by operation of Law) a reduction in the extent, or an extinguishment, of the Lessee's indemnification out of the assets of the Trust as a result of:
  - (i) the Lessee's fraud, negligence or breach of trust;
  - (ii) the Lessee having acted beyond power or improperly in relation to the Trust; or

- (iii) any act intended to reduce or extinguish the Lessee's indemnification out of the assets of the Trust.
- (e) The Lessee represents and warrants that, and undertakes to ensure that:
  - (i) the Lessee's right of indemnity out of, and lien over, the assets of the Trust as at the Commencement Date are not, and will not be, limited in any way; and
  - (ii) the Lessee does not, and will not, have any liability which may be set off against that right of indemnity.
- (f) This clause 1.5 applies despite any other provision of this Lease.

## 1.6 Discretions

Where a party has a discretion, right of approval or consent, or a right to determine a thing or an obligation to consider a thing, it may exercise that discretion or give or withhold that approval or consent or make a determination or undertake that consideration in its absolute discretion, subject to any conditions and without giving reasons, unless this Lease expressly provides otherwise.

## 1.7 Lessor's consent

- (a) Where this Lease requires the Lessor to not unreasonably withhold or delay its consent or approval to a matter, then without limiting the matters that the Lessor may take into account, the Lessor is entitled to take into account its own interests and the interests of the State in deciding whether to withhold or grant its consent or approval.
- (b) The Lessee acknowledges the Lessor, by giving any consent or approval, executing any document or imposing a condition in connection with any consent, approval or execution of a document:
  - (i) assumes no duty of care to the Lessee;
  - (ii) makes no warranty or representation in relation to the subject of the consent, approval or document; and
  - (iii) does not waive any right or remedy that the Lessor may have under this Lease.
- (c) A thing that would otherwise be prevented or prohibited by this Lease may be done with the prior consent of the Lessor.

## 1.8 Lessee acknowledgements of State rights

The Lessee acknowledges and agrees that, notwithstanding that the State is not a party to this Lease, to the extent a provision of this Lease expressly refers to the State as having a right or benefit under this Lease:

- (a) the Lessor holds that right or benefit on trust for the State;
- (b) the State may enforce that right or benefit directly against the Lessee; and
- (c) the Lessor may enforce that right or benefit against the Lessee on behalf of the State.

## 1.9 Lessee's Representatives

Every obligation under this Lease on the part of the Lessee will be deemed to include a covenant by the Lessee to procure compliance with the obligation by each of the Lessee's Representatives.

## 2 Lease

### 2.1 Lease Premium

- (a) The Lessee must pay the Premium to the Lessor (or as otherwise directed by the Lessor) on or before the date of this Lease and such Premium will belong absolutely to the Lessor (or the Lessor's nominee to whom the Lessor has directed the payment be made).
- (b) Neither the Lessor nor the State has any liability in any circumstances (including the early termination or expiry of this Lease) to repay or refund the Premium or any part of it.
- (c) Neither the Lessor nor the State has any liability to pay the Lessee or its financiers any amount, including damages or compensation, in connection with the retention of the Premium as referred to in clause 2.1(a) or (b).

### 2.2 Lease

- (a) The Lessor leases to the Lessee under this Lease, with effect from the Commencement Date and for the Term, and on the terms and conditions of this Lease, the Leased Property.
- (b) For the avoidance of doubt, the lease of the Leased Assets and the NSW Leased Land is subject to all Encumbrances, leases, licences, reservations and other rights (whether arising under Law or contract) that relate to the Leased Assets or the NSW Leased Land and that:
  - (i) have been granted or entered into by the Lessor and are in existence as at the Commencement Date;
  - (ii) come into existence after the Commencement Date under or in connection with the operation of contracts or arrangements entered into by the Lessor prior to the Commencement Date and in accordance with provisions in those contracts or arrangements as such provisions stood immediately prior to the Commencement Date; or
  - (iii) come into existence after the Commencement Date as a result of actions taken in accordance with this Lease.
- (c) The Lessor must choose for section 104-115 of the *Income Tax Assessment Act 1997* (Cth) to apply (instead of section 104-110 of that Act) to the grant of this Lease. The Lessor must:
  - (i) make the choice referred to in this paragraph (c) by the time that it lodges its income tax return for the income year in which capital gains tax event F2 happens as a result of the grant of this Lease; and
  - (ii) prepare its income tax returns in a manner that is consistent with that choice.

### 2.3 Head Leases

- (a) The parties acknowledge that:
  - (i) this Lease is a sublease with respect to that part of the NSW Network Leased Land that is described (or deemed, by virtue of clause 2.11 or 2.20, to be described) in Part 2 of Schedule 3;
  - (ii) this Lease is a sublease with respect to that part of the NSW Non-Network Leased Land that is described (or deemed, by virtue of clause 2.20, to be described) in Part 4 of Schedule 3; and

- (iii) pursuant to the Non-NSW Leases, the Lessor subleases to the Lessee that part of the Non-NSW Leased Land that is described (or deemed, by virtue of clause 2.11, to be described) in Part 6 of Schedule 3

(all such land being collectively referred to as the **Leasehold Land**) and that the Lessor's interest in the Leasehold Land is derived from the Head Leases.

- (b) The parties acknowledge and agree that:
  - (i) to the extent that the lease of the NSW Leased Land granted under clause 2.2(a) relates to the Leasehold Land, that grant is subject to all reservations contained in the applicable Head Lease, and the rights of the Lessee under this Lease are subject to and subordinate to the rights of the lessor under the Head Lease;
  - (ii) to the extent that the lease of the Non-NSW Leased Land granted under a Non-NSW Lease relates to the Leasehold Land, that grant is subject to all reservations contained in the applicable Head Lease, and the rights of the Lessee under the Non-NSW Lease are subject to and subordinate to the rights of the lessor under the Head Lease;
  - (iii) if a Head Lease relating to NSW Leased Land terminates, is surrendered or otherwise comes to end for any reason, this Lease automatically ceases to apply to that part of the Leasehold Land that was the subject of that Head Lease; and
  - (iv) if a Head Lease relating to Non-NSW Leased Land terminates, is surrendered or otherwise comes to end for any reason, the Non-NSW Lease that applies to that part of the Leasehold Land that was the subject of that Head Lease will terminate automatically in accordance with the terms of that Non-NSW Lease.
- (c) The Lessor does not have any liability in any circumstances to pay the Lessee any amount, including damages or compensation, in connection with any termination of any Head Lease and:
  - (i) any consequent cessation of the application of this Lease to the affected Leasehold Land as referred to in clause 2.3(b)(iii); or
  - (ii) any consequent termination of the Non-NSW Lease that applies to the affected Leasehold Land as referred to in clause 2.3(b)(iv),
 except to the extent the termination results from:
  - (iii) the Lessor's failure to comply with a reasonable direction of the Lessee under clause 2.3(e); or
  - (iv) a breach by the Lessor of clause 2.3(f), 2.3(g) or 2.3(l).
- (d) Except to the extent it is not permissible under a Head Lease for the Lessee to do so:
  - (i) the Lessee may exercise, or procure the exercise of, any of the rights of the Lessor under or in relation to the Head Lease; and
  - (ii) the Lessee must perform, or procure the performance of, all of the obligations of the Lessor under or in relation to the Head Lease.

The Lessee must not do or permit to be done any act or omission which constitutes a breach of the terms of a Head Lease.
- (e) To the extent it is not permissible under a Head Lease for the Lessee to exercise (or procure the exercise of) or to perform (or procure the performance of) the Lessor's rights and obligations under or in relation to the Head Lease, the Lessor must exercise those rights and perform those obligations in accordance with the reasonable directions of the

Lessee. For the avoidance of doubt, a direction will not be reasonable if compliance with it would cause the Lessor to breach any Law or any provision of the Head Lease.

- (f) The Lessor must not exercise any of its rights, or perform any of its obligations, under or in relation to a Head Lease except in accordance with a direction given under clause 2.3(e).
- (g) Without limiting clause 2.3(f), the Lessor must not:
  - (i) amend or vary the terms of a Head Lease;
  - (ii) surrender or terminate a Head Lease, whether in whole or in part;
  - (iii) enforce its rights under a Head Lease or settle, compromise, discontinue or defend any proceedings in relation to a Head Lease (whether such proceedings are brought by or against the lessor under the Head Lease); or
  - (iv) waive in writing any of its rights under a Head Lease,except in accordance with the reasonable directions of the Lessee or with the Lessee's prior consent, such consent not to be unreasonably withheld or delayed.
- (h) Notwithstanding clause 2.3(d) or (e), the Lessee must not, and is not entitled to direct the Lessor to, assign, transfer, encumber, surrender or otherwise dispose of the Lessor's interest in, or rights or obligations under, a Head Lease without the prior consent of the Lessor.
- (i) The Lessee indemnifies and must keep indemnified the Lessor from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor in respect of or arising from or in any way connected with a Head Lease, including such Losses as are in respect of or arise from or are in any way connected with:
  - (i) the exercise of the Lessor's rights under or in relation to the Head Lease, whether pursuant to clause 2.3(d)(i) or (e);
  - (ii) the performance of the Lessor's obligations under or in relation to the Head Lease, whether pursuant to clause 2.3(d)(ii) or (e);
  - (iii) the Lessor's compliance with a direction given under clause 2.3(e);
  - (iv) the failure to exercise any of the Lessor's rights or to perform any of the Lessor's obligations under or in relation to the Head Lease;
  - (v) any breach of the Head Lease to the extent it is caused by an act or omission of the Lessee, a Permitted Sublessee or any person whom the Lessee engages to exercise the rights, or perform the obligations, of the Lessor under the Head Lease;
  - (vi) any amendment or variation of the terms of the Head Lease;
  - (vii) any surrender or termination of the Head Lease, whether in whole or in part; or
  - (viii) any enforcement of (or failure to enforce) the Lessor's rights, powers or remedies under or in relation to the Head Lease or the settlement, compromise, discontinuance or defence of proceedings in relation to the Head Lease,except to the extent that Loss is caused or contributed to by a failure by the Lessor to comply with a direction given under clause 2.3(e) or a breach by the Lessor of clause 2.3(f), 2.3(g) or 2.3(l).
- (j) The Lessor must promptly account to the Lessee for any benefits that the Lessor receives under a Head Lease to the extent those benefits arise during, or relate to, the period in respect of which both the Head Lease and this Lease are in force.

- (k) The rights referred to in clause 2.3(d), (e) and (f) include:
  - (i) the right to enforce the terms of the Head Lease against the lessor under that Head Lease, which includes the right to make a Claim for breach of the Head Lease by such lessor and the right to make a Claim under an indemnity in the Head Lease; and
  - (ii) the right to settle, compromise, discontinue or defend proceedings in relation to the Head Lease.
- (l) The Lessor must promptly provide to the Lessee a copy of any written notices, correspondence or other information it receives during the Term from the lessor under a Head Lease.

## 2.4 Private Easements

- (a) The parties acknowledge that, by virtue of vesting orders made under the Act, the Lessee, and any nominee of the Lessee, are each entitled to exercise the rights and entitlements conferred on the Lessor under the Original NSW Private Easements until the earlier of the end of the term of the relevant Original NSW Private Easement and the Lease End Date.
- (b) Where a Private Easement is created after the Commencement Date and a purpose of it is to permit the location of any Leased Network Assets on, above or under any land, to provide access to any Leased Network Assets so as to enable the Leased Network Assets to be operated, repaired or maintained, or to enable the provision by the Lessor, the Lessee or any Permitted Sublessee of Services in connection with any Leased Network Assets, the Lessee must procure that, except where the operation of any Law precludes the Private Easement being held in the name of the Lessor, the Private Easement is held in the name of the Lessor but on terms under which:
  - (i) each of the Lessee, the Lessee's nominees and the Lessor's nominees are entitled to exercise the rights and entitlements conferred on the Lessor under the Private Easement until (in the case of the Lessee and its nominees) the earlier of the end of the term of the Private Easement and the Lease End Date; and
  - (ii) the Lessee and its nominees cease to be entitled to exercise the rights and entitlements conferred on the Lessor under the Private Easement with effect from the earlier of the end of the term of the Private Easement and the Lease End Date.

## 2.5 NSW Easements in Gross

- (a) The parties acknowledge that, by virtue of vesting orders made under the Act, the Lessee, and any nominee of the Lessee, are each entitled to exercise the rights and entitlements conferred on the Lessor under the Original NSW Easements in Gross until the earlier of the end of the term of the relevant Original NSW Easement in Gross and the Lease End Date.
- (b) Where a NSW Easement in Gross is created after the Commencement Date and a purpose of it is to permit the location of any Leased Network Assets on, above or under any land, to provide access to any Leased Network Assets so as to enable the Leased Network Assets to be operated, repaired or maintained, or to enable the provision by the Lessor, the Lessee or any Permitted Sublessee of Services in connection with any Leased Network Assets, the Lessee must procure that, except where the operation of any Law precludes the NSW Easement in Gross being held in the name of the Lessor, the NSW Easement in Gross is held in the name of the Lessor but on terms under which:

- (i) each of the Lessee, the Lessee's nominees and the Lessor's nominees are entitled to exercise the rights and entitlements conferred on the Lessor under the NSW Easement in Gross until (in the case of the Lessee and its nominees) the earlier of the end of the term of the NSW Easement in Gross and the Lease End Date; and
- (ii) the Lessee and its nominees cease to be entitled to exercise the rights and entitlements conferred on the Lessor under the NSW Easement in Gross with effect from the earlier of the end of the term of the NSW Easement in Gross and the Lease End Date.

## 2.6 Non-NSW Easements in Gross

- (a) The parties acknowledge that, to the extent the Original non-NSW Easements in Gross remain in the name of the Lessor after the Commencement Date, the Lessee, and any nominee of the Lessee, are each entitled to exercise the rights and entitlements conferred on the Lessor under the Original non-NSW Easements in Gross until the earlier of the end of the term of the relevant Original non-NSW Easement in Gross and the Lease End Date.
- (b) Where a Non-NSW Easement in Gross is created after the Commencement Date and a purpose of it is to permit the location of any Leased Network Assets on, above or under any land, to provide access to any Leased Network Assets so as to enable the Leased Network Assets to be operated, repaired or maintained, or to enable the provision by the Lessor, the Lessee or any Permitted Sublessee of Services in connection with any Leased Network Assets, the Lessee must procure that, except where the operation of any Law precludes the Non-NSW Easement in Gross being held in the name of the Lessor, the Non-NSW Easement in Gross is held in the name of the Lessor but on terms under which:
  - (i) each of the Lessee, the Lessee's nominees and the Lessor's nominees are entitled to exercise the rights and entitlements conferred on the Lessor under the Non-NSW Easement in Gross until (in the case of the Lessee and its nominees) the earlier of the end of the term of the Non-NSW Easement in Gross and the Lease End Date; and
  - (ii) the Lessee and its nominees cease to be entitled to exercise the rights and entitlements conferred on the Lessor under the Non-NSW Easement in Gross with effect from the earlier of the end of the term of the Non-NSW Easement in Gross and the Lease End Date.

## 2.7 Transfer of Private Easements and Easements in Gross as at Lease End Date

- (a) This clause 2.7 applies to each Private Easement and Easement in Gross where a purpose of it is to permit the location of any Leased Network Assets on, above or under any land, to provide access to any Leased Network Assets so as to enable the Leased Network Assets to be operated, repaired or maintained, or to enable the provision by the Lessor, the Lessee or any Permitted Sublessee of Services in connection with any Leased Network Assets.
- (b) To the extent the Private Easement or Easement in Gross is not held in the name of the Lessor, the Lessee must procure that the Private Easement or Easement in Gross is held in the name of the Lessee or a Permitted Sublessee.
- (c) Where any Private Easement or Easement in Gross is held in the name of the Lessee or any Permitted Sublessee, the Lessee must cooperate fully with the Lessor, and must

procure that any such Permitted Sublessee cooperates fully with the Lessor, to enable (at the Lessor's option, acting reasonably and for no payment by the Lessor to the Lessee, any Permitted Sublessee or any other person):

- (i) the transfer of the Private Easement or Easement in Gross to the Lessor or its nominee;
- (ii) the creation of a substitute Private Easement or Easement in Gross that is held by the Lessor (and is in favour of both the Lessor and its nominees); or
- (iii) the exclusive benefit of the Private Easement or Easement in Gross to be made available to the Lessor and its nominees,

with effect from the Lease End Date or as soon as practicable thereafter (including by executing and registering any documents necessary or desirable to effect the transfer).

## **2.8 Parties' obligations under Private Easements and Easements in Gross**

- (a) This clause 2.8 applies to each Private Easement and Easement in Gross where a purpose of it is to permit the location of any Leased Network Assets on, above or under any land, to provide access to any Leased Network Assets so as to enable the Leased Network Assets to be operated, repaired or maintained, or to enable the provision by the Lessor, the Lessee or any Permitted Sublessee of Services in connection with any Leased Network Assets.
- (b) Where the Private Easement or Easement in Gross is held in the name of the Lessor, the Lessee must, and must procure that each of its nominees under the Private Easement or Easement in Gross will:
  - (i) discharge and satisfy all of the duties, liabilities and obligations of the Lessor and themselves arising out of or in respect of that Private Easement or Easement in Gross;
  - (ii) comply with and satisfy all the requirements and conditions attaching to the Lessor and themselves under that Private Easement or Easement in Gross; and
  - (iii) comply with all applicable Laws and Authorisations with respect to the exercise of any rights or the discharge of any obligations arising under that Private Easement or Easement in Gross.
- (c) The Lessor agrees not to exercise such rights and entitlements as it may have under the Private Easement or Easement in Gross during the Term other than for the purposes of enabling the exercise of its rights under this Lease.
- (d) The Lessee indemnifies and must keep indemnified the Lessor from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor in respect of or arising from or in any way connected with each Private Easement and Easement in Gross, including such Losses as are in respect of or arise from or are in any way connected with:
  - (i) the Lessee's performance of, or failure to perform, the obligations referred to in clause 2.8(b);
  - (ii) the exercise of, or failure to exercise, the rights of the Lessee or its nominees under the Private Easement or Easement in Gross; or
  - (iii) the enforcement of, or failure to enforce, the rights, powers or remedies of the Lessee or its nominees under or in relation to the Private Easement or Easement in Gross,

except to the extent the Loss is caused or contributed to by a breach of clause 2.8(c) or 2.8(f).

- (e) The Lessee must not, and must procure that its nominees do not, vary, amend, transfer or otherwise dispose of the Private Easement or Easement in Gross in such a way as to replace the Lessor as the holder of the Private Easement or Easement in Gross.
- (f) The Lessor must promptly provide to the Lessee a copy of any written notices, correspondence or other information it receives during the Term from the grantor of the Private Easement or Easement in Gross.

## 2.9 Contractual Licences

- (a) Where a Contractual Licence that is granted in favour of the Lessor (as the grantee) is expressed to authorise the Lessee and its nominees to locate any Leased Network Assets on, above or under any land or to access any Leased Network Assets (including by virtue of a variation to the terms and conditions of that Contractual Licence that is made by a vesting order made under the Act), then clause 2.8 applies as if the Contractual Licence were a Private Easement that is held in the name of the Lessor.
- (b) Where a Contractual Licence that is granted in favour of the Lessor is not expressed to authorise the Lessee and its nominees to locate any Leased Network Assets on, above or under any land or to access any Leased Network Assets, then clauses 2.3(d) to (l) apply as if references to a Head Lease were references to the Contractual Licence and references to the lessor under the Head Lease were references to the grantor of the Contractual Licence.
- (c) Where a Contractual Licence is granted after the Commencement Date and a purpose of it is to enable the location of any Leased Network Assets on, above or under any land, the Lessee must procure that the Contractual Licence is granted in the name of the Lessor (as the grantee) but on terms under which:
  - (i) each of the Lessee, the Lessee's nominees and the Lessor's nominees are entitled to exercise the rights and entitlements conferred on the Lessor under the Contractual Licence until (in the case of the Lessee and its nominees) the earlier of the end of the term of the Contractual Licence and the Lease End Date; and
  - (ii) the Lessee and its nominees cease to be entitled to exercise the rights and entitlements conferred on the Lessor under the Contractual Licence with effect from the earlier of the end of the term of the Contractual Licence and the Lease End Date.
- (d) Where any Contractual Licence enables the location of any Leased Network Assets on, above or under any land or access to any Leased Network Assets so as to enable the Leased Network Assets to be operated, repaired or maintained, and the Contractual Licence is not granted in favour of the Lessor (as the grantee), the Lessee must cooperate fully with the Lessor, and must procure that any grantee of the Contractual Licence cooperates fully with the Lessor, to enable (at the Lessor's option, acting reasonably and for no payment by the Lessor to the Lessee, any grantee of the Contractual Licence or any other person):
  - (i) the transfer of the Contractual Licence to the Lessor or its nominee;
  - (ii) the creation of a substitute Contractual Licence in favour of the Lessor and its nominees; or
  - (iii) the exclusive benefit of the Contractual Licence to be made available to the Lessor and its nominees,

with effect from the Lease End Date or as soon as practicable thereafter (including by executing and registering any documents necessary or desirable to effect the transfer).

## 2.10 Right to locate assets

- (a) Where:
- (i) the location of Leased Network Assets on, above or under any land is supported by a right to so locate those Leased Network Assets;
  - (ii) that right is surrendered, terminated or extinguished; and
  - (iii) the Leased Network Assets continue to be located on, above or under that land, then the Lessee must procure that the right is replaced as soon as practicable with another right to locate the relevant Leased Network Assets on, above or under that land. For these purposes, the Lessee must use all reasonable endeavours to procure the replacement right in the form of a freehold or leasehold interest in the land, or a Private Easement or Easement in Gross, in preference to relying on any Contractual Licence or Statutory Right (except that this preference does not apply in so far as the Leased Network Assets are only part of the Transmission Telecommunications Network, as opposed to the Leased Transmission Network, or the land is public land).
- (b) Subject to clauses 2.10(a) and 21, the Lessee may cause or permit any right to locate any Leased Network Assets on, above or under any land to be surrendered, terminated or extinguished, provided that:
- (i) the Lessee complies with any applicable provisions of this Lease or a Non-NSW Lease; or
  - (ii) the relevant Permitted Sublessee complies with any applicable provisions of a Sublessee Lease,
- in relation to that surrender, termination or extinguishment.
- (c) The Lessee must ensure that, where any Leased Network Assets come into existence after the Commencement Date, the location of those Leased Network Assets on, above or under the land on, above or under which they are located is supported by an appropriate right to so locate them. For this purpose, the Lessee must use all reasonable endeavours to procure that right in the form of a freehold or leasehold interest in the land, or a Private Easement or Easement in Gross, in preference to relying on any Contractual Licence or Statutory Right (except that this preference does not apply in so far as the Leased Network Assets are only part of the Transmission Telecommunications Network, as opposed to the Leased Transmission Network, or the land is public land).

## 2.11 New Land and statutory land acquisition functions

- (a) Pursuant to section 36 of the Act, the parties agree that only the Lessee may exercise the Lessor's land acquisition functions (as defined in that section) on behalf of the Lessor during the Term.
- (b) Except as otherwise provided in this Lease, to the extent the Lessee wishes to acquire land after the Commencement Date for the purposes of enabling the location of any existing or future Leased Network Assets on, above or under that land or access to those Leased Network Assets (such land being referred to as **New Land**), the Lessee must:
- (i) only acquire the New Land as agent for and on behalf of the Lessor in accordance with this clause 2.11; and

- (ii) not acquire any New Land on its own behalf or for any other person or entity other than the Lessor,  
  
irrespective of whether the New Land is acquired by agreement or by a compulsory acquisition process.
- (c) Where the New Land is a freehold or leasehold interest in land that is located in New South Wales then, upon acquisition of that New Land, and unless that New Land is Sublessee Leased Land, the New Land will automatically and immediately:
  - (i) form part of the NSW Network Leased Land; and
  - (ii) be subject to the terms of this Lease, which continue to apply unaffected except for the addition of the New Land as NSW Network Leased Land (for the avoidance of doubt, no additional rent or premium will be payable with respect to the New Land),  
  
and, for the purposes of paragraph (i), this Lease is hereby varied accordingly.
- (d) Where the New Land is a freehold or leasehold interest in land that is located outside New South Wales then, upon acquisition of that New Land, and unless that New Land is Sublessee Leased Land:
  - (i) the definition of Non-NSW Leased Land will be taken to amended to include that New Land; and
  - (ii) the Lessee must promptly prepare and deliver to the Lessor a Non-NSW Lease in relation to that New Land that gives effect to the lease of the freehold interest in that land or to the sublease of the leasehold interest in that land (as the case may be) as from the date that freehold or leasehold interest becomes held by the Lessor.
- (e) To the extent that the New Land is a leasehold interest and is not Sublessee Leased Land then, upon acquisition of that New Land:
  - (i) that New Land will be taken to be Leasehold Land for the purposes of clause 2.3, for which purpose Part 2 or 6 (as the case may be) of Schedule 3 will be deemed to be varied to include a description of that New Land; and
  - (ii) the terms on which the leasehold interest is leased to the Lessor will constitute a Head Lease, for which purpose Part 2 or 6 (as the case may be) of Schedule 3 will be deemed to be varied to include a description of that Head Lease.
- (f) The Lessee must not acquire New Land which is a leasehold interest unless:
  - (i) in the case of New Land located in New South Wales, the Lessor has the right, under the terms on which the leasehold interest is leased to the Lessor, to sublease that leasehold interest to the Lessee in accordance with this Lease;
  - (ii) in the case of New Land located outside New South Wales, the Lessor has the right, under the terms on which the leasehold interest is leased to the Lessor, to sublease that leasehold interest to the Lessee in accordance with a Non-NSW Lease; or
  - (iii) in the case of New Land which is Sublessee Leased Land, the Lessor has the right, under the terms on which the leasehold interest is leased to the Lessor, to sublease that leasehold interest directly to a Permitted Sublessee in accordance with a Sublessee Lease.
- (g) As between the Lessee and the Lessor, the Lessee will be responsible for:

- (i) paying all consideration (including GST) and costs (including GST) associated with the acquisition of the New Land, including any purchase price, any compensation payable in accordance with section 37 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), any costs for third party consents or approvals, any stamp or transfer duty and any registration costs associated with the acquisition or leasing of the New Land;
- (ii) preparing all necessary documents, including land sale contracts, transfer forms, leases and applications for third party consents and approvals, all at the Lessee's cost;
- (iii) paying all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with reviewing and signing the documents referred to in paragraph (ii); and
- (iv) keeping and maintaining a trust account for and on behalf of the Lessor and in the name of the Lessor, as required under and in accordance with section 51 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), and paying into and out of that account any amount of compensation that is required by that Act to be paid into or out of that trust account.

The Lessee must indemnify and keep indemnified the Lessor from and against all Losses of every kind that the Lessor may incur or sustain, whether directly or indirectly, in respect of or arising from or in any way connected with the acquisition of the New Land or a breach (or alleged breach) of the terms that apply to the acquisition of the New Land. The Lessee acknowledges that the Lessor may engage Government Property NSW to assist it in relation to matters referred to in clause 2.11(g)(ii) and (iii) and agrees that the costs charged by Government Property NSW to the Lessor for those purposes must be paid by the Lessee. To the extent any funds in the trust account maintained by the Lessor under section 51 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) as at the Commencement Date are applied as part or all of compensation paid in connection with any acquisition of New Land, the Lessee must within 2 Business Days reimburse that amount to the Lessor or its nominee.

- (h) Subject to the Lessee complying with its obligations under this clause 2.11, the Lessor must cooperate with the Lessee and do all things that the Lessee reasonably requires of it to effect, perfect or complete the acquisition of the New Land contemplated by this clause, including execution of necessary documents.
- (i) As soon as practicable after any land in New South Wales is leased by the Lessor to the Lessee pursuant to this clause 2.11, the Lessee must register a variation of this Lease at LPI.
- (j) The Lessee must ensure that any freehold or leasehold interest in land that is acquired after the Commencement Date for the purposes of enabling the location of any existing or future Leased Network Assets on, above or under that land or access to those Leased Network Assets is acquired by the Lessee and is only acquired in accordance with this clause 2.11.

## 2.12 Statutory Rights

The Lessor agrees not to exercise any Statutory Rights during the Term other than:

- (a) for the purposes of enabling the exercise of its rights under this Lease;

- (b) for the purposes of protecting its interests as the owner of the Leased Assets and Leased Land, and the Lessor agrees to consult with the Lessee where possible prior to exercising any Statutory Right for such purposes; or
- (c) at the request of the Lessee, for the purpose of enabling the Lessee to exercise its rights under this Lease, in which case the Lessor is only required to do so to the extent it is so required by clause 9.5 and on the conditions set out in that clause.

### 2.13 Authorisations

- (a) The Lessee must, and must ensure that any Permitted Sublessee does, obtain, keep current and comply with all Authorisations, and otherwise comply with all Laws (including in so far as such Authorisations and Laws relate to the Regulatory Regime), that are required to be obtained, kept or complied with in order for the Leased Network Assets, the Leased Land and the Transmission Network Land to be managed, operated, repaired, maintained and used in accordance with this Lease.
- (b) The Lessor must not unreasonably withhold (and must not impose unreasonable conditions upon) any consent necessary for the Lessee or any Permitted Sublessee to apply for, retain or keep current any Authorisation referred to in clause 2.13(a), or to comply with any Law relating to the management, operation, repair, maintenance or use of the Leased Network Assets, the Leased Land or the Transmission Network Land, where the Lessee certifies to the Lessor in writing that the consent:
  - (i) complies this Lease, the Non-NSW Leases and the Sublessee Leases; and
  - (ii) is in accordance with all Laws and the requirements of any Governmental Agency.

### 2.14 Operator of Leased Transmission Network

The Lessee must ensure that, at all times during the Term, either it or a Permitted Sublessee, and no other person, is the operator of the Leased Transmission Network for the purposes of the Regulatory Regime.

### 2.15 Permitted Sublessee

If a Permitted Sublessee manages, operates, repairs, maintains or uses the Leased Network Assets, the Leased Land or the Transmission Network Land, the Lessee is deemed to have performed its obligations under this Lease in relation to the management, operation, repair, maintenance or use of the Leased Network Assets, the Leased Land or the Transmission Network Land to the extent that the Permitted Sublessee performs those obligations.

### 2.16 Lessee supply of telecommunications services

- (a) The Lessee must not (and must ensure that any Permitted Sublessee does not) use any part of the Leased Assets at any time during the Term to provide any Telecommunications Services unless:
  - (i) at the time the Telecommunications Services are provided, and to the extent required by Law:
    - (A) the Lessee, the Permitted Sublessee or a Related Body Corporate of either of them obtains, holds and maintains a Carrier Licence; and
    - (B) a Nominated Carrier Declaration is in force in respect of such parts of the Leased Assets as are Network Units; or
  - (ii) the provision of the Telecommunications Services is otherwise authorised under the Telecommunications Act,

and the provision of the Telecommunications Services does not cause the Lessor to be in breach of any Law (including section 42 of the Telecommunications Act). The Lessor must not withdraw its consent to any Nominated Carrier Declaration in respect of such parts of the Leased Assets as are Network Units.

- (b) If, during the Term, ACMA takes any regulatory, administrative or other action (**Action**) or threatens to take any Action that may affect or prejudice in any way the ability of the Lessee to comply with this clause 2.16, the Lessee must:
- (i) provide the Lessor with full details of the threatened or actual Action; and
  - (ii) permit the Lessor to contribute to any submission made to ACMA in response to that threatened or actual Action.

The Lessee must pay all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with the threatened or actual Action or in making any submission to ACMA in response to such Action.

- (c) The Lessee must as soon as possible upon request by the Lessor:
- (i) provide the Lessor and its authorised representatives with, and allow them to make copies of, any information the Lessor reasonably requires for the purposes of determining the Lessee's compliance with this clause 2.16;
  - (ii) make available to the Lessor and its authorised representatives a person or persons familiar with the Leased Assets for the purposes of assisting them to obtain an understanding of any information referred to in clause 2.16(c)(i); and
  - (iii) provide the Lessor and its authorised representatives with access to inspect any part of the Leased Assets, the Leased Land or the Transmission Network Land for the purposes of determining the Lessee's compliance with this clause 2.16.

The Lessor must act reasonably in making such requests, provided that the Lessor is not in any way restricted from making such requests in circumstances where it reasonably believes that the Lessee is in breach of this clause 2.16 or that the Lessee may be at risk of such breach.

- (d) The Lessee must promptly notify the Lessor of any circumstances likely to constitute or to cause any breach of this clause 2.16.
- (e) If the Lessor reasonably believes that the Lessee may be in breach of this clause 2.16 or may be at risk of such breach, the Lessor may by notice direct the Lessee to cease or suspend the Lessee's activities (or procure that a Permitted Sublessee cease or suspend the Permitted Sublessee's activities), in so far as the activities give rise or may give rise to a breach, or risk of breach, of this clause 2.16. The Lessee must promptly comply with such direction (and procure prompt compliance with such direction by any Permitted Sublessee) until such time as the Lessor gives the Lessee further notice.
- (f) The parties acknowledge and agree that, without limiting the Lessor's rights to any other remedies at common law, in equity or under the terms of this Lease (including clause 16), the Lessor may seek an urgent injunction or order for specific performance if the Lessee fails to comply, or fails to procure any Permitted Sublessee to comply, promptly with a direction given under clause 2.16(e).
- (g) To the extent that the performance of the Lessee's functions under this clause 2.16 requires the cooperation of any Permitted Sublessee, the Lessee must procure such cooperation.
- (h) The rights of the Lessor under this clause 2.16 are in addition to its rights under clause 8.

## 2.17 New Network Technologies

- (a) Except as otherwise consented to by the Lessor, the Lessee must not, and must ensure that neither any Permitted Sublessee nor any Associate of the Lessee or a Permitted Sublessee does, bring a New Network Technology into commercial operation unless title to the assets that comprise the New Network Technology is vested in or transferred to the Lessor free from all Security Interests over those assets (other than Permitted Liens).
- (b) With effect from the time title to the assets that comprise a New Network Technology is vested in or transferred to the Lessor in accordance with clause 2.17(a), those assets are hereby leased to the Lessee under this Lease.
- (c) Except as otherwise consented to by the Lessor, where an asset first becomes part of a New Network Technology after the time that New Network Technology is brought into commercial operation, title to that asset is hereby vested in or transferred to the Lessor and that asset is leased to the Lessee under this Lease. For this purpose, at the request of the Lessee, the Lessor must consult with the Lessee in relation to the process by which any such asset may be vested in or transferred to the Lessor and leased to the Lessee under this Lease.
- (d) The Lessee must do everything necessary to give effect to a vesting or transfer of title as referred to in clause 2.17(a) or (c) and to procure the release and discharge of all Security Interests over the asset prior to such vesting or transfer (other than Permitted Liens).
- (e) For the purposes of clause 2.17(c), an asset first becomes part of a New Network Technology when the asset first commences operation or otherwise first commences to perform the function which it is intended to perform.

## 2.18 Non-NSW Leases

- (a) The parties agree that, where a freehold or leasehold interest in land that is located outside New South Wales is acquired by the Lessee on behalf of the Lessor under clause 2.11(b), that interest must be leased by the Lessor to the Lessee pursuant to a lease instrument that complies with this clause 2.18. A lease instrument entered into in accordance with clause 2.18(c) is a **Non-NSW Lease**.
- (b) A lease instrument will comply with this clause 2.18 if:
  - (i) the lease of the freehold or leasehold interest takes effect as from the date the interest becomes held by the Lessor;
  - (ii) the lease instrument complies with all applicable Laws and the Lessee certifies in writing to the Lessor to this effect;
  - (iii) the lease is not a lease of any Leased Assets, it being acknowledged and agreed that such assets are leased to the Lessee under this Lease;
  - (iv) to the extent it is customary to register such a lease instrument, the lease instrument is in registrable form;
  - (v) where the lease is of a freehold interest held by the Lessor, the term of the lease expires at the end of the Term or on the expiry of the maximum term for that lease that is permitted by Law, whichever occurs first;
  - (vi) where the lease is of a leasehold interest held by the Lessor:
    - (A) the term of the lease expires at the end of the day before the Lessor's leasehold interest expires;

- (B) the lease is subject to those reservations to which the Lessor's leasehold interest is subject; and
  - (C) the terms and conditions of the lease instrument are not inconsistent with those which apply in respect of the grant to the Lessor of the Lessor's leasehold interest;
  - (vii) the lease terminates if the lease of the Leased Assets and the NSW Leased Land under this Lease comes to an end of any reason;
  - (viii) no rent is payable under the lease instrument or such rent as is payable is nominal; and
  - (ix) except as to the term of the lease, the lease instrument is on terms that are substantially the same as those of any then-existing Non-NSW Lease which relates to land in the same jurisdiction as that in which the land the subject of the freehold or leasehold interest is located (other than for any variations that are required by Law or as a result of the nature of the leased interest or land) or is otherwise on terms that are acceptable to the Lessor, acting reasonably.
- (c) Where a lease instrument complies with this clause 2.18:
- (i) the Lessor, as lessor, and the Lessee, as lessee, must promptly execute the lease instrument; and
  - (ii) where it is customary to register such lease instruments in the jurisdiction in which the land the subject of the lease instrument is located, the Lessee must promptly have the lease instrument registered at the relevant titles office.
- (d) The Lessee must:
- (i) prepare at its cost all documents required to give effect to any Non-NSW Lease;
  - (ii) pay all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with reviewing and signing those documents that give effect to any Non-NSW Lease entered into after the Commencement Date;
  - (iii) pay all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with applying for or obtaining any Authorisations, consents or approvals that are required to be held or obtained by the Lessor in relation to any Non-NSW Lease; and
  - (iv) pay all registration costs for any Non-NSW Lease.
- The Lessee acknowledges that the Lessor may engage Government Property NSW to assist it in relation to matters referred to in clause 2.18(d)(ii) and (iii) and agrees that the costs charged by Government Property NSW to the Lessor for those purposes must be paid by the Lessee.
- (e) The Lessor and the Lessee acknowledge and agree that Non-NSW Leased Land that is leased by the Lessor to the Lessee as referred to in this clause 2.18 is not leased by the Lessor to the Lessee under this Lease but is leased by the Lessor to the Lessee under the relevant Non-NSW Lease.
- (f) This clause 2.18 does not apply where clause 2.19 applies.

## 2.19 Sublessee Leases

- (a) This clause 2.19 applies where:

- (i) a freehold or leasehold interest in land is held by the Lessor, or is acquired by the Lessee on behalf of the Lessor under clause 2.11(b);
  - (ii) a sublease has been granted to a Permitted Sublessee under clause 23.3;
  - (iii) if the Lessor were to lease that freehold or leasehold interest to the Lessee, whether under this Lease or under a lease instrument referred to in clause 2.18, the Lessee would not be permitted by Law to sublease that interest to the Permitted Sublessee; and
  - (iv) the Lessor is not precluded by Law from leasing that freehold or leasehold interest directly to the Permitted Sublessee.
- (b) Where this clause 2.19 applies, the Lessor must lease the relevant freehold or leasehold interest directly to the Permitted Sublessee, and the Lessee must procure that the Permitted Sublessee takes that lease, pursuant to a lease instrument that complies with this clause 2.19. A lease instrument that is entered into in accordance with clause 2.19(d) is a **Sublessee Lease**.
- (c) A lease instrument will comply with this clause 2.19 if:
- (i) the lease of the freehold or leasehold interest takes effect as from the later of the Commencement Date and the date the interest becomes held by the Lessor;
  - (ii) the lease instrument complies with all applicable Laws and the Permitted Sublessee certifies in writing to the Lessor to this effect;
  - (iii) the lease is not a lease of any Leased Assets, it being acknowledged and agreed that such assets are leased to the Lessee under this Lease;
  - (iv) to the extent it is customary to register such a lease instrument, the lease instrument is in registrable form;
  - (v) where the lease is of a freehold interest held by the Lessor, the term of the lease expires at the end of the Term or on the expiry of the maximum term for that lease that is permitted by Law, whichever occurs first;
  - (vi) where the lease is of a leasehold interest held by the Lessor:
    - (A) the term of the lease expires as at the end of the day before the Lessor's leasehold interest expires,
    - (B) the lease is subject to those reservations to which the Lessor's leasehold interest is subject; and
    - (C) the terms and conditions of the lease instrument are not inconsistent with those which apply in respect of the grant to the Lessor of the Lessor's leasehold interest;
  - (vii) the lease terminates if the lease of the Leased Assets and the NSW Leased Land under this Lease comes to an end for any reason;
  - (viii) no rent is payable under the lease instrument or such rent as is payable is nominal; and
  - (ix) except as to the term of the lease, the lease instrument is on terms that are substantially the same as those of any then-existing Sublessee Lease which relates to land in the same jurisdiction as that in which the land the subject of the freehold or leasehold interest is located (other than for any variations that are required by Law or as a result of the nature of the leased interest or land) or is otherwise on terms that are acceptable to the Lessor, acting reasonably.

Notwithstanding any other provision in this Lease, each of the subleases of land by the Lessor to a Permitted Sublessee which came into effect on the Commencement Date, and which pertain to land located in the Australian Capital Territory that is leased to the Lessor on behalf of the Commonwealth pursuant to lease instruments dated 17 June 1997, 20 May 2010 and 17 October 2011, are taken to be Sublessee Leases for so long as those subleases remain in force.

- (d) Where a lease instrument complies with this clause 2.19:
- (i) the Lessor must promptly execute the lease instrument as the lessor;
  - (ii) the Lessee must procure that the Permitted Sublessee promptly executes the lease instrument as the lessee; and
  - (iii) where it is customary to register such lease instruments in the jurisdiction in which the land the subject of the lease instrument is located, the Lessee must procure that the Permitted Sublessee promptly has the lease instrument registered at the relevant titles office.
- (e) The Lessee must:
- (i) prepare at its cost all document required to give effect to any Sublessee Lease;
  - (ii) pay all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with reviewing and signing those documents that give effect to any Sublessee Lease entered into after the Commencement Date;
  - (iii) pay all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with applying for or obtaining any Authorisations, consents and approvals that are required to be held or obtained by the Lessor in relation to any Sublessee Lease; and
  - (iv) pay all registration costs for any Sublessee Lease.

The Lessee acknowledges that the Lessor may engage Government Property NSW to assist it in relation to matters referred to in clause 2.19(e)(ii) and (iii) and agrees that the costs charged by Government Property NSW to the Lessor for those purposes must be paid by the Lessee.

## 2.20 Slip provision

- (a) If, at any time, the Lessor has a freehold or leasehold interest in any land located in New South Wales as at both the Commencement Date and that time, and that land is not described in Schedule 3 and is not Sublessee Leased Land, then the parties agree to take all such actions, as are reasonably required to lease that land under this Lease, whereupon that land will:
- (i) to the extent it is used for the purposes of enabling the location of any existing or future Leased Network Assets on, above or under that land or access to those Leased Network Assets - form part of the NSW Network Leased Land;
  - (ii) where paragraph (i) does not apply – form part of the NSW Non-Network Leased Land; and
  - (iii) be subject to the terms of this Lease, which continue to apply unaffected except for the addition of that land as:
    - (A) where paragraph (i) applies - NSW Network Leased Land; or
    - (B) where paragraph (ii) applies – NSW Non-Network Leased Land

(for the avoidance of doubt no additional rent or premium will be payable under this Lease with respect to such land),

and, for the purposes of paragraphs (i) and (ii), this Lease is hereby varied accordingly.

- (b) To the extent that the Lessor has a leasehold interest in any land as referred to in clause 2.20(a):
- (i) that leasehold interest will be taken to be Leasehold Land for the purposes of clause 2.3, for which purpose:
- (A) where clause 2.20(a)(i) applies, Part 2 of Schedule 3 will be deemed to be varied to include a description of that land;
- (B) where clause 2.20(a)(ii) applies, Part 4 of Schedule 3 will be deemed to be varied to include a description of that land; and
- (ii) the terms on which the leasehold interest is leased to the Lessor will constitute a Head Lease, for which purpose:
- (A) where clause 2.20(a)(i) applies, Part 2 of Schedule 3 will be deemed to be varied to include a description of that Head Lease; and
- (B) where clause 2.20(a)(ii) applies, Part 4 of Schedule 3 will be deemed to be varied to include a description of that Head Lease.
- (c) Nothing in clause 2.20(a) is to be taken as requiring a leasehold interest in any land to become subject to this Lease unless the Lessor has the right, under the terms on which the leasehold interest is leased to the Lessor, to sublease that leasehold interest to the Lessee in accordance with this Lease.
- (d) As soon as practicable after any land in New South Wales is leased by the Lessor to the Lessee pursuant to this clause 2.20, the Lessee must register a variation of this Lease at LPI.

### **3 Concurrent Lease**

#### **3.1 Concurrent Lease**

- (a) This Lease is concurrent with the Existing Tenant Leases.
- (b) The Lessee must:
- (i) perform, or procure the performance of, all of the obligations of the Lessor under or in relation to the Existing Tenant Leases, including in respect of the exercise of an option by a tenant under an Existing Tenant Lease; and
- (ii) not do or permit to be done any act or omission which constitutes a breach of the terms of any Existing Tenant Lease.
- (c) The Lessee indemnifies and must keep indemnified the Lessor from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor in respect of or arising from or in any way connected with any Existing Tenant Lease, including such Losses as are in respect of or arise from or are in any way connected with:
- (i) the Lessee's performance of, or failure to perform, the obligations referred to in clause 3.1(b);
- (ii) the exercise of, or failure to exercise, the rights of the Lessor under any Existing Tenant Lease; or

- (iii) the enforcement of, or failure to enforce, the Lessor's rights, powers or remedies under or in relation to any Existing Tenant Lease,  
except to the extent such Losses are caused or contributed to by the Lessor's breach of clause 3.4.
- (d) Subject to this Lease, the Lessee may exercise and enforce all rights, powers and remedies of the Lessor under or in relation to the Existing Tenant Leases to the exclusion of the Lessor.
- (e) The Lessee is entitled to all rent and other money paid or payable to the Lessor under the Existing Tenant Leases during the Term.
- (f) The Lessee must notify the Lessor promptly upon becoming aware of any actual or prospective Loss of the Lessor relating to the Existing Tenant Leases. If the Lessee gives such notification, the Lessee may at its cost prosecute, defend or otherwise deal with any such Loss on behalf of the Lessor and the Lessor must provide such cooperation as is reasonable at the cost of the Lessee.

### 3.2 Relevant Lease Covenants

To the extent that this Lease does not have the legal effect of putting the Lessee, during the Term, in the same position as the Lessor in terms of exercising and enforcing all covenants, rights, powers and remedies of the Lessor under the Existing Tenant Leases, then:

- (a) subject to clause 3.2(b), the Lessor assigns to the Lessee with effect from the Commencement Date:
  - (i) the Lessor's interest in the Existing Tenant Leases; and
  - (ii) the benefit of the covenants by the Existing Tenants under the Existing Tenant Leases,  
**(Relevant Lease Covenants)**, and the Lessee accepts the assignment and assumes all liabilities of the Lessor, and must indemnify and keep the Lessor indemnified from and against any Losses which arise during the Term in respect of the Existing Tenant Leases; and
- (b) if the benefit of any Relevant Lease Covenant is not assignable, then it is not assigned to the Lessee, and during the Term:
  - (i) the Lessor holds the benefit of the Relevant Lease Covenant for the benefit of the Lessee; and
  - (ii) if directed by the Lessee, the Lessor must use its reasonable endeavours to enforce the Relevant Lease Covenant for and at the cost of the Lessee.

### 3.3 Lessee's dealing with Existing Tenant Leases

- (a) Subject to clause 3.3(b), the Lessee may:
  - (i) amend or vary the terms of any Existing Tenant Lease;
  - (ii) accept a surrender of all or any part of an Existing Tenant Lease;
  - (iii) agree to an Existing Tenant holding over under an Existing Tenant Lease after the expiry of the Existing Tenant Lease;
  - (iv) extend the term of an Existing Tenant Lease following valid exercise by the Existing Tenant of an option in existence as at the Commencement Date; or
  - (v) terminate an Existing Tenant Lease in accordance with its terms,

without the Lessor's consent.

- (b) The Lessee must not, without the prior consent of the Lessor, amend any Existing Tenant Lease in a manner that:
  - (i) requires the Lessor to pay or incur any cost or liability;
  - (ii) imposes any additional or more onerous obligation or liability on the Lessor;
  - (iii) extends the term (except in accordance with clause 3.3(a)(iv)) or grants an option to extend the term, of the Existing Tenant Lease beyond the Term of this Lease;  
or
  - (iv) releases the Existing Tenant from any obligation to carry out capital works, or make good the leased premises at the end of the lease term.
- (c) The Lessee must pay, or procure the payment by the lessee under the Existing Tenant Lease of, any duty in respect of such instrument.
- (d) Nothing in this clause 3.3 prevents the Lessee, in its own right, from providing or agreeing to provide any right or benefit to an Existing Tenant (for example, in a separate agreement between the Lessee and an Existing Tenant that is not an amendment or variation of an Existing Tenant Lease).

### **3.4 Lessor not to deal with Existing Tenant Leases**

The Lessor must not:

- (a) amend or vary the terms of any Existing Tenant Lease;
- (b) accept a surrender of all or any part of an Existing Tenant Lease;
- (c) terminate an Existing Tenant Lease;
- (d) purport to exercise or enforce any rights, powers or remedies of the Lessor under or in relation to an Existing Tenant Lease; or
- (e) waive in writing any of its rights under an Existing Tenant Lease,  
except:
  - (f) as permitted by this Lease; or
  - (g) with the Lessee's prior consent, such consent not to be unreasonably withheld or delayed.

### **3.5 Assignment of Existing Lease Guarantees**

- (a) On the Commencement Date, the Lessor assigns to the Lessee its interest in assignable Existing Lease Guarantees.
- (b) The Lessor does not warrant that the Existing Lease Guarantees are valid, enforceable or assignable to the Lessee.

### **3.6 Existing Lease Guarantees that are not assignable**

If the Lessor holds an Existing Lease Guarantee for an Existing Tenant Lease and the Existing Lease Guarantee is not assignable then, from the Commencement Date:

- (a) the Lessor holds its interest under the Existing Lease Guarantee for the benefit of the Lessee;
- (b) if directed by the Lessee, the Lessor must:
  - (i) return the Existing Lease Guarantee to the issuer of the Existing Lease Guarantee;

- (ii) return the Existing Lease Guarantee to the Existing Tenant on whose behalf the Existing Lease Guarantee is issued; or
- (iii) at the cost of the Lessee, make a claim under the Existing Lease Guarantee, and pay the money received to the Lessee; and
- (c) the Lessor will not amend (or agree to amend) the Existing Lease Guarantee without the Lessee's prior consent.

#### 4 Power of attorney

- (a) The Lessee irrevocably appoints the Lessor and each of the Lessor's directors and officers and their delegates, joint and severally, as the attorney of the Lessee to:
  - (i) execute, stamp and register a surrender of this Lease and any Non-NSW Lease if this Lease has been terminated or the Lessor has lawfully re-entered possession of the Leased Assets and the NSW Leased Land;
  - (ii) execute, stamp and register a withdrawal of any caveat lodged in respect of the Leased Land or consent to any dealing affected by that caveat if the Lessee fails to comply with its obligations under clause 38;
  - (iii) if the Lessee fails to comply with its obligations under clauses 2.7(c), 2.9(d) or 2.18, execute all documents that the Lessor reasonably considers necessary or desirable for the purposes of doing anything under clauses 2.7(c), 2.9(d) or 2.18 respectively;
  - (iv) execute all documents that the Lessor reasonably considers necessary or desirable for the purposes of doing anything under clause 18.1 (but excluding anything under clause 18.1(g));
  - (v) if the Lessee fails to comply with its obligations under clause 19, execute all documents that the Lessor reasonably considers necessary or desirable to perform the Lessee's obligations under clause 19;
  - (vi) generally (and acting reasonably) do, execute and perform any other thing relating to the Leased Assets, the Lessee Leased Land, the Transmission Network Land, this Lease or the Non-NSW Leases as fully and effectually as the Lessee could do if the Lessee fails to comply with its obligation under this Lease or a Non-NSW Lease to do the relevant thing after the Lessor has given the Lessee notice to do, execute or perform that thing and the Lessee has failed to comply with that notice;
  - (vii) appoint delegates as its attorney and, at the discretion of the Lessor, revoke any such appointment and appoint others; and
  - (viii) use the name of the Lessee in connection with any power the Lessor may exercise under this clause 4(a).
- (b) The Lessee agrees to ratify and confirm everything the attorney lawfully does on behalf of the Lessee under clause 4(a). The Lessee indemnifies and must keep indemnified and hold harmless the attorney and its delegates against any and all loss caused or contributed to by any lawful exercise of the attorney's and its delegates' powers under clause 4(a).
- (c) The Lessor must, as far as is reasonably practicable, notify the Lessee a reasonable time before taking any actions under clause 4(a).
- (d) The Lessee must execute and register any document necessary to give effect to the power of attorney created under this clause 4 or to give effect to, or achieve the

registration of, any document executed under the power of attorney created under this clause 4.

## **5 As is where is**

### **5.1 Condition**

(a) The Lessee acknowledges and agrees that, except as expressly provided in the Sale and Purchase Agreement:

- (i) the Leased Assets and the Lessee Leased Land are leased to the Lessee under this Lease and the Non-NSW Leases; and
- (ii) any Sublessee Leased Land is leased to a Permitted Sublessee under the Sublessee Leases,

in an 'as is where is' condition with all faults and defects, and no representation or warranty is given by the Lessor or the State (and the Lessee acknowledges that it has made its own enquiries to its satisfaction) as to:

- (iii) the state or condition of the Leased Assets or the Leased Land;
  - (iv) the extent of the rights under the Private Easements, Easements in Gross, Contractual Licences and Statutory Rights and whether such rights are sufficient to enable the location on, above or under the land of, or access to, the Leased Network Assets; and
  - (v) the status of compliance with any Laws or Authorisations or the requirements of any Governmental Agencies.
- (b) The Lessee acknowledges and agrees that it takes a lease of the Leased Assets and the Lessee Leased Land from the Lessor subject to:
- (i) all and any outstanding notices, requisitions or requirements of Governmental Agencies which apply at the Commencement Date; and
  - (ii) any notices, requisitions or requirements of Governmental Agencies which may apply following the Commencement Date.

### **5.2 Exclusion of warranties**

The Lessee acknowledges and agrees that:

- (a) the Lessee has not relied on, or been induced to enter into this Lease, any Non-NSW Lease or any Sublease Deed by, any promise, representation, warranty or undertaking given by or on behalf of the Lessor or the State other than a promise, representation, warranty or undertaking that is expressly set out in this Lease or the Sale and Purchase Agreement;
- (b) the Lessee accepts the Leased Assets and the Lessee Leased Land in their state, condition, age, capacity, quality, suitability and fitness current at the date they become subject to this Lease or any Non-NSW Lease (as the case may be), with all defects and faults (if any), and no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor or the State as to those matters; and
- (c) all conditions, representations and warranties relating to the Leased Assets and the Lessee Leased Land (whether express, implied, statutory, collateral or otherwise), other than those expressly set out in this Lease or the Sale and Purchase Agreement, are excluded.

## **6 Rent and other payments**

### **6.1 Rent**

The Lessee must pay the Rent in advance to the Lessor (or as otherwise directed by the Lessor) on each anniversary of the Commencement Date.

### **6.2 Other payments**

The Lessee must duly and punctually pay, or procure the payment of, all other money payable to the Lessor (or its nominee) or the State under this Lease or any Non-NSW Lease.

### **6.3 Rates and taxes**

Subject to clause 6.7, the Lessee must:

- (a) pay, or procure the payment, to each Governmental Agency on time; or
- (b) reimburse to the Lessor on demand by the Lessor, all Rates and Taxes without contribution from the Lessor.

### **6.4 Lessee to pay for Services**

The Lessee must pay, or procure the payment of, all costs, charges and expenses for the supply of all Services which are required by the Lessee or any Permitted Sublessee for the Leased Assets, the Leased Land or the Transmission Network Land in accordance with the terms of the agreements for supply of the relevant Services.

### **6.5 Payment of rent and other payments**

All payments by the Lessee to the Lessor (or its nominee) or the State under this Lease must be made:

- (a) in immediately available and irrevocable funds to such bank account as the Lessor may notify to the Lessee from time to time; and
- (b) inclusive of all duties and statutory charges and without any set off, deduction or withholding.

### **6.6 Default Interest**

- (a) The Lessee must pay to the Lessor (or its nominee) or the State interest on any amount payable to the Lessor (or such nominee) or the State which remains unpaid at the end of the date on which that amount is due for payment under this Lease or any Non-NSW Lease (including interest payable under this clause 6.6).
- (b) Interest will accrue at the Default Rate on the outstanding amount on a daily basis from (and including) the date on which the amount became due and payable to the date the amount is paid in full both before and after judgment (as a separate and independent obligation).
- (c) The right to require payment of interest under this clause 6.6 is without prejudice to any other rights and remedies of the Lessor or the State in respect of any failure to make any payment due and payable under this Lease or any Non-NSW Lease.

### **6.7 Rates and Taxes assessments**

- (a) The Lessor must promptly give to the Lessee copies of all assessments of Rates and Taxes received by the Lessor during the Term, and all correspondence relating to them. If the Lessee wishes to object to any such assessment or to pursue any further appeal

proceedings (for example, against a valuation) it will be entitled to do so in the name of the Lessor but at the cost of the Lessee.

- (b) The Lessee will be responsible for and indemnifies and must keep indemnified the Lessor against any penalties or interest that may become payable as a consequence of the Lessee not paying, or procuring the payment of, an assessment when due except to the extent the payment has not occurred by reason of the Lessor failing to give the Lessee a copy of the relevant assessment as required under clause 6.7(a) and the Lessee has not otherwise received a copy of that assessment.
- (c) If requested by the Lessee, the Lessor must apply to the relevant Governmental Agency for a reduction in, or deduction from, the liability of the Lessee or any Permitted Sublessee (or the Lessor's liability, where that liability is passed onto the Lessee under this Lease) to pay land tax in respect of the Leased Land or the Transmission Network Land or a reduction in, or deduction from, any valuation relevant to the calculation of such land tax, but only to the extent the Lessor is permitted by Law to apply for such reduction or deduction. The application will at the cost of the Lessee. For these purposes the Lessee will pay all of the costs incurred by the Lessor including its reasonable internal costs such as of time spent.

## **6.8 No Abatement**

Despite any Law to the contrary, the obligation of the Lessee to pay all moneys under this Lease or any Non-NSW Lease will not abate for any reason.

## **6.9 Recipient created tax invoices**

In accordance with clause 35.12, the Lessee must issue the Lessor a recipient created tax invoice for the consideration provided in the form of the payment of all Rates and Taxes.

# **7 Use of Leased Assets and Land**

## **7.1 Use**

The Lessee:

- (a) must ensure that the Leased Network Assets and the Transmission Network Land are used to conduct an electricity transmission business; and
- (b) may use the Leased Assets and the Leased Land, or permit the Leased Assets and the Leased Land to be used, to the extent of the rights conferred upon the Lessee under this Lease or any Non-NSW Lease and the rights conferred on any Permitted Sublessee under any Sublessee Lease, for any other lawful purpose, provided that such use does not materially interfere with the use of the Leased Network Assets and the Transmission Network Land to conduct an electricity transmission business.

## **7.2 Operation, Repair and Maintenance**

The Lessee must ensure that the Leased Assets, the Leased Land and the Transmission Network Land are managed, operated, repaired, maintained and used:

- (a) in a manner and to the extent necessary to enable the Lessee to comply with its obligations under clause 18.1;
- (b) in accordance with all applicable Laws and the requirements of all relevant Authorisations, including in so far as such Laws and Authorisations:
  - (i) relate to the Regulatory Regime;

- (ii) relate to safety, environmental matters, matters in respect of trade waste and dangerous goods, or the health and safety of people on or in the vicinity of the Leased Assets, the Leased Land and the Transmission Network Land; or
  - (iii) impose obligations on the Lessor in relation to the management, operation, repair or maintenance of the Leased Assets, the Leased Land and the Transmission Network Land and the performance of those obligations by the Lessee or any Permitted Sublessee is not prohibited by the Law or Authorisation; and
- (c) in accordance with all notices, orders and directions lawfully given by any Governmental Agency including under the Regulatory Regime (and including in so far as they impose obligations on the Lessor and the performance of those obligations by the Lessee or any Permitted Sublessee is not prohibited by Law).

### 7.3 Improvements

- (a) The Lessee must, at its own expense, make or ensure there is made all alterations, modifications, changes and additions to the Leased Assets and the Leased Land as and when required by any applicable Law or Authorisation (including the Regulatory Regime).
- (b) Subject to the other provisions of this clause 7, the Lessee may, at its own expense, make or permit to be made any alterations, modifications, changes or additions to the Leased Assets and the Leased Land as the Lessee considers necessary or desirable in the proper conduct of its business.
- (c) For the avoidance of doubt, in performing its obligations under clause 7.3(a) or exercising its rights under clause 7.3(b), the Lessee may remove a Leased Network Asset from service provided that, where that Leased Network Asset is required for the effective, safe or efficient operation of the Leased Transmission Network, it is replaced in service (in accordance with the requirements of this Lease) with another part which is of at least equivalent functionality.
- (d) All alterations, modifications, changes and additions to the Leased Assets or the Leased Land made under clauses 7.3(a) or (b) must be made in a good and workmanlike manner and in accordance with Good Operating Practice.
- (e) Upon the permanent removal of a Replaced Part and the replacement of it in service by another asset which is of at least equivalent functionality, title to that Replaced Part is hereby transferred to the Lessee and the Lessee may deal with that Replaced Part as it thinks fit. For these purposes, as soon as reasonably practicable after being notified of the permanent removal of the Replaced Part, the Lessor must procure the release and discharge of all Security Interests over any of its right, title and interest in the Replaced Part (other than Permitted Liens).
- (f) Subject to clause 7.3(g) and except as otherwise consented to by the Lessor, where an asset first becomes part of the Leased Transmission Network or the Transmission Telecommunications Network after the Commencement Date, or first becomes Network-Related Equipment after the Commencement Date, title in that asset is hereby vested in or transferred to the Lessor and that asset is leased to the Lessee under this Lease. For this purpose, at the request of the Lessee, the Lessor must consult with the Lessee in relation to the process by which any such asset may be vested in or transferred to the Lessor and leased to the Lessee under this Lease.
- (g) Clause 7.3(f) does not apply in respect of an asset referred to in paragraph (c) or (d) of the definition of Transmission Network in clause 1.1 where, as at the time that asset becomes part of the Leased Transmission Network, it is intended that the asset will be or will continue to be owned by a person other than:

- (i) the Lessee;
  - (ii) any Permitted Sublessee; or
  - (iii) an Associate of the Lessee or any Permitted Sublessee who owns the relevant asset other than in the capacity of a generator, network customer or network service provider (not being a network service provider in respect of the Transmission Network) whose facilities are connected to the Transmission Network.
- (h) The Lessee must do everything necessary to give effect to a vesting or transfer of title as referred to in clause 7.3(f) and to procure the release and discharge of all Security Interests over the asset prior to such vesting or transfer (other than Permitted Liens).
- (i) For the purposes of clause 7.3(f):
- (i) an asset first becomes part of the Leased Transmission Network or the Transmission Telecommunications Network; and
  - (ii) an asset first becomes Network-Related Equipment,
- when the asset first commences operation or otherwise first commences to perform the function which it is intended to perform.

#### **7.4 Removal of Obsolete Parts and Obsolete Non-Network Assets**

- (a) If the Lessee reasonably considers that any Leased Network Asset is an Obsolete Part, then the Lessee may remove that Obsolete Part from service.
- (b) If the Lessee reasonably considers that any Existing Non-Network Asset is an Obsolete Non-Network Asset, then the Lessee may remove that Obsolete Non-Network Asset from service.
- (c) Upon the permanent removal of:
  - (i) an Obsolete Part from service; or
  - (ii) an Obsolete Non-Network Asset from service,title to that Removed Obsolete Part or that Obsolete Non-Network Asset is hereby transferred to the Lessee and the Lessee may deal with that Removed Obsolete Part or Obsolete Non-Network Asset as it thinks fit. For these purposes, as soon as reasonably practicable after being notified of the permanent removal of the Obsolete Part or Obsolete Non-Network Asset from service, the Lessor must procure the release and discharge of all Security Interests over all or any of its right, title and interest in the Removed Obsolete Part or Obsolete Non-Network Asset (other than Permitted Liens).

#### **7.5 Operational disruption**

- (a) If an event occurs which causes a significant disruption to the operation of the Leased Transmission Network such that the supply of electricity to one or more local government areas in New South Wales is materially diminished, then the Lessee must, and must ensure that any Permitted Sublessee does, take all such action as is required to restore the operation of the Leased Transmission Network as soon as possible.
- (b) The action that must be taken as referred to in clause 7.5(a) includes expending such money, and rostering on such employees and contractors, as may be required to promptly restore the affected supply of electricity but does not require:
  - (i) the settlement of strikes or other industrial action by yielding to unreasonable demands; or

- (ii) the taking of any action that would put the Lessee or any Permitted Sublessee in breach of any applicable Law or Authorisation (including as to the safety of the employees or contractors of the Lessee or any Permitted Sublessee).
- (c) This clause 7.5(a) applies notwithstanding that the event may be a Force Majeure Event, and clause 22 does not apply to the extent that the application of clause 22 would derogate from the application of this clause 7.5. For the avoidance of doubt, the obligations under clause 7.5(a) are without limitation and in addition to the other obligations of the Lessee under clause 7.2.

## 7.6 Works in last 10 years

Despite anything else in this Lease, the Lessee must ensure that:

- (a) during the last 10 years of the Term; or
- (b) for so long as a Lessor Termination Event subsists,  
no Leased Asset, Leased Land, Additional Network Asset or Additional Network Land, or any part of them, is demolished, removed or disposed of, and not replaced, otherwise than:
  - (c) with the prior consent of the Lessor; or
  - (d) in the ordinary course of business.

## 7.7 Transition Plan

- (a) This clause 7.7 applies if:
  - (i) the Term is due to expire within the next 10 years; or
  - (ii) an event occurs which, with the giving of notice or passage of time or both, could reasonably be expected to become a Lessor Termination Event and the Lessor notifies the Lessee that this clause 7.7 applies.
- (b) Where this clause 7.7(a) applies:
  - (i) by virtue of clause 7.7(a)(i), then no later than 5 years prior to the end of the Term; or
  - (ii) by virtue of clause 7.7(a)(ii), then as soon as reasonably practicable after the Lessor notifies the Lessee that this clause 7.7 applies,

the Lessee must provide to the Lessor a transition plan that sets out the detailed actions to be taken by each of the Lessee and the Lessor, and the timing and process for the taking of those actions, in order to achieve an orderly and timely process for:

- (iii) the return to the Lessor (or its nominee) of the Leased Assets and the Leased Land at the Lease End Date;
  - (iv) the transfer to the Lessor (or its nominee) of the Additional Network Assets and the Additional Network Land at the Lease End Date; and
  - (v) the taking of such other actions as are required by this Lease in conjunction with or as a consequence of these matters,
- so as to enable the transmission of electricity using the Leased Transmission Network before, on and after the Lease End Date with minimum disruption to, or deterioration in the quality of, the services provided by the Leased Transmission Network.
- (c) If:
    - (i) the Lessee has not provided a transition plan as required by clause 7.7(b); or

- (ii) the Lessor and the Lessee have not agreed the transition plan following its receipt by the Lessor, and the Lessor gives a notice to the Lessee requiring the transition plan to be determined by an independent expert,  
the determination of the transition plan must be referred to an independent expert. In determining the transition plan, the independent expert must have regard to the matters set out in clause 7.7(b).
- (d) From time to time as required by either of them on reasonable notice to the other until the completion of implementation of the transition plan (which may occur after the Lease End Date), the Lessee and the Lessor must meet to inform each other of their respective progress in respect of their implementation of the transition plan agreed by them or determined by an independent expert.
- (e) Unless or until a transition plan has been agreed by the Lessor and the Lessee or determined by an independent expert, the Lessee must diligently pursue the implementation of, and do all things necessary or desirable to implement, the transition plan provided to the Lessor under clause 7.7(b).
- (f) Once the transition plan has been agreed by the Lessor and the Lessee or determined by an independent expert, the Lessee and the Lessor must diligently pursue the implementation of, and do all things necessary or desirable to implement, that transition plan.
- (g) In implementing the transition plan in accordance with clause 7.7(e) or (f), the Lessee must provide the Lessor with:
  - (i) such information as the Lessor reasonably requires; and
  - (ii) such access to its facilities and systems, its employees and contractors, the Leased Assets, the Leased Land, the Transmission Network Land, the Additional Network Assets and the Additional Network Land and the employees and contractors of its Related Bodies Corporate as the Lessor reasonably requires,  
to enable the transfer of ownership and control of the Leased Assets, the Leased Land, the Additional Network Assets and the Additional Network Land to the Lessor (or its nominee) to be achieved efficiently and with minimum disruption to, or deterioration in the quality of, the services provided by the Leased Transmission Network.
- (h) If requested by the Lessor, the Lessee must use all reasonable endeavours to facilitate the making of offers of employment by the Lessor (or its nominee) to such persons as are engaged in the electricity transmission business conducted by the Lessee and any Permitted Sublessee and as the Lessor reasonably considers are required for the purpose of the continued conduct of that business in the hands of the Lessor (or its nominee) after the Lease End Date, including providing to the Lessor such information about the employees as the Lessor reasonably requests that can be lawfully provided and allowing the Lessor to have access to the employees to discuss their future arrangements.

## **8 Records, Information and Inspection**

### **8.1 Records**

- (a) The Lessee must:
  - (i) prepare and keep (or ensure the preparation and keeping of) all records and reports in respect of the Leased Assets, the Leased Land, the Additional Network Assets and the Additional Network Land that are required to be prepared and

- kept in respect of them under applicable Laws and Authorisations (including under the Regulatory Regime) in accordance with the requirements of those Laws and Authorisations;
- (ii) maintain copies of all Authorisations that are required by Law to be held for the purposes of managing, operating and using the Leased Assets, the Leased Land, the Additional Network Assets and the Additional Network Land (including under the Regulatory Regime); and
  - (iii) keep and maintain all certificates of title in respect of the Leased Land as are in the possession of the Lessor immediately prior to, and handed over to the Lessee on, the Commencement Date.
- (b) The Lessee must maintain (or ensure the maintenance of):
- (i) a complete and current set of 'as built' plans and specifications and line diagrams in relation to the Leased Network Assets and the Additional Network Assets, and their configuration, design, construction and interconnection with other electricity transmission and distribution networks, in sufficient detail to enable an engineer not otherwise familiar with the Leased Network Assets and the Additional Network Assets to locate and identify the various parts of them;
  - (ii) a complete and current set of records relating to the operation, maintenance, use and condition of the Leased Assets, the Leased Land, the Transmission Network Land, the Additional Network Assets and the Additional Network Land (including daily operating logs that show electricity throughput); and
  - (iii) all relevant handbooks, training, maintenance and operating manuals and instructions, principal building layout lines, key site evaluations and information processes with respect to the Leased Network Assets and the Additional Network Assets and their interconnection with other electricity transmission and distribution networks,
- in each case in accordance with Good Operating Practice. Such documents as are in existence as at the Commencement Date will be taken to satisfy this requirement for a period of 6 months following the Commencement Date.
- (c) The documents referred to in clause 8.1(b) must be held by the Lessee or otherwise be accessible by or under the control of the Lessee until 12 months after the Lease End Date, unless already delivered to the Lessor in accordance with clause 18.1 or otherwise specified or directed by the Lessor.

## 8.2 Information

- (a) The Lessee must, within a reasonable period after any request by the Lessor, provide the Lessor and its authorised representatives with, and allow them to make copies of:
- (i) information on the location, condition, operation and use of, and environmental matters associated with, the Leased Assets, the Leased Land, the Transmission Network Land, the Additional Network Assets and the Additional Network Land; and
  - (ii) any other information that the Lessor reasonably requires for the purposes of determining the Lessee's compliance with this Lease or any Non-NSW Lease and any Permitted Sublessee's compliance with any Sublessee Lease,

which requests must not, unless the circumstances require (including where there is a subsisting Lessor Termination Event), be more frequent than once in every 6 months.

- (b) If so requested by the Lessor or any of its authorised representatives, the Lessee must make available to them a person or persons familiar with the Leased Assets, the Leased Land, the Transmission Network Land, the Additional Network Assets and the Additional Network Land for the purposes of assisting them to obtain an understanding of any information referred to in clause 8.2(a).

### 8.3 Inspection

- (a) The Lessee must permit the Lessor and its authorised representatives, at reasonable times and having given the Lessee reasonable notice, to inspect any part of the Leased Assets, the Leased Land or the Transmission Network Land.
- (b) When exercising its rights under clause 8.3(a), the Lessor and its authorised representatives:
  - (i) must not interfere with the Lessee's or any Permitted Sublessee's operations or business;
  - (ii) will be subject to the same limitations upon and conditions of access as apply to any third party visitor to the place where the relevant part of the Leased Assets, the Leased Land or the Transmission Network Land is located; and
  - (iii) must comply with all safety requirements and other reasonable directions of the Lessee or any Permitted Sublessee in relation to such access.
- (c) The Lessor must not, unless the circumstances require (including where there is a subsisting Lessor Termination Event), require inspections under clause 8.3(a) more frequently than once in every 6 months.

### 8.4 Access to third parties

The Lessee must:

- (a) use its best endeavours to procure that the Lessor and its authorised representatives are provided with access to such information as is maintained by third parties and which the Lessor is entitled to have access to, or have copies of, under this Lease; and
- (b) ensure that any contractual arrangements between the Lessee and any third party that are entered into after the Commencement Date acknowledge the Lessor's right of access under clause 8.4(a).

### 8.5 Notifications

- (a) The Lessee must promptly notify the Lessor of:
  - (i) any material loss or material damage to the Leased Assets, the Leased Land, the Transmission Network Land, any Additional Network Assets, any Additional Network Land or any part of them;
  - (ii) any suspension, cancellation, revocation, surrender or expiry of any of its or any Permitted Sublessee's Major Authorisations;
  - (iii) any proceeding or prosecution commenced under any Law against the Lessee, any Permitted Sublessee, or any person engaged by the Lessee or any Permitted Sublessee, relating to the Leased Assets, the Leased Land or the Transmission Network Land that, if successful, is reasonably likely to have a materially adverse effect on the operation of the Leased Transmission Network;
  - (iv) any notification from a Governmental Agency, a person exercising a function under a Law, or an insurer under a Policy which indicates that the Lessee may

not be complying with this Lease or a Non-NSW Lease or that any Permitted Sublessee may not be complying with a Sublessee Lease; and

- (v) any notification from a Governmental Agency requiring the Lessor, the Lessee or any Permitted Sublessee to clean up any Contamination in respect of any Leased Land or any Transmission Network Land.
- (b) The Lessor must promptly notify the Lessee of any written notification it receives from a Governmental Agency requiring the Lessor, the Lessee or any Permitted Sublessee to take any action in respect of the Leased Network Assets, Leased Land or Transmission Network Land, including to clean up any Contamination.

### 8.6 Asset register

- (a) On and from 6 months after the Commencement Date, the Lessee must maintain and keep current an asset register that sets out:
  - (i) all of the assets that are leased to it under this Lease or a Non-NSW Lease, or to a Permitted Sublessee under a Sublessee Lease, identifying each such asset by an asset identification number and an asset description; and
  - (ii) for each such asset:
    - (A) the date it first became so leased to the Lessee or the Permitted Sublessee (as the case may be);
    - (B) its accounting book cost, depreciation, accumulated depreciation and accounting book written down value as at the immediately preceding 30 June; and
    - (C) the value (if any) at which that asset is included in the Regulatory Asset Base for the transmission system, of which the Leased Transmission Network forms a part, as at the immediately preceding 30 June.
- (b) The Lessee must:
  - (i) by 31 July in each year; and
  - (ii) within 30 days of being requested to do so during any year (the Lessor only being entitled to make one such request each year),

provide the Lessor and its authorised representatives with, and allow them to make copies of, the asset register referred to in clause 8.6(a).
- (c) The Lessee acknowledges and agrees that the Lessor will be entitled to disclose information provided to the Lessor under clause (b) to the auditors of the Lessor and that such auditors are entitled to, and will, rely on that information.

### 8.7 No release from liability or responsibility

The Lessee acknowledges and agrees that, by being provided with information under this clause 8 or exercising its rights under this clause 8, the Lessor is not to be taken as:

- (a) accepting any liability or responsibility in relation to; or
- (b) relieving the Lessee from its responsibility for,

the performance of, or compliance with, the Lessee's obligations under this Lease.

### 8.8 Cooperation of Permitted Sublessee

To the extent that the performance of the Lessee's obligations under this clause 8 requires the cooperation of any Permitted Sublessee, the Lessee must procure such cooperation.

## 9 Title and Quiet Enjoyment

### 9.1 Lessor's title

The Lessee acknowledges that it has no rights in relation to the Leased Assets or the Leased Land other than the rights under this Lease and any Non-NSW Lease and the rights conferred on it by applicable Laws or Authorisations.

### 9.2 Protection of title

The Lessee must, to the extent reasonably practicable having regard to its legal capacity and its rights and obligations under this Lease and any Non-NSW Lease:

- (a) safeguard and protect the property, title and rights of the Lessor in and in relation to the Leased Assets, the Leased Land and the Transmission Network Land; and
- (b) not do or permit to be done any act, omission or thing which might jeopardise the property, title or rights of the Lessor in or in relation to the Leased Assets, the Leased Land or the Transmission Network Land.

### 9.3 Quiet Enjoyment

- (a) If the Lessee duly and punctually observes and performs the terms, covenants and conditions in this Lease and any Non-NSW Lease which the Lessee is required to observe and perform, the Lessee will and may peaceably possess and enjoy the Leased Assets and the Lessee Leased Land for the Term, or (in the case of Non-NSW Leased Land) for the term of the relevant Non-NSW Lease, without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by or under the Lessor save only where an interruption or disturbance results from:
  - (i) the exercise by the Lessor of such rights as are expressly or impliedly conferred on it under this Lease or any Non-NSW Lease;
  - (ii) the exercise by any person of a right arising under Law; or
  - (iii) the exercise by any person of a right arising under an Encumbrance, lease, licence, reservation, contract or other arrangement that:
    - (A) has been granted or entered into by the Lessor and is in existence as at the Commencement Date;
    - (B) comes into existence after the Commencement Date under or in connection with the operation of contracts or arrangements entered into by the Lessor prior to the Commencement Date and in accordance with provisions in those contracts or arrangements as such provisions stood immediately prior to the Commencement Date; or
    - (C) has been granted or entered into by the Lessor after the Commencement Date in accordance with, or as permitted or required by, this Lease.
- (b) After the Commencement Date, the Lessor must not grant or enter into any Encumbrance, lease, licence, reservation or right in relation to the Leased Assets or the Leased Land except where:
  - (i) it is required by Law to do so;
  - (ii) it is required to do so under a contract or other arrangement that is in existence as at the Commencement Date;
  - (iii) it is required or permitted by this Lease or any Sublease Deed to do so; or
  - (iv) with the consent of the Lessee.

#### 9.4 Encumbrances

The Lessee:

- (a) must observe and perform, and ensure that any Permitted Sublessee observes and performs, all obligations on the part of the Lessor under any Encumbrance; and
- (b) agrees to be bound by, and that this Lease and each Non-NSW Lease is subject to, the terms of any Encumbrances.

#### 9.5 Assistance by Lessor

The Lessor must, if requested by the Lessee and at the expense and risk of the Lessee (such expense to include the reasonable internal costs of the Lessor, such as of time spent), exercise its rights and entitlements in or in relation to the Leased Assets, the Lessee Leased Land and the Transmission Network Land during the Term, and do all things which the Lessee reasonably requires of it, to assist the Lessee in respect of any matter relating to the Leased Assets, the Lessee Leased Land or the Transmission Network Land where all of the following apply:

- (a) the Lessee is unable to act itself by reason of the Lessor's interest in or in relation to the Leased Assets, the Lessee Leased Land or the Transmission Network Land;
- (b) the matter to be undertaken by the Lessee is one not forbidden by or otherwise inconsistent with the terms of this Lease or a Non-NSW Lease; and
- (c) either:
  - (i) in exercising such rights or entitlements the Lessor assumes or incurs no obligations or present or contingent liabilities to any other person (including the Lessee or any Permitted Sublessee) for which the Lessor is not fully insured under an insurance policy taken out by the Lessee or a Permitted Sublessee and of which the Lessor has the benefit; or
  - (ii) the Lessor is, to the reasonable satisfaction of the Lessor, fully indemnified by the Lessee in respect of the obligations and liabilities referred to in clause 9.5(c)(i) and the liability of the Lessee under such indemnity is the subject of such security in favour of the Lessor as the Lessor may reasonably require.

#### 9.6 Cancellation of Sydney Water Easement

If the Deed of Agreement – TransGrid's operation & maintenance of electricity cables in Sydney Water's Pipeline Corridor between Guildford and Potts Hill dated 18 February 2014 entered into between the Lessor and Sydney Water Corporation (ABN 49 776 225 038) is terminated, then the Lessor must, if requested by the Lessee and at the expense of the Lessee (such expense to include the reasonable internal costs of the Lessor, such as of time spent):

- (a) promptly sign all documentation provided to the Lessor by the Lessee that is required to effect the cancellation of the Easement (as defined in that Deed of Agreement), which may include a form of cancellation or extinguishment of easement (or a form of transfer releasing easement) in registrable form; and
- (b) take all steps reasonably required by the Lessee to enable the relevant documentation lodged for registration at LPI to effect the removal of the Easement (as defined in that Deed of Agreement).

### 10 Insurance

#### 10.1 Required insurance policies

Subject to clause 10.5, the Lessee must, with effect from the Commencement Date:

- (a) effect and subsequently maintain throughout the Term (or cause to be effected and maintained throughout the Term), insurance policies with reputable insurance companies that are approved by the Lessor (with such approval to be deemed where the relevant company has a financial strength rating of at least 'A-' given by Standard & Poors or such other rating from a reputable rating agency which is equivalent to a rating of 'A-' given by Standard & Poors); or
  - (b) provide the Lessor with evidence to the reasonable satisfaction of the Lessor that the Lessee has sufficient financial capacity and internal 'self-insurance' strategies,
- to cover (to the extent required in accordance with Good Operating Practice):
- (c) the replacement or reinstatement of the Leased Network Assets or the Leased Land;
  - (d) public liability risks in connection with the Leased Assets, the Leased Land and the Transmission Network Land; and
  - (e) the Lessee's liability under this Lease and any Non-NSW Lease, and any Permitted Sublessee's liability under any Sublessee Lease, including all risks of an insurable nature in respect of which the Lessee is obliged to indemnify the Lessor under this Lease or any Permitted Sublessee is obliged to indemnify the Lessor under any Sublease Deed,

in the manner and to the extent reasonably determined by the Lessor from time to time.

Notwithstanding anything else in this clause 10 (but subject to clause 10.5), the insurance policies referred to in clause 10.1(a) must, at a minimum and unless the Lessor agrees otherwise, satisfy the requirements set out in a notice dated on or about the Commencement Date and given by the Lessor to the Lessee. The Lessor has determined that the requirements of this clause 10.1 are satisfied, as at the Commencement Date, by the Lessee having in place, as at the Commencement Date, insurance policies that satisfy the requirements set out in such notice, and that are with insurance companies that are specified in the notice or that have a financial strength rating of at least 'A-' given by Standard & Poors or such other rating from a reputable rating agency which is equivalent to a financial strength rating of 'A-' given by Standard & Poors. The Lessee will not be in breach of this clause 10 merely because an insurer which has been approved under this clause 10 subsequently ceases to satisfy the criteria which formed the basis of its approval, provided that the Lessee uses all reasonable endeavours to replace the relevant Policy with a Policy from a reputable insurance company or companies that are approved by the Lessor in accordance with clause 10.1(a).

## 10.2 Requirements for Policies taken out by the Lessee

To the extent clause 10.1(a) applies, the Lessee must:

- (a) ensure that the Lessor is named on each Policy;
- (b) ensure that each first party loss insurance Policy insures the Lessor and the Lessee for their respective rights and interests in the Leased Network Assets;
- (c) ensure, where legally possible, that each Policy provides that all insuring agreements and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each insured party (but not so as to increase limits of indemnity);
- (d) ensure, where legally possible, that each Policy provides that the insurer waives all rights, remedies or relief which it might become entitled to by subrogation against any of the insured parties, and that failure by any insured party to observe and fulfil the terms of the Policy shall not prejudice the insurance in regard to any other insured;
- (e) ensure, where legally possible, that each Policy contains a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise),

- any breach of a term or condition of the Policy, or any fraud or other act, omission or default by one insured party, will not affect another insured party, unless those acts or omissions were made with the connivance or actual knowledge of the other party;
- (f) ensure that the amount of any excess or deductible payable by an insured in respect of a claim under each Policy will not exceed the amount determined by two experienced insurance brokers, one of whom must be nominated by the Lessor, to be such amount as is customary for the operators of major electricity transmission networks in Australia. For these purposes, and unless the Lessor otherwise determines, any excess or deductible that satisfies the requirements set out in a currently applicable notice given pursuant to clause 10.1 will be deemed to be an excess or deductible that is customary for the operators of major electricity transmission networks in Australia;
  - (g) ensure that the insurer under each Policy waives all claims for insurance premiums, levies, stamp duties, charges or commissions against the Lessor;
  - (h) ensure that all Policy conditions, alterations, exclusions and endorsements which may have a material adverse effect on the Lessor's interests in the Leased Assets or the Leased Land have been first approved by the Lessor (such approval not to be unreasonably withheld or delayed);
  - (i) upon request by the Lessor (such requests not to be made more than once in any 12 month period) produce to the Lessor, on the Commencement Date and on every anniversary of that date, annual certificates of the currency of each Policy;
  - (j) use its best endeavours to ensure that each Policy contains provisions, reasonably acceptable to the Lessor, which provide that a notice of claim given by the Lessor to an insurer shall be accepted by the insurer as a notice of claim given to the insurer by the Lessee; and
  - (k) review each Policy from time to time, but at least every two years, to ensure reasonably adequate indemnity is maintained.

### 10.3 Notification and Provision of Information

- (a) To the extent clause 10.1(a) applies, the Lessee must promptly notify the Lessor of any occurrence or incident likely to give rise to a claim under any Policy (other than in respect of a claim by the Lessor against the Lessee) which may materially adversely affect the interests of the Lessor.
- (b) To the extent clause 10.1(b) applies, the Lessee must:
  - (i) on request from the Lessor from time to time provide the Lessor with evidence to the Lessor's reasonable satisfaction of the Lessee's current financial capacity; and
  - (ii) promptly inform the Lessor of any change in the Lessee's financial capacity which may materially adversely affect the Lessee's ability to 'self-insure' in accordance with this clause 10 in respect of the matters referred to in clause 10.1, whereupon the Lessee must (if so required by the Lessor, acting reasonably) effect external insurance as required by clause 10.1(a).

### 10.4 Failure to Insure

If the Lessee is unable or fails to procure or maintain the policies of insurance which it is required to procure or maintain under this clause 10 and is unable to satisfy the Lessor (acting reasonably) as to its financial capacity to 'self-insure', the Lessor may (without derogation from its rights under this Lease), but is not obliged to, procure in its own name such insurance policies as may in the

Lessor's discretion be required to insure against the risks contemplated by this clause 10, and the Lessee must on demand reimburse the Lessor for any premiums and other reasonable costs paid by the Lessor to obtain those policies.

### 10.5 Uninsurable risks

- (a) To the extent clause 10.1(a) applies, if the Lessee becomes aware that a risk to be covered by a Policy has or will become Uninsurable, then:
- (i) the Lessee must promptly notify the Lessor in writing providing all details available to the Lessee as to the reason the risk is Uninsurable, the steps taken by the Lessee to obtain insurance for the risk, the date on which the risk became or will become Uninsurable, and details as to what the Lessee suggests is appropriate to mitigate, manage or control the risk while it remains Uninsurable;
  - (ii) the parties must meet as soon as reasonably practicable after the notification in clause 10.5(a)(i) to discuss all practical means by which the risk will be managed;
  - (iii) the Lessee is relieved of its obligations under clause 10.1 to effect insurance for any risk that is Uninsurable for the period that the risk remains Uninsurable; and
  - (iv) where possible to do so and subject to clause 10.5(a)(iii), the Lessee must promptly obtain alternative insurance which provides similar cover in respect of its obligations under clause 10.1 that is satisfactory to the Lessor, acting reasonably.
- (b) For the purposes of clause 10.5(a), **Uninsurable** means, in relation to a risk, either that:
- (i) the insurance required pursuant to clause 10.1 is not available with insurers with a financial strength rating of 'A-' or better given by Standard & Poors (or the equivalent rating with another reputable rating agency); or
  - (ii) the insurance premium for insuring that risk is at such a level that, or the terms and conditions are such that, the risk is not generally being insured against by the operators of major electricity transmission networks in Australia with reputable insurers.

### 10.6 Compliance and enforcement

- (a) The Lessee must:
- (i) comply with the terms of each Policy and not do or fail to do anything the consequence of which is to materially prejudice or render void or voidable its coverage under each Policy;
  - (ii) take all steps necessary or desirable to claim, and to collect or recover, money that is, or (with the taking of such steps) would be likely to become, due to it under or in respect of a Policy; and
  - (iii) do everything (including providing documents, evidence and information) necessary or desirable in the reasonable opinion of the Lessor to claim, and to collect or recover, money due to the Lessor under or in respect of each Policy.
- (b) The Lessor must do everything (including providing documents, evidence and information) necessary or desirable in the reasonable opinion of the Lessee to enable the Lessee to claim, and to collect or recover, money due to it under or in respect of a Policy.

### 10.7 Notice of claims

The Lessee must notify the Lessor as soon as possible of:

- (a) a cancellation of, or change in or a reduction in the coverage of, a Policy;

- (b) a Policy becoming void or voidable; or
- (c) any other material adverse circumstance relating to a Policy,

but this clause does not require the Lessee to inform the Lessor of circumstances which may lead to an insured claim under a Policy by the Lessor against the Lessee.

### **10.8 Use of insurance proceeds**

Except as otherwise agreed by the Lessor and the Lessee (including under any Tripartite Deed), the Lessee must use the proceeds of any Policy received by it in reinstatement or replacement of the Leased Network Assets or the Leased Land, discharging the relevant liability or making good the covered loss, as applicable.

### **10.9 Payment of premiums**

- (a) Subject to clause 10.9(b), the Lessee must pay or cause to be paid when due all premiums, commissions, levies, stamp duties, charges and other expenses necessary for effecting and maintaining each Policy.
- (b) If the Lessee considers that the manner or extent of the Policies required to be effected in accordance with clause 10.1(a) exceeds that which a prudent lessee and a prudent lessor bound by this Lease, the Non-NSW Leases and the Sublessee Leases would require by way of such insurances, then the Lessee may refer the apportionment of the costs of effecting and maintaining such insurances as between the Lessee and the Lessor to an independent expert for determination on the basis that:
  - (i) the Lessor will be liable to contribute to so much of the costs of such insurances as is attributable to the manner and extent of insurances that is in excess of that which a prudent lessee and a prudent lessor bound by the terms of this Lease, the Non-NSW Leases and the Sublessee Leases would require;
  - (ii) the Lessor will not be liable to contribute to any premium or other cost that is attributable to the actions or inactions of the Lessee or any Permitted Sublessee; and
  - (iii) the Lessor will not be liable to contribute to any premium or other cost that is taken into account by the Lessee or any Permitted Sublessee in determining charges in respect of the use of the Leased Network Assets or the Transmission Network Land.

The Lessor must promptly pay to the Lessee such portion of the costs of effecting and maintaining such insurances as the independent expert determines is payable by the Lessor as set out above.

- (c) The Lessee must not delay in obtaining the insurances pending the outcome of the independent expert's determination as referred to in clause 10.9(b).
- (d) For the purposes of this clause 10.9, and unless the Lessor otherwise determines, Policies that satisfy the requirements set out in the notice referred to in clause 10.1 will be deemed to be Policies that a prudent lessee and a prudent lessor bound by this Lease, the Non-NSW Leases and the Sublessee Leases would require.

## **11 Risk and Indemnities**

### **11.1 Risk**

Except as otherwise expressly provided in this Lease, all things which the Lessee is required or permitted to do under this Lease or the Non-NSW Leases (including using the Leased Assets, the

Leased Land and the Transmission Network Land) are at its own risk and cost and the Lessee agrees to assume all such risks.

## 11.2 Indemnity and release

- (a) Despite any other provision of this Lease or of the Non-NSW Leases, at all times during the Term the Lessee is subject to the same duty of care and other responsibilities with regard to persons and property to which the Lessee would be subject if, during the Term, the Lessee were the owner of the Leased Assets and the Leased Land, and were entitled and required (to the exclusion of the Lessor) to exercise all the rights, and perform all the obligations, of the Lessor in relation to the Transmission Network Land.
- (b) The Lessee:
- (i) releases the Lessor and the State from any Loss which the Lessee may incur or sustain by reason of:
    - (A) any act or omission of the Lessee or the Lessee's Representatives;
    - (B) the performance of, or failure to perform, this Lease by the Lessee;
    - (C) the performance of, or failure to perform, the Non-NSW Leases by the Lessee;
    - (D) the performance of, or failure to perform, the Sublessee Leases by any Permitted Sublessee;
    - (E) the performance of, or failure to perform, any Sublease Deed by the Lessee or any Permitted Sublessee; or
    - (F) the use, possession or occupation of the Leased Assets, the Leased Land or the Transmission Network Land by the Lessee, any Permitted Sublessee, any Existing Tenant or any other person; and
  - (ii) indemnifies and must keep indemnified the Lessor and the State from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor or the State in respect of or arising from or in any way connected with:
    - (A) the use, possession or occupation of the Leased Assets, the Leased Land or the Transmission Network Land by the Lessee, any Permitted Sublessee, any Existing Tenant or any other person;
    - (B) the Leased Assets or the Leased Land or any part of them or the possession, condition, management, operation, use, repair, maintenance, alteration, modification, change, addition or replacement of the Leased Assets or the Leased Land or any part of them;
    - (C) the design of, or a defect in, the Leased Assets or the Leased Land or any part of them;
    - (D) any negligent act or omission or wilful default on the part of the Lessee or the Lessee's Representatives;
    - (E) any failure by the Lessee to comply with this Lease;
    - (F) any failure by the Lessee to comply with any Non-NSW Lease;
    - (G) any failure by any Permitted Sublessee to comply with any Sublessee Lease;

- (H) any failure by the Lessee or any Permitted Sublessee to comply with any Sublease Deed;
  - (I) the occurrence of a Lessor Termination Event;
  - (J) any failure by the Lessee or the Lessee's Representatives to comply with any applicable Law or Authorisation relating to the Leased Assets, the Leased Land or the Transmission Network Land or the possession, condition, management, operation, use, repair, maintenance, alteration, modification or replacement of them;
  - (K) any Contamination (whether occurring before or during the Term) in connection with the Leased Assets, the Leased Land or the Transmission Network Land or the management, operation, use, repair, maintenance, alteration, modification or replacement of them; and
  - (L) any death, personal injury, loss or damage suffered or sustained by any person in connection with the Leased Assets, the Leased Land or the Transmission Network Land or the condition, management, operation, use, repair, maintenance, alteration, modification or replacement of them.
- (c) If the Lessor or the State is made a party to any Claim to which the Lessee's indemnity under this clause 11 extends, the Lessee must, if so requested by the Lessor:
- (i) defend such Claim in the name of the Lessor or the State (as the case may be); and
  - (ii) pay all reasonable costs of the Lessor or the State (as the case may be) in connection with the Claim (including reasonable internal costs such as of time spent) provided that the Lessee may only compromise, pay or satisfy such Claim with the consent of the Lessor or the State, such consent not to be unreasonably withheld or delayed.
- (d) The indemnity and release contained in this clause 11 do not apply to the extent that the Loss is caused or contributed to by:
- (i) the Lessor's breach of this Lease, a Non-NSW Lease, any Sublessee Lease or any Sublease Deed;
  - (ii) the negligent acts or omissions or wilful default of the Lessor acting in its capacity as the lessor under this Lease, a Non-NSW Lease or a Sublessee Lease; or
  - (iii) the negligent acts or omissions or wilful default of the Lessor's Representatives to the extent they are acting for the Lessor in its capacity as the lessor under this Lease, a Non-NSW Lease or a Sublessee Lease.
- (e) The Lessor and the State must use all reasonable endeavours to mitigate the Losses that may be incurred or sustained by them and for which they are indemnified under this clause 11.
- (f) Neither the Lessor nor the State may recover from the Lessee, under an indemnity provided for in this Lease, an amount that exceeds the amount of all Losses that they have incurred or sustained and for which they are entitled to be indemnified under this Lease.
- (g) Subject to clause 11.2(f), this indemnity does not exclude any other right of the Lessor or the State to be indemnified by the Lessee.

**11.3 Indemnity continuing**

The indemnity contained in this clause 11 is a continuing obligation separate and independent of the Lessee's other obligations.

**11.4 Insurance not to limit indemnity**

No provision of clause 10, nor the holding of any insurance policy, limits the Lessee's liability in relation to any indemnity contained in this Lease.

**11.5 No requirement for expense before enforcement of indemnity**

It is not necessary for the Lessor or the State to incur any expense or make any payment before enforcing a right of indemnity conferred by this Lease.

**12 Work Health and Safety**

(a) The Lessee:

- (i) acknowledges that, as between itself and the Lessor, the Lessee has management and control of the Leased Assets, the Lessee Leased Land and the Transmission Network Land; and
- (ii) must ensure that, in respect of the Leased Assets, the Lessee Leased Land and the Transmission Network Land, the Lessee complies with WHS Law.

(b) The Lessor authorises the Lessee to, and the Lessee must:

- (i) manage and control the Leased Transmission Network, the Lessee Leased Land and the Transmission Network Land to the extent; and
- (ii) undertake such steps as are, necessary to discharge any responsibilities the Lessor may have under WHS Law, including any obligations imposed under a notice issued under WHS Law.

**13 Heritage and cultural heritage**

- (a) The Lessee acknowledges and agrees that it has not entered into this Lease or a Non-NSW Lease in reliance on any representation, warranty, promise or statement made by the Lessor or the State in relation to the heritage issues or cultural heritage issues that may affect the Leased Assets, the Leased Land or the Transmission Network Land or the prospect of securing removal from them of anything which has heritage or cultural heritage significance.
- (b) The Lessee must, at its cost, comply with any obligations imposed on the Lessor under the *Heritage Act 1977* (NSW), and under any similar laws whether of New South Wales, another State or Territory or the Commonwealth, relating to the Leased Assets, the Leased Land or the Transmission Network Land and notify the Lessor as soon as possible thereafter.

**14 Native Title**

- (a) The Lessee acknowledges and agrees that it has not entered into this Lease in reliance on any representation, warranty, promise or statement made by the Lessor or the State as to the existence or otherwise of any Native Title in respect of any part of the Leased Land or the Transmission Network Land.
- (b) The Lessee acknowledges that Native Title Claims cover part of the Leased Land or the Transmission Network Land, including:

- (i) claim by the Awabakal and Guringai People, Federal Court File No NSD780/2013;
  - (ii) claim by the Bandjalang People #2, Federal Court File No NSD 6107/1998;
  - (iii) claim by the Barkandji Traditional Owners #8, Federal Court File No NSD6084/1998;
  - (iv) claim by the Widjabul Wia-bal People, Federal Court File No NC2013/005 / NSD1174/2013;
  - (v) claim by the Plains Clan of the Womarua People, Federal Court File No NC2012/004 / NSD1093/2012;
  - (vi) Scott McCain Franks & Anor on behalf of the Plains Clan of the Womarua People, Federal Court File No. NC2013/006 / NSD1680/2013;
  - (vii) Trevor Close on behalf of the Githabul People v Minister for Lands Federal Court File No. NSD6019/1998 / NCD2007/001;
  - (viii) Gomeroi People Federal Court File No. NSD2308/2011 / NC2011/006;
  - (ix) Wendy Lewis, Mavis Agnew & Martin de Launey on behalf of Warrabinga-Wiradjuri #2 Federal Court File No. NSD543/2013 / NC2013/001; and
  - (x) Western Bundjalung People Federal File Court No. NSD2300/2011 / NC2011/005.
- (c) As between the Lessor and the Lessee:
- (i) the Lessee is responsible for dealing with any Native Title Claim in respect of any part of the Leased Land or the Transmission Network Land; and
  - (ii) the Lessee is responsible for the payment of any compensation or other money required to be paid to the Native Title holders of any part of the Leased Land or the Transmission Network Land.
- (d) In dealing with any Native Title Claim for which the Lessee is responsible or Native Title claimants or representative Aboriginal body (where a claim has not yet been made) in respect of any part of the Leased Land or the Transmission Network Land, the Lessee must:
- (i) consult with the Lessor and agree:
    - (A) whether or not the Lessee or any Permitted Sublessee shall seek to become or remain a respondent party to any such Native Title Claim; and
    - (B) all responses to any such Native Title Claim including management of any negotiation, mediation, settlement or other procedures provided for under the *Native Title Act 1993* (Cth); and
  - (ii) not enter any arrangement with the Native Title holders, claimants or any representative Aboriginal body, commit to payment of any compensation or other sum or settlement, or consent to any order including in respect of compensation to the Native Title holders or claimants, without the prior consent of the Lessor, which shall not be unreasonably withheld or delayed where the terms of such arrangement, settlement or order will enable the Lessor to have the benefit of it as against the Native Title holders, claimants or any representative Aboriginal body.

- (e) Except as expressed in this clause 14, neither the Lessor nor the State will be liable to the Lessee for any Loss which the Lessee incurs or sustains by reason of a Native Title Claim with respect to any part of the Leased Land or the Transmission Network Land.
- (f) If there is a Native Title Claim with respect to any part of the Leased Land or the Transmission Network Land, the Lessee must:
  - (i) continue to perform its obligations under this Lease and the Non-NSW Leases, and procure that any Permitted Sublessee continues to perform its obligations under the Sublessee Leases, except to the extent otherwise:
    - (A) directed by the Lessor (acting reasonably);
    - (B) ordered by a court or tribunal; or
    - (C) required by Law; and
  - (ii) at the request of the Lessor, provide all reasonable assistance in connection with the Lessor's involvement (if any) with such Native Title Claim (including giving the Lessor, and any other persons authorised by the Lessor, access to such part of the Leased Land or the Transmission Network Land as is the subject of the Native Title Claim, when reasonably required by the Lessor).
- (g) For the purposes of clause 14(f)(i)(A), the Lessor may, if doing so is required under Law in connection with the Native Title Claim, by notice direct the Lessee to suspend the Lessee's activities (or require the Lessee to procure that any Permitted Sublessee suspends the Permitted Sublessee's activities) in so far as they relate to the part of the Leased Land or the Transmission Network Land the subject of the Native Title Claim until such time as the Lessor gives the Lessee further notice or the Lessor is no longer required under Law to suspend those activities.
- (h) If a direction, order or requirement as referred to in clause 14(f)(i) obliges the Lessee to suspend or cease undertaking all or some of the Lessee's obligations under this Lease or a Non-NSW Lease, or all or some of a Permitted Sublessee's obligations under a Sublessee Lease, then the Lessee must comply with (and procure that any Permitted Sublessee complies with) such direction, order or requirement.
- (i) If there is a Native Title Claim with respect to any part of the Leased Land or the Transmission Network Land, the Lessee may request the assistance of the Lessor, and the Lessor must (at the cost of the Lessee) provide all reasonable assistance in connection with the Lessee's or any Permitted Sublessee's involvement with such Native Title Claim (including giving the Lessee reasonable access to information held by the Lessor).

## 15 Aboriginal Land Claim

- (a) The Lessee acknowledges and agrees that it has not entered into this Lease or any Non-NSW Lease in reliance on any representation, warranty, promise or statement made by the Lessor or the State as to the prospects or status of any Aboriginal Land Claim in respect of any part of the Leased Land or the Transmission Network Land.
- (b) The Lessee acknowledges that registered Aboriginal Land Claim No. 34089 covers part of the Leased Land or the Transmission Network Land.
- (c) Neither the Lessor nor the State will be liable to the Lessee for any Loss which the Lessee incurs or sustains by reason of an Aboriginal Land Claim with respect to any part of the Leased Land or the Transmission Network Land.

## 16 Termination by Lessor

### 16.1 Lessor Termination Event

Each of the following is a Lessor Termination Event:

- (a) **(Non-payment of moneys)** The aggregate of all amounts that are:
  - (i) due and payable to the Lessor or the State by the Lessee or any Permitted Sublessee under this Lease, a Non-NSW Lease, a Sublessee Lease or any Sublease Deed; and
  - (ii) not the subject of a bona fide dispute, exceeds the CPI-Adjusted Amount of \$5,000,000 and such amounts have not been paid to the Lessor or another person nominated by the Lessor within a period of 40 Business Days following delivery to the Lessee of a demand from the Lessor requiring that the Lessee or Permitted Sublessee (as the case may be) pay those amounts.
- (b) **(Insolvency Event)** An Insolvency Event in respect of the Lessee occurs and has not been cured within 20 Business Days.
- (c) **(Unauthorised dealing by Lessee)** Except as expressly permitted under this Lease, a Non-NSW Lease, a Tripartite Deed or a Sublease Deed, the Lessee:
  - (i) assigns, transfers or otherwise disposes of any of its rights, interests or obligations in or under:
    - (A) this Lease;
    - (B) a Non-NSW Lease; or
    - (C) the Sublease Deed,
 and the breach is not remedied within 40 Business Days after the Lessor has given the Lessee notice of that breach;
  - (ii) subleases, or grants a licence (other than a licence already granted by the Lessor and in existence as at the Commencement Date) in respect of, its interest in any part of the Leased Assets or the Lessee Leased Land, and the breach is not remedied within 40 Business Days after the Lessor has given the Lessee notice of that breach;
  - (iii) creates or allows to subsist a Security Interest (other than a Permitted Security Interest) over its rights under this Lease, any Non-NSW Lease or the Sublease Deed or its interest in all or any part of the Leased Assets or the Lessee Leased Land, and the breach is not remedied within 40 Business Days after the Lessor has given the Lessee notice of that breach; or
  - (iv) consents to any person to whom the Lessee has granted a sublease under clause 23.3 in respect of the Lessee's interest in any part of the Leased Assets or the Lessee Leased Land:
    - (A) assigning or transferring any of that person's rights or obligations under that sublease;
    - (B) subleasing, or granting a licence (other than a licence already granted by the Lessor and in existence as at the Commencement Date) in respect of, that person's interest in any part of the Leased Assets or the Lessee Leased Land; or

- (C) creating or allowing to subsist a Security Interest (other than a Permitted Security Interest) over any of that person's rights under the sublease, or over any of that person's right, title or interest in any part of the Leased Assets or the Lessee Leased Land,
- and:
- (D) that consent is given in breach of this Lease, a Non-NSW Lease, a Tripartite Deed or a Sublease Deed;
  - (E) the action in respect of which the consent is given is undertaken; and
  - (F) the action is not reversed within 40 Business Days after the Lessor has given the Lessee notice to procure its reversal.
- (d) **(Unauthorised dealing by Permitted Sublessee)** Except as expressly permitted under a sublease under clause 23.3(a), a Tripartite Deed, a Sublessee Lease or a Sublease Deed, a Permitted Sublessee:
- (i) assigns, transfers or otherwise disposes of its interest in the sublease, any Sublessee Lease or the Sublease Deed;
  - (ii) subleases, or grants a licence (other than a licence already granted by the Lessor and in existence as at the Commencement Date) in respect of, its interest in any part of the Leased Assets or the Leased Land; or
  - (iii) creates or allows to subsist a Security Interest (other than a Permitted Security Interest) over any of its rights under the sublease, any Sublessee Lease or the Sublease Deed,
- and the breach is not remedied within 40 Business Days after the Lessor has given the Lessee notice of that breach.
- (e) **(Revocation of Major Authorisation)** Each of the following has occurred:
- (i) a Major Authorisation of the Lessee or any Permitted Sublessee has been suspended or cancelled;
  - (ii) that Major Authorisation has not been re-instated or a new one has not been issued or granted to the Lessee (or its authorised successor) or the Permitted Sublessee (or its authorised successor) within 40 Business Days after the suspension or cancellation; and
  - (iii) all rights of review and appeal relating to the suspension, cancellation, issue or grant of the Major Authorisation (as the case may be) have been exhausted or have expired.
- (f) **(Use of Leased Network Assets)** Without the prior consent of the Lessor, not to be unreasonably withheld, or otherwise than as a result of a Force Majeure Event, all or substantially all of the Leased Network Assets cease to be used by the Lessee or any Permitted Sublessee for the purpose of managing and operating an electricity transmission network for a continuous period of 2 months after the Lessor has notified the Lessee that it requires the Lessee to bring that cessation of use to an end.
- (g) **(Use, Operation, Repair and Maintenance)** Each of the following has occurred:
- (i) the Lessee has committed a material breach of any of its obligations under clauses 7.1 or 7.2;
  - (ii) the Lessor has notified the Lessee that the breach referred to in paragraph (i) has occurred; and

- (iii) the Lessee has not remedied or rectified the consequences of the breach (including by way of the payment or expenditure of all reasonable sums of money) within the later of:
  - (A) 6 months following the giving of the notice under paragraph (ii); or
  - (B) if the Lessee provides notice to the Lessor within 28 days of the giving of the notice under paragraph (ii) that a period in excess of 6 months will be required in order to remedy or rectify the consequences of the breach, such longer period as is detailed in a plan for rectification or remedy of the breach, provided by the Lessee to the Lessor within 3 months of the giving of the notice under paragraph (ii), which nominates a period not in excess of 12 months from the giving of the notice under paragraph (ii).
- (h) **(Premium or Option Fee)** At any stage in any legal proceedings it is determined that:
  - (i) clause 2.1(b) or (c) or clause 17.2(c) or (d) does not have effect according to its terms, in whole or in part;
  - (ii) clause 2.1(b) or (c) or clause 17.2(c) or (d) is in whole or part void, voidable, unenforceable, invalid or otherwise ineffective;
  - (iii) the Premium or any Option Fee, or its payment, is in whole or part void, voidable, unenforceable, invalid or capable of being disclaimed or otherwise set aside; or
  - (iv) the Lessor or the State is liable to repay or refund the Premium or any Option Fee or any part of them or to pay any amount, including damages or compensation, in respect of the Premium, any Option Fee or any part of them.
- (i) **(Change of Control of Lessee)** Except as permitted under clause 23.4, the Lessee undergoes a Change of Control, and the breach is not remedied within 40 Business Days after the Lessor has given the Lessee notice of that breach.
- (j) **(Change of Control of Permitted Sublessee)** A Permitted Sublessee undergoes a Change of Control in breach of any Sublease Deed, and the breach is not remedied within 40 Business Days after the Lessor has given the Lessee notice of that breach.
- (k) **(Breach of Head Lease etc)** Each of the following has occurred:
  - (i) there has been a breach of the terms of a Head Lease, Lessor Lease, Private Easement, Easement in Gross or Contractual Licence caused by an act or omission of the Lessee, a Permitted Sublessee or any of their agents or contractors, or the Lessee has breached clause 2.10(a) or (c);
  - (ii) as a consequence of that breach the Lessor has lost or been deprived of its property, title or rights in any Leased Network Assets or any Leased Network Assets are required to be removed from the land on, above or under which they are located;
  - (iii) as a consequence of the matters referred to in clause 16.1(k)(ii), there is a significant disruption or material risk of significant disruption to the operation of the Leased Transmission Network such that the supply of electricity within a local government area is or is likely to be materially diminished;
  - (iv) the Lessor has notified the Lessee that the breach referred to in paragraph (i) has occurred; and
  - (v) within 40 Business Days following the giving of the notice under paragraph (iv), the Lessee has not rectified the consequences of the breach in such a way as to enable the Leased Transmission Network to be operated in a manner, and at a

level of security and reliability, comparable to that in which it was operated immediately prior to the breach.

- (l) **(Operator)** Each of the following has occurred:
- (i) the Lessee has committed a breach of clause 2.14;
  - (ii) the Lessor has notified the Lessee that the breach referred to in paragraph (i) has occurred; and
  - (iii) the Lessee has not remedied the breach within 40 Business Days following the giving of the notice under paragraph (ii).
- (m) **(Unauthorised telecommunications services)** Each of the following has occurred:
- (i) the Lessee has committed a breach of any of its obligations under clause 2.16(a) or 2.16(e) and that breach could reasonably be expected to result in a prosecution of the Lessor for a criminal offence;
  - (ii) the Lessor has notified the Lessee that the breach referred to in paragraph (i) has occurred; and
  - (iii) the Lessee has not remedied the breach as soon as possible and in any event within 10 days following the giving of the notice referred to in paragraph (ii).

It is acknowledged that, where the breach referred to in paragraph (i) is the result of the provision of telecommunications services, then one way of remedying that breach would be for the Lessee to procure the cessation of provision of those telecommunications services.

- (n) **(Breach of Sublease Deed)** Any of the following has occurred:
- (i) a breach of clause 2(a) of the Sublease Deed;
  - (ii) a breach of clause 4.2(a) of the Sublease Deed; or
  - (iii) a breach of clause 4.3(a) or (e) of the Sublease Deed and that breach could reasonably be expected to result in a prosecution of the Lessor for a criminal offence,
- and:
- (iv) the Lessor has notified the Lessee of the occurrence of the breach; and
  - (v) the breach is not remedied:
    - (A) in the case of paragraphs (i) and (ii), within 40 Business Days; and
    - (B) in the case of paragraph (iii), as soon as possible and in any event within 10 days,

following the giving of the notice under paragraph (iv).

It is acknowledged that, where the breach referred to in paragraph (iii) is the result of the provision of telecommunications services, then one way of remedying that breach would be for the Lessee to procure the cessation of provision of those telecommunications services.

## 16.2 Termination by the Lessor

- (a) The Lessor is entitled to terminate this Lease while a Lessor Termination Event subsists.
- (b) A termination under clause 16.2(a):

- (i) must be effected by the Lessor giving a termination notice to the Lessee which details the circumstances constituting the Lessor Termination Event; and
  - (ii) will be effective on the date specified in that notice, being a date that is no earlier than the date on which the notice is given to the Lessee.
- (c) If the Lessor terminates this Lease under clause 16.2(a), no amount will be payable by the Lessor to the Lessee.

### **16.3 Notification**

The Lessee must promptly notify the Lessor upon becoming aware of the occurrence of any Lessor Termination Event.

### **16.4 No other termination**

- (a) Except as provided in accordance with this clause 16:
- (i) neither the Lessor nor the Lessee may terminate or rescind or has any right to terminate or rescind or obtain any order with the effect of terminating or rescinding this Lease; and
  - (ii) this Lease will not terminate, be frustrated (whether at common law or by statute), be repudiated or be taken to have been repudiated for any reason.
- (b) Except as provided in clause 21, the Lessee may not surrender any part of its interest in this Lease or any Non-NSW Lease or permit any Permitted Sublessee to surrender any Sublessee Lease.

### **16.5 Forfeiture**

The Lessee agrees that it will not make any application to a court for relief against forfeiture upon the termination of this Lease or any Non-NSW Lease and agrees that this clause 16.5 may be pleaded as a bar to any court proceedings instituted by the Lessee.

### **16.6 Application despite Laws**

This clause 16 applies despite any Law to the contrary.

## **17 Lessor's election to renew**

### **17.1 Election**

Not later than 10 years, and not earlier than 15 years, prior to the end of the Term, the Lessor must give the Lessee notice of its election to either:

- (a) extend the Term by a further 99 years from the end of the then current Term on the same terms as this Lease or on such other terms agreed by the parties, in which case the Term will be extended by that further period; or
- (b) allow this Lease to expire, in which case the provisions of clauses 7.7, 18, 19 and 20 will apply.

This election may only be exercised once in respect of the current Term and once in respect of each successive extension of the then-current Term.

### **17.2 Option Fee**

- (a) If the Lessor gives a notice to the Lessee under clause 17.1 in which it elects to extend the Term under clause 17.1(a), then the Lessee must pay to the Lessor (or as the Lessor otherwise directs), not later than 60 Business Days before the end of the then current Term, the Option Fee for the extension of the Term as calculated in accordance with

clause 17.2(b), and such Option Fee will belong absolutely to the Lessor (or the Lessor's nominee to whom the Lessor has directed the payment be made).

- (b) The Option Fee for the extension of the Term referred to in clause 17.2(a) is calculated as the amount (if any) by which:
- (i) 95 percent of the fair market value of the Leased Assets and the Leased Land as at the date that is two years prior to the end of the then current Term (the **valuation date**),  
exceeds:
  - (ii) the sum of:
    - (A) the value at which each asset that comprises the Leased Assets or the Leased Land is included in the Regulatory Asset Base for the transmission system of which the Leased Transmission Network forms a part as at the valuation date; and
    - (B) if the value of any asset forming part of the Leased Assets or the Leased Land is not included to any extent in the Regulatory Asset Base for the transmission system of which the Leased Transmission Network forms a part as at the valuation date, the Tax Written Down Value of that asset as at that date,

that amount being as agreed between the Lessor and the Lessee or, failing such agreement by the day which is 18 months before the end of the then current Term, that amount as determined by an independent expert.

- (c) Neither the Lessor nor the State has any liability in any circumstances (including the early termination or expiry of this Lease) to repay or refund the Option Fee for an extension of the Term or any part of that Option Fee.
- (d) Neither the Lessor nor the State has any liability to pay the Lessee or its financiers any amount, including damages or compensation, in connection with the retention of any Option Fee as referred to in clause 17.2(a) or (c).
- (e) If the Term is extended in accordance with clause 17.1(a) then the Lessee must register a variation of this Lease at LPI which records that extension of the Term.

### **17.3 Where election to extend does not apply**

If:

- (a) the Lessor has given a notice to the Lessee under clause 17.1 in which it elects to extend the Term under clause 17.1(a); and
- (b) prior to the commencement of that extension, this Lease is terminated,  
clause 17.1 will have no effect.

## **18 Return on Expiry or Termination**

### **18.1 Return condition**

Subject to clause 20, on and with effect from the Lease End Date, the Lessee must:

- (a) return and surrender the Leased Assets to the Lessor or its nominee in the condition in which they are required to be managed, operated, repaired, maintained and kept under clause 7 (other than clause 7.2(a));

- (b) vacate (or procure the vacation of) and give vacant possession of the Leased Land to the Lessor or its nominee in the condition in which it is required to be managed, maintained and kept under clause 7 (other than clause 7.2(a));
- (c) give to the Lessor or its nominee all keys, codes and security devices which the Lessee or any Permitted Sublessee holds in relation to the Leased Land;
- (d) deliver to the Lessor or its nominee up to date, complete and accurate copies of all records, reports, plans, specifications, line diagrams, handbooks, manuals and instructions, layout lines, evaluations, information processes and certificates of title that are required to be prepared, kept and maintained under clause 8.1, together with any system required to interpret them;
- (e) assign (or procure the assignment of) to the Lessor or its nominee all rights to all services and facilities and intellectual property, and under all agreements and other instruments, that are necessary for the ongoing management, operation and use of:
  - (i) the Leased Transmission Network as a fully functioning electricity transmission network in the geographical areas over which it extends; and
  - (ii) the Leased Land,except for such rights as:
  - (iii) are readily commercially available on reasonable terms; or
  - (iv) are not capable of being assigned, in which case the Lessee must do all things lawful and reasonably necessary to enable the Lessor or its nominee to enjoy the benefit of those rights;
- (f) procure the release and discharge of all Security Interests over all or any of the right, title and interest of the Lessee or any Permitted Sublessee in any part of the Leased Assets, the Leased Land or the Transmission Network Land (other than Permitted Liens);
- (g) provide the Lessor or its nominee with an indemnity and security reasonably acceptable to the Lessor in respect of any material litigation or similar proceedings pending with respect to all or part of the Leased Assets, the Leased Land or the Transmission Network Land, except in respect of litigation or proceedings caused by or otherwise primarily as a result of anything referred to in clause 11.2(d);
- (h) use its best endeavours to procure the transfer to the Lessor or its nominee of such Authorisations relating to the operation the Leased Assets or the use of the Leased Land or the Transmission Network Land as are capable of being transferred and, in respect of the Leased Land or those which are not capable of being transferred, do all things reasonably necessary to assist the Lessor or its nominee to obtain such Authorisations;
- (i) in so far as any confidential or proprietary data, intellectual property, information or technology of the Lessee or any other person has become effectively integrated into:
  - (i) the electricity transmission system of which the Leased Transmission Network forms a part;
  - (ii) any Leased Network Assets that are not part of the Leased Transmission Network; or
  - (iii) any of the records, documents, instruments or systems used for the management or operation of such electricity transmission system or such Leased Network Assets,

(**confidential information**), enter into, or use its best endeavours to cause the relevant owner of such confidential information to enter into, such arrangements as are

reasonably requested by the Lessor to permit the Lessor or its nominee to use and enjoy the benefits of such confidential information without being obliged to make any royalty or similar payment; and

- (j) pay all the reasonable costs and expenses of the Lessor or its nominee in relation to the return of the Leased Assets and the Leased Land to the Lessor or its nominee.

## **18.2 Failure to return assets in required condition**

If the Lessee does not comply with any of its obligations under clause 18.1 the Lessor may take any action it considers necessary to ensure that the Lessee's obligations are fulfilled. All reasonable costs and expenses of anything done pursuant to this clause must be paid by the Lessee on demand by the Lessor.

## **18.3 Actions during the Term**

- (a) Subject to clause 18.3(b), during the period from the Commencement Date to the Lease End Date the Lessee must use its best endeavours to enter into (or procure the entry into of) agreements and arrangements on terms and conditions that will permit the Lessee to comply with the terms of clauses 18.1 and 19.
- (b) The Lessee will not be required to comply with the terms of clauses 18.1 and 19 to the extent that those clauses would otherwise apply to contracts of employment.

## **18.4 Third Party Telecommunications Network**

- (a) To the extent that, as at the Lease End Date, the Lessee or any Permitted Sublessee:
  - (i) operates a Third Party Telecommunications Network that can only be operated if it is connected to the Leased Network Assets; or
  - (ii) uses the Leased Network Assets to carry communications that are not required for the operation of the Leased Transmission Network as a fully functioning electricity transmission network,

then the Lessor must negotiate in good faith with the Lessee in an attempt to agree commercial arrangements that permit the continued connection of the Third Party Telecommunications Network to the Leased Network Assets or the continued use of the Leased Network Assets as referred to in clause 18.4(a) or (b) (as the case may be).

- (b) The value of the assets comprising the Third Party Telecommunications Network, and the value of the Leased Network Assets attributable to the use referred to in clause 18.4(a)(ii), will not be included in the calculation of any Option Fee for an extension of the Term or any payment referred to in clause 19(d) or 20.2.

## **19 Acquisition and Transfer of Additional Network Assets and Additional Network Land**

- (a) Not later than 6 months prior to the end of the Term, or if a Lessor Termination Event is subsisting or (in the opinion of the Lessor) is reasonably likely to occur, then as soon as reasonably practicable after being required to do so by the Lessor, the Lessee must provide to the Lessor a register of all Additional Network Assets and Additional Network Land.
- (b) At the same time as the Lessee is required to return and surrender the Leased Assets to the Lessor or its nominee under clause 18.1, the Lessee must transfer, or procure the transfer of, to the Lessor or its nominee all Additional Network Assets and Additional Network Land as are nominated by the Lessor. Any dispute as to whether any asset, land

or right is or is part of the Additional Network Assets or Additional Network Land may be referred by the Lessor or the Lessee to an independent expert for determination.

- (c) The Lessee must use its best endeavours to procure the transfer to the Lessor or its nominee of such Authorisations relating to the nominated Additional Network Assets or Additional Network Land as are capable of being transferred and, in respect of those which are not capable of being transferred, do all things reasonably necessary to assist the Lessor or its nominee to obtain such Authorisations.
- (d) In consideration for the transfer to the Lessor or its nominee of the nominated Additional Network Assets and Additional Network Land, and except as otherwise provided in this Lease, the Lessor must pay to the Lessee, on the date of such transfer:
  - (i) if the value of the asset is included (whether in whole or in part) in the Regulatory Asset Base for the transmission system of which the Leased Transmission Network forms a part as at the preceding 31 December – the lesser of:
    - (A) the value at which that asset is included in the Regulatory Asset Base as at that 31 December; and
    - (B) the fair market value of that asset as at that 31 December; or
  - (ii) if the value of the asset is not included to any extent in the Regulatory Asset Base for the transmission system of which the Leased Transmission Network forms a part as at the preceding 31 December – the lesser of:
    - (A) the Tax Written Down Value of that asset as at that 31 December; and
    - (B) the fair market value of that asset as at that 31 December,

as agreed between the Lessor and the Lessee or, failing agreement, as determined by an independent expert. This clause 19(d) does not apply where this Lease terminates prior to the expiry of the Term.
- (e) Upon receipt of the amount payable by the Lessor under clause 19(d) or the termination of this Lease prior to the expiry of the Term (as the case may be), the Lessee must contemporaneously procure the release and discharge of all Security Interests over all or any of the transferor's right, title and interest in the nominated Additional Network Assets and Additional Network Land (other than Permitted Liens).
- (f) Subject to clause 19(d), the Lessee must pay all the reasonable costs and expenses of the Lessor or its nominee in relation to the transfer of the nominated Additional Network Assets and Additional Network Land to the Lessor or its nominee.

## **20 Dealings with Leased Assets and Leased Land on Expiry**

### **20.1 Removal of parts of the Leased Assets and Leased Land on Expiry**

Subject to clause 20.2, upon expiry of the Term and with the prior consent of the Lessor (given or withheld in the Lessor's absolute discretion), the Lessee may remove such parts of the Leased Assets and the Leased Land as the Lessor and the Lessee agree. At the time of the removal of those parts, title to the assets comprising those parts is hereby transferred to the Lessee and the Lessee may deal with those assets as it thinks fit. For these purposes, the Lessor must procure the release and discharge of all Security Interests over all or any of its right, title and interest in any part of those assets (other than Permitted Liens).

### **20.2 Compensation**

The Lessor must pay to the Lessee or its nominee, not later than 60 Business Days after the expiry of the Term, an amount equal to:

- (a) where the value of such parts of the Leased Assets and the Leased Land as are not removed or agreed to be removed in accordance with clause 20.1 is included (whether in whole or in part) in the Regulatory Asset Base for the transmission system of which the Leased Transmission Network forms a part as at the preceding 31 December – the lesser of:
- (i) the value at which those parts are included in the Regulatory Asset Base as at that 31 December; and
  - (ii) the fair market value of those parts as at that 31 December; or
- (b) where the value of such parts of the Leased Assets and the Leased Land as are not removed or agreed to be removed in accordance with clause 20.1 is not included to any extent in the Regulatory Asset Base for the transmission system of which the Leased Transmission Network forms a part as at the preceding 31 December – the lesser of:
- (i) the Tax Written Down Value of those parts as at that 31 December; and
  - (ii) the fair market value of those parts as at that 31 December,

as agreed between the Lessor and the Lessee or, failing agreement, as determined by an independent expert.

### 20.3 Exclusion of land value

For the purposes of clause 20.2, no value is to be attributed to such of the Leased Land as was Leased Land as at the Commencement Date.

### 20.4 Lessor Termination Event

For the avoidance of doubt, this clause 20 does not apply where this Lease terminates prior to the expiry of the Term.

## 21 Surrender

### 21.1 Surrender Notice

- (a) The Lessee may from time to time give notice to the Lessor of:
- (i) the partial surrender of this Lease, so far as it relates to a part of the NSW Leased Land;
  - (ii) the surrender, by the Lessee, of a Non-NSW Lease; or
  - (iii) the surrender, by a Permitted Sublessee, of a Sublessee Lease,
- on a date (the **Surrender Date**) specified in the notice (the **Surrender Notice**). The Surrender Notice must specify the part of the NSW Leased Land, the Non-NSW Leased Land or the Sublessee Leased Land (as the case may be) that is to be surrendered (the specified land being the **Surrendered Area**), and the Surrender Date must not be less than three months after the Surrender Notice is given to the Lessor.
- (b) The Lessee may only exercise its right referred to in clause 21.1(a) in relation to any part of the Leased Land where:
- (i) the Lessee has certified in writing to the Lessor that the relevant part of the Leased Land is not, and for the foreseeable future is not reasonably likely to be, required in connection with the operation of any Leased Network Assets; and
  - (ii) either:
    - (A) the Lessor has given a notice to the Lessee that the Lessor is of the opinion that the relevant part of the Leased Land is not, and for the

foreseeable future is not reasonably likely to be, required in connection with the operation of any Leased Network Assets (such notice being required to be given unless the Lessor, acting reasonably, holds a different opinion); or

- (B) the Lessor has not, within three months after receiving the certification from the Lessee referred to in paragraph (i), given a notice to the Lessee that the Lessor is of the opinion that the relevant part of the Leased Land is, or for the foreseeable future is reasonably likely to be, required in connection with the operation of any Leased Network Assets (such notice only to be given if the Lessor, acting reasonably, holds that opinion).

## 21.2 Surrendered Area

A surrender will only take effect in relation to a Surrendered Area if, as at the Surrender Date:

- (a) no Leased Network Assets are located on the Surrendered Area;
- (b) to the extent the Surrendered Area is part of the NSW Leased Land, the Lessee has complied with its obligations under clause 18.1 in so far as those obligations relate to the relevant part of the NSW Leased Land as if:
- (i) references to the Leased Land (including as part of the Transmission Network Land) were references to the Surrendered Area; and
- (ii) references to the Lease End Date were references to the Surrender Date;
- (c) to the extent the Surrendered Area is Non-NSW Leased Land, the Lessee has complied with its obligations under clause 18.1 in so far as those obligations relate to the Non-NSW Leased Land, as if:
- (i) references to the Leased Land (including as part of the Transmission Network Land) were references to that Non-NSW Leased Land; and
- (ii) references to the Lease End Date were references to the Surrender Date; and
- (d) to the extent the Surrendered Area is Sublessee Leased Land, the Lessee has complied with its obligations under clause 18.1 in so far as those obligations relate to the Sublessee Leased Land as if:
- (i) references to the Leased Land (including as part of the Transmission Network Land) were references to that Sublessee Leased Land; and
- (ii) references to the Lease End Date were references to the Surrender Date.

## 21.3 Effect of surrender

Where a surrender takes effect under this clause 21, the Lessee must surrender, or procure the surrender of, the Surrendered Area to the Lessor on and from the Surrender Date, so that:

- (a) in respect of a Surrendered Area that is part of the NSW Leased Land, the residue of the term of this Lease with respect to the Surrendered Area will merge in the reversion and be extinguished; and
- (b) in respect of a Surrendered Area that is Non-NSW Leased Land or Sublessee Leased Land, the residue of the term of the Non-NSW Lease or Sublessee Lease (as the case may be) with respect to the Surrendered Area will merge in the reversion and be extinguished.

## 21.4 Lessee's obligations

The Lessee must:

- (a) consult with the Lessor in relation to any proposed surrender under this clause 21, including the proposed timeframes for the surrender to take effect;
- (b) obtain, or procure the obtaining of, all Authorisations, approvals and consents required by Law or any agreement in connection with:
  - (i) the surrender, including in relation to the registration of the surrender with LPI or any relevant land titles office in another State or Territory; and
  - (ii) any subdivision necessary to effect the surrender;
- (c) prepare at its cost all documents to effect and register the surrender and any subdivision necessary to effect and register the surrender, and pay all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with reviewing and signing those documents, including costs incurred in connection with the preparation, execution and registration of the surrender and any associated survey plans and subdivision plans; and
- (d) perform all obligations imposed on the Lessee under this Lease or any Non-NSW Lease, and procure that any Permitted Sublessee performs all obligations imposed on that Permitted Sublessee under any applicable Sublessee Lease, with respect to the Surrendered Area, up to and including the Surrender Date.

### 21.5 Lessor's obligations

Subject to the Lessee complying with its obligations under this clause 21, the Lessor must sign all documents that are reasonably required to effect the surrender contemplated by this clause 21 and provide all reasonable assistance required by the Lessee to effect the surrender.

### 21.6 Disposal of Surrendered Area

- (a) If:
  - (i) any Leased Land is surrendered in accordance with this clause 21;
  - (ii) the Lessee has performed, in all material respects, all of its obligations under this clause 21 in connection with the surrender; and
  - (iii) there is no Law or agreement which precludes the Lessor performing its obligations under this clause 21.6,

then the Lessor must, at the request of the Lessee, dispose of the relevant land on such terms as the Lessee directs provided that:

- (iv) the Lessee must pay all of the costs that the Lessor incurs in connection with such disposal (or any attempted disposal), including reasonable internal costs such as of time spent; and
- (v) the Lessee must fully indemnify and keep indemnified the Lessor in respect of all liabilities and obligations that the Lessor may incur in connection with such disposal (or any attempted disposal).

For the avoidance of doubt, such a disposal may be to the Lessee, any Permitted Sublessee, an Associate of the Lessee or any Permitted Sublessee, or any other person.

- (b) Subject to the Lessee complying with its obligations under clause 21.6(a), the Lessor must pay to the Lessee (or as the Lessee directs) the amount of the after-tax proceeds the Lessor receives from the disposal of the relevant land within 20 Business Days of the Lessor actually receiving the proceeds from that disposal.

## 21.7 Variation

Despite any surrender of this Lease or a Non-NSW Lease under this clause 21, the parties agree that:

- (a) the provisions of this Lease remain in full force with respect to those parts of the Leased Land which do not comprise the Surrendered Area;
- (b) no compensation (including by way of reimbursement for the value of improvements or other assets) is payable to the Lessee for the surrender of any Surrendered Area; and
- (c) subject to its obligation under clause 21.6, the Lessor is absolutely released from all obligations under this Lease or a Non-NSW Lease which relate to the Surrendered Area from the Surrender Date.

## 21.8 Government Property NSW

The Lessee acknowledges that the Lessor may engage Government Property NSW to assist it in relation to matters referred to in this clause 21 and agrees that the costs charged by Government Property NSW to the Lessor for those purposes must be paid by the Lessee.

## 22 Force Majeure

### 22.1 Force Majeure Event

A Force Majeure Event is a circumstance or event that is beyond the reasonable control of the party claiming relief under this clause 22 (the **Affected Party**), including:

- (a) an act of God, lightning, storm, explosion, flood, landslide, bush fire or earthquake;
- (b) strikes or other industrial action, other than strikes or other industrial action primarily involving only employees of the Lessee, any Permitted Sublessee or a Related Body Corporate of either of them;
- (c) an act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic; and
- (d) embargo, power shortage or water shortage,

the consequences of which could not have been prevented, overcome or remedied by the exercise by the Affected Party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances (including by the expenditure of reasonable sums of money and the application of technology that would reasonably be known to such a prudent and competent person). The Lessee and the Lessor acknowledge and agree that, in relation to a Force Majeure Event, the obligation to expend reasonable sums of money shall not require settlement of strikes or other industrial action by yielding to unreasonable demands.

### 22.2 Claims for relief

- (a) If the Lessee is prevented in whole or in part from carrying out its obligations under this Lease as a result of a Force Majeure Event or its effects, it must as soon as practicable notify the Lessor accordingly.
- (b) If the Lessor is prevented in whole or in part from carrying out its obligations under this Lease as a result of a Force Majeure Event or its effects, it must as soon as practicable notify the Lessee accordingly.
- (c) A notice under this clause 22.2 must:
  - (i) specify the relevant obligations and the extent to which the Affected Party cannot perform those obligations;

- (ii) fully describe the Force Majeure Event and its effects;
- (iii) estimate the time during which the Force Majeure Event and its effects will continue; and
- (iv) specify the measures proposed to be adopted to remedy or minimise the effects of the Force Majeure Event.

### **22.3 Suspension of obligations**

Following the giving of a notice of a Force Majeure Event under clause 22.2, and while the effects of Force Majeure Event continue, the obligations which cannot be performed because of the Force Majeure Event or its effects will be suspended other than any obligation to pay money, but only if the Affected Party has complied with its obligations under clauses 22.2 and 22.4.

### **22.4 Mitigation**

The Affected Party must use all reasonable endeavours to remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable.

### **22.5 Permitted Sublessee**

An act or omission of a Permitted Sublessee will not be a Force Majeure Event in relation to the Lessee.

### **22.6 Effect on Term**

The Term will not be extended by the period of a Force Majeure Event or its effects.

## **23 Security Interests, Assignments and Subletting**

### **23.1 Security Interests**

- (a) Subject to clauses 23.1(b) and (c), the Lessee must not, without the prior consent of the Lessor, such consent not to be unreasonably withheld or delayed, create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under this Lease or any Non-NSW Lease or over any of its right, title or interest in the Leased Assets or the Lessee Leased Land or any part of them.
- (b) Notwithstanding clause 23.1(a), the Lessee will not be in breach of this clause 23.1 by reason of a Security Interest arising or subsisting in accordance with the terms of an agreement or arrangement to which the Lessor:
  - (i) is a party; or
  - (ii) was a party prior to the Commencement Date where the terms of the agreement or arrangement that provide for the Security Interest were included in the agreement or arrangement prior to the Commencement Date and have not been amended on or after that date and the Security Interest is granted in favour of another party to that agreement or arrangement.
- (c) The Lessee may grant a Security Interest over all (but not part only) of its rights under this Lease and the Non-NSW Leases if:
  - (i) the enforcement of the Security Interest is subject to compliance with the restrictions on assignment or transfer set out in clause 23.2; and
  - (ii) the Lessee and the third party beneficiary of the Security Interest execute a Tripartite Deed in a form that is satisfactory to the Lessor, acting reasonably.

- (d) The Lessor acknowledges and agrees that the requirement in clause 23.1(c)(ii) will be satisfied if the Lessee and the third party beneficiary of the Security Interest execute a tripartite deed that is substantially in the form of the tripartite deed attached to the Sale and Purchase Agreement and that, subject to the execution of such a deed by the Lessee and that beneficiary, the Lessor will also execute that deed.

### 23.2 Permitted assignments

- (a) The Lessor may assign and transfer all (but not part only) of its rights and obligations under this Lease, the Non-NSW Leases and the Sublessee Leases to a person to whom it assigns or transfers at the same time all (but not part only) of its right, title and interest in the Leased Assets and the Leased Land, being a person that is the State or is wholly-owned or controlled by the State, provided that such assignment and transfer is subject to the condition that, if the assignee or transferee (not being the State) ceases to be wholly-owned or controlled by the State, those rights and obligations must, on or prior to that cessation, be assigned and transferred to the State or a person that is wholly-owned or controlled by the State. Any such assignee or transferee must execute a deed under which the assignee or transferee undertakes to the Lessee to be bound by the terms of this Lease and the Non-NSW Leases, and to any Permitted Sublessee to be bound by the terms of the Sublessee Leases, as if it were the Lessor.
- (b) The Lessee must not assign or transfer to any person any of its rights, interests and obligations in or under:
- (i) the Leased Assets (or any part of them);
  - (ii) the Lessee Leased Land (or any part of it);
  - (iii) this Lease; or
  - (iv) any Non-NSW Lease,
- without the prior consent of the Lessor.
- (c) Subject to clause 23.2(d), the Lessor must not unreasonably withhold or delay its consent under clause 23.2(b) where, at the time of the assignment or transfer, each of the following is satisfied:
- (i) the relevant assignment or transfer is of all (and not part only) of the Lessee's rights, interests and obligations in or under the Leased Assets, the Lessee Leased Land, this Lease and the Non-NSW Leases;
  - (ii) the assignee or transferee has obtained, or will obtain immediately following such assignment or transfer, all Authorisations necessary for the person to use the Leased Assets and the Lessee Leased Land for the purpose of conducting an electricity transmission business;
  - (iii) the assignee or transferee has sufficient financial and technical resources available to it to enable it to perform the obligations of the Lessee under this Lease and the Non-NSW Leases that are assigned or transferred to it;
  - (iv) the assignee or transferee is of good repute;
  - (v) the assignee or transferee has provided to the Lessor a duly executed deed under which the person undertakes to the Lessor to be bound by the terms of this Lease and the Non-NSW Leases as if it were the Lessee, including in respect of any accrued obligations of the Lessee under this Lease and the Non-NSW Leases as at the date of the assignment or transfer (unless the Lessee has agreed in the Lessor's favour to remain liable for those accrued obligations and

- the Lessee has sufficient financial and technical resources available to it to enable it to perform those accrued obligations);
- (vi) the assignment or transfer complies with all applicable Laws; and
  - (vii) the assignee or transferee has satisfactory arrangements in place that provide for it or any Permitted Sublessee to notify third parties, on request, of any proposals that it or such Permitted Sublessee has to acquire any right or interest in the whole or part of any land for the purposes of the *Conveyancing Act 1919* (NSW).
- (d) It will not be unreasonable for the Lessor to withhold or delay its consent to any assignment or transfer by the Lessee under clause 23.2(b) where, at the time of deciding whether to grant its consent to the assignment or transfer, the New Employer has not paid the State any amounts due under the EISS – New Employer Payment Deed. For the avoidance of doubt, this clause 23.2(d) is not intended to limit other circumstances in which it would not be unreasonable for the Lessor to withhold or delay such consent.
- (e) On a valid assignment or transfer by the Lessor in accordance with the requirements of clause 23.2(a), the Lessor is released from all its obligations under this Lease, the Non-NSW Leases and the Sublessee Leases.
- (f) On a valid assignment or transfer by the Lessee in accordance with the requirements of clause 23.2(b), the Lessee is released from all its obligations under this Lease and the Non-NSW Leases.

### 23.3 Subletting

- (a) The Lessee may sublease all (but not part only) of its interest in the Leased Assets and the Lessee Leased Land to a person (the **Permitted Sublessee**) if:
- (i) the use of the Leased Assets and the Lessee Leased Land which is permitted under the sublease is consistent with their use for the conduct of an electricity transmission business;
  - (ii) the Permitted Sublessee has, or will obtain immediately following the granting of such sublease, all Authorisations necessary for the Permitted Sublessee to use the Leased Assets and the Lessee Leased Land for the use which is permitted under the sublease;
  - (iii) the Permitted Sublessee has sufficient financial and technical resources available to it to enable it to perform the obligations which it assumes by virtue of the sublease;
  - (iv) the Permitted Sublessee is of good repute;
  - (v) following the granting of such sublease, the Permitted Sublessee will be the operator of the Leased Transmission Network for the purposes of the Regulatory Regime;
  - (vi) the sublease prohibits the Permitted Sublessee from:
    - (A) assigning or transferring any of its rights and obligations under the sublease; or
    - (B) subleasing, or granting a licence (other than a licence already granted by the Lessor and in existence as at the Commencement Date) in respect of, its interest in any part of the Leased Assets or the Lessee Leased Land,

except with the prior consent of the Lessee, and for these purposes the Lessee undertakes to the Lessor that it will not give such consent unless:

- (C) the Lessor, in its absolute discretion, consents to such assignment, transfer, sublease or licence; or
  - (D) the sublease or licence is required by Law, in which case the Lessee must consent to the sublease or licence, but only to the extent that the sublease or licence is required by Law;
- (vii) the sublease prohibits the Permitted Sublessee from creating or allowing to subsist a Security Interest (other than a Permitted Lien or a Security Interest permitted by a Sublease Deed) over any of the Permitted Sublessee's rights under the sublease, or over any of the Permitted Sublessee's right, title or interest in the Leased Assets or the Lessee Leased Land or any part of them, without the prior consent of the Lessee (and, for these purposes, the Lessee undertakes to the Lessor that it will not give such consent unless it has first obtained the consent of the Lessor under clause 23.3(d) or unless the requirements of clause 23.3(e)(i) and (e)(ii) have been satisfied);
  - (viii) the sublease is granted in accordance with all applicable Laws;
  - (ix) the sublease terminates if the lease of the Leased Assets and the NSW Leased Land under this Lease comes to an end for any reason;
  - (x) the term of the sublease expires at, or before, the end of the day before the Term expires;
  - (xi) the sublease expressly acknowledges the rights of the Lessor under this Lease and the Non-NSW Leases, and that the rights of the Permitted Sublessee under the sublease are subject to and subordinate to the rights of the Lessor under this Lease and the Non-NSW Leases;
  - (xii) under the sublease the Permitted Sublessee covenants not to do, permit or omit to do anything which causes or may cause a breach of this Lease or a Non-NSW Lease on the part of the Lessee; and
  - (xiii) the Lessee and the Permitted Sublessee execute a Sublease Deed.
- (b) Despite any sublease permitted or consented to by the Lessor under this clause 23.3, as between the Lessor and the Lessee, the Lessee continues to be bound to comply with all its obligations under this Lease and the Non-NSW Leases and any breach of this Lease or a Non-NSW Lease which is caused by the Permitted Sublessee will be deemed to be a breach of this Lease or the Non-NSW Lease by the Lessee.
  - (c) Except as provided in clause 23.3(a) or where the licence is already granted by the Lessor and is in existence as at the Commencement Date, the Lessee may only sublease, or grant a licence in respect of, its interest in any part of the Leased Assets or the Lessee Leased Land:
    - (i) with the prior consent of the Lessor, which may be given or withheld in the absolute discretion of the Lessor; or
    - (ii) where, and then only to the extent that, the sublease or licence is required by Law.
  - (d) Subject to clause 23.3(e) and for the purposes of clause 23.3(a)(vii), the Lessee must not consent to the Permitted Sublessee creating or allowing to subsist a Security Interest over any of the Permitted Sublessee's rights under the sublease or over any of the

Permitted Sublessee's right, title or interest in the Leased Assets or the Lessee Leased Land or any part of them unless the Lessee has first obtained the consent of the Lessor, which consent of the Lessor must not be unreasonably withheld or delayed.

- (e) For the purposes of clause 23.3(a)(vii), the Lessee may consent to the Permitted Sublessee creating or allowing to subsist a Security Interest over the Permitted Sublessee's rights under the sublease if:
- (i) the Security Interest is granted over all of the Permitted Sublessee's rights under the sublease;
  - (ii) the enforcement of the Security Interest is subject to compliance with the following requirements to the extent such enforcement entails the assignment or transfer of the sublease:
    - (A) all of the rights and obligations of the Permitted Sublessee under the sublease are assigned or transferred to the same person;
    - (B) the assignee or transferee has, or will obtain immediately following the assignment or transfer, all Authorisations necessary for that person to use the Leased Assets and the Lessee Leased Land for the use which is permitted under the sublease;
    - (C) the assignee or transferee has sufficient financial and technical resources available to it to enable it to perform the obligations which it assumes by virtue of the assignment or transfer to it of the sublease;
    - (D) the assignee or transferee is of good repute; and
    - (E) following the assignment or transfer, the assignee or transferee will be the operator of the Leased Transmission Network for the purposes of the Regulatory Regime; and
  - (iii) the Permitted Sublessee and the third party beneficiary of the Security Interest execute a Tripartite Deed in a form that is satisfactory to the Lessor, acting reasonably.

#### **23.4 Change of Control of Lessee**

- (a) A Change of Control with respect to the Lessee must not occur other than:
- (i) where such Change of Control is a Permitted Change of Control; or
  - (ii) with the prior consent of the Lessor.
- (b) Subject to clause 23.4(c), the Lessor must consent to a Change of Control under clause 23.4(a)(ii) where it is reasonably satisfied that, at the time of the Change of Control, the Change of Control complies with all applicable Laws and, immediately following the Change of Control:
- (i) the persons who will Control the Lessee, but excluding such of those persons as Controlled the Lessee immediately prior to the Change of Control, are of good repute and sound financial standing;
  - (ii) the Lessee will be financially capable of performing its obligations under this Lease and the Non-NSW Leases; and
  - (iii) the Lessee will be technically capable of performing its obligations under this Lease and the Non-NSW Leases.
- (c) The Lessor may withhold or delay its consent to a Change of Control under clause 23.4(a)(ii) where, at the time of deciding whether to grant its consent to the

Change of Control, the New Employer has not paid the State any amounts due under the EISS – New Employer Payment Deed. For the avoidance of doubt, this clause 23.4(c) is not intended to limit other circumstances in which the Lessor may withhold or delay such consent.

### **23.5 State ownership of Lessor**

The Lessor must ensure that at all times it is wholly-owned or controlled by the State or by a person who is wholly-owned or controlled by the State.

## **24 Taxes and Costs**

- (a) The Lessee must pay and indemnify and keep indemnified the Lessor against any liabilities for stamp duty, transaction and registration taxes and similar taxes or duties (including fines and penalties resulting from delay or omission to pay such taxes or duties, where such delay or omission is a result of the action or inaction of the Lessee or any Permitted Sublessee) which may be payable in relation to this Lease or any Non-NSW Lease or the performance or enforcement of this Lease or any Non-NSW Lease or any payment or receipt or other transaction contemplated by this Lease or any Non-NSW Lease, including in relation to:
- (i) any extension of the Term, or the payment of the Option Fee for such extension, in accordance with clause 17.2; and
  - (ii) the transfer to the Lessor (or its nominee) of any Additional Network Assets or Additional Network Land in accordance with clause 19.

This clause 24(a) does not apply to the extent of any inconsistency with the Sale and Purchase Agreement.

- (b) Unless this Lease otherwise provides, the Lessee must on demand reimburse the Lessor's costs and expenses (including reasonable internal costs such as of time spent) of or associated with:
- (i) considering, granting or refusing to grant any consent or approval under this Lease or any Non-NSW Lease;
  - (ii) considering, doing or refusing to do anything at the request or direction of the Lessee;
  - (iii) the actual or attempted enforcement of, or actual or attempted exercise or preservation of, any rights, powers or remedies under this Lease or any Non-NSW Lease including, in each case, legal costs and expenses on a full indemnity basis;
  - (iv) applying for or obtaining any Authorisations, consents or approvals that are required to be held or obtained by the Lessor in relation to this Lease;
  - (v) doing anything that ought to have been done by the Lessee under this Lease or any Non-NSW Lease; and
  - (vi) complying with any Law or Authorisation that imposes an obligation on the Lessor as the owner of the Leased Assets or the Leased Land.

## **25 Dispute resolution**

### **25.1 Dispute resolution process**

- (a) If either the Lessor or the Lessee considers a dispute has arisen under this Lease, that party may give notice of the dispute to the other party.

- (b) Within 5 Business Days of notice being given under clause 25.1(a), a representative of each of those parties must confer together at least once, without third party advisers, to attempt to resolve the dispute.
- (c) If the dispute is not resolved under clause 25.1(b) within 15 Business Days of the notice of dispute being given, then the representatives must confer together to agree a form of dispute resolution.
- (d) If either:
  - (i) no form of dispute resolution is agreed within 20 Business Days of the notice of dispute being given; or
  - (ii) the dispute is not resolved within 40 Business Days of the notice of dispute being given,then either party may, by written notice, refer the dispute to arbitration. Arbitration is to be before a single arbitrator in accordance with the *Commercial Arbitration Act 2010* (NSW) and either party may be represented by a member of the legal profession.
- (e) Costs will be in the discretion of the arbitrator.
- (f) This clause 25 does not prevent either party from seeking an injunction or declaration from a court in a case of urgency.
- (g) The existence of a dispute does not excuse a party from performing its obligations under this Lease in full, nor does it prevent a party from terminating this Lease due to the default of the other party where such termination is otherwise in accordance with this Lease.

## 25.2 Independent expert

Where this Lease expressly provides for a dispute to be resolved by or referred to an independent expert, or the Lessor and the Lessee otherwise agree that a dispute is best resolved by an independent expert, then the Lessor and the Lessee must submit to the following procedure to resolve the dispute:

- (a) the Lessor and the Lessee will choose and appoint an independent expert;
- (b) in the absence of agreement by the parties as to the independent expert within 5 Business Days of notice of a dispute being given, the independent expert will be appointed on the application of either of them by (unless otherwise agreed) the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Institute of Arbitrators and Mediators Australia;
- (c) the independent expert must make a determination or finding on the issues in dispute as soon as practicable and in any event within 15 Business Days after the dispute is referred to it, or such longer period as may be agreed between the parties;
- (d) the independent expert must act as an expert and not as an arbitrator and may adopt such procedures as he or she sees fit so as to provide an expeditious, cost effective and fair means of determining the dispute, subject to any provisions to the contrary in this Lease;
- (e) the independent expert is not bound by the rules of evidence and may make his or her determination on the basis of information received or his or her own expertise;
- (f) the Lessor and the Lessee must provide the independent expert with all such information as the independent expert reasonably requires to determine the dispute and must do all

things reasonably necessary to cooperate with the independent expert for the purposes of such determination;

- (g) in the absence of manifest error material to the determination, the independent expert's determination will be final and binding on the parties; and
- (h) the costs of the independent expert will be borne by the parties equally or as the independent expert may otherwise determine and each party will bear its own costs, including legal costs, relating to the independent expert's decision.

## **26 Confidentiality**

### **26.1 General Obligations**

Each party must keep confidential and not allow, make or cause any disclosure of or in relation to any information provided to it by the other party in connection with this Lease without the prior consent of that other party, which consent may be given or withheld, or given with conditions, in that other party's absolute discretion.

### **26.2 Exceptions**

A party's obligations in clause 26.1 do not apply to disclosures to the extent that the disclosure is:

- (a) by that party to its legal or other professional advisers, its auditors or other consultants, its insurers, its shareholders, the employees of that party or that party's Related Bodies Corporate, or any Permitted Sublessee, to the extent those persons require the information for the purposes of this Lease (or any transactions contemplated by it) or for the purpose of advising that party in relation thereto;
- (b) of information which is at the time lawfully in the possession of the proposed recipient of the information;
- (c) required by Law or by a lawful requirement of any Governmental Agency or recognised public securities exchange having jurisdiction over that party or its Related Bodies Corporate, including (in the case of the Lessee and its Related Bodies Corporate) to the extent the disclosure is required in relation to any equity or debt raising to be conducted by the Lessee or its Related Bodies Corporate (but subject, in such case, to that disclosure:
  - (i) only being made to the minimum extent reasonably necessary in connection with the equity or debt raising; and
  - (ii) not resulting in a breach of any confidentiality obligation of the Lessor or the State);
- (d) required in connection with legal proceedings relating to this Lease or for the purpose of advising that party in relation thereto;
- (e) of information which is at the time generally and publicly available other than as a result of breach of confidence by that party;
- (f) necessary or commercially desirable to a bona fide proposed or prospective assignee or transferee of, or acquirer of an interest in, a party, or to that person's legal advisers, auditors or insurers, in which case that party must, if requested by the other party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other party prior to the disclosure of the information;
- (g) necessary or commercially desirable to an existing or bona fide proposed or prospective financier, or to that financier's legal advisers, auditors or insurers, in which case that party must, if requested by the other party, procure that the proposed recipient of the

information executes a confidentiality deed in favour of the other party prior to the disclosure of the information;

- (h) by the Lessor to the State or any Minister of the Crown in right of the State or any of its agencies or instrumentalities; or
- (i) of the terms of this Lease by virtue of its registration at LPI.

### 26.3 Notice

Prior to making a disclosure under clause 26.2(f) or (g), the party making the disclosure must notify the other party of the proposed disclosure so that such other party can determine whether to require the proposed recipient of the information to execute a confidentiality deed as referred to in that clause.

## 27 Notices

Any notice, demand, consent, approval or other communication (a **Notice**) given or made under this Lease or a Non-NSW Lease:

- (a) except as otherwise specified in this Lease or a Non-NSW Lease, must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
  - (i) to the Lessor: Contact: Deputy Secretary – Commercial NSW Treasury  
Address: Level 27, 52 Martin Place Sydney NSW 2000  
GPO Box 5469 Sydney NSW 2001  
Fax: N/A
  - (ii) to the Lessee: Contact: Company Secretary  
Address: 180 Thomas Street, Haymarket NSW 2000  
Fax: N/A
- (c) will conclusively be taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at 9.00am on the next business day in that place.

## 28 Entire agreement

This Lease, the Non-NSW Leases, the Sublessee Leases and any Sublease Deed:

- (a) contain the entire agreement between the parties with respect to their subject matter;
- (b) set out the only conduct relied on by the parties; and
- (c) supersede all prior agreements and understandings between the parties in connection with their subject matter.

**29 No waiver**

No failure to exercise nor any delay in exercising any right, power or remedy under this Lease by a party operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

**30 Rights cumulative**

Subject to any express provision in this Lease to the contrary, the rights, powers and remedies of a party under this Lease are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by Law or by any agreement.

**31 Amendment**

Except as otherwise expressly provided in this Lease, no amendment or variation of this Lease is valid or binding on a party unless made in writing and executed by both parties.

**32 Further assurances**

- (a) Each party must do everything (including executing agreements and documents) necessary or reasonably required by the other party to give full effect to this Lease and the transactions contemplated by it.
- (b) At the request of the Lessee, the Lessor must provide all reasonable assistance to the Lessee, at the Lessee's cost, to rectify any errors in the registration details relating to the Leased Land or any other Transmission Network Land.

**33 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Lease. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

**34 Severability of provisions**

Any provision of this Lease that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Lease nor affect the validity or enforceability of that provision in any other jurisdiction.

**35 GST****35.1 GST to be added to amounts payable**

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Lease, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause 35.1 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

### 35.2 Liability net of GST

Any reference in the calculation of Consideration, or of any indemnity, reimbursement or similar amount, to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

### 35.3 Timing of the payment of the GST Amount

The GST Amount is payable on the earlier of:

- (a) the first date on which all or any part of the Consideration for the Taxable Supply is provided; and
- (b) the date five Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.

The GST Amount is not payable until a Tax Invoice is issued to the recipient of the Taxable Supply.

### 35.4 Off-set of GST Amount in integrated accounts

- (a) Notwithstanding clause 35.3, in relation to any GST payable on the Initial Lease Premium, the Lessor agrees that the GST Amount will not be paid to the Lessor, but will instead (by agreement with the Commissioner) be paid by offsetting the two corresponding GST Amounts in the parties' integrated client accounts (the amount being a GST liability for the Lessor and a corresponding Input Tax Credit for the Lessee). If the Commissioner does not agree to the set-off of the GST Amounts, then clause 35.3 applies.
- (b) If the amount of the Lessee's Input Tax Credit associated with the GST Amount (as reflected in the Lessee's integrated client account under the agreement with the Commissioner referred to in clause 35.4(a)) is less than the additional GST Amount determined under clause 35.1, the Lessee will pay to the Lessor the difference between the two amounts. The Lessee must pay the amount under this clause to the Lessor at the same time it would be required to pay the GST Amount under clause 35.3 in the absence of the agreement with the Commissioner or if the Lessee fails to comply with clause 35.4(c).
- (c) The Lessee agrees to the following in relation to the Input Tax Credit referred to in clause 35.4(a):
  - (i) the Lessee will report the Input Tax Credit in its GST return (as a component of the Lessee's net amount) for the tax period which includes the date the Initial Lease Premium was paid to the Lessor (the **Relevant GST Return**);
  - (ii) the Lessee will pay to the ATO an amount equal to the net amount owing on its Relevant GST Return after excluding the Input Tax Credit referred to in clause 35.4(a); and
  - (iii) the Lessee will consent by written notification to the ATO setting off the Input Tax Credit reflected in the Lessee's integrated client account with the GST Amount reflected in the Lessor's integrated client account. The written notification to the ATO must be in the form of the Offset Notification Letter to the ATO.

**35.5 Revenue exclusive of GST**

Unless otherwise stated, any reference in this Lease to proceeds, price, value, sales, revenue, consideration or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.

**35.6 Cost exclusive of GST**

Unless otherwise stated, any reference in this Lease to cost, expense, liability or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

**35.7 Adjustment Event**

If an Adjustment Event occurs in respect of a Taxable Supply described in this clause 35, the GST Amount payable under clause 35.1 will be recalculated to reflect the Adjustment Event and a payment will be made by the recipient to the supplier or by the supplier to the recipient, as the case requires. The supplier must issue an Adjustment Note for the Adjustment Event.

**35.8 GST Group**

If a party is a member of a GST Group, references to GST which the party must pay, and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

**35.9 Non-monetary Consideration**

If a supply made under this Lease is a Taxable Supply made for non-monetary consideration then:

- (a) the supplier must provide the recipient with a Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (b) for the avoidance of doubt, any non-monetary consideration payable under or in connection with this Lease is GST inclusive.

**35.10 Lessee acquisitions on behalf of Lessor**

Where the Lessee makes an acquisition from any person on behalf of the Lessor, subject to the Lessor receiving a Tax Invoice for that acquisition, the Lessor must pay to that other person or reimburse the Lessee for the GST Amount payable on that acquisition.

**35.11 Supply under existing arrangements**

The Lessor and the Lessee acknowledge that, under the terms of this Lease, the Lessee is entitled to rent and other money paid or payable to the Lessor under certain agreements, including the Existing Tenant Leases. The Lessor and the Lessee acknowledge that, for these arrangements, the Lessee, on the Lessor's behalf, facilitates the Taxable Supply to third parties. The Lessor and the Lessee agree that, in respect of such Taxable Supplies, for the purposes of Division 153B of the GST Act:

- (a) the Lessee will be treated as making the Taxable Supply to the third parties;
- (b) the Lessor will be treated as making the corresponding Taxable Supply to the Lessee;
- (c) the Lessee will issue to the third parties, in the Lessee's own name, all Tax Invoices and Adjustment Notes relating to those Taxable Supplies;
- (d) the Lessor will not issue to the third parties any Tax Invoices or Adjustment Notes relating to those Taxable Supplies; and
- (e) this clause 35.11 will cease to have effect if the Lessee or the Lessor ceases to be registered for GST purposes.

The Lessee warrants and undertakes that it is currently registered, and will promptly advise the Lessor if it ceases to be registered, for GST purposes.

### 35.12 Recipient created tax invoices

For any Taxable Supply made by the Lessor under, by reference to or in connection with this Lease, the parties agree as follows:

- (a) the recipient can and will issue Tax Invoices in respect of the Taxable Supply;
- (b) the supplier will not issue Tax Invoices in respect of the Taxable Supply;
- (c) the supplier acknowledges that it is registered for GST when it enters into this Lease;
- (d) the supplier must notify the recipient if it ceases to be registered for GST; and
- (e) the recipient acknowledges that it is registered for GST when it enters into this Lease and that it will notify the supplier if it ceases to be so registered or if its GST turnover ceases to satisfy any of the requirements of A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No.1) 2000.

### 35.13 Definitions

- (a) Words or expressions used in this clause 35 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) and related imposition Acts have the same meaning in this clause 35 unless expressly provided otherwise in clause 1.1.
- (b) **GST Amount**, in relation to a Taxable Supply, means the amount of GST payable in respect of that Taxable Supply.
- (c) In addition to its meaning as defined in the GST Act, Taxable Supply includes, where relevant, a part of a Taxable Supply that is treated under section 156-5 of the GST Act as if it were a separate supply.

## 36 Moratorium Legislation

To the full extent permitted by Law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Lessee any obligation under this Lease; or
- (b) delays, prevents, limits or prejudicially affects the exercise by the Lessor or the State of any power, right or authority, discretion or remedy which is given to the Lessor or the State by this Lease or by Law in relation to this Lease,

is excluded from this Lease.

## 37 Representations and warranties

Each party represents and warrants that, as at the date of this Lease:

- (a) the execution and delivery by that party of this Lease has been properly authorised by all necessary corporate actions of that party;
- (b) that party has full corporate power and lawful authority to execute and deliver this Lease and to consummate and perform or cause to be performed its obligations under this Lease; and
- (c) this Lease constitutes a legal, valid and binding obligation of that party enforceable in accordance with its terms by appropriate legal remedy.

**38 Caveats**

The Lessee must not lodge, and must ensure that a Permitted Sublessee does not lodge, a caveat on the title to the Leased Land without the Lessor's prior consent. Consent will not be unreasonably withheld if the caveat refers only to the Lessee's interest under this Lease or under any Non-NSW Lease, or only to the Permitted Sublessee's interest under a sublease entered into in accordance with clause 23.3 or under any Sublessee Lease, as the case may be. If such a caveat is lodged, the Lessee must promptly at its cost:

- (a) consent to, or procure the Permitted Sublessee's consent to, any dealing by the Lessor with the Leased Land that is permitted by this Lease, the relevant Non-NSW Lease or the relevant Sublessee Lease that does not materially prejudice the Lessee's rights under this Lease or the relevant Non-NSW Lease or the Permitted Sublessee's rights under the relevant Sublessee Lease; and
- (b) ensure that the caveat is removed as soon as this Lease is registered at LPI, the Non-NSW Lease is registered at the relevant titles office or the Sublessee Lease is registered at LPI or another titles office (as appropriate).

**39 Set-off**

- (a) The Lessor may set-off any amount that it owes the Lessee against any obligation of the Lessee to pay any amount to the Lessor under this Lease or a Non-NSW Lease.
- (b) The Lessee may set-off any amount that it owes the Lessor against any obligation of the Lessor to pay any amount to the Lessee under this Lease or a Non-NSW Lease.

**40 General PPSA Provisions**

To the extent that a PPSA Security Interest (as defined in the PPSA) is created under this Lease or a Non-NSW Lease, the following applies:

- (a) the grantor of that PPSA Security Interest consents to the secured party perfecting such PPSA Security Interest by registration under the PPSA and agrees to do anything (promptly and at its own cost) that is reasonably requested by the secured party to enable the secured party to do so;
- (b) each party contracts out of each provision of the PPSA, as permitted by section 115 of the PPSA, to the extent that:
  - (i) exercise by a party of any right, power or remedy will be taken not to be under a provision mentioned in section 115 of the PPSA to the extent that such right, power or remedy is a right, power or remedy under:
    - (A) this Lease or a Non-NSW Lease;
    - (B) any document or agreement that is ancillary to this Lease or a Non-NSW Lease; or
    - (C) any other law or statute,unless that party so elects; and
  - (ii) any obligation of a party to give notice, or any restriction on the exercise by a party of a right, power or remedy, will not apply;
- (c) each party waives its rights to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive; and
- (d) each party waives its rights to receive anything from the other party under section 275 of the PPSA and agrees not to make any request of the other party under that section.

**41 Exclusion of legislative provisions**

- (a) To the extent permitted by Law the covenants, powers and provisions (if any) implied in leases by virtue of any Law are expressly negated.
- (b) Without limiting clause 41(a), sections 84, 84A, 85, 86, 122, 130 and 133B and Column 1 of Part 2 of Schedule 4 of the *Conveyancing Act 1919* (NSW) have no application or operation in respect of this Lease.
- (c) To the extent permitted by Law, the Proportionate Liability Regimes do not apply to any claims by the Lessor or the State against the Lessee.

**42 Notification system**

The Lessee must at all times have satisfactory arrangements in place that provide for the Lessee or any Permitted Sublessee to notify third parties, on request, of any proposals that the Lessee or such Permitted Sublessee has to acquire any right or interest in the whole or part of any land for the purposes of the *Conveyancing Act 1919* (NSW).

**43 Governing law and jurisdiction**

- (a) This Lease is governed by the laws of the State of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them for determining any dispute concerning this Lease. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (c) The parties agree that neither of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Lease other than in a court of New South Wales or, in respect of any proceedings in a Federal court, in the Sydney registry of the relevant Federal court. A party must not, without the consent of the other party, request that proceedings instituted in a Federal court in New South Wales be heard outside New South Wales.
- (d) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a party by being delivered to that party in accordance with clause 27.

**Schedule 1 – Reference Schedule**

Item	Term	Definition
1	Lessor	TransGrid
2	Lessee	NSW Electricity Networks Assets Pty Limited as trustee of NSW Electricity Networks Assets Trust
3	Leased Land	The whole of the land in described in Schedule 3.
4	Term	99 years.
5	Option to renew	See clause 17.
6	Commencement Date	16 DECEMBER 2015
7	Expiry Date	15 DECEMBER 2114
8	Premium	\$7,246,500,226 comprising: \$7,246,498,226 in respect of Leased Property located in New South Wales; \$1,000 in respect of Leased Property located in the Australian Capital Territory; and \$1,000 in respect of Leased Property located in Victoria
9	Rent	CPI-Adjusted Amount of \$550,000 per Year

## Schedule 2 – Transmission Network Infrastructure as at the Commencement Date

### Overhead transmission lines and underground cables

#### 500kV Circuits

- **Overhead transmission lines and underground cables**

#### 500kV Circuits

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
5A1	ERARING	KEMPS CREEK	140.796	Double Circuit Steel Tower
5A2	ERARING	KEMPS CREEK	140.767	Double Circuit Steel Tower
5A3	BAYSWATER	MT PIPER	227.018	Double Circuit Steel Tower
5A4	BAYSWATER	WOLLAR	114.652	Double Circuit Steel Tower
5A5	WOLLAR	MT PIPER	113.448	Double Circuit Steel Tower
5A6	MT PIPER	BANNABY	141.104	Double Circuit Steel Tower
5A7	MT PIPER	BANNABY	141.105	Double Circuit Steel Tower
5B1	ERARING	Field Terminated (Not energised)	2.384	Double Circuit Steel Tower
5B2	ERARING	Field Terminated (Not energised)	2.388	Double Circuit Steel Tower

#### 330kV Circuits

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
1	CANBERRA	UPPER TUMUT	100.526	Single Circuit Steel Tower
2	UPPER TUMUT	YASS	146.791	Single Circuit Steel Tower
3	LOWER TUMUT	YASS	140.567	Single Circuit Steel Tower
4	MARULAN	YASS	114.023	Single Circuit Steel Tower
5	MARULAN	YASS	118.238	Single Circuit Steel Tower
6	CANBERRA	CAPITAL WIND FARM	59.883	Single Circuit Steel Tower
7	CANBERRA	LOWER TUMUT	98.670	Single Circuit Steel Tower
8	DAPTO	MARULAN	70.326	Single Circuit Steel Tower
9	CANBERRA	YASS	45.020	Single Circuit Steel Tower
10	DAPTO	AVON	10.979	Single Circuit Steel Tower
11	DAPTO	SYDNEY SOUTH	68.022	Single Circuit Steel Tower
12	LIVERPOOL	SYDNEY SOUTH	17.494	Double Circuit Steel Pole
13	KEMPS CREEK	SYDNEY SOUTH	24.208	Double Circuit Steel Pole
14	KEMPS CREEK	SYDNEY NORTH	50.537	Single Circuit Steel Tower
16	AVON	MARULAN	70.488	Single Circuit Steel Tower
17	AVON	MACARTHUR	41.081	Single Circuit Steel Tower

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
18	DAPTO	KANGAROO VALLEY	42.862	Single Circuit Steel Tower
20	SYDNEY NORTH	SYDNEY WEST	33.232	Single Circuit Steel Tower
21	TUGGERAH	SYDNEY NORTH	64.683	Single Circuit Steel Tower
22	SYDNEY NORTH	VALES POINT	86.051	Single Circuit Steel Tower
23	MUNMORAH	VALES POINT	6.749	Single Circuit Steel Tower
24	VALES POINT	ERARING	30.581	Single Circuit Steel Tower
25	ERARING	VINEYARD	108.922	Double Circuit Steel Tower
26	MUNMORAH	SYDNEY WEST	123.435	Double Circuit Steel Tower
27	SYDNEY NORTH	SYDNEY EAST	21.776	Single Circuit Steel Tower
28	SYDNEY NORTH	SYDNEY EAST	22.560	Single Circuit Steel Tower
29	VINEYARD	SYDNEY WEST	20.688	Double Circuit Steel Tower
30	LIVERPOOL	SYDNEY WEST	16.722	Single Circuit Steel Tower
31	BAYSWATER	REGENTVILLE	171.415	Double Circuit Steel Tower
32	BAYSWATER	SYDNEY WEST	188.195	Double Circuit Steel Tower
33	BAYSWATER	LIDDELL	6.046	Double Circuit Steel Tower
34	BAYSWATER	LIDDELL	6.026	Double Circuit Steel Tower
35	BANNABY	MARULAN	19.965	Double Circuit Steel Tower
36	BANNABY	MARULAN	19.945	Double Circuit Steel Tower
37	MACARTHUR	KEMPS CREEK	22.739	Single Circuit Steel Tower
38	REGENTVILLE	SYDNEY WEST	16.953	Double Circuit Steel Tower
39	BANNABY	SYDNEY WEST	114.120	Single Circuit Steel Tower
41	SYDNEY SOUTH	BEACONSFIELD	19.700	Underground Cable
42	SYDNEY SOUTH	HAYMARKET	27.500	Underground Cable
43	HOLROYD	ROOKWOOD ROAD	15.395	Underground Cable
44	HOLROYD	ROOKWOOD ROAD	15.392	Underground Cable
51	LOWER TUMUT	WAGGA	100.484	Single Circuit Steel Tower
60	JINDERA	WODONGA TS	22.187	Single Circuit Steel Tower
61	BANNABY	GULLEN RANGE	59.091	Single Circuit Steel Tower
62	JINDERA	WAGGA	99.486	Single Circuit Steel Tower
63	WAGGA	DARLINGTON PT	151.631	Single Circuit Steel Tower
64	LOWER TUMUT	UPPER TUMUT	40.612	Single Circuit Steel Tower
65	MURRAY	UPPER TUMUT	45.653	Single Circuit Steel Tower
66	LOWER TUMUT	MURRAY	72.988	Single Circuit Steel Tower
70	MT PIPER	WALLERAWANG	8.002	Double Circuit Steel Tower
71	MT PIPER	WALLERAWANG	7.971	Double Circuit Steel Tower
72	MT PIPER	WELLINGTON	169.822	Single Circuit Steel Tower

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
76	WALLERAWANG	SYDNEY SOUTH	143.196	Double Circuit Steel Tower
77	WALLERAWANG	INGLEBURN	121.947	Double Circuit Steel Tower
78	INGLEBURN	SYDNEY SOUTH	21.279	Double Circuit Steel Tower
79	WOLLAR	WELLINGTON	117.052	Single Circuit Steel Tower
81	LIDDELL	NEWCASTLE	102.888	Single Circuit Steel Tower
82	LIDDELL	TOMAGO	118.158	Single Circuit Steel Tower
83	LIDDELL	MUSWELLBROOK	18.337	Single Circuit Steel Tower
84	LIDDELL	TAMWORTH 330	139.332	Single Circuit Steel Tower
85	TAMWORTH 330	ARMIDALE	103.645	Single Circuit Steel Tower
86	TAMWORTH 330	ARMIDALE	110.980	Single Circuit Steel Tower
87	ARMIDALE	COFFS HARBOUR	136.227	Single Circuit Steel Tower
88	MUSWELLBROOK	TAMWORTH 330	127.289	Single Circuit Steel Tower
89	COFFS HBR	LISMORE	171.052	Single Circuit Steel Tower
90	ERARING	NEWCASTLE	21.149	Double Circuit Steel Tower
92	NEWCASTLE	VALES PT	34.719	Double Circuit Steel Tower
93	ERARING	NEWCASTLE	19.488	Double Circuit Steel Tower
94	NEWCASTLE	TOMAGO	24.332	Double Circuit Steel Tower
95	NEWCASTLE	TOMAGO	25.446	Double Circuit Steel Tower
96	NEWCASTLE	WARATAH WEST	18.395	Double Circuit Steel Tower
1C	SYDNEY WEST	HOLROYD	9.833	Double Circuit Steel Tower
1F	SYDNEY WEST	HOLROYD	9.893	Double Circuit Steel Tower
2M	MUNMORAH	TUGGERAH	39.541	Single Circuit Steel Tower
3C	CANBERRA	WILLIAMDALE	49.172	Single Circuit Steel Tower
3J	GULLEN RANGE	YASS	65.626	Single Circuit Steel Tower
3W	CAPITAL WINDFARM	KANGAROO VALLEY	129.004	Single Circuit Steel Tower
8C	ARMIDALE	DUMARESQ	172.295	Double Circuit Steel Tower
8E	ARMIDALE	DUMARESQ	172.441	Double Circuit Steel Tower
8L	DUMARESQ	BULLI CREEK	48.715	Double Circuit Steel Tower
8M	DUMARESQ	BULLI CREEK	48.722	Double Circuit Steel Tower
9W	TOMAGO	WARATAH WEST	8.845	Double Circuit Steel Tower
L1	LOWER TUMUT	TUMUT 3	0.576	Single Circuit Steel Tower
L3	LOWER TUMUT	TUMUT 3	0.569	Single Circuit Steel Tower
L5	LOWER TUMUT	TUMUT 3	0.546	Single Circuit Steel Tower
M1	MURRAY	MURRAY 1	4.721	Single Circuit Steel Tower
M11	MURRAY	MURRAY 2	2.209	Single Circuit Steel Tower

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
M13	MURRAY	MURRAY 2	1.994	Single Circuit Steel Tower
M3	MURRAY	MURRAY 1	4.744	Single Circuit Steel Tower
M5	MURRAY	MURRAY 1	4.761	Single Circuit Steel Tower
M7	MURRAY	MURRAY 1	4.787	Single Circuit Steel Tower
M9	MURRAY	MURRAY 1	4.837	Single Circuit Steel Tower
U1	UPPER TUMUT	TUMUT 1	5.194	Single Circuit Steel Tower
U3	UPPER TUMUT	TUMUT 1	4.955	Single Circuit Steel Tower
U5	UPPER TUMUT	TUMUT 2	3.746	Single Circuit Steel Tower
U7	UPPER TUMUT	TUMUT 2	3.875	Single Circuit Steel Tower
BB1	BANNABY 500	BANNABY 330	0.400	Single Circuit Steel Tower
BB2	BANNABY 500	BANNABY 330	0.400	Single Circuit Steel Tower
Canberra Bypass	Canberra	Canberra	0.174	Single Circuit Wood Pole
YY	Lower Tumut	Field Terminated (not energised)	2.330	Single Circuit Steel Tower
81SP	Liddell	Field Terminated (not energised)	2.139	Double Circuit Steel Tower
82SP	Liddell	Field Terminated (not energised)	1.036	Double Circuit Steel Tower
83SP	Liddell	Field Terminated (not energised)	1.938	Double Circuit Steel Tower
84SP	Liddell	Field Terminated (not energised)	1.715	Double Circuit Steel Tower
91	Kemps Creek	Field Terminated (not energised)	1.453	Double Circuit Steel Tower
90SP	Kemps Creek	Field Terminated (not energised)	1.412	Double Circuit Steel Tower

**220kV Circuits**

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
0X1	BURONGA	RED CLIFFS	23.904	Single Circuit Steel Tower
X2	BURONGA	BROKEN HILL	259.470	Single Circuit Steel Tower
X5/1	DARLINGTON PT	BALRANALD	249.716	Single Circuit Steel Tower
X5/3	BALRANALD	BURONGA	148.059	Single Circuit Steel Tower

**132kV Circuits**

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
250	MT COLAH	SYDNEY NORTH	8.200	Double Circuit Steel Tower

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
875	GUNNEDAH	FIELD TERMINATED	3.860	Single Circuit Wood Pole
944	WALLERAWANG	ORANGE NORTH	98.028	Single Circuit Wood Pole
948	ORANGE NORTH	PANORAMA	43.819	Single Circuit Wood Pole
949	MT PIPER 132	ORANGE NORTH	93.589	Single Circuit Wood Pole
959	SYDNEY EAST	SYDNEY NORTH	23.730	Double Circuit Steel Tower
965	ARMIDALE	KEMPSEY	143.015	Single Circuit Wood Pole
966	ARMIDALE	KOOLKHAN	177.216	Single Circuit Wood Pole
967	KOOLKHAN	LISMORE 330	90.009	Single Circuit Concrete Pole
968	NARRABRI	TAMWORTH 330	174.071	Single Circuit Wood Pole
969	TAMWORTH 132	GUNNEDAH	65.281	Single Circuit Wood Pole
970	YASS 330	BURRINJUCK	37.300	Single Circuit Wood Pole
973	YASS 330	COWRA 132	119.622	Single Circuit Wood Pole
978	COOMA	WILLIAMSDALE	73.994	Single Circuit Wood Pole
979	GUTHEGA	MUNYANG	0.475	Single Circuit Wood Pole
990	YASS 330	WAGGA 132	150.386	Single Circuit Concrete Pole
991	MURRUMBURRAH	WAGGA NORTH	115.021	Single Circuit Wood Pole
992	BURRINJUCK	TUMUT	52.663	Single Circuit Wood Pole
993	WAGGA 330	GADARA MILL	79.281	Single Circuit Wood Pole
994	WAGGA 330	YANCO	127.809	Single Circuit Concrete Pole
995	ALBURY	HUME PS	12.378	Single Circuit Wood Pole
998	COWRA	FORBES	88.596	Single Circuit

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
				Concrete Pole
999	YASS 330	COWRA	114.708	Single Circuit Steel Tower
097B	BLOWERING	TUMUT 132	13.267	Single Circuit Wood Pole
92Z	SYDNEY EAST	SYDNEY NORTH TEE MT COLAH	23.757	Double Circuit Steel Tower
945	MOLONG	WELLINGTON	64.902	Single Circuit Concrete Pole
947	ORANGE NORTH	WELLINGTON	89.274	Single Circuit Wood Pole
94B	BERYL	WELLINGTON	52.285	Single Circuit Concrete Pole
94E	MT PIPER 132	WALLERAWANG 132	8.995	Single Circuit Wood Pole
94G	ORANGE NORTH	ORANGE	0.659	Single Circuit Concrete Pole
94H	MANILDRA	PARKES	81.734	Single Circuit Concrete Pole
94K	PARKES 132	WELLINGTON 330	115.584	Single Circuit Wood Pole
94M	MT PIPER132 TEE MUDGE	BERYL	129.004	Single Circuit Wood Pole
94P	MOLONG	MANILDRA	27.107	Single Circuit Concrete Pole
94T	ORANGE NORTH	MOLONG	29.347	Single Circuit Concrete Pole
94U	FORBES	PARKES	30.418	Single Circuit Wood Pole
94X	PANORAMA	WALLERAWANG 132	56.915	Single Circuit Wood Pole
94Y	MT PIPER	MTPIPER 132	1.773	Single Circuit Wood Pole
963	TOMAGO	TAREE TEE HAWKS NEST	108.731	Single Circuit Wood Pole
964	PT MACQUARIE	TAREE TEE HERONS CK	66.110	Single Circuit Wood Pole
96C	ARM IDALE	COFFS HBR TEE DORRIGO	139.962	Single Circuit Wood Pole
			61.731	

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
96F	TOMAGO	STROUD		Single Circuit Wood Pole
96G	KEMPSEY	PT MACQUARIE	43.021	Double Circuit Concrete Pole
96H	COFFS HARBOUR	KOOLKHAN	80.544	Single Circuit Wood Pole
96L	TENTERFIELD	LISMORE TEE CASINO	124.068	Single Circuit Wood Pole
96M	NARRABRI	MOREE	107.003	Single Circuit Concrete Pole
96N	ARMIDALE	INVERELL	111.193	Single Circuit Wood Pole
96P	STROUD	TAREE	85.996	Single Circuit Wood Pole
96R	GLEN INNES	TENTERFIELD	80.240	Single Circuit Wood Pole
96T	ARMIDALE	GLEN INNES	96.073	Single Circuit Wood Pole
96X	WARABROOK	WARATAH WEST	1.587	Double Circuit Steel Tower
96Y	WARABROOK	WARATAH WEST	1.597	Double Circuit Steel Tower
976/1	CANBERRA	QUEANBEYAN TEE YASS 330	51.265	Single Circuit Wood Pole
976/2	YASS 330	TEE	38.073	Single Circuit Wood Pole
977/1	CANBERRA	QUEANBEYAN	53.713	Single Circuit Wood Pole
97A	TAMWORTH 132	TAMWORTH 330	3.052	Single Circuit Wood Pole
97B	TAMWORTH 132	TAMWORTH 330	3.141	Double Circuit Concrete Pole
97C	TAMWORTH	TAMWORTH 330 (CURRENTLY NOT CONNECTED)	3.545	Single Circuit Wood Pole
97D	COOMA	WILLIAMSDALE	80.037	Single Circuit Wood Pole
97G/1	MURRAY	GEEHITEE	17.520	Single Circuit Wood Pole
97G/2	GEEHI TEE	GEEHI DAM	0.160	Single Circuit Wood Pole

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
				Pole
97G/3	GUTHEGA	GEEHI TEE	19.820	Single Circuit Wood Pole
97K	COOMA	MUNYANG TEE SNOWY ADIT	76.769	Single Circuit Wood Pole
97L	GUTHEGA	JINDABYNE	20.329	Single Circuit Wood Pole
996	WAGGA 330	ANM TEE MORVEN	105.919	Single Circuit Concrete Pole
99A	URANQUINTY	FINLEY	169.064	Single Circuit Wood Pole
99B	ALBURY	JINDERA	16.979	Single Circuit Wood Pole
99D	DARLINGTON PT	YANCO	37.502	Single Circuit Wood Pole
99F	URANQUINTY	YANCO	109.018	Single Circuit Wood Pole
99H	A.N.M.	JINDERA	11.470	Single Circuit Wood Pole
99J	YANCO	GRIFFITH	45.483	Single Circuit Wood Pole
99K	DARLINGTON PT	GRIFFITH	59.415	Single Circuit Concrete Pole
99L	COLEAMBALLY	DENILQUIN	152.868	Single Circuit Concrete Pole
99M	YASS 330	MURRUMBURRAH	72.130	Single Circuit Wood Pole
99P	GADARA MILL	TUMUT	8.140	Single Circuit Concrete Pole
99T	DARLINGTON PT	COLEAMBALLY	13.372	Single Circuit Concrete Pole
99W	WAGGA 132	WAGGA 330	9.810	Double Circuit Steel Tower
99X	WAGGA 132	WAGGA 330	10.242	Double Circuit Steel Tower
99z	ALBURY	A.N.M .	9.901	Single Circuit Wood Pole
9C5	TOMAGO	BRANDY HILL	18.103	Double Circuit Concrete Pole
9C6	TOMAGO	BRANDY HILL	13.796	Double Circuit Concrete Pole

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
9C8	BRANDY HILL	STROUD	48.438	Double Circuit Concrete Pole
9GP	WELLINGTON	FIELD TERMINATED	0.680	Double Circuit Concrete Pole
9R1	WAGGA 330	URANQUINTY	16.551	Single Circuit Concrete Pole
9R2	WAGGA 330	URANQUINTY	16.465	Single Circuit Concrete Pole
9R3	FINLEY	DENILIQUN	45.243	Single Circuit Wood Pole
9R5	WAGGA 330	WAGGA NORTH	14.597	Double Circuit Steel Tower
9R6	WAGGA 132	WAGGA NORTH	10.424	Double Circuit Steel Tower
9U2	INVERELL	MOREE	143.210	Single Circuit Concrete Pole
9U3	GUNNEDAH	BOGGABRI EAST	66.821	Single Circuit Wood Pole
9U4	GLEN INNES	INVERELL	67.807	Single Circuit Concrete Pole
9U5	TAMWORTH 132kV	FIELD TERMINATED	14.819	Double Circuit Concrete Pole
9UH	NARRABRI	BOGGABRI NORTH	52.062	Single Circuit Wood Pole
9UJ	BOGGABRI EAST	BOGGABRI NORTH	12.738	Double Circuit Concrete Pole
9W2	KEMPSEY	RALEIGH	84.472	Double Circuit Concrete Pole
9W3	RALEIGH	COFFS HARBOUR	25.544	Double Circuit Concrete Pole
9W5	KEMPSEY	MACKSVILLE	52.516	Double Circuit Concrete Pole
9W6	MACKSVILLE	NAMBUCCA	13.332	Double Circuit Concrete Pole
9W7	NAMBUCCA	BOAMBEE SOUTH	36.232	Double Circuit Concrete Pole
9W8	BOAMBEE SOUTH	COFFS HARBOUR	13.394	Double Circuit Concrete Pole
9W9	PT MACQUARIE	KEMPSEY	43.203	Double Circuit Concrete Pole
OR-T1	ORANGE	ORANGE NORTH	0.546	Single Circuit

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
OR-T2	ORANGE	ORANGE NORTH	0.590	Single Circuit Concrete Pole
OR-T3	ORANGE	ORANGE NORTH	0.650	Single Circuit Concrete Pole
WW 3TX	WALLERAWANG 330	WALLERAWANG NEW 132	0.270	Single Circuit Concrete Pole
WW 4TX	WALLERAWANG 330	WALLERAWANG NEW 132	0.247	Single Circuit Concrete Pole
9S4	HAYMARKET	SYDNEY PARK	3.617	Underground Cable

**66kV Circuits**

Circuit Number	From (Site 1)	To (Site 2)	Length (Km)	Construction Type
8C1/1	MOLONG	CUMNOCK COUPLING POINT TEE WEST ORANGE	6.600	Double Circuit Concrete Pole (132kV construction)
886	GLENN INNES	GLENN INNES TOWN COUPLING POINT	10.400	Double Circuit Concrete Pole (132kV construction)

• **Substations**

500kV Sites	Commissioning Year	System Voltage (kV)
Bannaby	2010	500/330
	2010	330
Bayswater	2009	500/330
	1984	330
Eraring	1984	500/330
Mt Piper 500	2009	500/330
	1986	330/132
Kemps Creek	1984	500/330
Wollar	2009	500/330

**Total sites at 500kV = 6**

330kV Sites	Commissioning Year	System Voltage (kV)
Armidale	1972	330/132
	1969	132/66
Avon	1974	330

<b>330kV Sites</b>	<b>Commissioning Year</b>	<b>System Voltage (kV)</b>
Beaconsfield West	1979	330/132
Canberra	1967	330/ 132
Capital Wind Farm	2009	330
Coffs Harbour	2006	330/132
	1979	132/66
Dapto	1962	330/132
Darlington Point	1988	330/1220
		330/132
Dumaresq	2000	330
Gullen Range	2013	330
Haymarket	2004	330/132
Holroyd	2014	330/132
Ingleburn	1984	330/66
Jindera	1979	330/132
Kangaroo Valley	1976	330
Liddell	1970	330
Lismore	1992	330/132
Liverpool	1985	330/132
Lower Tumut	1972	330
Macarthur	2009	330/132
		330/66
Marulan	1992	330/132
Munmorah	1967	330/132
Murray	1967	330/132
Muswellbrook	1983	330/132
Newcastle	1969	330/132
Regentville	1997	330/132
Rookwood Road	2014	330/ 132
Sydney East	1976	330/ 132
Sydney North	1963	330/132
Sydney South	1961	330/132
Sydney West	1965	330/132
Tamworth 330	1968	330/132
Tomago	1983	330/132
	2008	132

<b>330kV Sites</b>	<b>Commissioning Year</b>	<b>System Voltage (kV)</b>
Tuggerah	1986	330/132
Upper Tumut	1959	330
Vales Point	1962	330/132
Vineyard	1994	330/132
Wagga 330	1973	330/132
Wallerawang 330	1975	330/132
Waratah West	1992	330/132
Wellington	1984	330/132
Williamsdale	2012	330/132
Yass	2006	330/132
	1965	132/66
<b>Total sites at 330kV = 43</b>		

<b>220kV Sites</b>	<b>Commissioning Year</b>	<b>System Voltage (kV)</b>
Balranald	200 1	220/22
Broken Hill	1979	220/22
Buronga	1988	220
<b>Total sites at 220kV = 3</b>		

<b>132kV Sites</b>	<b>Commissioning Year</b>	<b>System Voltage (kV)</b>
Albury	1958	132
A.N.M.	1981	132
Beryl	1976	132/66
Boambee South	2010	132
Boggabri East	2014	132
Boggabri North	2015	132
Burrinjuck	1950	132
Coleambally	1993	132
Cooma	1954	132/66/11
Cowra	1960	132/66
Deniliquin	1971	132/66
Finley	1991	132/66
Forbes	1969	132/66
Gadara	2000	132/11

<b>132kV Sites</b>	<b>Commissioning Year</b>	<b>System Voltage (kV)</b>
Glen Innes	2007	132/66
Griffith	1964	132/33
Gunnedah	1985	132/66
Guthega	1970	132
Hume	1957	132
Inverell	1984	132/66
Kempsey	1967	132/33 66/33
Koolkhan	1963	132/66
Macksville	2010	132
Manildra	2012	132
Molong	2001	132/66
Moree	1984	132/66
Mt Piper 132	1988	132/66
Munyang	1989	132/33
Murrumburrah	1985	132/66
Nambucca	2001	132/66
Narrabri	1965	132/66
Orange	1954	132/66
Orange North	2012	132
Panorama	1979	132/66
Parkes	1993	132/66
Port Macquarie	1979	132/33
Queanbeyan	2010	132/66
Raleigh	2009	132
Tamworth 132	1961	132/66
Taree	1958	132/66/33
Tenterfield	1970	132/22
Tumut	1967	132/66
Uranquinty	2007	132
Wagga 132	1955	132/66
Wagga North	2009	132/66
Wallerawang 132 (new)	2014	132/66
Yanco	1969	132/33

**Total sites at 132kV = 47**

Total sites at all voltages = 99

**Schedule 3 – Leased Land****Part 1 – Freehold Land (NSW Network Leased Land)**

<b>Title</b>	<b>Asset Category</b>	<b>Display Name</b>	<b>Locality</b>
Folio Identifier 1/436341	Managed Land	Black Range Sub	YASS VALLEY
Folio Identifier B/415546	Managed Land	Dapto 330kv Sub	WOLLONGONG
Folio Identifier 1/534115	Managed Land	Dapto 330kv Sub	DAPTO
Folio Identifier 2/234771	Managed Land	Dapto 330kv Sub	MARSHALL MOUNT
Folio Identifier 1/517460	Managed Land	Dapto 330kv Sub	YALLAH
Folio Identifier 60/751541	Managed Land	Dumaresq – Lismore 330kv TI	TENTERFIELD
Folio Identifier 61/751541	Managed Land	Dumaresq – Lismore 330kv TI	TENTERFIELD
Folio Identifier 86/751541	Managed Land	Dumaresq – Lismore 330kv TI	TENTERFIELD
Folio Identifier 58/751541	Managed Land	Dumaresq – Lismore 330kv TI	TENTERFIELD
Folio Identifier 1/230689	Managed Land	Mt Druitt 132kv Sub	ST MARYS
Folio Identifier 1/719678	Managed Land	Narrabri 330kv Sub	NARRABRI
Folio Identifier 15/1061633	Managed Land	Richmond Vale 500kv Sub	RICHMOND VALE
Folio Identifier 5/521268	Managed Land	South Creek Sub	KINGSWOOD
Folio Identifier 2/700555	Managed Land	Taree 330kv Sub	LANSDOWNE
Folio Identifier 3/700555	Managed Land	Taree 330kv Sub	LANSDOWNE
Folio Identifier 1/736920	Managed Land	Tomerong 330/132kv Sub	TOMERONG
Folio Identifier 173/751370	Operational	Coffs Harbour – Grafton 330kv	CLARENCE VALLEY
Folio Identifier 2/1145580	Operational	Coffs Harbour – Grafton 330kv	RUSHFORTH
Folio Identifier 1/1145580	Operational	Coffs Harbour – Grafton 330kv	RUSHFORTH
Folio Identifier 8/713553	Operational	Coffs Harbour – Kempsey 132kv	BOAMBEE
Folio Identifier 8/1171381	Operational	Kemps Creek – Liverpool 330kv	ELIZABETH HILLS
Folio Identifier 22/708476	Operational	Mt Piper – Marulan 500kv TI	HAZELGROVE
Folio Identifier 12/7800	Operational	Munmorah – Sydney North 330kv	GOSFORD
Folio Identifier 26/202567	Operational	Newcastle – Tomago 330kv TI	YOUNG WALLSEND

Folio Identifier 1/727968	Operational	Port Kembla – Sydney 66kv TI	KINGSGROVE
Auto-consol 1010-77	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Auto-consol 10916- 89	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Auto-consol 11403- 249	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Folio Identifier 19/41/1480	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE
Folio Identifier 20/41/1480	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE
Auto-consol 2066-93	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Folio Identifier 4/31852	Operational	Sydney West – Sydney North No 2 330kv	KENTHURST
Folio Identifier 45/51/1480	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE
Auto-consol 5064-25	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Folio Identifier 53/40/1480	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Auto-consol 770-134	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Auto-consol 8425- 114	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE
Auto-consol 8436- 240	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE
Auto-consol 8447-71	Operational	Sydney West – Sydney North No 2 330kv	BLACKTOWN
Auto-consol 8451- 112	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE
Auto-consol 8460- 190	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE
Auto-consol 8647- 195	Operational	Sydney West – Sydney North No 2 330kv	RIVERSTONE

Folio Identifier 1/1192677	Operational	Tamworth 132kv Sub Outlets	HILLVUE
Folio Identifier 111/615529	Operational	Tuggerah – Sterland 330kv TI	TUGGERAH
Folio Identifier 1/627921	Operational	Tuggerah – Sterland 330kv TI	OURIMBAH
Folio Identifier 2/627921	Operational	Tuggerah – Sterland 330kv TI	OURIMBAH
Folio Identifier 364/26070	Operational	Wallerawang – Orange No 1 132k	LITHGOW CITY
Folio Identifier 920/1164448	Substation	Wallerawang 132kv Sub	WALLERAWANG
Folio Identifier 571/832444	Operational	Waratah 330/132kv Sub	MAYFIELD WEST
Folio Identifier 1751/712136	RRS	Baldy Peak RRS	RYLSTONE
Folio Identifier 1/533908	RRS	Burra RRS	GUNDAGAI
Folio Identifier 10/740889	RRS	Colleambally RRS	COLEAMBALLY
Folio Identifier 1/738332	RRS	Conargo RRS	DENILQUIN
Folio Identifier 1/1069494	RRS	Currawarna RRS	CURRAWARNA
Folio Identifier 1/551952	RRS	Darkes Forest RRS (Maddens Plains)	MADDENS PLAINS
Folio Identifier 1/227339	RRS	Ellsmore RRS	MOSS VALE
Folio Identifier 21/618107	RRS	Ellsmore RRS	MOSS VALE
Folio Identifier 1/1008294	RRS	Emmaville RRS	EMMAVILLE
Folio Identifier 1/580856	RRS	Goombargana RRS	GOOMBARGANA
Folio Identifier 1/1134911	RRS	Hawk Hill RRS	BOOROWA
Folio Identifier 1/738224	RRS	Hay RRS	HAY
Folio Identifier 201/633590	RRS	High Range RRS	HIGH RANGE
Folio Identifier 2/211502	RRS	Kurrajong Heights RRS	KURRAJONG HEIGHTS
Folio Identifier 1/228771	RRS	Lerida RRS	COLLECTOR
Folio Identifier 121/618106	RRS	Lerida RRS	COLLECTOR
Folio Identifier 1/532643	RRS	Mallanganee RRS	MALLANGANEE
Folio Identifier 1/1149361	RRS	Merriwa RRS	MERRIWA
Folio Identifier 1/226974	RRS	Mt Gray RRS	GOULBOURN
Folio Identifier 21/618105	RRS	Mt Gray RRS	GOULBOURN
Folio Identifier 600/1192830	RRS	Mt Hallam RRS	ATHOLWOOD

Folio Identifier 101/870983	RRS	Mt Lambie RRS	MT LAMBIE
Folio Identifier 102/870983	RRS	Mt Lambie RRS	MT LAMBIE
Folio Identifier 1/1170642	RRS	Murrumburrah RRS	MURRUMBURRAH
Folio Identifier 2/1029841	RRS	Parrots Nest RRS	PARROTS NEST
Folio Identifier 1/869583	RRS	Point Lookout RRS	PT LOOKOUT
Folio Identifier 1/586132	RRS	Putty RRS	SINGLETON
Folio Identifier 121/630152	RRS	Razorback RRS	RAZORBACK
Folio Identifier 1/801300	RRS	Robertson RRS	ROBERTSON
Folio Identifier 81/618110	RRS	Robertson RRS	ROBERTSON
Folio Identifier 1/535026	RRS	Yass Microwave RRS	YASS
Folio Identifier 21/618108	RRS	Yass Microwave RRS	YASS
Folio Identifier 50/1005835	Substation	Albury 132kv Sub	EAST LAVINGTON
Folio Identifier 1/1013556	Substation	Armidale 330kv Sub	ARMIDALE
Folio Identifier 1/999496	Substation	Armidale 330kv Sub	ARMIDALE
Folio Identifier 2/1013556	Substation	Armidale 330kv Sub	ARMIDALE
Folio Identifier 2/999496	Substation	Armidale 330kv Sub	ARMIDALE
Folio Identifier 8/112694	Substation	Armidale 330kv Sub	ARMIDALE DUMARESQ
Folio Identifier 847/653684	Substation	Armidale 330kv Sub	ARMIDALE DUMARESQ
Folio Identifier 858/755808	Substation	Armidale 330kv Sub	ARMIDALE
Folio Identifier 1/629660	Substation	Australia Newsprint Mills (ANM) 132/66kv Substation	ETTAMOGAH
Folio Identifier 48/1015985	Substation	Balranald 220/22kv Sub	BALRANALD
Folio Identifier 49/1049774	Substation	Balranald 220/22kv Sub	BALRANALD
Folio Identifier 101/791667	Substation	Beaconsfield West 132kv Sub	ST PETERS
Folio Identifier 102/791667 Concurrent Lease	Substation	Beaconsfield West 330kv Sub	ST PETERS
Folio Identifier B/90878 Concurrent Lease	Substation	Beaconsfield West 330kv Sub	ALEXANDRIA
Folio Identifier 1/523876	Substation	Beryl 132/66kv Sub	BERYL
Folio Identifier 101/1203462	Substation	Beryl 330kV Substation	BERYL

Folio Identifier 280/1196626	Substation	Boggabri – Boggabri East Swf Sub	BOGGABRI
Folio Identifier 281/1196626	Substation	Boggabri – Boggabri East Swf Sub	BOGGABRI
Folio Identifier 1/1102040 Concurrent Lease	Substation	Broken Hill 220kv Sub	BROKEN HILL
Folio Identifier 2/1102040	Substation	Broken Hill 220kv Sub	BROKEN HILL
Folio Identifier 1/717938	Substation	Buronga 220/66kv Sub	TAPIO
Folio Identifier 1/1083920	Substation	Coffs Harbour 330/132kv Sub	KARANGI
Folio Identifier 101/603409	Substation	Coffs Harbour 330/132kv Sub	KARANGI
Folio Identifier 5/560766	Substation	Coffs Harbour 330/132kv Sub	KARANGI
Folio Identifier 6/560766	Substation	Coffs Harbour 330/132kv Sub	KARANGI
Folio Identifier 100/1183622	Substation	Cooma 132kv Sub	COOMA
Folio Identifier 3/242762	Substation	Cooma 132kv Sub	COOMA NORTH
Folio Identifier 2/1065708	Substation	Cowra 132kv Sub	COWRA
Folio Identifier 1/108251	Substation	Dapto (Yallah) 330kv Sub	WOLLONGONG
Folio Identifier 2/628785	Substation	Darlington Point 330/132kv Sub	DARLINGTON POINT
Folio Identifier 1/536901	Substation	Deniliquin 132kv Sub	DENILIQWIN
Folio Identifier 201/879480	Substation	Dumaresq 330kv Sub	MAIDENHEAD
Folio Identifier 10/1050120	Substation	Eraring 500kv Sub	ERARING
Folio Identifier B/961693	Substation	Finley 132/66kv Sub	BERRIGAN
Folio Identifier 101/844226	Substation	Forbes 132kv Sub	FORBES
Folio Identifier 397/753282	Substation	Glen Innes 132kv Sub	GLEN INNES
Folio Identifier 398/753282	Substation	Glen Innes 132kv Sub	GLEN INNES
Folio Identifier 1/865611	Substation	Griffith 132kv Sub	WIDGELL
Folio Identifier 1/633426	Substation	Gunnedah 132/66kv Sub	GUNNEDAH
Folio Identifier 2/633426	Substation	Gunnedah 132/66kv Sub	GUNNEDAH
Folio Identifier 1/1129303	Substation	Holroyd 330kv Sub	GREYSTANES
Folio Identifier 1/1/1186 Concurrent Lease	Substation	Ingleburn 330/66kv Sub	CAMPBELLTOWN

Folio Identifier 12/625290 Concurrent Lease	Substation	Ingleburn 330/66kv Sub	MINTO-INGLEBURN
Folio Identifier 1/601080	Substation	Inverell 132kv Sub	INVERELL
Folio Identifier 1/588720	Substation	Jindera 330kv Sub	GREATER HUME SHIRE
Folio Identifier 1/606317	Substation	Kemps Creek 500kv Sub	WEST HOXTON
Folio Identifier 4/771080	Substation	Kemps Creek 500kv Sub	WEST HOXTON
Folio Identifier 2/1121926 Concurrent Lease	Substation	Kempsey 132kv Sub	WEST KEMPSEY
Folio Identifier 1/544298	Substation	Koolkhan 132kv Sub	KOOLKHAN
Folio Identifier 1/1022827	Substation	Liddell 330kv Sub	LIDDELL
Folio Identifier 101/626660	Substation	Lismore 330kv Substation	CLOVASS
Folio Identifier 22/2359	Substation	Liverpool 330kv Sub	LIVERPOOL
Folio Identifier 3/1045029	Substation	Liverpool 330kv Sub	HOXTON PARK
Folio Identifier 50/1091285	Substation	Lower Tumut 330kv Ss	TALBINGO
Folio Identifier 31/1105615	Substation	Macarthur 330kv Sub	MENANGLE PARK
Folio Identifier 1/1120270	Substation	Marulan 500kv Sub	BIG HILL, BRAYTON
Folio Identifier 2341/622834	Substation	Marulan 500kv Sub	MARULAN
Folio Identifier 1/542283	Substation	Molong 132kv Sub	MOLONG
Folio Identifier 1/999486	Substation	Moree 132kv Sub	MOREE
Folio Identifier 22/832446	Substation	Mt Piper 132kv Sub	MOUNT PIPER
Folio Identifier 1/1092737	Substation	Mt Piper 330kv Sub	MOUNT PIPER
Folio Identifier 2/1092737	Substation	Mt Piper 330kv Sub	MOUNT PIPER
Folio Identifier 3/1092737	Substation	Mt Piper 330kv Sub	MOUNT PIPER
Folio Identifier 4/1092737	Substation	Mt Piper 330kv Sub	MOUNT PIPER
Folio Identifier 1/1122687	Substation	Munmorah 330kv Sub	COLONGRA
Folio Identifier 60/1065038 Concurrent Lease	Substation	Munmorah 330kv Sub	MUNMORAH
Folio Identifier 2/1080570	Substation	Murray 330kv Ss	KHANCOBAN
Folio Identifier 4/830807	Substation	Murray 330kv Ss	KHANCOBAN
Folio Identifier 5/241727	Substation	Murray 330kv Ss	KHANCOBAN

Folio Identifier 1/630858	Substation	Murrumburrah 132/66kv Sub	MURRUMBURRAH
Folio Identifier 1621/852356	Substation	Muswellbrook 330kv Sub	SANDY CREEK
Folio Identifier 10/1017930	Substation	Nambucca 132kv Sub	VALLA
Folio Identifier 1/502189	Substation	Narrabri 132kv Sub	NARRABRI
Folio Identifier 1/619513	Substation	Newcastle 330kv Sub	KILLINGWORTH
Folio Identifier 2/619513	Substation	Newcastle 330kv Sub	KILLINGWORTH
Folio Identifier 101/1137137	Substation	North Orange 132kv Sub	BOWEN
Folio Identifier 1/603566	Substation	Orange 132kv Sub	EAST ORANGE
Folio Identifier 521/603541	Substation	Panorama 132kv Sub	MT PLEASANT
Folio Identifier 1/717829	Substation	Parkes 132/66kv Sub	PARKES
Folio Identifier 1/999487 Concurrent Lease	Substation	Port Macquarie 132kv Sub	THRUMSTER
Folio Identifier 301/878971	Substation	Regentville 330kv Sub	REGENTVILLE
Folio Identifier 4/241666	Substation	Regentville 330kv Sub	PENRITH
Folio Identifier 101/1149790	Substation	Rookwood Rd 330kv Sub	POTTS HILL
Folio Identifier 1/433650	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier 1620/752038	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier 1621/752038	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier 1622/752038	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier 1623/659507	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier 1625/752038	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier 1626/752038	Substation	Sydney East 330kv Sub	WARRINGAH
Auto-consol 5476-55	Substation	Sydney East 330kv Sub	BELROSE
Folio Identifier A/365933	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier B/365933	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier C/365933	Substation	Sydney East 330kv Sub	WARRINGAH
Folio Identifier 1/867325	Substation	Sydney North 330kv Sub	DURAL

Folio Identifier 1/440591	Substation	Sydney South 330kv Sub	BANKSTOWN
Auto-consol 7881- 154	Substation	Sydney West 330kv Sub	PENRITH
Folio Identifier 1/999490	Substation	Tamworth 132kv Sub	TAMWORTH REGIONAL
Folio Identifier 3/244399	Substation	Tamworth 330kv Sub	CALALA
Folio Identifier 4/244399	Substation	Tamworth 330kv Sub	CALALA
Folio Identifier 6/219993	Substation	Tamworth 330kv Sub	CALALA
Folio Identifier 1/661214	Substation	Taree 132kv Sub	GREATER TAREE
Folio Identifier 1/529125	Substation	Tenterfield 132kv Sub	TENTERFIELD
Folio Identifier 101/1125747	Substation	Tomago 132kv Sub	TOMAGO
Folio Identifier 102/1125747	Substation	Tomago 330kv Sub	TOMAGO
Folio Identifier 103/1125747	Substation	Tomago 330kv Sub	TOMAGO
Folio Identifier 101/999132	Substation	Tuggerah 330kv Sub	TUGGERAH
Folio Identifier 2/801563	Substation	Tumut 132kv Sub	TUMUT
Folio Identifier 3/801563	Substation	Tumut 132kv Sub	TUMUT
Folio Identifier 4/801563	Substation	Tumut 132kv Sub	TUMUT
Folio Identifier 100/1065718	Substation	Vales Point 330kv Sub	VALES POINT
Folio Identifier 101/1065718	Substation	Vales Point 330kv Sub	VALES POINT
Folio Identifier 210/830505	Substation	Vineyard 330/132kv Sub	VINEYARD
Folio Identifier 1/436402	Substation	Wagga 132kv Sub	WAGGA WAGGA
Folio Identifier 1/524499	Substation	Wagga 330kv Sub	LAKE ALBERT
Folio Identifier 1/1115229	Substation	Wagga North 132kv Sub	BOMEN
Folio Identifier 101/1043966	Substation	Wallerawang 132kv Sub	WALLERAWANG
Folio Identifier 91/1043967	Substation	Wallerawang 330kv Sub	WALLERAWANG
Folio Identifier 1/206650	Substation	Waratah 132kv Sub	NEWCASTLE
Folio Identifier 2/219839	Substation	Waratah 330/132kv Sub	NEWCASTLE
Folio Identifier 2/511849	Substation	Waratah 330/132kv Sub	NEWCASTLE
Folio Identifier 3/1136578	Substation	Wellington 330kv Sub	WUULUMAN

Folio Identifier 1/1090027	Substation	Wollar 330kv Ss	WOLLAR
Folio Identifier 2/1090027	Substation	Wollar 330kv Ss	WOLLAR
Folio Identifier 4/1090027	Substation	Wollar 330kv Ss	WOLLAR
Folio Identifier 6/1090027	Substation	Wollar 330kv Ss	WOLLAR
Folio Identifier 8/1090027	Substation	Wollar 330kv Ss	WOLLAR
Folio Identifier 10/844961	Substation	Yanco 132kv Sub	YANCO
Folio Identifier 1/725596	Substation	Yass 330kv Sub	YASS VALLEY
Folio Identifier 101/1204994	Substation	Boggabri North Switching Station (Maules Creek)	HARPARARY
Folio Identifier 2/1096390	Substation	Bannaby 500kv Sub	BANNABY
Folio Identifier 161/1022834	Substation	Bayswater 330kv Sub	BAYSWATER
Folio Identifier 4/560766	Substation	Coffs Harbour 330/132kv Sub	KARANGI
Folio Identifier 100/1193515	Substation & Depot	Haymarket 330/132kv Substation and Ultimo Office	HAYMARKET
Folio Identifier 13/1157491	Substation & Depot	Sydney West 330kv Sub	EASTERN CREEK
Folio Identifier 6/229769	Substation & Depot	Sydney West 330kv Sub	WALLGROVE
Folio Identifier 1/999493	Substation & Depot	Yass 330kv Sub	YASS VALLEY
Folio Identifier 372/1033766	Tunnel	Sydney South – Haymarket 330kv (Mary Ann St Adit)	DARLING HARBOUR
Folio Identifier 81/1033767 Concurrent Lease	Tunnel	Sydney South – Haymarket 330kv (Sydney Park Adit)	ALEXANDRIA
Folio Identifier 1/182445	Operational	Port Kembla – Sydney 66kv TI	CANTEBURY
Folio Identifier 14/1136859	Tunnel	Sydney South – Haymarket 330kv	ALEXANDRIA
Folio Identifier 2/1105933	Tunnel	Sydney South – Haymarket 330kv	ALEXANDRIA
Folio Identifier 200/1156713	Tunnel	Sydney South – Haymarket 330kv	ALEXANDRIA

Folio Identifier 201/1156713	Tunnel	Sydney South – Haymarket 330kv	ALEXANDRIA
Folio Identifier 202/1156722	Tunnel	Sydney South – Haymarket 330kv	ALEXANDRIA
Folio Identifier 205/1156742	Tunnel	Sydney South – Haymarket 330kv	REDFERN
Folio Identifier 207/1156764	Tunnel	Sydney South – Haymarket 330kv	DARLINGTON; CHIPPENDALE
Folio Identifier 208/1156775	Tunnel	Sydney South – Haymarket 330kv	CHIPPENDALE
Folio Identifier 501/1033739	Tunnel	Sydney South – Haymarket 330kv	ALEXANDRIA
Folio Identifier 203/1156727	Tunnel	Sydney South – Haymarket 330kv	ALEXANDRIA
Folio Identifier 206/1156753	Tunnel	Sydney South – Haymarket 330kv	REDFERN
Folio Identifier 100/1176221	Managed Land	Riley Street – Surrey Hills	SURREY HILLS
Folio Identifier 100/1047822	Tunnel	Sydney South – Haymarket 330kV	ULTIMO
Folio Identifier 1/1047820	Tunnel	Sydney South – Haymarket 330kV	ULTIMO

**Part 2 – Head Leases and Leasehold Land (NSW Network Leased Land)**

Title	Asset Category	Head Lease	Locality
Folio Identifier 102/1035564	Gadara 132kv Substation	<b>Lease AC973882</b> (Lease with Visy Packaging Properties Pty Ltd, Gadara Substation)	GADARA
Auto-consol 11442- 52	Harnham Hill RRS	<b>Leases AF57163, AF57164 and AF57165</b> (Lease with Magus Pty Ltd)	KENTUCKY

**Part 3 – Freehold Land (NSW Non-Network Leased Land)**

Title	Asset Category	Name	Locality
Folio Identifier 102/1163891	Depot	Orange Regional Depot	ORANGE
Folio Identifier 1/999543	Depot	Wagga Regional Depot	SOUTH WAGGA WAGGA
Folio Identifier 12/817507	Depot	Waratah Regional Depot	WARATAH WEST
Folio Identifier 1/516989	Depot	Tamworth Regional Depot	SOUTH TAMWORTH
Folio Identifier 11/817507	Depot	Waratah Regional Depot	WARATAH WEST
Folio Identifier 10/844969	Managed Land	Wagga Regional Depot	WAGGA WAGGA

**Part 4 – Head Leases and Leasehold Land (NSW Non-Network Leased Land)**

Nil

**Part 5 – Freehold Land (Non-NSW Leased Land)**

Nil

**Part 6 – Head Leases and Leasehold Land (Non-NSW Leased Land)**

Nil

#### **Schedule 4 – Existing Non-Network Assets**

The following types of assets owned by the Lessor immediately prior to the Commencement Date:

- (i) forklifts;
- (ii) crane Tadano TR250E;
- (iii) loaders;
- (iv) hoists and hydraulic winches;
- (v) borers;
- (vi) backhoes;
- (vii) elevating work platforms;
- (viii) tree chippers;
- (ix) slashers;
- (x) ride-on mowers;
- (xi) tractors;
- (xii) excavators; and
- (xiii) sweepers and trenchers.

**Schedule 5 - Original non-NSW Easements in Gross**

<b>Holding</b>	<b>Volume : Folio</b>	<b>Land &amp; Deposited Plan</b>	<b>Lessee</b>	<b>Dealing Number</b>
65	5 : 414	Jerrabomberra Block 27 on DP 184	Council of The Municipality of Queanbeyan	1999519
71	2150 : 67	Tennent Blocks 196 & 197 & Paddys River Block 361 on DP 10866	Maree Katherine Munns; Donald Herbert Moore	1993898
74	1612 : 38	Corree Blocks 74 to 77, 79 on DP 9133	Anthony William Griffen; Helen Ruth Griffen	1997934
77	1645 : 35	Stromlo Block 435 on DP 7843 Stromlo Block 456 on DP 8625 Stromlo Block 476 on DP 8896 Stromlo Blocks 441, 439, 440 on DP 7589	Michael Duncan Blake	1995046
78	1647 : 3	Majura Block 513 on DP 8905	Charles Bernard West	1993574
79	1647 : 9	Stromlo Blocks 466 - 469 on DP 9280	Steven Otto Guth	1997936
80	1655 : 75	Corree Blocks 22, 24 and 26 on DP 5791	Judith Irene Blundell	1996892

<b>82</b>	1675 : 16	Corree Blocks 70 and 72 on DP 8909 Corree Block 88 on DP 9963	Bidgeeyarra Pty Limited	1993575
<b>85</b>	1683 : 8	Stromlo Block 400 on DP 7087 Stromlo Block 433 on DP 8097 Chapman Block 6, Section 58 on DP 8097	Cooleman Pty Limited	1993577
<b>86</b>	1684 : 34	Majura Block 693 on DP 10027	Ronald William Taylor and Faye Taylor	1999520
<b>92</b>	1877 : 5	Belconnen Block 50 on DP 645	Willryan Pty Limited	1993572
<b>93</b>	1909 : 19	Tuggeranong Block 36 on DP 6413 Tuggeranong Block 119 on DP 5944 Tuggeranong Block 1503 on DP 8019	Stephen John Locke	1993573
<b>94</b>	1933:44	Majura Block 474 on DP 5080	ACT Regional Transport & Distribution Industry Training Council Incorporation	1993571
<b>95a</b>	1613:46	Kowen Block 91 on DP9727	Ronald Charles McKenzie and Donna Suzanne McKeahnie	1999521
<b>96</b>	1979 : 88	Majura Block 306 on DP 4126	Fairbairn Park Control Council Incorporated	1993576

**Schedule 6- Contractual Licences as at the Commencement Date****Licences**

VDR Reference	Contract ID #	Counterparty/ies	Contract Name/Description
08.01.02.02.02.05	20060701	Visy Packaging Properties Pty Ltd	Right of access granted to TransGrid (Conveyancing Act, Schedule 8, Part 14) under the Lease of the Gadara Substation, but excluding the lease itself
08.01.02.02.02.06	20100616	The Minister of the State of NSW administering the <i>National Parks and Wildlife Act 1974</i>	Occupation Licence, Geehi, Guthega, Upper Tumut Mungyang
08.01.02.02.02.07 and .09	20110621	Inverell Shire Council	Occupancy Permit Agreement
08.01.02.02.02.08	20120401	The Forestry Commission trading as Forestry NSW	Forest Permit, Mt Berrico
08.01.02.02.02.10	20140907	The Forestry Commission trading as Forestry NSW	Forest Permit – Girard State Forest (ACMA 9019778)
08.01.02.02.02.11	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, Banyabba, Gibberagee (ACMA 402002)
08.01.02.02.02.12	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, Mt Coramba (ACMA 7956)
08.01.02.02.02.13	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, Mt Coramba, Orara East (ACMA 9000763)
08.01.02.02.02.14	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, Mt Macquarie (ACMA 9004467)
08.01.02.02.02.15	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, N East Billys Creek, Sheas Nob (ACMA 35905)
08.01.02.02.02.16	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, Shooters Hill, Vulcan (ACMA 10420)
08.01.02.02.02.17	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, Snubba Range, Bago (ACMA 9965)
08.01.02.02.02.18	20150401	The Forestry Commission trading as Forestry NSW	Forest Permit, Trig Road, Mullions Range (ACMA 9004466)
08.01.02.02.02.19	20100101	Snowy Hydro Limited	Paddys River – Communications Licence
08.01.02.02.02.20	20070620	Minister Primary Industries	Deed of Easement (Forests NSW)

VDR Reference	Contract ID #	Counterparty/ies	Contract Name/Description
08.01.02.02.02.21	20150313	AGL Upstream Infrastructure Investments Pty Ltd	Deed of Amendment to Easement Interface Deed
08.01.02.02.02.22	20020531	Snowy Hydro Limited	Shared Site Tenancy Agreement
08.01.02.02.02.23	19571022	Commonwealth of Australia	Access Licence
08.02.04.03.06	20150903	Essential Energy	Licence to Occupy Shared Sites

**Special Access Arrangements**

VDR Reference	Contract ID #	Counterparty/ies	Contract Name/Description
08.01.02.05.10	20130902	ARTC	Licence Agreement dated 27 August 2013 and attached to the Works Deed dated 2 September 2013, but excluding that Works Deed

**Other Radio Repeater Site licences**

VDR Reference	Contract ID #	Counterparty/ies	Contract Name/Description
08.02.12.02.271	20140815	ARTC	Occupation permit for Boambee RRS
08.02.12.02.272	20150803	Shoalhaven Council	Cambewarra Telecommunications Facility RRS
08.02.12.02.311	20151022	Telstra	Non-Carrier Facilities Access Agreement and Site Schedules (Black Mountain, Little Duval, Mt Yarrahapinni and Mt McKenzie)
08.02.12.03.01	20130208	Highland Towers	Deed of Licence – Site Schedule for Foleys Corner Tower Site (Widgelli)
08.02.12.03.04	19930517	Minister for Crown Lands	Section 34 Crown Lands Act Licence, Mt Crawney
08.02.12.03.28 (master licence); refer description column for references to site schedules	20070701	The Minister administering the Crown Lands Act 1989	Master Agreement, Section 34A Licence - Radio Sites insofar as it applies to the following site schedules and the following sites schedules: <ul style="list-style-type: none"> <li>• Loka (08.02.12.03.49)</li> <li>• Somersby (08.02.12.03.16)</li> </ul>

VDR Reference	Contract ID #	Counterparty/ies	Contract Name/Description
			<ul style="list-style-type: none"> <li>• Mt Arthur (08.02.12.03.06)</li> <li>• Mt Kaputar (08.02.12.03.09)</li> <li>• Square Head (08.02.12.03.01)</li> <li>• Mt Sugarloaf (08.02.12.03.12)</li> <li>• Mount Spring (08.02.12.03.11)</li> <li>• Ben Lomond (08.02.12.03.46)</li> <li>• Goombargana (08.02.12.03.48)</li> <li>• Nerriga (08.02.12.03.14)</li> <li>• Bugong Gap (08.02.12.03.47)</li> <li>• Wambrook Trig (08.02.12.03.18)</li> <li>• Saddleback (08.02.12.03.15)</li> <li>• Botobolar (08.02.12.03.45)</li> <li>• Mount Douglas (08.02.12.03.08)</li> <li>• Mount Mackenzie (08.02.12.03.10)</li> <li>• Mount Bodongora (08.02.12.03.50)</li> <li>• Mount Topper (08.02.12.03.13)</li> <li>• Mount Coonambro (08.02.12.03.07)</li> <li>• Wollar (08.02.12.03.19)</li> <li>• Finley (08.02.12.03.38)</li> <li>• Mt Bingar (08.02.12.03.52)</li> <li>• Camberawarra Lookout</li> <li>• Mt Crawney</li> </ul>
08.02.12.03.22	20100101	The Minister of NSW administering the National Parks and Wildlife Act 1974	Telecommunications Licence, Mt Yarrhapinni
08.02.12.03.23	20120701	AirServices Australia	Telecommunications Share Site Licence, Mt Bobbara
08.02.12.03.25	20130000	Airservices Australia	Share Site Licence, Mt Canobolas

VDR Reference	Contract ID #	Counterparty/ies	Contract Name/Description
08.02.12.03.34 and .40	20130811	ARTC	Mt Berrico - Communications Tower Licence
08.02.12.03.35 and .41	20130811	ARTC	Mt Douglas - Communications Tower Licence, AL0355-002
08.02.12.03.36 and .42	20130811	ARTC	Mt Ganghat - Communications Tower Licence, AL0355-003
08.02.12.03.37 and .43	20130811	ARTC	Red Hill - Communications Tower Licence, AL0355-004
08.02.12.03.39	20150629	Wellington Council	Radio Site Deed of Licence, Mt Bodangora
08.02.12.03.51	20150716	Essential Energy	Radio Site Deed, Site Schedule Mt Bingar
08.02.12.03.53	20100101	NPWS	Clarkes Hill RRS
08.02.12.03.54	20100510	Minister for Lands	Mt Darling RRS
08.02.12.03.55	20111202	Minister administering the National Parks and Wildlife Act 1974	Cabbage Tree RRS
08.02.12.03.56	20111202	Minister administering the National Parks and Wildlife Act 1974	Middle Brother Mountain RRS
08.02.12.03.57	20140215	Essential Energy	Deed of Licence for Mt Topper

**Schedule 7 – Third Party Telecommunications Network as at the Commencement Date**

The assets comprising the following:

- (a) the line links owned by the Lessor immediately prior to the Commencement Date and located:
- (i) between the Canberra Substation on Parkwood Road, Macgregor ACT and the NextDC C1 data centre, 19 Battye St, Bruce ACT;
  - (ii) between the NextDC C1 data centre, 19 Battye St, Bruce ACT and the Verizon data centre, 7-9 Braybrooke St, Bruce ACT;
  - (iii) between the NextDC C1 data centre, 19 Battye St, Bruce ACT and the TransAct data centre, 470 Northbourne Ave, Dickson ACT;
  - (iv) between the TransAct Data Centre, 470 Northbourne Ave, Dickson ACT and 50 Mort St, Braddon ACT;
  - (v) between the Sydney West Substation, 200 Old Wallgrove Road, Eastern Creek NSW and the HP Aurora data centre, Roberts Road, Eastern Creek NSW;
  - (vi) between the Springhill Substation, Glastonbury Ave, Unanderra NSW and the Metronode data centre, Lathe Place, Unanderra NSW;
  - (vii) at the Metronode data centre, 8-14 Edgerton St, Silverwater NSW;
  - (viii) at the Equinix SY1 data centre, 639 Gardener's Road, Mascot NSW;
  - (ix) at the Digital Realty data centre, 1-11 Templar Road, Erskine Park NSW;
  - (x) between the Telstra Exchange, 4 Dalley St, Sydney NSW and the corner of Pitt St and Bridge St, Sydney NSW;
  - (xi) between the Telstra Exchange, 48-52 Terminus St, Liverpool NSW and the corner of Speed St and Terminus St, Liverpool NSW;
  - (xii) at the Telstra Exchange, 1 Taylor Street, Lidcombe NSW;
  - (xiii) at the Telstra Exchange, 209 Dunmore Street, Pendle Hill NSW;
  - (xiv) at the Telstra Exchange, 17 Flushcombe Road, Blacktown NSW;
  - (xv) at the Telstra Exchange, 23 Fitzroy St, Tamworth NSW;
  - (xvi) between the Equinix ME1 data centre, 600 Lorimer St, Port Melbourne Vic and the NextDC M1 data centre, 826 Lorimer St, Port Melbourne Vic;
  - (xvii) between the Fishermans Bend Substation, Turner St, Port Melbourne Vic and NextDC M1 data centre, 826 Lorimer St, Port Melbourne Vic; and
  - (xviii) between West Melbourne Substation, Lloyd St, West Melbourne VIC, and TPG Data Centre, 221 Dryburgh St, North Melbourne VIC; and
  - (xix) between transmission line 62 tower 217, Klemke St Walla Walla and Commercial Street, Walla Walla. Project P0004743; and
- (b) the designated radiocommunications facilities owned by the Lessor immediately prior to the Commencement Date and located:

- (i) between the Mt Spring Radio Site and the Tarago Radio Site in NSW (licence number 1982047);
  - (ii) between the Tarago Radio Site and the Woodlawn Bioreactor in NSW (licence number 1982048);
  - (iii) between the Bayswater Power Station and the Elderslie Radio Site in NSW (licence number 1926994);
  - (iv) between the Elderslie Radio Site and the Mt Sugarloaf Radio Site in NSW (licence number 1926993); and
  - (v) between the Mt Sugarloaf Radio Site and the Ipera data centre in NSW (licence number 1926992).
- (c) The radio towers, poles, and ancillary equipment shelters located at:
- (i) Emerald Hill RRS;
  - (ii) Glenrock RRS;
  - (iii) Talmo RRS;
  - (iv) Boyne Trig RRS; and
  - (v) Carlingford RRS.

**Schedule 8 - Sublease Deed**

## Sublease Deed

EXECUTION VERSION

Allens  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

© Allens, Australia 2015

**Contents**

<b>1</b>	<b>Interpretation and other matters</b>	<b>134</b>
1.1	Transmission Network Lease definitions	134
1.2	Definitions	134
1.3	Interpretation	135
1.4	Sublessor trustee capacity	135
1.5	Sublessee trustee capacity	136
1.6	Lessor's consent	136
1.7	Equitable relief	137
1.8	Acknowledgements of State rights	137
1.9	Sublessee's Representatives	137
<b>2</b>	<b>Sublease and Access Agreement</b>	<b>137</b>
<b>3</b>	<b>Transmission Network Lease</b>	<b>138</b>
<b>4</b>	<b>Sublessee obligations</b>	<b>139</b>
4.1	Lessor's interest	139
4.2	Sublessee as operator	140
4.3	Telecommunications services	140
4.4	Records, information and inspection	141
4.5	Obligations at Lease End Date	142
4.6	New Network Technologies	142
4.7	Sublessee Leases	143
4.8	Work Health and Safety	145
<b>5</b>	<b>Exercise of statutory rights</b>	<b>145</b>
<b>6</b>	<b>Power of attorney</b>	<b>146</b>
<b>7</b>	<b>Condition</b>	<b>147</b>
7.1	As is where is	147
7.2	Exclusion of warranties	147
<b>8</b>	<b>Guarantee</b>	<b>148</b>
8.1	Guarantee and indemnity	148
8.2	Liability unaffected by other events	148
8.3	Continuing guarantee and indemnity	148
<b>9</b>	<b>Risk and Indemnities</b>	<b>149</b>
9.1	Risk	149
9.2	Indemnity and release	149
9.3	Indemnity continuing	151
9.4	Insurance not to limit indemnity	151
9.5	No requirement for expense before enforcement of indemnity	151
<b>10</b>	<b>Security Interests, Assignments and Subletting</b>	<b>151</b>
10.1	Security Interests	151
10.2	Permitted assignments	152
10.3	Subletting	152
10.4	Sublease Deed	152
10.5	Change of Control of Sublessee	153
<b>11</b>	<b>Liability for termination of Transmission Network Lease or other leases</b>	<b>154</b>
<b>12</b>	<b>Assistance by Lessor</b>	<b>154</b>
<b>13</b>	<b>Payments</b>	<b>154</b>

13.1	Obligation	154
13.2	Payment of payments	155
13.3	Default Interest	155
13.4	No Abatement	155
<b>14</b>	<b>Separate subleases</b>	<b>155</b>
<b>15</b>	<b>Confidentiality</b>	<b>155</b>
15.1	General Obligations	155
15.2	Exceptions	156
15.3	Notice	156
<b>16</b>	<b>GST</b>	<b>156</b>
16.1	GST to be added to amounts payable	156
16.2	Liability net of GST	157
16.3	Timing of the payment of the GST Amount	157
16.4	Revenue exclusive of GST	157
16.5	Cost exclusive of GST	157
16.6	Adjustment Event	157
16.7	GST Group	157
16.8	Non-monetary Consideration	157
16.9	Sublessee makes acquisitions on behalf of Lessor	158
16.10	Recipient created tax invoices	158
16.11	Definitions	158
<b>17</b>	<b>Inconsistency</b>	<b>158</b>
<b>18</b>	<b>Taxes and Costs</b>	<b>158</b>
<b>19</b>	<b>Representations and warranties</b>	<b>159</b>
<b>20</b>	<b>Moratorium Legislation</b>	<b>159</b>
<b>21</b>	<b>Notices</b>	<b>159</b>
<b>22</b>	<b>Entire agreement</b>	<b>160</b>
<b>23</b>	<b>No waiver</b>	<b>160</b>
<b>24</b>	<b>Rights cumulative</b>	<b>160</b>
<b>25</b>	<b>Amendment</b>	<b>160</b>
<b>26</b>	<b>Further Assurances</b>	<b>161</b>
<b>27</b>	<b>No merger</b>	<b>161</b>
<b>28</b>	<b>Severability of provisions</b>	<b>161</b>
<b>29</b>	<b>Exclusion of statutory provisions</b>	<b>161</b>
<b>30</b>	<b>General PPSA Provisions</b>	<b>161</b>
<b>31</b>	<b>Governing law and jurisdiction</b>	<b>162</b>

**This Deed is made on****Parties**

- 1 **TransGrid** (ABN 19 622 755 774) a State Owned Corporation constituted by the *Energy Services Corporations Act 1995* (NSW) of 180 Harris Street, Sydney NSW 2000 (the **Lessor**).
- 2 **NSW Electricity Networks Assets Pty Limited** (ACN 609 169 922) as trustee of the Sublessor Trust, of Level 43, 101 Collins Street, Melbourne VIC 3000 (the **Sublessor**); and
- 3 **NSW Electricity Networks Operations Pty Limited** (ACN 609 169 959) as trustee of the Sublessee Trust, of Level 43, 101 Collins Street, Melbourne VIC 3000 (the **Sublessee**).

**Recitals**

- A By the Transmission Network Lease, the Lessor has leased to the Sublessor the Leased Property.
- B By the Sublease and Access Agreement, the Sublessor has subleased to the Sublessee such of the Leased Property as is leased to the Sublessor from time to time under the Transmission Network Lease.
- C As at the date of this Deed, the Sublease and Access Agreement is a sublease made in accordance with clause 23.3(a) of the Transmission Network Lease.
- D The parties have entered into this Deed to regulate as between themselves certain matters relating to the Transmission Network Lease and the Sublease and Access Agreement.

It is agreed as follows.

**1 Interpretation and other matters****1.1 Transmission Network Lease definitions**

Terms used in this Deed, including in the Recitals, that are defined in clause 1.1 of the Transmission Network Lease have the same meaning as in the Transmission Network Lease unless those terms are defined in this Deed or the context requires otherwise.

**1.2 Definitions**

The following definitions apply, including in the Recitals, unless the context requires otherwise.

**Default Rate** means a rate equivalent to the 4% per annum above the Bank Bill Rate during any period in which an amount payable under this Deed remains unpaid.

**Direct Leased Land** has the meaning given in clause 4.7(c).

**Lessor Lease** has the meaning given in clause 4.7(c).

**Sublease and Access Agreement** means the Transmission Network Sublease and Access Agreement between the Sublessor and the Sublessee dated on or about the date of this Deed.

**Sublease Term** has the meaning given in the Sublease and Access Agreement.

**Sublessee Trust** means the trust established by deed poll by NSW Electricity Networks Operations Pty Limited dated 16 November 2015.

**Sublessee Trust Deed** means the constitution of the Sublessee Trust.

**Sublessee's Representatives** means any officer, employee, agent, contractor, consultant, adviser, licensee or invitee of the Sublessee.

**Sublessor Trust** means the trust established by deed poll by NSW Electricity Networks Assets Pty Limited dated 16 November 2015.

**Sublessor Trust Deed** means the constitution of the Sublessor Trust.

**Sublessor's Representatives** means any officer, employee, agent, contractor, consultant, adviser, licensee or invitee of the Sublessor, but does not include the Lessor or the Lessor's Representatives.

**Transmission Network Lease** means the Transmission Network Lease between the Lessor and the Sublessor (as the Lessee) dated on or about the date of this Deed.

### 1.3 Interpretation

Clause 1.2 (Interpretation), 1.4 (Business Days) and 1.6 (Discretions) of the Transmission Network Lease apply as if set out in full in this Deed and as if references to the Transmission Network Lease were references to this Deed.

### 1.4 Sublessor trustee capacity

- (a) The Sublessor enters into and performs this Deed as trustee of the Sublessor Trust and in no other capacity.
- (b) Subject to clause 1.4(d), any liability of the Sublessor arising under or in connection with this Deed is limited to the extent to which the Sublessor is entitled to be indemnified for that liability out of the assets of the Sublessor Trust.
- (c) Subject to clause 1.4(d), no person will be entitled to:
  - (i) claim from or commence proceedings against the Sublessor in respect of any Loss under this Deed in any capacity other than as the trustee of the Sublessor Trust;
  - (ii) seek the appointment of an Insolvency Official to any assets of the Sublessor, or prove in any liquidation, administration or arrangement of or affecting the Sublessor, except in relation to the assets of the Sublessor Trust; or
  - (iii) enforce or seek to enforce any judgement in respect of a Loss under this Deed against the Sublessor in any capacity other than as trustee of the Sublessor Trust.
- (d) The provisions of this clause 1.4 do not apply to any obligation or liability of the Sublessor to the extent that it is not satisfied because there is (whether under the Sublessor Trust Deed or by operation of Law) a reduction in the extent, or an extinguishment, of the Sublessor's indemnification out of the assets of the Sublessor Trust as a result of:
  - (i) the Sublessor's fraud, negligence or breach of trust;
  - (ii) the Sublessor having acted beyond power or improperly in relation to the Sublessor Trust; or
  - (iii) any act intended to reduce or extinguish the Sublessor's indemnification out of the assets of the Sublessor Trust.
- (e) The Sublessor represents and warrants that, and undertakes to ensure that:
  - (i) the Sublessor right of indemnity out of, and lien over, the assets of the Sublessor Trust as at the Commencement Date are not, and will not be, limited in any way; and

- (ii) the Sublessor does not, and will not, have any liability which may be set off against that right of indemnity.
- (f) This clause 1.4 applies despite any other provision of this Deed.

### 1.5 Sublessee trustee capacity

- (a) The Sublessee enters into and performs this Deed as trustee of the Sublessee Trust and in no other capacity.
- (b) Subject to clause 1.5(d), any liability of the Sublessee arising under or in connection with this Deed is limited to the extent to which the Sublessee is entitled to be indemnified for that liability out of the assets of the Sublessee Trust.
- (c) Subject to clause 1.5(d), no person will be entitled to:
  - (i) claim from or commence proceedings against the Sublessee in respect of any Loss under this Deed in any capacity other than as the trustee of the Sublessee Trust;
  - (ii) seek the appointment of an Insolvency Official to any assets of the Sublessee, or prove in any liquidation, administration or arrangement of or affecting the Sublessee, except in relation to the assets of the Sublessee Trust; or
  - (iii) enforce or seek to enforce any judgement in respect of a Loss under this Deed against the Sublessee in any capacity other than as trustee of the Sublessee Trust.
- (d) The provisions of this clause 1.5 do not apply to any obligation or liability of the Sublessee to the extent that it is not satisfied because there is (whether under the Sublessee Trust Deed or by operation of Law) a reduction in the extent, or an extinguishment, of the Sublessee's indemnification out of the assets of the Sublessee Trust as a result of:
  - (i) the Sublessee's fraud, negligence or breach of trust;
  - (ii) the Sublessee having acted beyond power or improperly in relation to the Sublessee Trust; or
  - (iii) any act intended to reduce or extinguish the Sublessee's indemnification out of the assets of the Sublessee Trust.
- (e) The Sublessee represents and warrants that, and undertakes to ensure that:
  - (i) the Sublessee's right of indemnity out of, and lien over, the assets of the Sublessee Trust as at the Commencement Date are not, and will not be, limited in any way; and
  - (ii) the Sublessee does not, and will not, have any liability which may be set off against that right of indemnity.
- (f) This clause 1.5 applies despite any other provision of this Deed.

### 1.6 Lessor's consent

- (a) Where this Deed requires the Lessor to not unreasonably withhold or delay its consent or approval to a matter, then without limiting the matters that the Lessor may take into account, the Lessor is entitled to take into account its own interests and the interests of the State in deciding whether to withhold or grant its consent or approval.

- (b) The Sublessor and the Sublessee acknowledge the Lessor, by giving any consent or approval, executing any document or imposing a condition in connection with any consent, approval or execution of a document:
  - (i) assumes no duty of care to either of them;
  - (ii) makes no warranty or representation in relation to the subject of the consent, approval or document; and
  - (iii) does not waive any right or remedy that the Lessor may have under the Transmission Network Lease or this Deed.
- (c) A thing that would otherwise be prevented or prohibited by this Deed may be done with the prior consent of the Lessor.

### 1.7 Equitable relief

Each party:

- (a) acknowledges that damages may not be an adequate remedy for any breach by it of, or failure by it to comply with, this Deed; and
- (b) agrees that, without limiting any other right, remedy or action another party has in connection with any actual or threatened breach by it of, or failure by it to comply with, this Deed, that other party is entitled to seek equitable relief (including specific performance, an injunction or declaratory relief) to restrain any actual or threatened breach by it of, or failure by it to comply with, this Deed and it must not oppose the granting of such relief on the basis that the party seeking such relief has not or will not sustain any actual loss or damage.

### 1.8 Acknowledgements of State rights

The Sublessor and the Sublessee acknowledge and agree that, notwithstanding that the State is not a party to this Deed, to the extent a provision of this Deed expressly refers to the State as having a right or benefit under this Deed:

- (a) the Lessor holds that right or benefit on trust for the State;
- (b) the State may enforce that right or benefit directly against the Sublessor or the Sublessee, as applicable; and
- (c) the Lessor may enforce that right or benefit against the Sublessor or the Sublessee (as applicable) on behalf of the State.

### 1.9 Sublessee's Representatives

Every obligation under this Deed on the part of the Sublessee will be deemed to include a covenant of the Sublessee to procure compliance with the obligation by each of the Sublessee's Representatives.

## 2 Sublease and Access Agreement

- (a) The Sublessor and the Sublessee must not amend the Sublease and Access Agreement in such a way as will result in it ceasing to satisfy the requirements for it to be a sublease that is made in accordance with clause 23.3(a) of the Transmission Network Lease.
- (b) The parties acknowledge and agree that, irrespective of whether the Sublease and Access Agreement continues to satisfy the requirements for it to be a sublease that is made in accordance with clause 23.3(a) of the Transmission Network Lease, the Sublessee is to be regarded as a Permitted Sublessee for the purposes of the Transmission Network Lease.

### 3 Transmission Network Lease

- (a) The Sublessee acknowledges that it has been given a copy of, and has read and understood, the Transmission Network Lease.
- (b) The Sublessee must not do, permit or omit to do anything which causes or may cause a breach of the Transmission Network Lease or a Non-NSW Lease by the Sublessor.
- (c) The Sublessee acknowledges and agrees that:
  - (i) the Sublease and Access Agreement is subject to all reservations contained in the Transmission Network Lease and each Non-NSW Lease; and
  - (ii) the rights of the Sublessee under the Sublease and Access Agreement are subject to and subordinate to the rights of the Lessor under the Transmission Network Lease and each Non-NSW Lease.
- (d) The Sublessee acknowledges and agrees that, apart from such rights as are conferred on it by applicable Laws or Authorisations, it has no greater rights in relation to the Leased Assets or the Leased Land than the rights conferred on:
  - (i) the Sublessor under the Transmission Network Lease and the Non-NSW Leases; and
  - (ii) the rights conferred on the Sublessee under the Sublessee Leases.
- (e) The Sublessee must permit the Lessor to exercise, and not hinder the Lessor in the exercise of, the Lessor's rights in relation to the Leased Assets and the Leased Land, including the Lessor's rights under the Transmission Network Lease and each Non-NSW Lease to:
  - (i) rectify breaches of the Sublessor's obligations under the Transmission Network Lease or any Non-NSW Lease; and
  - (ii) enter into possession of the Leased Assets and the Leased Land.
- (f) The Sublessee:
  - (i) acknowledges that, under clause 21 of the Transmission Network Lease, the Sublessor may:
    - (A) effect a partial surrender of the Transmission Network Lease, so far as it relates to a part of the NSW Leased Land; or
    - (B) surrender a Non-NSW Lease; and
  - (ii) agrees that:
    - (A) the effect of such surrender is that the relevant NSW Leased Land or Non-NSW Leased Land will automatically cease to be subleased to the Sublessee under the Sublease and Access Agreement;
    - (B) it has no right to request or take a lease of that NSW Leased Land or that Non-NSW Leased Land from the Lessor;
    - (C) it will not make any application to a court for relief against forfeiture upon such surrender and this clause 3(f)(ii)(C) may be pleaded as a bar to any court proceedings instituted by the Sublessee; and
    - (D) the Sublessee must prepare at its cost all documents required to effect and register the surrender or partial surrender of the Sublease and Access Agreement to give effect to this clause 3(f), and pay all of the costs incurred by the Lessor in connection with reviewing and signing

those documents, including costs incurred in connection with the preparation, execution and registration of those documents.

- (g) The parties acknowledge and agree that the Sublessee:
- (i) may surrender a Sublessee Lease through the Sublessor complying with clause 21 of the Transmission Network Lease in relation to that Sublessee Lease; and
  - (ii) may not surrender any Sublessee Lease other than through the Sublessor complying with clause 21 of the Transmission Network Lease in relation to that Sublessee Lease and the relevant Sublessee Leased Land.

Despite any surrender of a Sublessee Lease under clause 21 of the Transmission Network Lease, the parties agree that:

- (i) the provisions of the Transmission Network Lease and this Deed remain in full force with respect to those parts of the Leased Land which do not comprise the Surrendered Area;
  - (ii) no compensation (including by way of reimbursement for the value of improvements or other assets) is payable to the Sublessee for the surrender of the relevant Sublessee Leased Land; and
  - (iii) subject to its obligation under clause 21.6 of the Transmission Network Lease, the Lessor is absolutely released from all obligations under the Transmission Network Lease or a Sublessee Lease which relate to the relevant Sublessee Leased Land from the Surrender Date.
- (h) The Sublessee acknowledges and agrees that it is not entitled to any payment from the Lessor or the State, including by way of compensation, damages or reimbursement for the value of improvements or other assets, in connection with:
- (i) the return of the Leased Assets and Leased Land under clause 18 of the Transmission Network Lease;
  - (ii) the transfer of Additional Network Assets or Additional Network Land under clause 19 of the Transmission Network Lease; or
  - (iii) the surrender of any Leased Land under clause 21 of the Transmission Network Lease.
- (i) Nothing in this Deed releases the Sublessor from its obligations under the Transmission Network Lease or any Non-NSW Lease, or releases the Sublessor from such liability as it may have for a breach of the Transmission Network Lease or any Non-NSW Lease, notwithstanding that such breach may have been caused by an act or omission of the Sublessee or the Sublessee's Representatives.

## **4 Sublessee obligations**

### **4.1 Lessor's interest**

- (a) The Sublessee must, to the extent reasonably practicable having regard to its legal capacity and its rights and obligations under the Sublease and Access Agreement and any Sublessee Lease:
- (i) safeguard and protect the property, title and rights of the Lessor in and in relation to the Leased Assets, the Leased Land and the Transmission Network Land; and
  - (ii) not do or permit to be done any act, omission or thing which might jeopardise the property, title or rights of the Lessor in or in relation to the Leased Assets, the Leased Land or the Transmission Network Land.

- (b) The Sublessee acknowledges and agrees that, from the time that an asset first becomes part of the Leased Transmission Network or the Telecommunications Network after the Commencement Date, or first becomes Network-Related Equipment after the Commencement Date, in accordance with clause 7.3(f) of the Transmission Network Lease, title to that asset is vested in or transferred to the Lessor and the asset is leased to the Sublessor under the Transmission Network Lease.
- (c) The Sublessee must do everything necessary and reasonably within its power to give effect to any vesting, or transfer of title, referred to in clause 4.1(b), and to procure the release and discharge of all Security Interests over the asset prior to such vesting or transfer (other than Permitted Liens).
- (d) If the Sublessee duly and punctually observes and performs the terms, covenants and conditions in this Deed and any Sublessee Lease which the Sublessee is required to observe and perform, the Sublessee will and may peaceably possess and enjoy the Sublessee Leased Land for the term of that Sublessee Lease without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by or under the Lessor save only where an interruption or disturbance results from:
  - (i) the exercise by the Lessor of such rights as are expressly or impliedly conferred on it under the Transmission Network Lease, this Deed or the Sublessee Lease;
  - (ii) the exercise by any person of a right arising under Law; or
  - (iii) the exercise by any person of a right arising under an Encumbrance, lease, licence, reservation, contract or other arrangement that is in existence as at the Commencement Date or has been granted or entered into by the Lessor in accordance with, or as permitted or required by, the Transmission Network Lease or this Deed.
- (e) The Sublessee acknowledges and agrees that each Sublessee Lease is subject to the terms of any Encumbrances.

#### **4.2 Sublessee as operator**

- (a) The Sublessee must at all times during the Sublease Term be the operator of the Leased Transmission Network for the purposes of the Regulatory Regime.
- (b) The Sublessee must obtain, keep current and comply with all Authorisations and otherwise comply with all Laws that are required to be obtained, kept or complied with in order for the Sublessee to operate the Leased Transmission Network during the Sublease Term.

#### **4.3 Telecommunications services**

- (a) The Sublessee must not use any part of the Leased Assets at any time during the Sublease Term to provide any Telecommunications Services unless:
  - (i) at the time the Telecommunications Services are provided, and to the extent required by Law:
    - (A) the Sublessor, the Sublessee or a Related Body Corporate of either of them holds and maintains a Carrier Licence; and
    - (B) a Nominated Carrier Declaration is in force in respect of such parts of the Leased Assets as are Network Units; or
  - (ii) the provision of the Telecommunications Services is otherwise authorised under the Telecommunications Act,

and the provision of the Telecommunications Services does not cause the Lessor to be in breach of any Law (including section 42 of the Telecommunications Act). The Lessor must not withdraw its consent to any Nominated Carrier Declaration in respect of such parts of the Leased Assets as are Network Units.

- (b) If, during the Sublease Term, ACMA takes any regulatory, administrative or other action (**Action**) or threatens to take any Action that may affect or prejudice in any way the ability of the Sublessee to comply with this clause 4.3, the Sublessee must:
- (i) provide the Lessor with full details of the threatened or actual Action; and
  - (ii) permit the Lessor to contribute to any submission made to ACMA in response to that threatened or actual Action.

The Sublessee must pay all of the costs incurred by the Lessor (including reasonable internal costs such as of time spent) in connection with the threatened or actual Action or in making any submission to ACMA in response to such Action.

- (c) The Sublessee must as soon as possible upon request by the Lessor:
- (i) provide the Lessor and its authorised representatives with, and allow them to make copies of, any information the Lessor reasonably requires for the purposes of determining the Sublessee's compliance with this clause 4.3;
  - (ii) make available to the Lessor and its authorised representatives a person or persons familiar with the Leased Assets for the purposes of assisting them to obtain an understanding of any information referred to in clause 4.3(c)(i); and
  - (iii) provide the Lessor and its authorised representatives with access to inspect any part of the Leased Assets, the Leased Land or the Transmission Network Land for the purposes of determining the Sublessee's compliance with this clause 4.3.

The Lessor must act reasonably in making such requests, provided that the Lessor is not in any way restricted from making such requests in circumstances where it reasonably believes that the Sublessee is in breach of this clause 4.3 or that the Sublessee may be at risk of such breach.

- (d) The Sublessee must promptly notify the Lessor of any circumstances likely to constitute or to cause any breach of this clause 4.3.
- (e) If the Lessor reasonably believes that the Sublessee may be in breach of this clause 4.3 or may be at risk of such breach, the Lessor may by notice direct the Sublessee to cease or suspend the Sublessee's activities, in so far as the activities give rise or may give rise to a breach, or risk of breach, of this clause 4.3. The Sublessee must promptly comply with such direction such time as the Lessor gives the Sublessee further notice.
- (f) The parties acknowledge and agree that, without limiting the Lessor's rights to any other remedies at common law, in equity or under the terms of this Deed or the Transmission Network Lease (including clause 16 of the Transmission Network Lease), the Lessor may seek an urgent injunction or order for specific performance if the Sublessee fails to comply promptly with a direction given under clause 4.3(e).
- (g) The rights of the Lessor under this clause 4.3 are in addition to its rights under clause 8 of the Transmission Network Lease.

#### 4.4 Records, information and inspection

The Sublessee must do all things that are reasonably within its power to enable the Sublessor to comply with its obligations under clause 8 of the Transmission Network Lease.

#### 4.5 Obligations at Lease End Date

- (a) The Sublessee must do all things that are reasonably within its power to enable the Sublessor to comply with its obligations under clause 18.1 of the Transmission Network Lease.
- (b) The Sublessee must do all things that are reasonably within its power to enable the Sublessor to comply with its obligations under clause 19(b), (c) and (e) of the Transmission Network Lease in so far as those obligations relate to Additional Network Assets or Additional Network Land of the Sublessee or an Associate of the Sublessee.
- (c) Where a Private Easement or Easement in Gross to which clause 2.7 of the Transmission Network Lease applies is held in the name of the Sublessee, the Sublessee must cooperate fully with the Lessor to enable (at the Lessor's option, acting reasonably and for no payment by the Lessor to the Sublessee or any other person):
  - (i) the transfer of the Private Easement or Easement in Gross to the Lessor or its nominee;
  - (ii) the creation of a substitute Private Easement or Easement in Gross that is held by the Lessor (and is in favour of both the Lessor and its nominees); or
  - (iii) the exclusive benefit of the Private Easement or Easement in Gross to be made available to the Lessor and its nominees,with effect from the Lease End Date or as soon as practicable thereafter (including by executing and registering any documents necessary or desirable to effect the transfer).
- (d) Where the Sublessee is the grantee of a Contractual Licence referred to in clause 2.9(d) of the Transmission Network Lease, the Sublessee must cooperate fully with the Lessor to enable (at the Lessor's option, acting reasonably and for no payment by the Lessor to the Sublessee or any other person):
  - (i) the transfer of the Contractual Licence to the Lessor or its nominee;
  - (ii) the creation of a substitute Contractual Licence in favour of the Lessor and its nominees; or
  - (iii) the exclusive benefit of the Contractual Licence to be made available to the Lessor and its nominees,with effect from the Lease End Date or as soon as practicable thereafter (including by executing and registering any documents necessary or desirable to effect the transfer).

#### 4.6 New Network Technologies

- (a) Except as otherwise consented to by the Lessor, the Sublessee must not, and must ensure that none of the Sublessee's Associates does, bring a New Network Technology into commercial operation unless title to the assets that comprise the New Network Technology is vested in or transferred to the Lessor free from all Security Interests over those assets (other than Permitted Liens).
- (b) The Sublessee acknowledges that:
  - (i) with effect from the time title to the assets that comprise a New Network Technology is vested in or transferred to the Lessor in accordance with clause 4.6(a), those assets are leased to the Sublessor under the Transmission Network Lease; and
  - (ii) except as otherwise consented to by the Lessor, where an asset first becomes part of a New Network Technology after the time that New Network Technology is

brought into commercial operation, title to that asset is vested in or transferred to the Lessor and that asset is leased to the Sublessor under the Transmission Network Lease.

- (c) The Sublessee must do everything necessary to give effect to a vesting or transfer of title as referred to in clause 4.6(a) or (b)(ii) and to procure the release and discharge of all Security Interests over the asset prior to such vesting or transfer (other than Permitted Liens).

#### 4.7 Sublessee Leases

- (a) The parties acknowledge that, where clause 2.19 of the Transmission Network Lease applies, the Lessor may be required to lease to the Sublessee a freehold or leasehold interest in land that is held by the Lessor or that is acquired by the Sublessor on behalf of the Lessor.
- (b) Where clause 2.19 of the Transmission Network Lease applies, the Sublessee must:
  - (i) promptly execute the relevant Sublessee Lease; and
  - (ii) where it is customary to register such lease instruments in the jurisdiction in which the land the subject of the Sublessee Lease is located, promptly have that Sublessee Lease registered at the relevant titles office.
- (c) The parties acknowledge and agree that:
  - (i) where a Sublessee Lease is a lease to the Sublessee of the Lessor's leasehold interest in any land (such land being referred to as the **Direct Leased Land**), the Lessor's interest in the Direct Leased Land is derived from the lease pursuant to which that leasehold interest is granted to the Lessor (the **Lessor Lease**); and
  - (ii) the following provisions of this clause 4.7 apply with respect to that Lessor Lease, Sublessee Lease and Direct Leased Land.
- (d) The grant of the Sublessee Lease is subject to all reservations contained in the Lessor Lease, and the rights of the Sublessee under the Sublessee Lease are subject to and subordinate to the rights of the lessor under the Lessor Lease.
- (e) If the Lessor Lease terminates for any reason, the Sublessee Lease will terminate in accordance with the terms of the Sublessee Lease.
- (f) The Lessor does not have any liability in any circumstances to pay the Sublessor or the Sublessee any amount, including damages or compensation, in connection with any termination of the Lessor Lease and any consequent termination of the Sublessee Lease as referred to in clause 4.7(e), except to the extent such termination results from:
  - (i) the Lessor's failure to comply with a reasonable direction of the Sublessee under clause 4.7(h); or
  - (ii) a breach by the Lessor of clause 4.7(i), 4.7(j) or 4.7(o).
- (g) Except to the extent it is not permissible under the Lessor Lease to do so:
  - (i) the Sublessee may exercise, or procure the exercise of, any of the rights of the Lessor under or in relation to the Lessor Lease; and
  - (ii) the Sublessee must perform, or procure the performance of, all of the obligations of the Lessor under or in relation to the Lessor Lease.

The Sublessee must not do or permit to be done any act or omission which constitutes a breach of the terms of the Lessor Lease.

- (h) To the extent it is not permissible under the Lessor Lease for the Sublessee to exercise (or procure the exercise of) or to perform (or procure the performance of) the Lessor's rights and obligations under or in relation to the Lessor Lease, the Lessor must exercise those rights and perform those obligations in accordance with the reasonable directions of the Sublessee. For the avoidance of doubt, a direction will not be reasonable if compliance with it would cause the Lessor to breach any Law or any provision of the Lessor Lease.
- (i) The Lessor must not exercise any of its rights, or perform any of its obligations, under or in relation to a Lessor Lease except in accordance with a direction given under clause 4.7(h).
- (j) Without limiting clause 4.7(i), the Lessor must not:
  - (i) amend or vary the terms of the Lessor Lease;
  - (ii) surrender or terminate the Lessor Lease, whether in whole or in part;
  - (iii) enforce its rights under the Lessor Lease or settle, compromise, discontinue or defend any proceedings in relation to the Lessor Lease (whether such proceedings are brought by or against the lessor under the Lessor Lease); or
  - (iv) waive in writing any of its rights under the Lessor Lease,except in accordance with the reasonable directions of the Sublessee or with the Sublessee's prior consent, such consent not to be unreasonably withheld or delayed.
- (k) Notwithstanding clause 4.7(g) or (h), the Sublessee must not, and is not entitled to direct the Lessor to, assign, transfer, encumber, surrender or otherwise dispose of the Lessor's interest in, or rights or obligations under, the Lessor Lease without the prior consent of the Lessor.
- (l) The Sublessee indemnifies and must keep indemnified the Lessor from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor in respect of or arising from or in any way connected with the Lessor Lease, including such Losses as are in respect of or arise from or are in any way connected with:
  - (i) the exercise of the Lessor's rights under or in relation to the Lessor Lease, whether pursuant to clause 4.7(g)(i) or (h);
  - (ii) the performance of the Lessor's obligations under or in relation to the Lessor Lease, whether pursuant to clause 4.7(g)(ii) or (h);
  - (iii) the Lessor's compliance with a direction given under clause 4.7(h);
  - (iv) the failure to exercise any of the Lessor's rights or to perform any of the Lessor's obligations under or in relation to the Lessor Lease;
  - (v) any breach of the Lessor Lease to the extent it is caused by an act or omission of the Sublessor, the Sublessee or any person whom the Sublessee engages to exercise the rights, or perform the obligations, of the Lessor under the Lessor Lease;
  - (vi) any amendment or variation of the terms of the Lessor Lease;
  - (vii) any surrender or termination of the Lessor Lease, whether in whole or in part; or
  - (viii) any enforcement of (or failure to enforce) the Lessor's rights, powers or remedies under or in relation to the Lessor Lease or the settlement, compromise, discontinuance or defence of proceedings in relation to the Lessor Lease,

except to the extent that Loss is caused or contributed to by a failure by the Lessor to comply with a direction given under clause 4.7(h) or a breach by the Lessor of clause 4.7(i), 4.7(j) or 4.7(o).

- (m) The Lessor must promptly account to the Sublessee for any benefits that the Lessor receives under the Lessor Lease to the extent those benefits arise during, or relate to, such of the Sublease Term for which the Lessor Lease is in force.
- (n) The rights referred to in clause 4.7(g), (h) and (i) include:
  - (i) the right to enforce the terms of the Lessor Lease against the lessor under that Lessor Lease, which includes the right to make a Claim for breach of the Lessor Lease by such lessor and the right to make a Claim under an indemnity in the Lessor Lease; and
  - (ii) the right to settle, compromise, discontinue or defend proceedings in relation to the Lessor Lease.
- (o) The Lessor must promptly provide to the Sublessee a copy of any written notices, correspondence or other information it receives during the Sublease Term from the lessor under the Lessor Lease.

#### 4.8 Work Health and Safety

- (a) The Sublessee:
  - (i) acknowledges and agrees that, as between itself and the Lessor, the Sublessee has management and control of the Sublessee Leased Land; and
  - (ii) it must ensure that, in respect of the Sublessee Leased Land, the Sublessee complies with WHS Law.
- (b) The Lessor authorises the Sublessee to, and the Sublessee must:
  - (i) manage and control the Sublessee Leased Land to the extent; and
  - (ii) undertake such steps as are,  
necessary to discharge any responsibilities the Lessor may have under WHS Law, including any obligations imposed under a notice issued under WHS Law.

#### 5 Exercise of statutory rights

- (a) Pursuant to section 36 of the Act, the parties agree that only the Sublessor may exercise the Lessor's land acquisition functions (as defined in that section) on behalf of the Lessor during the Term.
- (b) Pursuant to section 179 of the Electricity Supply Act, the Lessor must not exercise any function of a network operator under section 45 of the Electricity Supply Act during the Term other than:
  - (i) for the purposes of enabling the Lessor to exercise its rights under the Transmission Network Lease, a Sublessee Lease or this Deed;
  - (ii) for the purposes of protecting its interests as the owner of the Leased Assets and Leased Land;
  - (iii) at the request of the Sublessor, for the purposes of enabling the Sublessor to exercise its rights under the Transmission Network Lease, in which case the Lessor is only required to do so to the extent it is so required by clause 9.5 of the Transmission Network Lease and on the conditions set out in clause 9.5 of the Transmission Network Lease; or

- (iv) at the request of the Sublessee, for the purposes of enabling the Sublessee to exercise its rights in relation to the Leased Assets, the Leased Land or the Transmission Network Land, in which case the Lessor is only required to do so to the extent it is so required by clause 12 and on the conditions set out in clause 12.

## 6 Power of attorney

- (a) The Sublessee irrevocably appoints the Lessor and each of the Lessor's directors and officers and their delegates, joint and severally, as the attorney of the Sublessee to:
  - (i) execute, stamp and register a surrender of the Sublease and Access Agreement and any Sublessee Lease if the Transmission Network Lease has been terminated or the Lessor has lawfully re-entered possession of the Leased Assets and the NSW Leased Land;
  - (ii) execute, stamp and register a withdrawal of any caveat lodged by the Sublessee in respect of the Leased Land or consent to any dealing affected by that caveat if the Sublessor fails to comply with its obligations under clause 38 of the Transmission Network Lease in respect of that caveat;
  - (iii) if the Sublessee fails to comply with its obligations under clause 4.7, execute all documents that the Lessor reasonably considers necessary or desirable for the purposes of doing anything under clause 2.19 of the Transmission Network Lease;
  - (iv) if the Sublessee fails to comply with its obligations under clause 4.5(a) or 4.5(b), execute all documents that the Lessor reasonably considers necessary or desirable to perform the Sublessee's obligations under clause 4.5(a) or 4.5(b) (but excluding anything under clause 18.1(g) of the Transmission Network Lease);
  - (v) if the Sublessee fails to comply with its obligations under clause 4.5(c) or 4.5(d), execute all documents that the Lessor reasonably considers necessary or desirable for the purposes of doing anything under clause 4.5(c) or 4.5(d);
  - (vi) generally (and acting reasonably) do, execute and perform any thing relating to the Sublessee Leased Land and the Sublessee Leases as fully and effectually as the Sublessee could do if the Sublessee fails to comply with its obligation under this Deed or a Sublessee Lease to do the relevant thing after the Lessor has given the Sublessee notice to do, execute or perform that thing and the Sublessee has failed to comply with that notice;
  - (vii) appoint delegates as its attorney and, at the discretion of the Lessor, revoke any such appointment and appoint others; and
  - (viii) use the name of the Sublessee in connection with any power the Lessor may exercise under this clause 6(a).
- (b) The Sublessee agrees to ratify and confirm everything the attorney lawfully does on behalf of the Sublessee under clause 6(a). The Sublessee indemnifies and must keep indemnified and hold harmless the attorney and its delegates against any and all loss caused or contributed to by any lawful exercise of the attorney's and its delegates' powers under clause 6(a).
- (c) The Lessor must, as far as is reasonably practicable, notify the Sublessee a reasonable time before taking any actions under clause 6(a).

- (d) The Sublessee must execute and register any document necessary to give effect to the power of attorney created under this clause 6 or to give effect to, or achieve the registration of, any document executed under the power of attorney created under this clause 6.

## **7 Condition**

### **7.1 As is where is**

- (a) The Sublessee acknowledges and agrees that, except as expressly provided in the Sale and Purchase Agreement:
  - (i) the Leased Assets and the Lessee Leased Land are subleased to the Sublessee under the Sublease and Access Agreement; and
  - (ii) the Sublessee Leased Land is leased to the Sublessee under the Sublessee Leases,

in an 'as is where is' condition with all faults and defects, and no representation or warranty is given by the Lessor or the State (and the Sublessee acknowledges that it has made its own enquiries to its satisfaction) as to:

- (iii) the state or condition of the Leased Assets or the Leased Land;
  - (iv) the extent of the rights under the Private Easements, Easements in Gross, Contractual Licences and Statutory Rights and whether such rights are sufficient to enable the location on, above or under the land of, or access to, the Leased Network Assets; and
  - (v) the status of compliance with any Laws or Authorisations or the requirements of any Governmental Agencies.
- (b) The Sublessee acknowledges and agrees that it takes a sublease of the Leased Assets and the Lessee Leased Land under the Sublease and Access Agreement, and that it takes a lease of the Sublessee Leased Land under the Sublessee Leases, subject to:
    - (i) all and any outstanding notices, requisitions or requirements of Governmental Agencies which apply at the Commencement Date; and
    - (ii) any notices, requisitions or requirements of Governmental Agencies which may apply following the Commencement Date.

### **7.2 Exclusion of warranties**

The Sublessee acknowledges and agrees that, as between the Sublessee on the one hand and the Lessor and the State on the other hand:

- (a) the Sublessee has not relied on, or been induced to enter into the Sublease and Access Agreement, any Sublessee Lease or this Deed by, any promise, representation, warranty or undertaking given by or on behalf of the Lessor or the State other than a promise, representation, warranty or undertaking that is expressly set out in this Deed, that Sublessee Lease or the Sale and Purchase Agreement;
- (b) the Sublessee accepts the Leased Assets and the Leased Land in their state, condition, age, capacity, quality, suitability and fitness current at the date they become subject to the Sublease and Access Agreement or any Sublessee Lease (as the case may be), with all defects and faults (if any), and no promise, representation, warranty or undertaking has been given by or on behalf of the Lessor or the State as to those matters;

- (c) the Sublessee has not entered into the Sublease and Access Agreement or any Sublessee Lease in reliance on any representation, warranty, promise or statement made by the Lessor or the State in relation to the heritage issues or cultural heritage issues that may affect the Leased Assets, the Leased Land or the Transmission Network Land or the prospect of securing removal from them of anything which has heritage or cultural heritage significance;
- (d) the Sublessee has not entered into the Sublease and Access Agreement or any Sublessee Lease in reliance on any representation, warranty, promise or statement made by the Lessor or the State as to the existence or otherwise of any Native Title in respect of any part of the Leased Land or the Transmission Network Land;
- (e) neither the Lessor nor the State will be liable to the Sublessee for any Loss which the Sublessee incurs or sustains by reason of a Native Title Claim with respect to any part of the Leased Land or the Transmission Network Land; and
- (f) the Sublessee has not entered into the Sublease and Access Agreement or any Sublessee Lease in reliance on any representation, warranty, promise or statement made by the Lessor or the State as to the prospects or status of any Aboriginal Land Claim in respect of any part of the Leased Land or the Transmission Network Land.

## **8 Guarantee**

### **8.1 Guarantee and indemnity**

The Sublessee:

- (a) unconditionally and irrevocably guarantees to the Lessor and the State on demand the due and punctual payment of any money owed by the Sublessor to the Lessor or the State under the Transmission Network Lease or any Non-NSW Lease during the Sublease Term; and
- (b) separately indemnifies the Lessor and the State against any Losses which may be incurred or sustained by the Lessor or the State in connection with any default or delay by the Sublessor in the due and punctual payment of any money owed by the Sublessor to the Lessor or the State under the Transmission Network Lease or any Non-NSW Lease during the Sublease Term.

### **8.2 Liability unaffected by other events**

The liability of the Sublessee under this clause 8 is not affected by each act, omission or thing which, but for this provision, might in any way operate to release or otherwise exonerate or discharge the Sublessee from any of its obligations under this clause 8, including the grant to the Sublessor or any other person of any time, waiver or other indulgence, or the discharge or release of the Sublessor or any other person from any obligation.

### **8.3 Continuing guarantee and indemnity**

This clause 8:

- (a) extends to cover the Transmission Network Lease and each Non-NSW Lease as amended, varied or replaced, whether with or without the consent of the Sublessee; and
- (b) is a continuing guarantee and indemnity and remains in full force and effect for so long as the Sublessor has any liability or obligation to the Lessor or the State under the Transmission Network Lease and any Non-NSW Lease in relation to the payment of money under the Transmission Network Lease and any Non-NSW Lease as referred to in clause 8.1 and until all of those liabilities or obligations have been fully discharged.

## 9 Risk and Indemnities

### 9.1 Risk

The Sublessee acknowledges and agrees that, as between it and the Lessor, all things which the Sublessee does under or in relation to the Sublease and Access Agreement or the Sublessee Leases (including using the Leased Assets, the Leased Land and the Transmission Network Land) are at its own risk and cost and the Sublessee agrees to assume all such risks.

### 9.2 Indemnity and release

- (a) The Sublessee acknowledges and agrees that, at all times during the Sublease Term, and as between it and the Lessor, the Sublessee is subject to the same duty of care and other responsibilities with regard to persons and property to which the Sublessee would be subject if, during the Sublease Term, the Sublessee were the owner of the Leased Assets and the Leased Land (unencumbered by the Transmission Network Lease, the Non-NSW Leases, the Sublessee Leases and the Sublease and Access Agreement), and were entitled and required (to the exclusion of the Lessor and the Sublessor) to exercise all the rights, and perform all the obligations, of the Lessor in relation to the Transmission Network Land.
- (b) The Sublessee:
- (i) releases the Lessor and the State from any Loss which the Sublessee may incur or sustain by reason of:
    - (A) any act or omission of the Sublessor, the Sublessor's Representatives, the Sublessee or the Sublessee's Representatives;
    - (B) the performance of, or failure to perform, the Sublease and Access Agreement by the Sublessor or the Sublessee;
    - (C) the performance of, or failure to perform, the Transmission Network Lease or the Non-NSW Leases by the Sublessor;
    - (D) the performance of, or failure to perform, the Sublessee Leases by the Sublessee; or
    - (E) the performance of, or failure to perform, this Deed by the Sublessor or the Sublessee; or
    - (F) the use, possession or occupation of the Leased Assets, the Leased Land or the Transmission Network Land by the Sublessor, the Sublessee, any Existing Tenant or any other person; and
  - (ii) indemnifies and must keep indemnified the Lessor and the State from and against all Losses of every kind that may be incurred or sustained, whether directly or indirectly, by the Lessor or the State in respect of or arising from or in any way connected with:
    - (A) the use, possession or occupation of the Leased Assets, the Leased Land or the Transmission Network Land by the Sublessee, any Existing Tenant or any other person;
    - (B) the Leased Assets or the Leased Land or any part of them or the possession, condition, management, operation, use, repair, maintenance, alteration, modification, change, addition or replacement of the Leased Assets or the Leased Land or any part of them;

- (C) the design of, or a defect in, the Leased Assets or the Leased Land or any part of them;
  - (D) any negligent act or omission or wilful default on the part of the Sublessee or the Sublessee's Representatives;
  - (E) any failure by the Sublessee to comply with any Sublessee Lease;
  - (F) any failure by the Sublessee to comply with this Deed;
  - (G) any act or omission on the part of the Sublessee or the Sublessee's Representatives that causes a breach of the Transmission Network Lease or a Non-NSW Lease by the Sublessor;
  - (H) any failure by the Sublessee or the Sublessee's Representatives to comply with any applicable Law or Authorisation relating to the Leased Assets, the Leased Land or the Transmission Network Land or the possession, condition, management, operation, use, repair, maintenance, alteration, modification or replacement of them; and
  - (I) any death, personal injury, loss or damage suffered or sustained by any person in connection with the Leased Assets, the Leased Land or the Transmission Network Land or the condition, management, operation, use, repair, maintenance, alteration, modification or replacement of them.
- (c) If the Lessor or the State is made a party to any Claim to which the Sublessee's indemnity under this clause 9 extends, the Sublessee must, if so requested by the Lessor:
- (i) defend such Claim in the name of the Lessor or the State (as the case may be); and
  - (ii) pay all reasonable costs of the Lessor or the State (as the case may be) in connection with the Claim (including reasonable internal costs such as of time spent) provided that the Sublessee may only compromise, pay or satisfy such Claim with the consent of the Lessor or the State, such consent not to be unreasonably withheld or delayed.
- (d) The indemnity and release contained in this clause 9 do not apply to the extent that the Loss is caused or contributed to by:
- (i) the Lessor's breach of the Transmission Network Lease, a Non-NSW Lease, a Sublessee Lease or this Deed;
  - (ii) the negligent acts or omissions or wilful default of the Lessor acting in its capacity as the lessor under the Transmission Network Lease, a Non-NSW Lease or a Sublessee Lease; or
  - (iii) the negligent acts or omissions or wilful default of the Lessor's Representatives to the extent they are acting for the Lessor in its capacity as the lessor under the Transmission Network Lease, a Non-NSW Lease or a Sublessee Lease.
- (e) The Lessor and the State must use all reasonable endeavours to mitigate the Losses that may be incurred or sustained by them and for which they are indemnified under this clause 9.
- (f) Neither the Lessor nor the State may recover from the Sublessee, under an indemnity provided for in this Deed, an amount that exceeds the amount of all Losses that they have incurred or sustained and for which they are entitled to be indemnified under this Deed.

- (g) Subject to clause 9.2(f), this indemnity does not exclude any other right of the Lessor or the State to be indemnified by the Sublessee.

### **9.3 Indemnity continuing**

The indemnity contained in this clause 9 is a continuing obligation separate and independent of the Sublessee's other obligations.

### **9.4 Insurance not to limit indemnity**

No holding of any insurance policy limits the Sublessee's liability in relation to the indemnity contained in this clause 9.

### **9.5 No requirement for expense before enforcement of indemnity**

It is not necessary for the Lessor or the State to incur any expense or make any payment before enforcing a right of indemnity conferred by this clause 9.

## **10 Security Interests, Assignments and Subletting**

### **10.1 Security Interests**

- (a) Subject to clause 10.1(c), the Sublessee must not, without the prior consent of the Sublessor, create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under the Sublease and Access Agreement or over any of its right, title or interest in the Leased Assets or the Lessee Leased Land or any part of them.
- (b) Subject to clause 10.1(c), the Sublessee must not, without the prior consent of the Lessor, create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under a Sublessee Lease.
- (c) Notwithstanding clause 10.1(a) and (b) the Sublessee will not be in breach of this clause 10.1 by reason of a Security Interest arising or subsisting in accordance with the terms of an agreement or arrangement to which the Lessor:
- (i) is a party; or
  - (ii) was a party prior to the Commencement Date where the terms of the agreement or arrangement that provide for the Security Interest were included in the agreement or arrangement prior to the Commencement Date and have not been amended on or after that date and the Security Interest is granted in favour of another party to that agreement or arrangement.
- (d) The Sublessee acknowledges that the Sublessor must not give its consent under clause 10.1(a) unless:
- (i) the Sublessor has first obtained the consent of the Lessor under clause 23.3(d) of the Transmission Network Lease; or
  - (ii) the requirements of clause 23.3(e) of the Transmission Network Lease have been satisfied.
- (e) The Lessor must give its consent under clause 10.1(b) if:
- (i) the Security Interest is also a Security Interest to which clause 23.3(e) of the Transmission Network Lease applies; and
  - (ii) the requirements set out in clause 23.3(e)(i) and (ii) of the Transmission Network Lease are satisfied, for which purpose references in that clause to the sublease are to be taken to include references to all of the Sublessee Leases and

references in that clause to the Lessee Leased Land are to be taken to include all of the Sublessee Leased Land.

## 10.2 Permitted assignments

- (a) The Sublessee must not assign or transfer to any person any of its rights, interests and obligations in or under:
- (i) the Leased Assets (or any part of them);
  - (ii) the Lessee Leased Land (or any part of it); or
  - (iii) the Sublease and Access Agreement,
- without the prior consent of the Sublessor, which the Sublessee acknowledges may only be given if the Lessor consents to such assignment or transfer under clause 23.3(a)(vi) of the Transmission Network Lease.
- (b) Without limiting the conditions to which the Lessor's consent, as referred to in clause 10.2(a), may be subject, the parties acknowledge and agree that one of those conditions may be that the assignee or transferee enters into a deed in the form of this Deed.
- (c) The Sublessee must, and must only, assign and transfer all (but not part only) of its rights, interests and obligations in or under a Sublessee Lease to:
- (i) a person to whom it assigns or transfers at the same time all of its rights and obligations under the Sublease and Access Agreement and each other Sublessee Lease; or
  - (ii) the Sublessor if the sublease of the Leased Assets and Lessee Leased Land under the Sublease and Access Agreement has come to an end for any reason before the Lease End Date and those rights, interests and obligations are not assigned and transferred to a person referred to in paragraph (i).

## 10.3 Subletting

- (a) The Sublessee must not sublease, or grant a licence (other than a licence already granted by the Lessor and in existence as at the Commencement Date) in respect of, its interest in any part of the Leased Assets or the Lessee Leased Land without the prior consent of the Sublessor, which the Sublessee acknowledges may only be given:
- (i) if the Lessor consents to such sublease or licence under clause 23.3(a)(vi) of the Transmission Network Lease; or
  - (ii) where the sublease or licence is required by Law, in which case the Sublessor must consent to the sublease or licence, but only to the extent that the sublease or licence is required by Law.
- (b) The Sublessee must not sublease, or grant a licence (other than a licence already granted by the Lessor and in existence as at the Commencement Date) in respect of, its interest in any part of the Sublessee Leased Land except:
- (i) with the prior consent of the Lessor, which may be given or withheld in the absolute discretion of the Lessor; or
  - (ii) where, and then only to the extent that, the sublease or licence is required by Law.

## 10.4 Sublease Deed

- (a) Except with the prior consent of the Lessor or as otherwise provided in this clause 10.4, neither the Sublessor nor the Sublessee may:

- (i) create or allow to subsist a Security Interest (other than a Permitted Lien) over any of its rights under this Deed; or
  - (ii) assign or transfer to any person any of its rights, interests or obligations in or under this Deed.
- (b) The Lessor must not unreasonably withhold its consent under clause 10.4(a)(i) to the extent that:
  - (i) in the case of the Sublessor, the Security Interest is over all (but not part only) of the Sublessor's rights under this Deed, the Transmission Network Lease, the Sublease and Access Agreement and the Non-NSW Leases, and the Sublessor and the third party beneficiary of the Security Interest execute a Tripartite Deed in a form that is satisfactory to the Lessor, acting reasonably; and
  - (ii) in the case of the Sublessee, the Security Interest is over all (but not part only) of the Sublessee's rights under this Deed, the Sublease and Access Agreement and the Sublessee Leases, and the Sublessee and the third party beneficiary of the Security Interest execute a Tripartite Deed in a form that is satisfactory to the Lessor, acting reasonably.
- (c) The Sublessor must, and must only, assign and transfer all (but not part only) of its rights, interests and obligations in or under this Deed to a person to whom it assigns or transfers at the same time all of its rights and obligations under the Transmission Network Lease, the Sublease and Access Agreement and the Non-NSW Leases.
- (d) The Sublessee must, and must only, assign and transfer all (but not part only) of its rights, interests and obligations in or under this Deed to a person to whom it assigns or transfers at the same time all of its rights and obligations under the Sublease and Access Agreement and the Sublessee Leases.
- (e) The Lessor must, and must only, assign and transfer all (but not part only) of its rights, interests and obligations in or under this Deed to a person to whom it assigns or transfers at the same time all of its rights and obligations under the Transmission Network Lease, the Non-NSW Leases and the Sublessee Leases.

#### **10.5 Change of Control of Sublessee**

- (a) A Change of Control with respect to the Sublessee must not occur other than:
  - (i) where such Change of Control is a Permitted Change of Control; or
  - (ii) with the prior consent of the Lessor.
- (b) The Lessor must consent to a Change of Control under clause 10.5(a)(ii) where it is reasonably satisfied that, at the time of the Change of Control, the Change of Control complies with all applicable Laws and, immediately following the Change of Control:
  - (i) the persons who will Control the Sublessee, but excluding such of those persons as Controlled the Sublessee immediately prior to the Change of Control, are of good repute and sound financial standing;
  - (ii) the Sublessee will be financially capable of performing its obligations under this Deed and the Sublessee Leases; and
  - (iii) the Sublessee will be technically capable of performing its obligations under this Deed and the Sublessee Leases.

## **11 Liability for termination of Transmission Network Lease or other leases**

- (a) The Sublessee acknowledges and agrees that the Sublease and Access Agreement, the Non-NSW Leases and the Sublessee Leases will automatically terminate when the lease of the Leased Assets and the NSW Leased Land under the Transmission Network Lease comes to an end for any reason.
- (b) The Sublessee acknowledges and agrees that neither the Lessor nor the State has any liability whatsoever to the Sublessee, including for any Loss, in respect of the termination of the Transmission Network Lease, any Non-NSW Lease or any Sublessee Lease in accordance with their terms.
- (c) The Sublessee agrees that it will not make any application to a court for relief from forfeiture upon the termination of the Transmission Network Lease, any Non-NSW Lease or any Sublessee Lease and agrees that this clause 11(c) may be pleaded as a bar to any court proceedings instituted by the Sublessee.

## **12 Assistance by Lessor**

The Lessor must, if requested by the Sublessee and at the expense and risk of the Sublessee (such expense to include the reasonable internal costs of the Lessor, such as of time spent), exercise its rights and entitlements in or in relation to the Leased Assets, the Leased Land and the Transmission Network Land during the Sublease Term, and do all things which the Sublessee reasonably requires of it, to assist the Sublessee in respect of any matter relating to the Leased Assets, the Leased Land or the Transmission Network Land where all of the following apply:

- (a) the Sublessee is unable to act itself by reason of the Lessor's interest in or in relation to the Leased Assets, the Leased Land or the Transmission Network Land;
- (b) the matter to be undertaken by the Sublessee is one not forbidden by or otherwise inconsistent with the terms of the Transmission Network Lease, any Non-NSW Lease, any Sublessee Lease or this Deed; and
- (c) either:
  - (i) in exercising such rights or entitlements the Lessor assumes or incurs no obligations or present or contingent liabilities to any other person (including the Sublessor or the Sublessee) for which the Lessor is not fully insured under an insurance policy taken out by the Sublessor or the Sublessee and of which the Lessor has the benefit; or
  - (ii) the Lessor is, to the reasonable satisfaction of the Lessor, fully indemnified by the Sublessee in respect of the obligations and liabilities referred to in clause 12(c)(i) and the liability of the Sublessee under such indemnity is the subject of such security in favour of the Lessor as the Lessor may reasonably require.

The Lessor must not unreasonably withhold (and must not impose unreasonable conditions upon) any consent necessary for the Sublessee to apply for, retain or keep current any Authorisation referred to in clause 4.2(b) or to comply with any Law referred in clause 4.2(b).

## **13 Payments**

### **13.1 Obligation**

The Sublessee must duly and punctually pay all money payable by it to the Lessor or the State under this Deed or any Sublessee Lease.

### 13.2 Payment of payments

All payments by the Sublessee to the Lessor or the State under this Deed or any Sublessee Lease must be made:

- (a) in immediately available and irrevocable funds to such bank account as the Lessor may notify to the Sublessee from time to time; and
- (b) inclusive of all duties and statutory charges and without any set off, deduction or withholding.

### 13.3 Default Interest

- (a) The Sublessee must pay to the Lessor or the State interest on any amount payable to the Lessor or the State which remains unpaid at the end of the date on which that amount is due for payment under this Deed or any Sublessee Lease (including interest payable under this clause 13.3).
- (b) Interest will accrue at the Default Rate on the outstanding amount on a daily basis from (and including) the date on which the amount became due and payable to the date the amount is paid in full both before and after judgment (as a separate and independent obligation).
- (c) The right to require payment of interest under this clause 13.3 is without prejudice to any other rights and remedies of the Lessor or the State in respect of any failure to make any payment due and payable under this Deed or any Sublessee Lease.

### 13.4 No Abatement

Despite any Law to the contrary, the obligation of the Sublessee to pay all moneys under this Deed or any Sublessee Lease will not abate for any reason.

## 14 Separate subleases

The parties agree and acknowledge that, instead of subleasing Non-NSW Leased Land to a Permitted Sublessee under the Sublease and Access Agreement, the Sublessor might sublease such Non-NSW Leased Land to the Permitted Sublessee under a separate sublease or subleases, in which case the parties:

- (a) confirm that, for the purposes of the application of clause 23.3 of the Transmission Network Lease, references in that clause to the sublease to the Permitted Sublessee are to be taken to include such separate sublease or subleases; and
- (b) agree that references in the Transmission Network Lease and this Deed to a sublease under clause 23.3 of the Transmission Network Lease, and references in this Deed (other than this clause 14) to the Sublease and Access Agreement, will be taken to include such separate sublease or subleases.

## 15 Confidentiality

### 15.1 General Obligations

The parties must keep confidential and not allow, make or cause any disclosure of or in relation to this Deed without the prior consent of the other parties, which consent may be given or withheld, or given with conditions, in the other parties' absolute discretion. For these purposes the consent of the Sublessor in relation to disclosure by the Lessor will be deemed to constitute the consent of the Sublessee.

## 15.2 Exceptions

A party's obligations in clause 15.1 do not apply to disclosures to the extent that the disclosure is:

- (a) by that party to its legal or other professional advisers, its auditors or other consultants, its insurers, its shareholders, or the employees of that party or that party's Related Bodies Corporate, to the extent those persons require the information for the purposes of this Deed (or any transactions contemplated by it) or for the purpose of advising that party in relation thereto;
- (b) of information which is at the time lawfully in the possession of the proposed recipient of the information;
- (c) required by Law or by a lawful requirement of any Governmental Agency or recognised public securities exchange having jurisdiction over that party or its Related Bodies Corporate including (in the case of the Sublessor, the Sublessee and their Related Bodies Corporate) to the extent the disclosure is required in relation to any equity or debt raising to be conducted by the Sublessor, the Sublessee or their Related Bodies Corporate (but subject, in such case, to that disclosure:
  - (i) only being made to the minimum extent reasonably necessary in connection with the equity or debt raising; and
  - (ii) not resulting in a breach of any confidentiality obligation of the Lessor or the State);
- (d) required in connection with legal proceedings relating to this Deed or the Transmission Network Lease or for the purpose of advising that party in relation thereto;
- (e) of information which is at the time generally and publicly available other than as a result of breach of confidence by that party;
- (f) necessary or commercially desirable to a bona fide proposed or prospective assignee or transferee of, or acquirer of an interest in, a party, or to that person's legal advisers, auditors or insurers, in which case that party must, if requested by another party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other party prior to the disclosure of the information;
- (g) necessary or commercially desirable to an existing or bona fide proposed or prospective financier, or to that financier's legal advisers, auditors or insurers, in which case that party must, if requested by another party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the other party prior to the disclosure of the information; or
- (h) by the Lessor to the State or any Minister of the Crown in right of the State or any of its agencies or instrumentalities.

## 15.3 Notice

Prior to making a disclosure under clause 13.2(f) or (g), the party making the disclosure must notify the other parties of the proposed disclosure so that such other parties can determine whether to require the proposed recipient of the information to execute a confidentiality deed as referred to in that clause.

## 16 GST

### 16.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the party providing the Consideration for that Taxable Supply must also pay the GST

Amount as additional Consideration. This clause 16.1 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

#### **16.2 Liability net of GST**

Any reference in the calculation of Consideration, or of any indemnity, reimbursement or similar amount, to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

#### **16.3 Timing of the payment of the GST Amount**

The GST Amount is payable on the earlier of:

- (a) the first date on which all or any part of the Consideration for the Taxable Supply is provided; and
- (b) the date five Business Days after the date on which an Invoice is issued in relation to the Taxable Supply.

The GST Amount is not payable until a Tax Invoice is issued to the recipient of the Taxable Supply.

#### **16.4 Revenue exclusive of GST**

Unless otherwise stated, any reference in this Deed to proceeds, price, value, sales, revenue, consideration or a similar amount (**Revenue**) is a reference to that Revenue exclusive of GST.

#### **16.5 Cost exclusive of GST**

Unless otherwise stated, any reference in this Deed to cost, expense, liability or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

#### **16.6 Adjustment Event**

If an Adjustment Event occurs in respect of a Taxable Supply described in this clause 16, the GST Amount payable under clause 16.1 will be recalculated to reflect the Adjustment Event and a payment will be made by the recipient to the supplier or by the supplier to the recipient, as the case requires. The supplier must issue an Adjustment Note for the Adjustment Event.

#### **16.7 GST Group**

If a party is a member of a GST Group, references to GST which the party must pay, and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

#### **16.8 Non-monetary Consideration**

If a supply made under this Deed is a Taxable Supply made for non-monetary consideration then:

- (a) the supplier must provide the recipient with a Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (b) for the avoidance of doubt, any non-monetary consideration payable under or in connection with this Deed is GST inclusive.

### 16.9 Sublessee makes acquisitions on behalf of Lessor

Where the Sublessee makes an acquisition from any person on behalf of the Lessor, subject to the Lessor receiving a Tax Invoice for that acquisition, the Lessor must pay to that other person or reimburse the Sublessee for the GST Amount payable on that acquisition.

### 16.10 Recipient created tax invoices

For any Taxable Supply made by the Lessor under, by reference to or in connection with this Deed, the parties agree as follows:

- (a) the recipient can and will issue Tax Invoices in respect of the Taxable Supplies;
- (b) the supplier will not issue Tax Invoices in respect of the Taxable Supplies;
- (c) the supplier acknowledges that it is registered for GST when it enters into this Deed;
- (d) the supplier must notify the recipient if it ceases to be registered; and
- (e) the recipient acknowledges that it is registered for GST when it enters into this Deed and that it will notify the supplier if it ceases to be registered or if its GST turnover ceases to satisfy any of the requirements of *A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No.1) 2000*.

### 16.11 Definitions

- (a) Words or expressions used in this clause 16 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act)* and related imposition Acts have the same meaning in this clause 16 unless expressly provided otherwise by virtue of the application of clause 1.1.
- (b) **GST Amount**, in relation to a Taxable Supply, means the amount of GST payable in respect of that Taxable Supply.
- (c) In addition to its meaning as defined in the GST Act, Taxable Supply includes, where relevant, a part of a Taxable Supply that is treated under section 156-5 of the GST Act as if it were a separate supply.

## 17 Inconsistency

If there is any inconsistency between the Sublease and Access Agreement and this Deed, this Deed prevails to the extent of the inconsistency.

## 18 Taxes and Costs

- (a) The Sublessee must pay and indemnify the Lessor and the Sublessor against any liabilities for stamp duty, transaction and registration taxes and similar taxes or duties (including fines and penalties resulting from delay or omission to pay such taxes or duties, where such delay or omission is the result of the action or inaction of the Sublessee) which may be payable in relation to this Deed or any Sublessee Lease or the performance or enforcement of this Deed or any Sublessee Lease or any payment or receipt or other transaction contemplated by this Deed or any Sublessee Lease, including in relation to the transfer to the Lessor (or its nominee) of any Additional Network Assets or Additional Network Land as contemplated by clause 4.5(b). This clause 18(a) does not apply to the extent of any inconsistency with the Sale and Purchase Agreement.
- (b) The Sublessee must on demand reimburse the Lessor's costs and expenses (including reasonable internal costs such as of time spent) of or associated with:

- (i) considering, granting or refusing to grant any consent or approval under this Deed or any Sublessee Lease;
- (ii) considering, doing or refusing to do anything at the request or direction of the Sublessee;
- (iii) the actual or attempted enforcement of, or actual or attempted exercise or preservation of, any rights, powers or remedies under this Deed or any Sublessee Lease including, in each case, legal costs and expenses on a full indemnity basis;
- (iv) applying for or obtaining any Authorisations, consents or approvals that are required to be held or obtained by the Lessor in relation to this Deed;
- (v) doing anything that ought to have been done by the Sublessee under this Deed or any Sublessee Lease; and
- (vi) complying with any Law or Authorisation that imposes an obligation on the Lessor as the owner of the Leased Assets or the Leased Land.

## 19 Representations and warranties

Each party represents and warrants that, as at the date of this Deed:

- (a) the execution and delivery by that party of this Deed has been properly authorised by all necessary corporate actions of that party;
- (b) that party has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or cause to be performed its obligations under this Deed; and
- (c) this Deed constitutes a legal, valid and binding obligation of that party enforceable in accordance with its terms by appropriate legal remedy.

## 20 Moratorium Legislation

To the full extent permitted by Law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Sublessor or the Sublessee any obligation under this Deed; or
- (b) delays, prevents, limits or prejudicially affects the exercise by the Lessor or the State of any power, right or authority, discretion or remedy which is given to the Lessor or the State by this Deed or by Law in relation to this Deed,

is excluded from this Deed.

## 21 Notices

Any notice, demand, consent, approval or other communication (a **Notice**) given or made under this Deed or a Sublessee Lease:

- (a) except as otherwise specified in this Deed or a Sublessee Lease must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

- (i) to the Lessor: Contact: Deputy Secretary – Commercial  
NSW Treasury  
Address: Level 27, 52 Martin Place Sydney

NSW 2000

GPO Box 5469 Sydney NSW 2001

(ii) to the Sublessor: Contact: Company Secretary  
Address: 180 Thomas St, Haymarket, NSW  
2000

(iii) to the Sublessee: Contact: Company Secretary  
Address: 180 Thomas St, Haymarket, NSW  
2000; and

- (c) will conclusively be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at 9.00am on the next business day in that place.

## 22 Entire agreement

This Deed, the Transmission Network Lease, the Non-NSW Leases and the Sublessee Leases:

- (a) contain the entire agreement between the parties with respect to their subject matter;
- (b) set out the only conduct relied on by the parties; and
- (c) supersede all prior agreements and understandings between the parties in connection with their subject matter.

## 23 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy under this Deed by a party operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## 24 Rights cumulative

Subject to any express provision in this Deed to the contrary, the rights, powers and remedies of a party under this Deed are cumulative and are in addition to, and do not exclude or limit, any right, power or remedy provided by Law or by any agreement.

## 25 Amendment

Except as otherwise expressly provided in this Deed, no amendment or variation of this Deed is valid or binding on a party unless made in writing and executed by all parties.

**26 Further Assurances**

Each party must do everything (including executing agreements and documents) necessary or reasonably required by any other party to give full effect to this Deed and the transactions contemplated by it.

**27 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

**28 Severability of provisions**

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

**29 Exclusion of statutory provisions**

To the extent permitted by Law, the Proportionate Liability Regimes do not apply to any claims by the Lessor or the State against the Sublessor or the Sublessee.

**30 General PPSA Provisions**

To the extent that a PPSA Security Interest (as defined in the PPSA) is created under a Sublessee Lease, the following applies:

- (a) the grantor of that PPSA Security Interest consents to the secured party perfecting such PPSA Security Interest by registration under the PPSA and agrees to do anything (promptly and at its own cost) that is reasonably requested by the secured party to enable the secured party to do so;
- (b) the Lessor and the Sublessee contract out of each provision of the PPSA, as permitted by section 115 of the PPSA, to the extent that:
  - (i) exercise by either of them of any right, power or remedy will be taken not to be under a provision mentioned in section 115 of the PPSA to the extent that such right, power or remedy is a right, power or remedy under:
    - (A) the Sublessee Lease;
    - (B) any document or agreement that is ancillary to the Sublessee Lease; or
    - (C) any other law or statute,unless that party so elects; and
  - (ii) any obligation of a party to give notice, or any restriction on the exercise by a party of a right, power or remedy, will not apply;
- (c) the Lessor and the Sublessee both waive their rights to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive; and
- (d) the Lessor and the Sublessee each waive their rights to receive anything from the other under section 275 of the PPSA and agree not to make any request of the other under that section.

**31 Governing law and jurisdiction**

- (a) This Deed is governed by the laws of the State of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them for determining any dispute concerning this Deed. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (c) The parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Deed other than in a court of New South Wales or, in respect of any proceedings in a Federal court, in the Sydney registry of the relevant Federal court. A party must not, without the consent of all other parties, request that proceedings instituted in a Federal court in New South Wales be heard outside New South Wales.
- (d) Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on a party by being delivered to that party in accordance with clause 21.

**Executed** and delivered as a deed in Sydney.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

**Signed sealed and delivered by The Hon Gladys Berejiklian, Treasurer of the State of New South Wales, for and on behalf of Transgrid, in the presence of:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
The Hon Gladys Berejiklian, Treasurer of the State of New South Wales, for and on behalf of Transgrid

\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **NSW Electricity Networks Assets Pty Limited** as trustee for NSW Electricity Networks Assets Trust:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* by **NSW Electricity Networks Operations Pty Limited** as trustee for NSW Electricity Networks Operations Trust:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

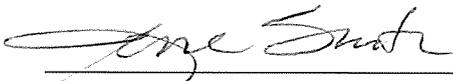
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

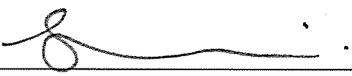
**Signing Page**

**EXECUTED** and delivered as a deed in Sydney.

**Signed sealed and delivered by The Hon Gladys Berejiklian, Treasurer of the State of New South Wales, for and on behalf of TransGrid, in the presence of:**

  
\_\_\_\_\_  
Witness Signature

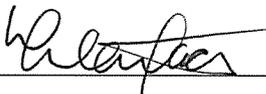
JANE SMITH  
\_\_\_\_\_  
Print Name of Witness

  
\_\_\_\_\_  
The Hon Gladys Berejiklian, Treasurer of the State of New South Wales, for and on behalf of TransGrid

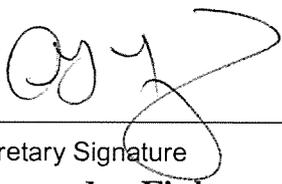
Gladys Berejiklian  
\_\_\_\_\_  
Print Name

52 Martin Place, Sydney  
\_\_\_\_\_  
Address of Witness

**Signed sealed and delivered** in accordance with s127 of the Corporations Act by **NSW Electricity Networks Assets Pty Limited** ACN 609 169 922 as trustee for the NSW Electricity Networks Assets Trust as Lessee:

  
\_\_\_\_\_  
Director Signature  
**ILAN SADEH**

Print Name

  
\_\_\_\_\_  
Director/Secretary Signature  
**Alexandra Finley**

Print Name

