

TasNetworks Revision as at 19.06.2018

**Draft: 29June2018**

**TASMANIAN NETWORKS PTY LTD**

ABN 24 167 357 299

**and**

**[Insert User name]**

ABN [insert]

**and**

**[Insert IUSA Provider name]**

ABN [insert]

**INTERFACE WORKS CONSTRUCTION AGREEMENT  
FOR [insert name of project]**

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AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 2018

- PARTIES**
1. **Tasmanian Networks Pty Ltd**  
 ABN 24 167 357 299  
 of 1-7 Maria Street, Lenah Valley, Tasmania, 7008  
 (TasNetworks)
  
  2. [insert]  
 ABN [insert]  
 of [insert]  
 (IUSA Provider)
  
  2. [insert]  
 ABN [insert]  
 of [insert]  
 (User)

## RECITALS

- A. User intends to construct the *facility*. The *facility* comprises a [insert] located at [insert] in Tasmania.
- B. To enable the export of electricity from the *facility* User has requested a *connection* to TasNetworks' *transmission system*.
- C. To facilitate the required *connection* to TasNetworks' *transmission system*, the *identified user shared assets* need to be constructed.
- D. User has engaged IUSA Provider to design and construct the *contestable IUSA components*.
- E. User and TasNetworks have entered into the *Asset Development Agreement* to design and construct the *non-contestable IUSA components*.
- F. This Agreement sets out the obligations on the parties with respect to the coordination, standards, testing commissioning and completion of the interface between the *non-contestable IUSA components* and the *contestable IUSA components*.

## THE PARTIES AGREE

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### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this agreement, unless the contrary intention appears:

**approvals** means any approval, authorisation, consent, exception, licence, permit, determination, certificate, registration or waiver of or from any **Authority**, including any renewal or variation;

**Asset Development Agreement** means a *asset development agreement* between TasNetworks and User for the design and construction of the **non-contestable IUSA components** and the *dedicated connection assets*;

**authorised service providers** means a company that has successfully completed the Client Authorised Service Provider Scheme as evidenced by a duly executed Authorisation Contract;

**Authority** means the Crown, any government or regulatory department, body, instrumentality or entity, Minister of the Crown, agency or other authority, or any body which is the successor to the administrative responsibilities of such department, body, instrumentality, Minister of the Crown, agency or other authority (but does not include the parties unless in the case of TasNetworks it is acting as *System Operator*);

**business day** means any day except a Saturday, Sunday or public holiday in Hobart;

**cash rate** means the cash rate (also known as the interbank overnight rate), recorded to two decimal places, as set by the Reserve Bank of Australia, provided that if the **cash rate** cannot be so determined, then **cash rate** will, if the parties cannot otherwise agree, mean such rate as may be determined in accordance with the dispute resolution procedure in clause 21.2;

**Co-ordination Committee** means the committee set up in accordance with clause 7.

**commencement date** means the date all conditions precedent in clause 2.1 have been satisfied or waived;

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



**Commissioning Test Program** means a program sets out the **Commissioning Test** in relation to an item of plant or equipment that is required to be prepared by the IUSA Provider in accordance with clause 14.2;

**conditions precedent deadline** has the meaning given in clause 2.2;

**construction audit process** means the construction audit process described in Schedule 10;

**contestable IUSA components** means the components described in Schedule 6.;

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

- (a) interfaces between the **non-contestable IUSA components** and **contestable IUSA components**;
- (b) the scheduling of the **non-contestable IUSA components** and **contestable IUSA components**;
- (c) industrial relations issues;
- (d) access to the land on which the works relating to the **non-contestable IUSA components** and **contestable IUSA components** are performed;
- (e) the undertaking of the works relating to the **non-contestable IUSA components** and **contestable IUSA components**;
- (f) **practical completion** processes and responsibilities; and
- (g) any matters related, or incidental, to any of the matters referred to in paragraphs (a) – (f).

**design specification** means the design specification for the IUSA set out in Schedule 7

**dispute** means any dispute or difference of opinion between the parties or the absence of agreement between them about a matter under or arising out of this agreement;

**execution date** means the date this agreement is executed by the last party to do so;

**facility** means User's proposed [insert generator type, i.e. wind farm] in Tasmania;

**final design documentation** means the design documentation accepted by TasNetworks in accordance with clause 8;

**final sums** means the aggregate of:

- (a) **TasNetworks' costs** incurred prior to the date of termination of this agreement;
- (b) fees, expenses and costs properly payable by TasNetworks in respect of, or arising from the termination by it or any third party of any contract associated with the works to be carried out by TasNetworks;

- (c) a sum equal to the reasonable costs of removing any IUSA Provider assets and of making good the remaining *plant* following such removal;
- (d) interest in accordance with clause 16.6 on any such amounts from the date they were paid by TasNetworks to the date of TasNetworks' invoice,

less

- (e) any amounts paid by User or the IUSA Provider under this agreement; and

***functional specifications*** means the functional specifications for the IUSA set out in Schedule 2.

***GST*** means a goods and services tax imposed under *A New Tax System (Goods and Services Tax) Act 1999* and related legislation;

***insolvency event*** means for a party any of the following events:

- (a) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint an administrator to that party; or
- (b) a receiver, receiver manager, official manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001*) or similar officer is appointed over the assets or undertaking of that party; or
- (c) that party enters into or proposes to enter into any arrangement, composition or compromise with or assignment for the benefit of, its creditors or a class of them; or
- (d) that party is deemed by the provisions of the *Corporations Act 2001* to be insolvent;

***Identified User Shared Assets and IUSA*** means the ***non-contestable IUSA components*** and the ***contestable IUSA components***;

***Law*** means:

- (a) those principles of law or equity established by decisions of courts;
- (b) statutes, regulations, codes or by-laws of the Commonwealth of Australia, the State of Tasmania or an ***Authority*** which have the force of law;
- (c) the Constitution of the Commonwealth of Australia;
- (d) the ***Rules*** and any ***approvals***, including conditions, provided by an ***Authority*** in respect thereof which have the force of law;
- (e) binding requirements and mandatory ***approvals***, including conditions, of the Commonwealth of Australia, the State of Tasmania or an ***Authority*** which have the force of law; and

- (f) guidelines of the Commonwealth of Australia, the State of Tasmania or an *Authority* which have the force of law;

*material change* means a change:

- (a) to the *functional specifications*;
- (b) that has an adverse effect on the proposed connection, TasNetworks' other customers or TasNetworks' transmission network;
- (c) that will result in an increase in the cost of completing the works relating to the *non-contestable IUSA components*; or
- (d) to the *works program*;

*non-contestable IUSA components* means the components described in Schedule 6.

*practical completion* means the stage in the performance of the *contestable IUSA components* when TasNetworks reasonably determines the following requirements have been satisfied:

- (a) the *IUSA* has been completed in accordance with this agreement, except for minor defects and omissions which do not prevent the *IUSA* satisfying paragraph (c);
- (b) the *IUSA* have been successfully commissioned in accordance with this agreement;
- (c) the *IUSA* is capable of providing the *services* to User in accordance with the *User connection agreement*; and
- (d) TasNetworks and the *IUSA Provider* have entered into the *Network Operations Agreement* for the *IUSA*;

*Outstanding Completion Items List* means a list of outstanding items required to be rectified prior to issue of a certificate of practical completion issued in accordance with clause 15.3;

*Practical Completion Criteria* means the following criteria:

- (a) the *contestable IUSA components* have been successfully commissioned in accordance with this agreement;
- (b) the *contestable IUSA components* comply with the *functional specifications*; and
- (c) TasNetworks and the *IUSA Provider* have entered into the *Network Operations Agreement* for the *IUSA*;

**[Note: any other requirements of TasNetworks to be inserted]**

*Project* means the [to be inserted]

**Project Land** means the lands set out in Schedule 4 where the works and contestable works are to be performed.

**Related Agreements** means the *User connection agreement*, *Asset Development Agreement* and *Network Operations Agreement*;

**Rules** means the National Electricity Rules;

**services** has the meaning given to it in the *User connection agreement*;

**TasNetworks' approved materials list** means the list of equipment and materials specified in Schedule 9;

**TasNetworks' costs** means all of TasNetworks' internal and external costs, expenses, profit margin and overhead and project management costs and expenses (including any sub-contractor costs, consultant fees or out of pocket expenses) reasonably and necessarily incurred by TasNetworks (or a related body corporate as defined in the *Corporations Act 2001* (Cth)) in undertaking any activities that TasNetworks is to carry out under this Agreement;

**TasNetworks' safety policies and procedures** means those policies and procedures of TasNetworks in Schedule 8;

**User connection agreement** means a *connection agreement* between TasNetworks and User for the *facility* which secures the payment of charges; and

**wilful default** means intentional misconduct or reckless acts or omissions in breach of this agreement but it does not mean any innocent act or omission, mistake, error of judgement, whether in breach of this agreement or not; and

**works program** means the program of work agreed between the parties and set out in Schedule 5.

## 1.1 Interpretation

In this agreement unless the contrary intention appears:

- (a) a reference to a recital, clause, party, paragraph, Schedule or attachment is a reference to a recital and clause of and a party, paragraph, Schedule or attachment to, this agreement and references to this agreement include any Schedule or attachment;
- (b) a reference to this agreement, any other agreement or instrument or any provision of any of them includes any amendment, variation or replacement of that agreement, instrument or provision;

- (c) a reference to an *applicable regulatory instrument, Australian Standard* or published index includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements, as applicable, of the same;
- (d) a reference to a thing (including, an amount) is a reference to the whole or any part of it, but nothing in this clause 1.2(d) implies that the performance of part of an obligation constitutes performance of that obligation;
- (e) the singular includes the plural and vice versa;
- (f) the word “person” includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, an unincorporated association and any **Authority**;
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, and permitted assigns;
- (h) if a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day;
- (i) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (j) if a term is defined in this agreement other parts of speech and grammatical forms of that term have corresponding meanings; and
- (k) the word “includes” in any of its forms is not a word of limitation.

### 1.1 Headings, italics and bold type

- (a) Headings in this agreement are included for convenience only and do not affect the interpretation of this agreement.
- (b) Italics used to identify terms defined in the **Rules** and bold italics used to identify terms defined in this agreement form part of this agreement, however if a term so defined is not identified by italics or bold italics that fact is to be disregarded in deciding whether or not to apply the definition.

### 1.1 Terms defined in the Rules

Where a term defined in the **Rules** in general terms is used in this agreement it will be interpreted in its context within this agreement to refer specifically to assets and services relevant to this agreement.

## 1.2 Standards and indexes

Where an *Australian Standard* or published index referred to in this agreement ceases to exist a replacement standard or index agreed by the parties to have the same purpose will be substituted for that standard or index.

## 2. TERM AND TERMINATION

### 2.1 Conditions precedent

- (a) Other than clauses [to be confirmed], this agreement does not come into force or effect until Execution of the **Related Agreements**;

### 2.1 Satisfaction

User must satisfy the conditions precedent in clause 2.1 on or before the date that is [insert] days after the date of this agreement or such later date as is agreed by the parties in writing (**conditions precedent deadline**).

### 2.2 Non satisfaction

If a condition precedent in clause 2.1 has not been satisfied (or waived by all parties) on or before the **conditions precedent deadline**, then:

- (a) if requested by User and the ISUA Provider, the parties will, acting in good faith, endeavour to agree an extension to the **conditions precedent deadline**; and
- (b) if User and the ISUA Provider does not request an extension under clause 2.3 (a) or the parties are unable to agree an extension within 5 **business days** after User's request under clause 2.3(a), either party may terminate this agreement by written notice to the other party.

### 2.1 Term

Subject to clauses 2.1, 2.2 and 2.3, this agreement commences on the **execution date** and, unless terminated earlier, expires on the date that is three months after the date the TasNetworks determines that **Practical Completion** has been achieved.

## 2.2 Effect of termination

- (a) Upon termination of this agreement TasNetworks will as soon as reasonably possible determine, in accordance with this agreement, the total of the *final sums* and render User an invoice for that amount.
- (b) User must pay the invoice in accordance with clause 2.5(a).
- (c) This clause 2.5 survives termination of this agreement.

## 3. USER ACKNOWLEDGEMENT AND OBLIGATIONS

### 3.1 Risk and expense

The User acknowledges and agrees that the *contestable IUSA components* are at the User's risk and expense.

## 4. OBLIGATIONS OF IUSA PROVIDER

### 4.1 Performance of the *works*

- (a) IUSA Provider will undertake the performance and completion of the *contestable IUSA components* in accordance with this Agreement.
- (b) In performing the works relating to the *contestable IUSA components* , IUSA Provider must:
  - (i) comply with applicable *Laws*;
  - (ii) comply with the *functional specifications*;
  - (iii) comply with *TasNetworks' safety policies and procedures*;
  - (iv) comply in all material respects with all applicable *Australian Standards*;
  - (v) exercise due skill, care and diligence;
  - (vi) not cause damage to any assets owned by TasNetwork;
  - (vii) comply with good industry practice, including *good electricity industry practice* where applicable;
  - (viii) start and complete the *contestable IUSA components* by the relevant deadline dates set out in the *works program*;
  - (ix) construct the *contestable IUSA components* in accordance with the *final design documentation*;
  - (x) use only *authorised service providers*; and

- (xi) to the extent possible, using equipment and materials in accordance with *TasNetworks' approved materials list*.

#### 4.1 Approvals

- (a) IUSA Provider is responsible for obtaining the *approvals* (if any) required for the works relating to the *contestable IUSA components* and IUSA Provider must apply for, obtain and maintain the *approvals* (if any) required for those works.
- (b) If any *approvals* required to be obtained by the IUSA Provider under clause 4.2(a) may impact TasNetworks:
  - (i) operation and maintenance of the *contestable IUSA components*;
  - (ii) construction, operation and maintenance of the *non-contestable IUSA components*; or
  - (iii) TasNetworks operation of its *transmission network*,
 then the IUSA Provider must, prior to obtaining the *approvals*, notify TasNetworks of the *approvals* and make any reasonable changes requested by TasNetworks.
- (c) IUSA Provider is responsible for satisfying the conditions of the *approvals* (if any) it obtains for the works relating to the *non-contestable IUSA components*.

#### 4.1 Reporting

IUSA Provider will provide TasNetworks with a written report every month detailing:

- (a) the progress of the works relating to the *non-contestable IUSA components*;
- (b) any delays encountered or expected to be encountered in the delivery of the works relating to the *non-contestable IUSA components*; and
- (c) changes to any design, works or other inputs that may impact another party.

#### 4.1 General

- (a) IUSA Provider and User will do all things that are consistent with the objects of this Agreement and that are reasonably necessary to assist TasNetworks in performing its obligations under this agreement and the *Related Agreements* as and when reasonably requested to do so by TasNetworks including:
  - (i) assisting TasNetworks and its contractors to gain access to any relevant property; and



- (ii) facilitating and assisting the coordination and performance of all testing, commissioning, interface works and other works to be performed by the IUSA Provider, User or their *representatives* associated with the performance of the works relating to the ***non-contestable IUSA components*** by TasNetworks.

#### 4.1 Specific Obligations

- (a) IUSA Provider must provide TasNetworks with the information specified in Appendix A within 14 days of receiving a written request from TasNetworks (and provided that the timing of such request must be consistent with the indicative timeframes set out in Appendix A). IUSA Provider acknowledges that the provision of this information is critical to achieving ***practical completion***.

### 5. OBLIGATIONS OF TASNETWORKS

#### 5.1 Performance of the *testing, inspection and commissioning*

- (b) TasNetworks will perform the review, testing, inspections and commission further set out in the Agreement.

#### 5.1 Reporting

TasNetworks will provide IUSA Provider with a written report every month detailing:

- (a) the progress of the works relating to the ***non-contestable IUSA components***;
- (b) any delays encountered or expected to be encountered in the delivery of the works relating to the ***non-contestable IUSA components***; and
- (c) changes to any design, works or other inputs that may impact another party.

### 6. VARIATIONS TO WORKS

#### 6.1 Changes

- (a) Each party is entitled to make changes to its works at its own cost and without notice to the other party, so long as they do not result in a ***material change*** and otherwise comply with this Agreement.

#### 6.1 When a change notice must be issued

- (b) Subject to clause 6.4, each party must, as soon as practicable after becoming aware of any event or circumstance which may result in a **material change**, give the other party a change notice, which sets out the following details (to the extent known by the party at the time):
- (i) the event or circumstance giving rise to the requirement for the change;
  - (ii) the impact that this event or circumstance is expected to have on the works (including, for example, any consequential changes to, or delays in, the works, or any changes to the cost of the works);
  - (iii) potential mechanisms for mitigating the impact on the works (provided that these are consistent with good electricity industry practice and **functional specifications**), and any particular advantages or disadvantages of these suggested mechanisms; and
  - (iv) where there is a change to approved documentation, a marked up copy of that documentation.
- (c) A party may give more than one change notice about the same subject matter if any one or more of the following happens:
- (i) the relevant event or circumstances continues;
  - (ii) new or additional information becomes available; or
  - (iii) the nature or extent of information that existed at the time of the giving of the earlier change notice, but which information was not known to the relevant party, becomes known to that party.

#### 6.1 Addressing a change notice

- (a) Within 10 **business days** of a change notice being issued, the parties must commence liaison with each other about the **material change**, including:
- (i) sharing any further relevant information about the **material change**;
  - (ii) arranging to meet to agree upon the appropriate actions to take to proceed with the works to achieve the purposes of the **User Connection Agreement** in a manner acceptable to each party (acting reasonably), provided that it is reasonable for TasNetworks to withhold TasNetworks' agreement if the proposed actions may, or would, result in:
    - (A) the works relating to the **contestable IUSA components** not complying with the requirements of this Agreement;

- (B) an adverse effect on the proposed connection, TasNetworks' other customers or TasNetworks' transmission network;
  - (C) an increase in the cost of completing the works relating to the *non-contestable IUSA components*; or
  - (D) a change to the works relating to the *non-contestable IUSA components* that is not acceptable to TasNetworks; and
- (b) Where the agreed actions result in changes to the scope, cost or timing of the works by TasNetworks, this will be an excepted risk under the *Asset Development Agreement* and entitle TasNetworks to an increase in costs and time under that agreement.
- (c) Unless otherwise agreed, or where necessary or highly desirable in the circumstances, the parties must not commence any changes to the works in connection with a *material change* before agreed in writing.
- (d) If the parties cannot reach agreement after 20 *business days* of a change notice being given, then either party may terminate this Agreement by written notice to the other party.

#### 6.1 TasNetworks' material changes

- (a) TasNetworks must comply with this clause 6 only where TasNetworks implements a *material change* that will affect the milestones for the works relating to the *contestable IUSA components*, the cost of the works relating to the *non-contestable IUSA components* to the User or the completion date relating to the works relating to the *non-contestable IUSA components*.

## 7. COORDINATION OF WORKS

### 7.1 Co-ordination

- (a) Each party must:
- (i) exercise reasonable care, skill and diligence and do all things required under the *Related Agreements* related to its works;
  - (ii) use reasonable endeavours to take into account each other party's work (and the points of interaction between their respective works) in completing its works;

- (iii) work co-operatively and harmoniously with each other party and any other person associated with each other party's works;
  - (iv) co-ordinate the performance of its works with the performance of all other party's works; and
  - (v) take reasonable steps to minimise the impact of its works on each other party's works.
- (b) Each party must use reasonable endeavours to co-operate and work together in good faith to resolve any conflict on a ***Co-ordination Matter***.
  - (c) Each party must not unduly interfere, obstruct, damage or delay each other party's works.

#### 7.1 Co-ordination Committee

- (a) Prior to the commencement of any works, the parties must establish a ***Co-ordination Committee*** consisting of a representative of each party and, if required by party, a representative of each key contractor engaged by the party to perform its works.
- (b) A member of the ***Co-ordination Committee*** may appoint a delegate to attend ***Co-ordination Committee*** meetings in their absence and to discharge their responsibilities under clause 7.
- (c) The ***Co-ordination Committee*** will be disbanded once ***practical completion*** has been achieved.

#### 7.1 Objectives of Co-ordination Committee

- (a) The objectives of the ***Co-ordination Committee*** are for the parties to consider and discuss ***Co-ordination Matters***, including to:
  - (i) keep each other informed as to the status of their respective works and to alert each other to any actual or potential co-ordination, health, safety, environmental, native title or cultural heritage issues or risks;
  - (ii) plan, review and co-ordinate activities that need to be, or are being, undertaken for the management of the interaction between each other party's works;
  - (iii) take all reasonable steps to minimise the impact of any interference with each other party's works; and

- (iv) identify any changes to their designs, works or inputs that may impact another party.

#### 7.1 Meetings and Minutes

- (a) After works commence the *Co-ordination Committee* will meet at such times as requested by a party and must meet not less frequently than fortnightly until all works are completed.
- (b) On a rotational basis a representative of a party must take minutes from the meeting and following the meeting distribute to all parties.

#### 7.1 Observers

- (a) A party may, with the prior consent of the other parties (such consent not to be unreasonably withheld), invite a representative of any of its contractors, suppliers or consultants to attend any *Co-ordination Committee* meeting as an observer.

#### 7.1 Resolution of Co-ordination Matters

- (a) Without in any way limiting a party's obligations under the *Related Agreements*, the parties must act reasonably to resolve any disagreement concerning a *Co-ordination Matter* by consensus among the members of the *Co-ordination Committee*.
- (b) If the *Co-ordination Committee* fails to reach a consensus on any *Co-ordination Matter* after reasonable efforts at negotiation, the *Co-ordination Matter* may be referred to the dispute resolution procedure by a party.

#### 7.1 Day-to-day Liaison

- (a) Each party must use reasonable endeavours to liaise with each other party on the performance and integration of its works, including:
  - (i) completion dates, milestone dates, milestone events and any actual or projected changes to those and the interaction between components of the works;
  - (ii) access to and use of the *Project Land*, use of access routes, transport of goods to and within the *Project Land* and security of the *Project Land*;

- (iii) to plan, program and carry out its works in a manner so as to minimise any interference with the carrying out of the other works; and
- (iv) monitor, manage and co-ordinate the integration of its works.

## 8. DESIGN

- (a) IUSA Provider must, at least one month before the expected time for starting works relating to the ***non-contestable IUSA components***, submit the design documentation to TasNetworks in accordance with the ***design specification***.
- (b) TasNetworks will review the design documentation for compliance with the ***design specification*** or any other requirement specified in this Agreement.
- (c) TasNetworks will use reasonable endeavours to complete the design audit by the later of:
  - (i) two weeks after submission of the design documentation for review; or
  - (ii) [to be inserted]
- (d) If the design documentation passes the design audit, TasNetworks will issue to IUSA Provider a certificate of acceptance - design.
- (e) TasNetworks will notify IUSA Provider in writing if the design documentation does not meet the requirements of the design audit. Where the design documentation does not meet the requirements of the design audit, TasNetworks may require a re-audit of the design documentation. The cost of any re-audit will be charged to the IUSA Provider.
- (f) TasNetworks may issue a certificate of conditional acceptance - design where the design documentation meets a majority of the requirements of the design audit and only minor rectification work is required.
- (g) Where TasNetworks has issued a certificate of conditional acceptance - design, the IUSA Provider may proceed to the construction phase of the works relating to the ***non-contestable IUSA components*** but must obtain a certificate of acceptance - design as soon as reasonably practicable, and in any event, before the first audit gate.
- (h) Once TasNetworks has issued a certificate of acceptance - design, the design documentation becomes the final design documentation.
- (i) If IUSA Provider wants to amend the final design documentation, IUSA Provider must:

- (i) submit to TasNetworks a revised copy of the relevant final design documentation, marked up to show the proposed changes and the final installation to be constructed; and
- (ii) obtain TasNetworks' written approval to the changes, which TasNetworks will not unreasonably withhold, provided that the changes:
  - (A) do not have a material adverse effect on the provision of the works relating to the ***non-contestable IUSA components***, any provision of customer connection services or the transmission system; and
  - (B) do not result in an increase in the cost of carrying out the works relating to the ***non-contestable IUSA components***; and
  - (C) not commence or continue any works proposed to be changed until TasNetworks has advised that the proposed changes are acceptable to TasNetworks.

## 9. LAND

- (a) It is a condition precedent to the IUSA Provider commencement of the ***contestable works*** that the freehold title in the ***Project Land*** is transferred to TasNetworks.
- (b) The IUSA must obtain from the landowners executed documents necessary to transfer to TasNetworks freehold title over the ***Project Land***, and agrees to pay all costs of obtaining and registering the transfer, including stamp duty, registration fees and any consideration payable to the land owner.
- (c) TasNetworks will grant the IUSA Provider a right of access to, and over, the ***Project Land***, on terms and conditions acceptable to TasNetworks, for the purpose of installing, testing, inspecting the contestable works and for any related purpose on and from the ***commencement date***.

## 10. FACTORY ACCEPTANCE TESTS

### 10.1 Obligation to Ensure Factory Acceptance Tests are Conducted

- (a) The IUSA Provider must ensure that each item of plant and equipment which forms part of the works relating to the *non-contestable IUSA components*, before delivery to the *Project Land*, passed factory acceptance tests according to the applicable Australian Standard, or if there is no applicable Australian Standard, any recognised international standard relating to the particular item of plant or equipment.

#### 10.1 TasNetworks Review of Factory Acceptance Tests

- (a) The IUSA Provider must:
- (i) notify the TasNetworks no less than 10 *Business Days* before the date on which a factory acceptance test is expected to be undertaken;
  - (ii) permit TasNetworks to view the factory acceptance test being carried out; and
  - (iii) as soon as practicable after the relevant test, provide evidence to TasNetworks that the tests referred to in clause 10.1 have been successfully conducted.
- (b) The evidence referred to in paragraph (a) must, in respect of each test:
- (i) identify the item of plant or equipment to which the test relates;
  - (ii) identify the manufacturer of the item of plant or equipment to which the test relates;
  - (iii) set out the Australian Standard (or recognised international standard) and other criteria against which the item of plant or equipment was tested;
  - (iv) state whether the item of plant or equipment passed the test; and
  - (v) be signed and dated by an authorised officer of the manufacturer to confirm that the manufacturer endorses the results of the test.
- (c) TasNetworks may notify the IUSA Provider that, despite the evidence provided under paragraph (b), TasNetworks reasonably considers that:
- (i) evidence of a successful factory acceptance test for the item of plant or equipment has not been provided to TasNetworks; or
  - (ii) the evidence provided in relation to the item of plant or equipment does not meet the requirements of paragraph (b).



- (d) If TasNetworks gives a notice to the IUSA Provider under paragraph (c), the IUSA Provider must provide TasNetworks with the outstanding information as required by paragraph (a) or (b) in relation to the item of plant or equipment.
- (e) IUSA Provider's obligation to provide TasNetworks with evidence under paragraph (a) is an ongoing obligation until the requirements of clause 10.2 are met, or the evidence is determined to be sufficient as a result of the application of the Dispute Resolution Procedure.
- (f) If TasNetworks wishes to notify the IUSA Provider under paragraph (c), TasNetworks must do so within 5 **Business Days** after receiving the relevant item of evidence from the IUSA Provider under either paragraph (a) or (d).
- (g) TasNetworks may, by notice to IUSA Provider, waive the need for the IUSA Provider to provide evidence under paragraph (a) for a particular item of plant or equipment.

## 11. AUDIT

### 11.1 Construction audit process

- (a) TasNetworks will audit the IUSA Provider's construction of the works relating to the **contestable IUSA components** in accordance with the **construction audit process**.
- (b) The schedule for the **construction audit process** must be agreed between TasNetworks and IUSA Provider's at the first Co-ordination Committee meeting.
- (c) IUSA Provider must give TasNetworks 2 **business days'** prior written notice of readiness for inspection for each of audit gates under the **construction audit process**.
- (d) TasNetworks will issue a written report to the IUSA Provider containing the results of the inspection for each audit gate, including as a minimum:
  - (i) any non-compliances with this **works program** requiring rectification by the IUSA Provider;
  - (ii) where any non-compliances are identified, whether a re-audit is required by TasNetworks to satisfy the audit gate; and
  - (iii) the result of each audit gate inspection, in accordance with the **construction audit process**.

- (e) If a re-audit is required by TasNetworks under clause 11.1(d), the cost of any re-audit will be charged to Customer.
- (f) IUSA Provider must not, before any inspection by TasNetworks under the ***construction audit process***, conceal, cover or bury any component of the works relating to the ***non-contestable IUSA components***, or otherwise treat any component of the works relating to the ***non-contestable IUSA components*** in a manner that will result in those components not being readily visible or available to a person attempting to view those components.

## 12. OUTAGES

For the purposes of clause 11, the period of an outage includes the time taken to switch a transmission line out of and into service.

### 12.1 Planned Outages and Outage Plans

- (a) On the first ***Business Day*** of each month occurring prior to ***practical completion***, each party must provide each other an outage plan in respect of planned outages caused by, or that will or may affect, the Project (Outage Plan). The Outage Plan must identify, in respect of the relevant parties' facilities:
  - (a) the work likely to require *outages* over the next 24 months;
  - (b) the expected periods when *outages* will be required over the next 24 months;
  - (c) for each planned *outage*:
    - (i) the expected duration of the *outage*; and
    - (ii) the expected maximum recall time.

### 12.1 Co-operation and timing

- (a) Each of the parties must use reasonable endeavours to:
  - (i) minimise the number and duration of outages in respect of their facilities;
  - (ii) advise each other party in advance if it anticipates that a planned outage is expected to vary from the Outage Plan;
  - (iii) co-ordinate outages in respect of their Facilities with the other parties and other affected persons; and
  - (iv) minimise recall times.

- (b) Each of the parties must provide to each other party such further information concerning an outage as that other party reasonably requests.

### 13. FIRST ENERGISATION

#### 13.1 Obligation to conduct Pre-First Energisation Tests

- (a) Subject to paragraph (b), before the IUSA Provider energises any item of plant or equipment, it must complete tests that demonstrate to TasNetworks' reasonable satisfaction that the item of plant or equipment to be energised has been tested to meet the *functional specification*. TasNetworks must notify the IUSA Provider as soon as reasonably practicable and, in any event, within 5 *Business Days*, if it does not consider that the IUSA Provider has demonstrated to its reasonable satisfaction that the item of plant or equipment to be energised has been tested to meet the *functional specification*.
- (b) Paragraph (a) does not apply to tests for those items of plant or equipment for which:
- (i) tests can only be completed when the plant or equipment has been energised or on-load; or
  - (ii) TasNetworks has waived the need for the test by giving prior notice to the IUSA Provider.
- (c) Once a IUSA Provider considers that the requirements of paragraph (a) are met in relation to each item of plant or equipment to be energised, the IUSA Provider must give the other parties a signed checklist in the form shown in [to be inserted] that meets the requirements of [to be inserted].
- (d) Within 5 *Business Days* of receipt of the signed checklist, TasNetworks may request that the IUSA Provider provide additional supporting evidence reasonably required to verify any matter covered by a checklist given under paragraph (c), and the IUSA Provider must comply with that request as soon as is reasonably practicable.

#### 13.1 Nature of the Pre-First Energisation Tests

- (a) The IUSA Provider must ensure that each item of plant or equipment tested under clause 13 for which it is responsible is tested according to the applicable Australian Standard, or if there is no applicable Australian Standard, any

recognised international standard relating to the particular item of plant or equipment.

## 14. COMMISSIONING TESTS

### 14.1 Obligation to Perform Commissioning Tests

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

### 14.1 Developing Commissioning Test Program

- (a) At least 40 *Business Days* before a party commences a *Commissioning Test* in respect of any item of plant or equipment, the IUSA Provider must give the TasNetworks a *Commissioning Test Program* in respect of that item of plant or equipment.
- (b) The IUSA Provider must ensure that the *Commissioning Test Program* contains tests necessary to demonstrate that the item of plant or equipment meets the *functional specification*.
- (c) The Commissioning Test Program must set out the dates on which the IUSA Provider intends to carry out each *Commissioning Test* and the test procedures.

### 14.1 Modifying the Commissioning Test Program

- (a) If TasNetworks reasonably considers that a Commissioning Test Program in respect of an item of plant or equipment:
  - (i) omits a *Commissioning Test*; or
  - (ii) is not otherwise sufficient to enable IUSA Provider to demonstrate that the relevant item of plant or equipment will meet the *functional specification*,

- (b) TasNetworks may request the IUSA Provider to modify the Commissioning Test Program and the IUSA Provider must modify the Commissioning Test Program accordingly before conducting the *Commissioning Test*.
- (c) TasNetworks must give the IUSA Provider a notice referred to in paragraph (a) no later than 10 *Business Days* after the date on which TasNetworks receives the *Commissioning Test Program* in respect of the item of plant or equipment.
- (d) The parties acknowledge that, immediately before or while conducting a *Commissioning Test*, the IUSA Provider may encounter practical difficulties that may require a departure from the *Commissioning Test Program* in respect of an item of plant or equipment. If the IUSA Provider wishes to revise the *Commissioning Test Program* in respect of an item of plant or equipment, it must first obtain TasNetworks approval to the revision, which must be either provided or rejected within 3 *Business Days* after a request. TasNetworks must not unreasonably withhold or delay giving its approval to a revision proposed by IUSA Provider under clause 14.3

#### 14.1 TasNetworks Review of Commissioning Tests

- (a) IUSA Provider must provide evidence to TasNetworks' reasonable satisfaction that each *Commissioning Test* in respect of each item of plant or equipment has been conducted and passed as contemplated in clause 14.3.
- (b) The evidence referred to in paragraph (a) must, in respect of each test:
  - (i) identify the item of plant or equipment to which the test relates;
  - (ii) set out the date on which the test occurred;
  - (iii) state whether the item of plant or equipment passed the test; and
  - (iv) be signed and dated by an authorised officer of the IUSA Provider to confirm that the IUSA Provider endorses the results of the test.
- (c) TasNetworks may notify the IUSA Provider that, despite the evidence provided by the IUSA Provider under paragraph (a) or (d), TasNetworks reasonably considers that in relation to an item of plant or equipment:
  - (i) the item of plant or equipment has not passed the *Commissioning Tests* as contemplated in clause 14;
  - (ii) evidence of a *Commissioning Test* for the item of plant or equipment has not been provided to TasNetworks; or

- (iii) the evidence provided in relation to the item of plant or equipment does not meet the requirements of paragraph (b).
- (d) If TasNetworks gives a notice to a IUSA Provider under paragraph (c), the IUSA Provider must provide TasNetworks with evidence to TasNetworks reasonable satisfaction, as required by paragraph (a) in relation to the item of plant or equipment.
- (e) The IUSA Provider's obligation to provide TasNetworks with evidence under paragraph (a) is an ongoing obligation until the requirements of clause 14.4 are met.
- (f) If TasNetworks wishes to notify IUSA Provider under paragraph (c), TasNetworks must do so as soon as practicable (and, in any event, within 5 **Business Days**) after receiving the relevant evidence from the IUSA Provider under either paragraph (a) or (d).
- (g) TasNetworks may, by notice to IUSA Provider, waive the need for the IUSA Provider to provide evidence for a particular item of plant or equipment under paragraph (a).

#### 14.1 Failure of Commissioning Tests

- (a) If a **Commissioning Test** is not successful, the IUSA Provider must:
  - (i) notify the other parties of the failure;
  - (ii) reasonably consider the other parties' views provided to the IUSA Provider concerning the failure;
  - (iii) rectify the failure in the shortest practicable time; and
  - (iv) keep the other parties informed on the rectification of the failure.

### 15. PRACTICAL COMPLETION

#### 15.1 Practical Completion Proposal

- (a) The IUSA Provider and TasNetworks must jointly develop a proposal for **practical completion**.

#### 15.1 Notice of Satisfaction of Practical Completion Criteria

- (b) IUSA Provider must notify TasNetworks at least 20 **Business Days** prior to the indicative date when they will likely be providing TasNetworks with

evidence that the works relating to the *contestable IUSA components* satisfies the *Practical Completion Criteria*.

- (c) No earlier than the later date notified by IUSA Provider under clause 15.2, the IUSA Provider may request TasNetworks issue a certificate of practical completion. A request under this clause must be accompanied by:
  - (i) evidence that the *Practical Completion Criteria* are satisfied; or
  - (ii) evidence that the *Practical Completion Criteria* are satisfied in part, and a request that TasNetworks waive the outstanding *Practical Completion Criteria*.
- (d) The IUSA Provider may also provide a draft list of minor outstanding items applicable to their component of the Project with the request under clause 15.
- (e) The request, evidence and any list must be provided electronically and in hard copy.

#### 15.1 Outstanding Completion Items List

- (a) Within 10 *Business Days* of receipt of a request under clause 15.2 , TasNetworks must consider the material submitted by the IUSA Provider and determine (acting reasonably) whether the *Practical Completion Criteria* are satisfied or waived and if:
  - (i) *practical completion* has occurred, issue a certificate of practical completion; or
  - (ii) *practical completion* has not occurred, provide the IUSA Provider with an *Outstanding Completion Items List* for which it is responsible.
- (b) Upon receipt of an *Outstanding Completion Items List*, the IUSA Provider must:
  - (i) perform the work specified in that *Outstanding Completion Items List* as soon as is reasonably practicable; or
  - (ii) provide further evidence to TasNetworks when the IUSA Provider reasonably believes that *practical completion* has been achieved; or
  - (iii) notify TasNetworks if the IUSA Provider disagrees with any item set out in an *Outstanding Completion Items List* and if TasNetworks and the IUSA Provider cannot resolve the disagreement within 5 *Business Days*, refer the *Dispute* for resolution in accordance with the Dispute Resolution Procedure.

- (c) IUSA Provider must notify TasNetworks when, in its view, it has completed the work in an ***Outstanding Completion Items List*** for which it is responsible and provide any supporting material.
- (d) Within 10 ***Business Days*** of receipt of a notice under clause 15.3 (c) , TasNetworks must consider the material submitted and determine (acting reasonably) whether the ***Practical Completion Criteria*** are satisfied or waived and if:
  - (i) ***practical completion*** has occurred, issue a certificate of practical completion; or
  - (ii) ***practical completion*** has not occurred, provide the Constructing Party with an update to the ***Outstanding Completion Items List***.

#### 15.1 Effect of Certificate of Practical Completion

- (a) Any list, certificate or notice is not:
  - (i) an approval by TasNetworks of the IUSA Provider's performance of its obligations under the ***Related Agreements***; or
  - (ii) an acknowledgement by TasNetworks that the IUSA has been constructed in accordance with the ***Related Agreements***.

## 16. FEES, INVOICING AND PAYMENT

### 16.1 Fees

User agrees to pay ***TasNetworks' costs*** for performing the activities and obligations under this agreement.

### 16.2 Invoices

TasNetworks agrees to issue invoices for ***TasNetworks' costs*** on a monthly basis.

- (a) In addition to any hard copy of an invoice provided TasNetworks will send invoices by electronic mail to the address specified in Schedule 3.

### 16.1 Payment

- (a) User agrees to pay all invoices issued by TasNetworks pursuant to clause 2.5 (Early Termination) and clause 16.1.
- (b) All payments by IUSA Provider to TasNetworks must be:



- (i) for the full amount of each invoice including **GST**;
- (ii) electronically transferred by User into an account or accounts nominated by TasNetworks;
- (iii) transferred by User, to the nominated account or accounts by 4.00 pm on the tenth **business day** after receipt of the invoice;
- (iv) without set-off or counterclaim; and
- (v) without any deduction or withholding.

#### 16.1 GST

- (a) Unless expressly stated otherwise amounts payable under this agreement are exclusive of **GST**.
- (b) Subject to TasNetworks' invoices being in a form which satisfies the requirements of the **GST** legislation for a valid tax invoice User agrees to pay to TasNetworks' at the same time and in the same manner as the amount specified in the invoice an additional amount on account of the amount of TasNetworks' **GST** liability in respect of the amount covered by the invoice.

#### 16.1 Late or non-payment

If a payment is not made by a party in accordance with this agreement then that party must pay interest on the amount for the period from the date the payment is due until the date of payment calculated in accordance with clause 16.6.

#### 16.2 Interest

Interest payable under this agreement will:

- (a) accrue daily for each relevant *day* at the rate that is the aggregate of the **cash rate** and:
  - (i) 2% per annum in the case of interest referred to in clause 16.5; and
  - (ii) 0% in all other cases; and
- (b) be calculated on the basis of the actual number of *days* elapsed and assuming a 365 *day* year; and
- (c) be compounded on a daily basis.

#### 16.1 Survival

The obligations in clause 16 will survive termination.

## 17. RISK AND INSURANCE

### 17.1 IUSA Provider insurance

The IUSA Provider must ensure the following insurance is effected and maintained:

- (a) Public liability insurance
  - (i) Cover: Legal liability of the IUSA for loss of or damage to property, death or injury (except to the extent covered under workers compensation insurance) arising out of the performance of the works relating to the *contestable IUSA components*.
  - (ii) Minimum amount: AUD\$20,000,000 per occurrence.
  - (iii) Period required: Whilst any works relating to the *contestable IUSA components* are being performed.
- (b) Motor vehicle insurance – compulsory third party
  - (i) Cover: All motor vehicles, trailers and mobile plant used in the performance of the works relating to the *contestable IUSA components*.
  - (ii) Minimum amount: As required by *Law*.
  - (iii) Period required: Whilst the motor vehicles are being used at the *site*.
- (c) Motor vehicle insurance – third party property damage
  - (i) Cover: All motor vehicles, trailers and mobile plant used in the performance of the works relating to the *contestable IUSA components*.
  - (ii) Minimum amount: AUD\$20,000,000 per occurrence.
  - (iii) Period required: Whilst the motor vehicles are being used at the *site*.
- (d) Workers compensation insurance
  - (i) Cover: Liability for death or injury (including occupational disease) to employees as required by *law*.
  - (ii) Amount of cover: As required by *law*.
  - (iii) Period required: Whilst any works relating to the *contestable IUSA components* are being performed.

### 17.2 Contractors insurance

IUSA Provider must ensure that each of its contractors who carry out the works relating to the *contestable IUSA components* effect and maintain the following public liability insurance:

- (a) Cover: Legal liability for loss of or damage to property, death or injury (except to the extent covered under workers compensation insurance) arising out of the performance of the works relating to the *contestable IUSA components* by the contractor.
- (b) Minimum amount: AUD\$20,000,000 per occurrence.
- (c) Period required: Whilst any works relating to the *contestable IUSA components* are being performed by the contractor.

### 17.3 Required insurers and policies

Each insurance policy required under this clause 17 must be effected and maintained with an insurer which has a minimum Standard & Poor's long term credit rating of A- (or equivalent rating with another recognised international rating agency).

### 17.4 Evidence

The IUSA Provider must give TasNetworks certificates of currency for the insurance policies required by clauses 17.1 and 17.2 within 10 *business days* after written request by TasNetworks.

## 18. REPRESENTATIONS AND WARRANTIES

### 18.1 Representations and warranties

As at the *execution date*, each party represents and warrants to the other parties that:

- (a) it is duly formed and validly existing under the laws of Tasmania;
- (b) it has the power to execute this agreement and to perform its obligations under this agreement and has taken all necessary action to authorise such execution and performance;
- (c) the execution and performance of this agreement does not violate, breach, conflict with or result in a contravention of any law applicable to it in relation to this agreement, any provision of its constitutional documents, any order or judgment of any court or *Authority* applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets; and

- (d) all licences that are required of it with respect to this agreement have been obtained and are in full force and effect and all conditions of such licences have been complied with.

#### 18.1 Continuing representations and warranties

The representations and warranties given in clause 18.1 are continuing representations and warranties, and will not merge on, and will remain in full force and effect after, the *execution date*.

#### 18.2 Separate representations and warranties

Each representation and warranty given in clause 18.1 is to be treated as a separate representation and warranty in respect of each statement made and the interpretation of any statement made is not restricted by any reference to or inference from any other statement.

### 19. LIABILITY

#### 19.1 Liability for damage to property, death and personal injury

To the maximum extent permitted by **Law**, TasNetworks will only be liable to other parties under this agreement in the event that any act or omission of TasNetworks or any of its *representatives*:

- (a) constitutes an act of **wilful default** or negligence of TasNetworks or any of its *representatives*; and
- (b) causes loss or damage to be suffered or incurred by the other party, in which case the liability of TasNetworks shall be limited to the following:
  - (c) the direct loss or damage to the tangible property of the other party; and
  - (d) damages for death or personal injury to *representatives* of the other party.

#### 19.1 Indemnity

The IUSA Provider indemnifies TasNetworks and its *representatives* against any loss, damage, claim, action or expense (including legal expense) which TasNetworks or any of its *representatives* suffers as a direct or indirect result of any of the following:

- (a) an act of **wilful default** by the IUSA Provider or any of its *representatives*; and
- (b) any negligent act or failure to act by the IUSA Provider or any of its *representatives*.

#### 19.2 Cap amount

- (a) Subject to clause 19.3 (b), the aggregate amount recoverable by the IUSA Provider and User from TasNetworks in relation to events occurring in a *financial year* under this agreement is limited to the **cap amount** in that *financial year*.
- (b) TasNetworks liability in respect of the following is not limited by clause 19.3 (a), and is not counted towards the limit on the party's liability under clause 19.3(a):
  - (i) liability for personal injury or death; and
  - (ii) liability for fraud, unlawful or illegal acts or omissions.

#### 19.1 Limitations on Liability

- (a) TasNetworks' liability under this clause 19 shall be reduced proportionally by the extent that the negligent act or omission of the IUSA Provider or User or their *representatives* contributes to any claims or damages.
- (b) The IUSA Provider or User's liability under this clause 19 shall be reduced proportionally by the extent that the negligent act or omission of TasNetworks or *representatives* contributes to any claims or damages.
- (c) Despite any other clause in this agreement, TasNetworks will not be liable for any loss, injury, damage or expense that the IUSA Provider or User suffers or incurs as a direct or indirect result of any action which TasNetworks is permitted or authorised to take under this agreement.
- (d) A party shall not be liable to the other party for any claims or damages incurred or suffered by a party resulting from action taken by the other party as a result of a direction, order, requisition, or injunction of any **Authority** (other than as a consequence of a failure by the other party to comply with this agreement) or any action or failure to act by an **Authority** in the discharge of its functions.
- (e) The IUSA Provider and User each waive any and all rights, under contract, negligence or otherwise at law, to assert any and all defences which the IUSA

Provider or the User may have to a claim by TasNetworks for the non-performance, inadequate performance or delay in performance under this agreement due to any non-performance or inadequate performance or delay in performance by either the IUSA Provider or User under the contract [insert] between the IUSA Provider and User.

## 20. DEFAULT PROVISIONS

### 20.1 Breach of the agreement

If a party:

- (a) fails to pay any amount payable by that party under this agreement by the due date;
- (b) fails to remedy a breach of a provision of this agreement (other than an obligation to pay money) which is capable of being remedied, within the reasonable time (being not less than 10 *business days*) specified in a notice from a party requiring remedy of the breach; or
- (c) breaches a provision of this agreement in a manner which is incapable of remedy

then that party (the “Defaulting Party”) will be in breach of this agreement.

### 20.1 Notice of breach

If a party is in breach of this agreement under clause 20.1, the party requiring remedy of the breach is entitled to serve notice on the Defaulting Party and, if after the expiration of 5 *business days* from the receipt by the Defaulting Party of the notice, the party requiring remedy of the breach reasonably believes that the Defaulting Party is still in breach of this agreement, and if the breach is capable of being remedied, a remedy is not being diligently pursued then the party requiring remedy of the breach may:

- (i) suspend the performance of all or part of its obligations under this agreement until it chooses to lift the suspension or the breach is remedied; or
- (ii) terminate this agreement (either as an alternative to suspension or during any period of suspension).

## 20.2 Effect of insolvency

If an *insolvency event* occurs for a party:

- (a) that party must immediately notify the other party that the *insolvency event* has occurred; and
- (b) the other party may terminate this agreement at any time by giving notice to the party suffering an *insolvency event*, regardless of whether notice is given under clause 20.3(a).

## 20.1 Rights, liabilities and obligations upon termination

Termination of all or part of this agreement for any reason does not affect:

- (a) any rights of a party against another party which:
  - (i) arose prior to the time at which such termination occurred; and
  - (ii) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement occurring prior to the termination of this agreement; or
- (b) the rights and obligations of the parties under clauses which survive the termination of this agreement, regardless of the reasons for the termination.

## 21. DISPUTE

### 21.1 Application of Rules provisions

If a *dispute* is a dispute to which the **Rules** apply that *dispute* will be dealt with in accordance with the dispute resolution regime set out in or implemented in compliance with the **Rules**.

### 21.2 All other disputes

- (a) If a *dispute* arises that is not a *dispute* to which the **Rules** apply, the parties shall comply with the provisions of this clause 21.2.
- (b) A party may give to the other party a written notice (“Notice”) identifying the matters in *dispute*.
- (c) The parties must meet within 10 **business days** after the Notice has been given and attempt to resolve the *dispute*. Each party must be represented at the meeting by a person who has authority to agree to a resolution of the *dispute*.
- (d) If the *dispute* has not been resolved within 20 **business days** after the Notice has been given, the parties must participate in a mediation of the *dispute* in

accordance with the Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

- (e) If the *dispute* has not been resolved within 20 *business days* after the termination of the mediation, the parties may agree to refer the *dispute* to determination by an independent expert in accordance with clause 21.2(h) or to arbitration in accordance with clause 21.2(i) or a party may give to the other a notice referring the *dispute* to litigation.
- (f) Subject to clause 21.2 (g) , a party must not issue court proceedings in connection with a *dispute* unless a notice referring the *dispute* has been given in accordance with clause 21.2(e).
- (g) Clause 21.2(f) does not apply to an application for an urgent injunction or declaration.
- (h) Where the parties agree to refer the *dispute* to an independent expert the expert determination will be conducted in accordance with the Institute of Arbitrators & Mediators Australia Expert Determination Rules.
- (i) Where the parties agree to refer the *dispute* to arbitration the arbitration will be conducted in accordance with the Institute of Arbitrators and Mediators Australia Expedited Commercial Arbitration Rules.
- (j) Where this clause refers to rules of the Institute of Arbitrators & Mediators Australia that reference is to the version of the rules in force at the date of the Notice or, if there is no such version, the version of the rules most recently published.

#### 21.1 Expert determination

Despite any other provision of this agreement, the parties agree that where a *dispute* under any of the following clauses is not resolved within 20 *business days* after termination of mediation of the *dispute* it will be referred to an expert for determination in accordance with clause 21.2(h):

- (a) the definition of *cash rate* in clause 1.1.

#### 21.1 Survival

This clause 21 survives termination of this agreement.



## 22. SUSPENSION

- (a) Notwithstanding any other provision of this agreement, TasNetworks may, at any time, give the IUSA Provider a suspension notice where, in TasNetworks' reasonable opinion, the IUSA Provider is carrying out works in a way that:
  - (i) is a danger to any person or property;
  - (ii) may impact the transmission system security; or
  - (iii) is not compliant with *TasNetworks' safety policies and procedures*.
- (b) On receipt of a suspension notice the IUSA Provider must immediately stop the whole works or part work notified by TasNetworks.
- (c) As soon as TasNetworks becomes aware that the reason for any suspension no longer exists, TasNetworks shall direct the IUSA Provider to recommence the suspended work.
- (d) The IUSA Provider shall bear the cost of suspension.

## 23. CONFIDENTIALITY

### 23.1 Intellectual Property Rights

- (a) The provision of information by a party to any other party under this Agreement does not (unless expressly stated) give rise to any intellectual property rights in the recipient party.
- (b) Each party grants to each other party a perpetual, irrevocable, royalty-free, transferable and non-exclusive licence (including the right to sub-licence) to copy and use any intellectual property rights in any documentation provided by that party to that other party for the purposes of:
  - (i) the Project; and
  - (ii) meeting their obligations under this Agreement and any *Related Agreement*;
- (c) Each party warrants to each other party that use of intellectual property rights as contemplated in clause 23.1(b) will not infringe any third party's intellectual property rights.

### 23.1 Non-disclosure

Subject to clauses 23.3 and 23.4, the information contained in, relating to or provided in accordance with this agreement and all negotiations leading up to its execution are confidential to the parties and must not be disclosed to any other person.

## 23.2 Exceptions

Clause 23.2 does not prevent disclosure of information by a party:

- (a) which is in the public domain or comes into the public domain otherwise than as a result of a breach by the party of its obligations under clause 23.2 provided that participants in the Tasmanian electricity industry do not of themselves constitute the public domain;
- (b) where the party is required by **Law** to disclose the information or where the party, acting reasonably, discloses the information in the course of legal proceedings;
- (c) to the lawyers, consultants, contractors or professional advisers of the party who has entered into a confidentiality undertaking with similar effect to this part, but which obliges the party to enforce its rights under that confidentiality undertaking if and to the extent required by the other party;
- (d) to any bank, financier, investor or insurer to or of the party (other than the party's lawyers) who has entered into a confidentiality undertaking with similar effect to this part, but which:
  - (i) does not contain a provision corresponding to this clause 23.3(d); and
  - (ii) obliges the party to enforce its rights under that confidentiality undertaking if and to the extent required by the other party;
- (e) with the consent of the other party;
- (f) to the extent required by **Law** or by a lawful requirement of any **Authority** having jurisdiction over a party or its *related body corporate*;
- (g) to the extent required by a lawful requirement of any stock exchange having jurisdiction over a party or its *related body corporate*;
- (h) to its *related body corporate*, but only on the basis permitted under clause 23.3 (d);
- (i) in the context of the sale of shares in or the sale of, or lease of, the assets of a party, to any consultant, bank, financier, insurer or professional adviser to a prospective purchaser or lessee of the relevant shares or assets as the case may

be any the prospective purchaser or lessee but only on the basis permitted under clause 23.3(d); or

- (j) to the *System Operator* as required by this agreement or the **Rules**.

### 23.1 Enforcing confidentiality undertaking

Where a party has entered into a confidentiality undertaking pursuant to clause 23.3 (d), that party must enforce its rights under the confidentiality agreement to the extent reasonably required by the other party.

### 23.2 Provision of information to TasNetworks' contractors

User hereby consents to TasNetworks disclosing to its tenderers and contractors such information as is reasonably necessary to fulfil the objects of this agreement.

### 23.3 Survive expiration

The obligations contained in clauses 23.1 , 23.2 , 23.3 and 23.4 will survive the termination of this agreement.

## 24. ASSIGNMENT AND OTHER DEALINGS

### 24.1 TasNetworks

Subject to the **Rules**, TasNetworks may at any time transfer or assign its rights and obligations under this agreement, provided that:

- (a) the proposed assignee or transferee is a responsible and solvent person with sufficient financial, business and technical capacity to successfully carry out the obligations of TasNetworks under this agreement; and
- (b) the proposed assignee or transferee first obtains all **approvals** required under all applicable *regulatory instruments* and the **Rules**, and the proposed assignee or transferee has otherwise complied with the requirements of the **Rules**; and
- (c) the proposed assignee or transferee first executes a deed of assignment or novation of this agreement in a form agreed between the parties acting reasonably pursuant to which the proposed assignee or transferee assumes the obligations of TasNetworks under this agreement.

### 24A.1 IUSA

IUSA Provider may with the consent in writing of TasNetworks transfer or assign this agreement and TasNetworks will not withhold its consent in circumstances where:

- (a) IUSA Provider requests the consent of TasNetworks to the transfer or assignment to the proposed assignee in writing;
- (b) IUSA Provider has provided to TasNetworks any information reasonably required by TasNetworks regarding the proposed assignee or transferee;
- (c) the proposed assignee or transferee is a responsible and solvent person with sufficient financial, business and technical capacity to successfully carry out the obligations of IUSA Provider under this agreement;
- (d) the proposed assignee or transferee first obtains all licences and permits required of the IUSA Provider under all applicable regulatory instruments and the **Rules**, and the proposed assignee or transferee has otherwise complied with the requirements of the **Rules**;
- (e) prior to settlement of any transfer or assignment:
  - (i) IUSA Provider or the proposed assignee or transferee pays to TasNetworks any moneys outstanding to TasNetworks under this agreement; and
  - (ii) where IUSA Provider was in default under this agreement in respect of an obligation that is to be transferred, the proposed transferee agrees to rectify that default; and
- (f) the proposed assignee or transferee first executes a deed of assignment or novation of this agreement in a form agreed between the parties acting reasonably.

#### 24A.1 Costs of assignment or novation

The party requesting an assignment or novation of this agreement must pay the other party's reasonable costs arising out of the assignment or novation.

## 25. NOTICES

### 25.1 Form

A notice or other communication to a party under this agreement must be in writing and addressed to that party in accordance with Schedule 3.

### 25.2 Service

- (a) Notices may be served by being:
  - (i) delivered by hand at the party's then current address for service; or

- (ii) sent to the party's then current address for service by pre paid ordinary mail.
- (b) Notice given by post is taken to be received on the third *business day* after posting.
- (c) A notice received by a party after 5:00 pm or on a day which is not a *business day* in the place where it is received, will be taken to have been received on the next *business day* in the place where it is received.

#### 25.1 Change of contact details

A party may at any time by notice in writing to the other party designate a different person, address or facsimile number and Schedule 3 will be amended to record the revised details provided the address and facsimile number are within Australia.

### 26. MISCELLANEOUS

#### 26.1 Waiver

No failure to exercise, nor any delay in exercising, any right, power or remedy under this agreement will operate as a waiver. No single or partial exercise of any right, power or remedy will preclude any other or future exercise of that or any other right, power or remedy.

#### 26.2 Entire agreement

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

#### 26.3 Amendment of agreement

Subject to clause 25.3 any amendments or alterations to this agreement must be by agreement in writing executed by both parties.

#### 26.4 Severability

Any provision of this agreement which is invalid or unenforceable in any jurisdiction is, if possible, to be read down for the purposes of that jurisdiction so as to be valid and enforceable, and is otherwise severed to the extent of the invalidity or

unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### 26.5 No precedent

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

#### 26.6 No third party rights

Except as specifically provided in this agreement, the parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this agreement and all covenants, stipulations, promises and agreements contained in this agreement are for the sole and exclusive benefit of the parties to this agreement.

#### 26.7 Governing law

This agreement will be governed by the laws of Tasmania.

#### 26.8 Submission to jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Tasmania, the Federal Court of Australia in Tasmania and courts of appeal from them for determining any *dispute* concerning this agreement.

#### 26.9 Service of process

Any document in any action may be served by delivery to the party being served at its address for service of notices as specified in accordance with clause 25.

#### 26.10 Counterparts

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

**EXECUTED AS AN AGREEMENT**

**Signed** for and on behalf of )  
**TASMANIAN NETWORKS PTY LTD** )  
by its duly authorised officer in the )  
presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised officer (print)

\_\_\_\_\_  
Position of witness (print)

\_\_\_\_\_  
Position of authorised officer (print)

**Executed by User**

in accordance with section 127 of the )  
Corporations Act 2001 )

\_\_\_\_\_  
Director

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

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director/Secretary (print)

**Executed by IUSA Provider** )  
in accordance with section 127 of the )  
Corporations Act 2001 )

\_\_\_\_\_  
Director

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

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Name of Director/Secretary (print)



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SCHEDULE 1 WORK

1 WORKS

2 CONTESTABLE WORKS (IUSA)

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SCHEDULE 3 FUNCTIONAL SPECIFICATIONS

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**SCHEDULE 4 CONTACT DETAILS**

**TasNetworks:** **Tasmanian Networks Pty Ltd**  
Street address: 1-7 Maria Street, Lenah Valley TAS 7008  
Postal address: PO Box 606, Moonah TAS 7009  
Nominated representative: **Iain Meaney**  
Title: **Commercial Solutions Team Leader**  
Phone: (03) 6271 6703

**User:** **[insert]**  
Street address: **[insert]**  
Postal address: **[insert]**  
Nominated representative: **[insert]**  
Title: **[insert]**  
Phone: **[insert]**

**IUSA Provider:** [insert]  
Street address: [insert]  
Postal address: [insert]  
Nominated representative: [insert]  
Title: [insert]  
Phone: [insert]

or as most recently notified by the party under clause 25.

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SCHEDULE 5 PROJECT LAND

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SCHEDULE 6WORKS PROGRAM

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SCHEDULE 7 IUSA COMPONENTS

*contestable IUSA components* means [to be inserted]

*non-contestable IUSA components* means [to be inserted]

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SCHEDULE 8 DESIGN SPECIFICATIONS

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SCHEDULE 9TASNETWORKS' SAFETY POLICIES AND PROCEDURES



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SCHEDULE 10      TASNETWORKS' APPROVED MATERIALS LIST

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SCHEDULE 11 CONSTRUCTION AUDIT PROCESS

**APPENDIX A          REQUIRED INFORMATION – TO BE REVIEWED**

This Appendix A sets out the required information to be provided by User in accordance with clause 5.2 of this Agreement.

ITEM	REQUIRED INFORMATION	INDICATIVE TIMEFRAME FOR PROVISION
1		
2		
3		
4		
5		