

TASMANIAN NETWORKS PTY LTD
ABN 24 167 357 299

and

[INSERT IUSA OWNER]
ABN [insert]

NETWORK OPERATION AGREEMENT

INDEX

1.	DEFINITION AND INTERPRETATION	1
1.1	Definitions.....	1
1.2	Rules definitions.....	5
1.3	Interpretation.....	6
1.4	Headings.....	6
2.	COMMENCEMENT AND TERM.....	7
2.1	Commencement and conditions precedent.....	7
2.2	Term.....	7
3.	EFFECT OF THIS AGREEMENT.....	7
4.	PROVISION OF SERVICES.....	8
4.1	General.....	8
4.2	Services.....	8
4.3	Service exclusions.....	8
4.4	Standard of care.....	8
5.	ASSET BOUNDARY AND INTERFACE.....	9
6.	TRANSFER OF OPERATIONAL CONTROL.....	9
7.	ASSET OPERATION AND CONTROL.....	9
8.	IUSA OWNER OBLIGATIONS	10
8.1	Provision of asset information.....	10
8.2	Decommissioning and reinstatement.....	11
9.	LAND ACCESS.....	12
9.1	Licence.....	12
9.2	Access by IUSA Owner.....	12
10.	OPTION TO PURCHASE.....	12
11.	DEFECT WARRANTIES	14
12.	CHARGES AND PAYMENT	14

12.1	Amount of Charges.....	14
12.2	Invoices.....	15
12.3	GST.....	15
12.4	Payments.....	15
12.5	Manifest error.....	15
12.6	Adjustment of disputed invoices.....	16
12.7	Late or non-payment.....	16
12.8	Interest.....	17
13.	SECURITY.....	17
13.1	Provision of security.....	17
13.2	Recourse to security.....	19
14.	DEFAULT PROVISIONS.....	19
14.1	Breach of agreement.....	19
14.2	Notice of breach.....	20
14.3	Repeat of breach.....	20
14.4	Effect of insolvency.....	21
14.5	Rights, liabilities and obligations upon termination.....	21
15.	REPRESENTATIONS AND WARRANTIES.....	21
15.1	Representations and warranties.....	21
15.2	Continuing representations and warranties.....	22
15.3	Separate representations and warranties.....	23
16.	LIABILITY AND INDEMNITIES.....	23
16.1	Warranties.....	23
16.2	Exclusion of implied terms.....	23
16.3	No waiver.....	23
16.4	Liability of both parties for damage to property and death and personal injury.....	23
16.5	Liability or other financial losses.....	24
16.6	Cap amount.....	24
16.7	Limitations on liability.....	25
16.8	Limitation of TasNetworks' liability as a system operator.....	25
16.9	Suspension or termination.....	25

16.10	Threshold and timing limitations.....	26
17.	ASSIGNMENT AND SUBCONTRACTING.....	26
18.	FORCE MAJEURE.....	27
18.1	Suspension of obligations by either party.....	27
18.2	Notice obligations.....	27
18.3	Mitigation.....	27
18.4	Amendment or termination of agreement.....	28
19.	INSURANCE.....	28
19.1	Insurance by IUSA Owner.....	28
19.2	Insurances by TasNetworks.....	29
19.3	Notices.....	29
20.	DISPUTE RESOLUTION.....	30
20.1	Disputes.....	30
20.2	Rules Disputes.....	31
20.3	Non-Rules disputes.....	31
21.	CONFIDENTIALITY.....	32
21.1	Non-disclosure.....	32
21.2	Exceptions.....	32
21.3	Enforcement of Undertaking.....	33
21.4	Survive expiration.....	33
22.	REVIEWS.....	34
22.1	Review of agreement.....	34
22.2	Initiation of review.....	34
22.3	Good faith negotiations.....	34
22.4	Conduct of review.....	35
22.5	Outcome of review.....	35
23.	NOTICES.....	36
23.1	Giving Notices.....	36
23.2	Address Details.....	36

23.3	Change of Address or Details.....	37
24.	MISCELLANEOUS.....	37
24.1	Survival.....	37
24.2	Waiver	37
24.3	Amendment of agreement.....	37
24.4	Severability.....	37
24.5	No precedent.....	38
24.6	No third party rights.....	38
24.7	Governing law.....	38
24.8	Submission to jurisdiction.....	38
24.9	Service of process.....	38
24.10	Acknowledgment of System Operator function.....	38
24.11	Counterparts.....	39

This Network Operation Agreement is made on

2018

BETWEEN TASMANIAN NETWORKS PTY LTD

ABN 082 586 892

of 1-7 Maria Street, Lenah Valley in Tasmania

(“**TasNetworks**”);

AND [INSERT IUSA OWNER]

ABN [insert]

of [insert]

(“**IUSA Owner**”);

RECITALS

A.

THE PARTIES AGREE:

1. DEFINITION AND INTERPRETATION

1.1 Definitions

In this agreement, except where the context otherwise requires:

approved credit rating is a credit rating of at least BBB issued by Standard & Poor’s or, if nominated and agreed to by TasNetworks, an equivalent credit rating from another credit rating agency acceptable to TasNetworks;

Australian bank means an “Australian bank” as defined in the *Corporations Act 2001* (Cth) which is incorporated in Australia;

Authority means the Crown, any government or regulatory department, body, instrumentality, minister, 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***) including the *AEMC*, the *AER* and *AEMO*;

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

cap amount means, for each *financial year*, [to be inserted];

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 mean such rate as may be determined in accordance with the dispute resolution procedure in clause 20;

charges means the fee to be paid by IUSA Owner to TasNetworks for the **services** calculated in accordance with Schedule 3 and, where relevant, clause 12.6;

claim means all claims, actions, disputes or proceedings whether arising under statute or in contract, tort (including breach to statutory duty and negligence), common law, equity or otherwise;

commencement date has the meaning given in clause 2.1;

CPI means for a particular year:

- (a) the Consumer Price Index: All Groups Index Number, weighted average of eight capital cities published by the Australian Bureau of Statistics for the March quarter immediately preceding the start of the relevant year;

divided by:

- (b) the Consumer Price Index: All Groups Index Number, weighted average of eight capital cities published by the Australian Bureau of Statistics for the March quarter immediately preceding the March quarter referred to in (a) above;

costs means all internal and external costs, expenses, fees, charges and overhead, including sub-contractor, consultant and advisor fees;

damages means all liabilities, expenses, losses, damages and **costs** (including legal costs on a party/party basis) whether incurred by or awarded against a person;

decommissioning plan means a plan specifying the process, procedure, scope and timeline for the decommissioning of the IUSA required to be prepared by the IUSA Owner in accordance with clause 8.2;

defect means any defective, deficient, incomplete or omitted services, works, goods, plant, materials or equipment in relation to or in connection with **IUSA**, including,

without limitation, anything in relation to any **IUSA** that causes or constitutes a breach of the obligations, undertakings or warranties in this agreement (including, without limitation, any relevant warranties);

defects rectification period has the meaning given in clause 11(a);

direct loss means loss, injury, damage or expense suffered or incurred by the Affected Party that results directly from, whether solely or in part, an act or omission of the First Party for which the First Party is liable to the Affected Party (whether for the First Party's breach of this agreement, negligence or otherwise), but does not include:

- (a) any loss, damage or expense arising out of interruption to business, increased costs of working, loss of use of property, loss of contract, or loss of production;
- (b) any loss of actual or anticipated profit or revenue or saving (but excluding TasNetworks' profit that forms part of the **charges**);
- (c) any damage to goodwill, reputation or share price; or

any indirect or consequential loss (being any loss that does not fall within the first limb of the decision in *Hadley v Baxendale*) or special or contingent **damages** of any kind;

dispute means any dispute or difference of opinion between TasNetworks and IUSA Owner or the absence of agreement between them about a matter under or arising out of this agreement;

emergency fault response has the meaning set out in clause 4.2(c) of this agreement;

existing warranties means [to be inserted];

force majeure event means an event or circumstance that:

- (a) is beyond the reasonable control of the notifying party and its *representatives*;
- (b) is not caused by an act or omission of the notifying party or its *representatives*;
- and
- (c) could not have been avoided or overcome by the notifying party and its *representatives* taking reasonable precautions and steps,

including the following events, to the extent they satisfy paragraphs (a) to (c) (inclusive):

- (a) any industrial or labour dispute which the notifying party can demonstrate:
 - (i) involves persons other than the notifying party and its *representatives*; and

- (ii) was not caused or induced by the acts or omissions of the notifying party or its *representatives*;
- (b) natural disasters;
- (c) landslide, flood, cyclone, earthquake, severe storm, lightning strike, severe and abnormal weather condition, electro-magnetic radiation storm, explosion or fire;
- (d) an act of war, terrorism, riot, civil commotion, malicious damage, sabotage or revolution; and
- (e) an act or omission of another person (including an **Authority**) who is not under the control of the notifying party;

gross negligence means a negligent act or omission so wanton or reckless that it amounts to an utter disregard for the harmful and avoidable consequences of that act or omission;

GST means a goods and services tax imposed under the **GST Act** and related legislation;

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

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 and 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.

IUSA means the *identified user shared asset* (more particularly described in Schedule which is used to *connect transmission customers* to TasNetworks' *Transmission System*;

IUSA Owner representative means the person identified in Schedule 4 of this agreement or as otherwise notified in writing to TasNetworks by IUSA Owner from time to time;

IWCA mean Interface User Construction Agreement between TasNetworks, User and IUSA Owner dated [insert date];

land means the land comprised of [insert], which is owned by TasNetworks, and on which the **IUSA** are located;

law means:

- (a) those principles of law or equity established by decisions of courts;
- (b) statutes, regulations 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 authorisation, 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;

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

security means any guarantee, performance, undertaking, security interest or other document provided under clause 13 for the payment of money under this agreement

services has the meaning set out in clause 4.2;

TasNetworks safety policies and procedures means those policies and procedures of TasNetworks in [to be inserted];

termination date means the earlier of [insert]; and

[NER 5.2A.7(c): Term must be for a period which is at least equal to the term of the longest *connection agreement* of a member of the initial *identified user group* for the *third party IUSA*]

wilful default means intentional misconduct or reckless acts or omissions.

1.1 Rules definitions

Words appearing in bold italics are defined in this agreement. Words appearing in italics have the same meaning as they have in the **Rules**. If such a term is both defined in the

Rules and in this agreement, unless the context otherwise requires the definition in this agreement will apply.

1.2 Interpretation

In this agreement unless a contrary intention appears:

- (a) a reference to this agreement or any document or any instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other legislative requirement includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) person includes a firm, body corporate, an unincorporated association or a responsible **Authority** as constituted from time to time;
- (e) a reference to anything (including any amount) is a reference to the whole or any part of it and a reference to a group of person is a reference to any one or more of them;
- (f) a reference to a clause or schedule is to a clause or schedule in or to this agreement;
- (g) a reference to a day must be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (h) words or phrases derived from a defined word have a corresponding meaning to the defined word; and
- (i) a term of inclusion must not be interpreted to be a term of limitation.

1.1 Headings

Headings are inserted for convenience and do not affect the interpretation of this agreement.

2. COMMENCEMENT AND TERM

2.1 Commencement and conditions precedent

The **commencement date** is the later of:

- (a) the date of execution of this agreement;
- (b) the date upon which IUSA Owner delivers to TasNetworks the **security** required under clause 13;
- (c) the date upon which IUSA Owner delivers to TasNetworks the asset information required under clause 8.1;
- (d) the date of practical completion (as defined under the **IWCA**) under the **IWCA**; and
- (e) provision of site inductions and training from the IUSA Owner to TasNetworks as reasonably required by TasNetworks for the purposes of operating and maintaining the **IUSA**;
- (f) provision of any licences required for TasNetworks to provide the **services**; and
- (g) [insert any other necessary prerequisites].

2.1 Term

This agreement will commence at 12:00 am on the **commencement date** and unless earlier terminated by a party pursuant to the terms of this agreement will continue until 12:00 am on the **termination date**.

3. EFFECT OF THIS AGREEMENT

The parties acknowledge and agree that:

- (a) this is a **network operating agreement** for the purposes of the **Rules** for the **IUSA**;
- (b) TasNetworks has all the rights, benefits and privileges provided for in clause 5.2A.7(d) of the **Rules** relating to the **IUSA**; and
- (c) **IUSA** has no property rights in any electrical capacity or capability of the **IUSA**.

4. PROVISION OF SERVICES

4.1 General

Subject to the terms and conditions set out in, and in consideration of the payments to be made under, this agreement, TasNetworks will provide the *services*. TasNetworks will be responsible for providing adequate personnel and resources to carry out the work required to provide the *services*.

4.2 Services

The *services* are the following:

- (a) **(Operation)** TasNetworks will operate and control the *IUSA* as part of its *transmission system*;
- (b) **(Inspection and Maintenance)** *TasNetworks* will conduct inspections and carry out maintenance on the *IUSA* as set out in [insert reference] of Schedule 2;
- (c) **(Emergency Fault Response)** *TasNetworks* will carry out *emergency fault response* as set out in [insert reference] of Schedule 2;
- (d) **(Notification of Defects)** If, as a result of performing the *services* described in paragraphs (a), (b), or (c) *TasNetworks* becomes aware that work is required on the *IUSA* which is subject to the *existing warranties*, it will promptly notify the *IUSA* Owner *representative* in writing of its opinion of the nature of the rectification work required.; and
- (e) **(Repair and Maintenance)** repair and maintain (including alter and replace where necessary) the *IUSA*; and
- (f) [insert any other services required, such as holding spare parts].

4.1 Service exclusions

Unless otherwise agreed by the parties in writing, the *services* do not include the following:

- (a) [insert any other exclusions].

4.1 Standard of care

TasNetworks agrees that:

- (a) it will use all reasonable endeavours to maintain in full force and effect, and to comply with, all applicable licences;
- (b) it will comply with the **Rules**;
- (c) it will perform its obligations under this agreement in accordance with applicable standards of *good electricity industry practice*; and
- (d) it will comply in all material respects with all applicable **laws**, regulations, statutory orders, and *Australian Standards* to which it may be subject if failure to so comply would materially impair its ability to perform its obligations under this agreement.

5. ASSET BOUNDARY AND INTERFACE

The [boundary/boundaries] between TasNetworks' *transmission network* and the **IUSA** [is/are] as follows:

[insert description of primary and secondary asset boundaries, as applicable]

6. TRANSFER OF OPERATIONAL CONTROL

Operational control of the IUSA will transfer to TasNetworks on the ***commencement date***.

7. ASSET OPERATION AND CONTROL

TasNetworks will:

- (a) have unrestricted use and control of, and access to, the **IUSA**, including all rights relating to the **services** and the right to augment the **IUSA**;
- (b) have the right to *connect* other persons to the **IUSA** in accordance with the **Rules**; and
- (c) treat the **IUSA** as forming part of its *transmission network* in all material respects and may use the **IUSA** to provide *transmission services* to any *Transmission Network User* in accordance with the **Rules**.

8. IUSA OWNER OBLIGATIONS

8.1 Provision of asset information

IUSA Owner must provide to TasNetworks:

- (a) documentary information on the **IUSA** in either hard copy or electronically based format, including but not limited to:
 - (i) drawings;
 - (ii) protection and test settings;
 - (iii) inter-tripping schemes;
 - (iv) configuration files;
 - (v) copies of test certificates, test results and inspection and test plans, including manufacturer test certificates for any materials and equipment;
 - (vi) copies of any technical documentation received from any manufacturers or suppliers of materials or equipment forming part of the **IUSA**;
 - (vii) serial numbers and/or part numbers of plant, parts and equipment; and
 - (viii) manuals for any materials, equipment and spares forming part of the **IUSA**,for the **IUSA**;
- (b) [insert any other asset information required]
- (c) sufficient information to populate TasNetworks' internal asset registers with the **IUSA** and expand TasNetworks' network operating model to incorporate the relevant details to enable TasNetworks to enjoy the benefit of its rights, and carry out its obligations, under this agreement;
- (d) a copy of the **existing warranties** and any defects liability insurance policy with respect to the **IUSA**; and
- (e) any other documents, materials or items that are reasonably required by TasNetworks to enable TasNetworks to access, operate, maintain, repair, replace and remove the **IUSA** in the same manner as for the rest of TasNetworks' transmission system, and otherwise enjoy the benefit of its rights, and carry out its obligations, under this agreement.

8.1 Decommissioning and reinstatement

- (a) In the event that the IUSA is not acquired by TasNetworks in accordance with clause 10 or a third party by the *termination date* of this agreement, then the IUSA Owner must comply with the following paragraphs (b) to (i).
- (b) The IUSA Owner must prepare a *decommissioning plan* and submit it for TasNetworks for approval
- (c) At least 40 *Business Days* before expiry of this agreement, the IUSA Owner must give TasNetworks a *decommissioning plan* in respect of the IUSA.
- (d) The IUSA Owner must ensure that the *decommissioning plan* contains all the information reasonably required by TasNetworks, including the dates on which the IUSA Owner intends to carry out the decommissioning.
- (e) TasNetworks may request the IUSA Owner to modify the decommissioning plan and the IUSA Owner must modify the decommissioning plan accordingly before conducting the decommissioning.
- (f) IUSA Owner must carry out the decommissioning in accordance with *Australian Standards*, any *approvals* and the *decommissioning plan* approved by TasNetworks.
- (g) IUSA Owner must provide evidence to TasNetworks' reasonable satisfaction that decommissioning has been conducted in accordance clause 8.2(f).
- (h) Within 30 *business days* of the *termination date* the IUSA Owner must:
 - (i) complete the decommissioning and reinstatement of the *land* to its condition prior to the construction of the IUSA;
 - (ii) remove from the *land* all plant equipment and materials that make up the *IUSA*; and
 - (iii) repair any damage caused to the land by removal of the IUSA;
- (i) If the IUSA Owner fails to comply with clause 8.2(h) then TasNetworks may carry out the obligations themselves and the costs of doing so will be a debt due and owing from the IUSA Owner to TasNetworks.

9. LAND ACCESS

9.1 Licence

- (a) TasNetworks grants to IUSA Owner a licence to have and maintain the **IUSA** on the **land** for the term of this agreement.

9.1 Access by IUSA Owner

- (a) IUSA Owner's employees, officers, agents or contractors may access the **land** to visually inspect the **IUSA** with TasNetworks' prior consent (such consent not to be unreasonably withheld or delayed) provided that individuals accessing the **land**:
 - (i) comply with all applicable **TasNetworks safety policies and procedures**, including undertaking a site induction;
 - (ii) are accompanied by a TasNetworks representative; and
 - (iii) where access is sought more than once per calendar year, IUSA Owner agrees to pay TasNetworks' reasonable **costs** of facilitating access.
- (b) Other than as set out in clause 9.2(a), this agreement does not confer on IUSA Owner or its employees, agents or contractors a right of entry to the **land** without TasNetworks' prior consent.

10. OPTION TO PURCHASE

10.1 Proposed Price

- (a) TasNetworks may make a request in writing to the IUSA Owner, no less than 3 months and no more than 12 months before the **termination date** the proposed purchase price representing fair market value for the **IUSA**.
- (b) If TasNetworks makes a request under clause 10.1(a) then the IUSA Owner must deliver to TasNetworks, within 30 days of receipt of the request, a notice stating the purchase price the IUSA Owner proposes represents fair market value for the **IUSA**.

10.1 Notice by TasNetworks

- (a) Within 30 days after a notice is delivered to TasNetworks in accordance with clause 10.1(b), TasNetworks must notify IUSA Owner in writing that it:
 - (i) agrees to the proposed purchase price; or
 - (ii) does not agree with the purchase price, but wishes to negotiate the amount.

- (b) If TasNetworks agrees to the purchase price proposed by the IUSA Owner, then the parties will in good faith negotiate the terms of the transfer of **IUSA** on the basis of the purchase price agreed.

10.1 Negotiation of Purchase Price

If TasNetworks notifies the IUSA Owner of its wish to negotiate the purchase price then the IUSA Owner and TasNetworks must in good faith negotiate to determine the fair market value for the IUSA which is acceptable to both parties.

10.2 Disagreement

- (a) If TasNetworks and the IUSA Owner cannot agree to the purchase price payable pursuant to clause 10.3 within 30 days of commencing negotiations then either party, or both parties, may refer the matter for determination by independent valuers. At least two independent valuations of the fair market value for the IUSA must be obtained. The fair market value will be the average of the valuations given by the independent valuers.
- (b) Each party must equally share the costs of the costs of the independent valuations.
- (c) If TasNetworks agrees to the fair market value determined by the independent valuations then the parties will in good faith negotiate the terms of the transfer of **IUSA** on the basis of this fair market value being the purchase price.

10.1 Option to Purchase where Agreement Terminated

If this agreement is terminated by a party prior to the **termination date** and TasNetworks notifies the IUSA Owner that it wishes to purchase the IUSA then clauses 10.3 and 10.4 apply to the parties for the purposes of determining fair market value for the **IUSA**.

11. DEFECT WARRANTIES

- (a) The *defects rectification period* is:
- (i) for any electrical works, the period of [24 months]; and
 - (ii) for civil works, the period of [12 months],
after the *commencement date*.
- (b) If, during the *defects rectification period*, and despite any audits, inspections and the issue of practical completion certificate under the *IWCA*, TasNetworks discovers or becomes aware of any *defect* in the transferable assets, TasNetworks must notify IUSA Owner of the defect in writing.
- (c) In respect of any *defect* notified by TasNetworks to IUSA Owner during the *defects rectification period*, TasNetworks may, at TasNetworks' election, do one or more of the following:
- (i) where the *defect* relates to material or equipment for which TasNetworks has the benefit of an enforceable warranty provided by IUSA Owner to TasNetworks, call on that warranty;
 - (ii) rectify the *defect* and recover the *costs* of doing so from IUSA Owner, including by calling on the *security*; and
 - (iii) exercise all other rights and remedies that may be available to TasNetworks.
- (d) Any action taken by TasNetworks under this clause 11 does not limit or reduce any other rights or remedies that TasNetworks may have against IUSA Owner.

12. CHARGES AND PAYMENT

12.1 Amount of Charges

Subject to clause 12.5, IUSA Owner must pay to TasNetworks the *charges* determined in accordance with Schedule 3 and all other amounts payable by IUSA Owner to TasNetworks under this agreement from time to time in accordance with this clause 12.

12.2 Invoices

- (e) TasNetworks will render invoices within 10 *business days* following the end of each calendar month, or other agreed period, in which the *charges* were incurred.
- (f) An invoice must contain sufficient information to allow IUSA Owner to assess the accuracy of the *charges* specified in the invoice.

12.1 GST

- (a) The *charges* in Schedule 3 are exclusive of *GST*.
- (b) Subject to TasNetworks' invoice being in a form which satisfies the requirements of the *GST Act* for a valid tax invoice, IUSA Owner agrees to pay to TasNetworks at the same time and in the same manner as the *charges* specified in the invoice an additional amount on account of the amount of TasNetworks' *GST* liability in respect of the supply of the *services* covered by the invoice.

12.1 Payments

Subject to clause 12.5 IUSA Owner must pay the *charges* to TasNetworks. All payments must be:

- (a) for the amount of each invoice including *GST*;
- (b) electronically transferred into an account or accounts nominated by TasNetworks;
- (c) transferred to the nominated account or accounts by 4.00 pm on the tenth *business day* after the date of invoice or 2 *business days* after receipt of the invoice, whichever is the later;
- (d) without set-off or counterclaim; and
- (e) without any deduction or withholding.

12.1 Manifest error

If IUSA Owner in good faith (acting reasonably and for genuine reasons) considers that there is a manifest error on the face of an invoice, then provided it has notified

TasNetworks of the error prior to the date for payment of the invoice, IUSA Owner may pay TasNetworks such amount as it considers to be due and payable, and refer the balance to TasNetworks for TasNetworks' consideration. If TasNetworks disputes IUSA Owner's assessment of the invoice, the provisions of clause 20(Dispute Resolution) will apply.

12.2 Adjustment of disputed invoices

- (a) If IUSA Owner has paid an invoice and, within 24 months of the date of the invoice, either party considers IUSA Owner has been undercharged or overcharged it may refer the invoice to the other party with a view to establishing whether an adjustment is warranted.
- (b) If the parties agree to adjust the invoice TasNetworks must issue an adjusting note for the amount of the adjustment agreed by the parties plus interest calculated in accordance with clause 12.8 from the date of the original invoice until the date of the adjusting note.
- (c) Within 15 *business days* of the issue of an adjusting note:
 - (i) IUSA Owner will pay the amount determined for an agreed undercharge to TasNetworks in accordance with clause 12.4; and
 - (ii) TasNetworks will pay the amount determined for an agreed overcharge to IUSA Owner as directed by IUSA Owner.
- (d) If the parties cannot agree on the adjustment of an invoice, the provisions of clause 20(Dispute Resolution) will apply.

12.1 Late or non-payment

If a payment is not made by a party in accordance with clause 12.4 or clause 12.6 the party required to make the payment 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 12.8.

12.2 Interest

Interest payable under this agreement will:

- (a) accrue daily at the *cash rate* for each relevant *day* plus:
 - (i) 2% in the case of interest referred to in clause 12.7, and
 - (ii) 0% in all other cases; and
- (b) be calculated at:
 - (i) on a daily compounding basis; and
 - (ii) assuming a 365 *day* year.

13. SECURITY

13.1 Provision of security

- (a) IUSA Owner must on and from the *commencement date* at all times provide and maintain *security* in the amount and in the form stated in [Schedule X].
- (b) All *security* must be in the form of either:
 - (i) a bank guarantee which must at all times be:
 - (A) given by an *Australian bank* (lawfully carrying on business under the *Banking Act 1959* (Cth)) that meets the requirements of TasNetworks' Credit Risk Management Policy and which *Australian bank* is otherwise acceptable to TasNetworks;
 - (B) an irrevocable and unconditional commitment by the *Australian bank* to pay, without enquiry or reference to User, the amount demanded by TasNetworks, without set-off or counterclaim, up to the amount of the *security*;
 - (C) issued from a branch of the issuing Australian Bank in Hobart and provide for presentation and payment at that branch; and
 - (D) otherwise on terms acceptable to TasNetworks;
 - (ii) a guarantee (on terms acceptable to TasNetworks) by a *related body corporate* or other entity that TasNetworks is satisfied has an *approved credit rating*,
or such other form of *security* as TasNetworks agrees to accept.

- (c) Where any *security* provided in accordance with this clause 13 has an expiry date which is earlier than the *termination date*, then:
- (i) that expiry date must be midnight on the 30th day of June in any relevant year;
 - (ii) IUSA Owner must, not later than 60 *business days* before that expiry date, provide TasNetworks with the proposed form of IUSA Owner's replacement *security*;
 - (iii) TasNetworks must, not more than 20 *business days* after receipt of the proposed form of IUSA Owner's replacement *security*, advise IUSA Owner whether or not the proposed form of *security* is acceptable; and
 - (iv) IUSA Owner must provide TasNetworks with replacement *security* in a form acceptable to TasNetworks not less than 20 *business days* before that expiry date;
- (d) If User fails to provide replacement *security* in accordance with clause 13(c) then TasNetworks may, without notice or reference to User, draw down or call upon the *security* as payment of that amount secured.
- (e) IUSA Owner must provide the required *security* on or before the *commencement date*.
- (f) IUSA Owner must immediately notify TasNetworks if the *Australian bank* that issued a bank guarantee or an entity that provided a guarantee fails to hold and maintain the *approved credit rating*.
- (g) TasNetworks may, by notice, request IUSA Owner to provide a replacement *security*, that complies with clause 13.1(b), if the *Australian bank* issuing the bank guarantee or the entity who provides the guarantee fails to hold and maintain the *approved credit rating*.
- (h) IUSA Owner must comply with a notice under clause 13.1(g) within 10 *business days* from the date of TasNetworks' notice.
- (i) If TasNetworks draws down or calls upon the *security* in accordance with this clause 13(d), and the User subsequently provides TasNetworks with *security* which complies with this clause 13(b) then TasNetworks must within 10 *business*

days after written request by the User pay to the User (or as it directs) the amount which TasNetworks has drawn down or called upon.

13.1 Recourse to security

TasNetworks may have recourse to the *security* without notice to IUSA Owner at any time TasNetworks reasonably claims that IUSA Owner has money owing to TasNetworks in connection with this agreement or the *IUSA*, including any *claims* that it is entitled to:

- (a) the payment of monies or an indemnity by IUSA Owner; or
- (b) reimbursement of any monies paid to others in connection with this agreement or the *IUSA*.

14. DEFAULT PROVISIONS

14.1 Breach of agreement

If a party:

- (a) fails to pay an invoice in accordance with clause 12;
- (b) fails to maintain *security* in accordance with clause 13 or provide replacement *security* in accordance with clause 13.1(c)(iv);
- (c) fails to remedy a breach of a provision of this agreement, which obliges it to pay money to the other party, within the reasonable time (being not less than 10 *business days*) specified in a notice from the other party requiring remedy of the breach;
- (d) 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 60 *business days*) specified in a notice from the other party requiring remedy of the breach; or
- (e) breaches a provision of this agreement in a manner which is incapable of remedy, and fails to provide to the other party within 5 *business days* of demand a written undertaking not to repeat the breach;

then a default event (“*default event*”) will occur for that party (the “*defaulting party*”) and the *defaulting party* will be in default of this agreement for the relevant *default event*.

14.1 Notice of breach

If a *default event* occurs for a party under clause 14.1, the other party 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 other party reasonably believes that:

- (a) the *defaulting party* is still in breach of this agreement; and
- (b) (i) if the breach is capable of being remedied, a remedy is not being diligently pursued; or
- (ii) if the breach is incapable of being remedied, an undertaking requested under clause 14.1(e) is not provided in the required time;

then the other party may take one or more of the following actions:

- (c) call on the *security*;
- (d) 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
- (e) terminate this agreement (either as an alternative to suspension or during any period of suspension).

14.1 Repeat of breach

If a party repeats a breach of a provision of this agreement in respect of which it has given a written undertaking not to repeat a breach, then the other party may:

- (a) 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
- (b) terminate this agreement (either as an alternative to suspension or during any period of suspension).

14.1 Effect of insolvency

If an *insolvency event* occurs with respect to 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 14.4(a).

14.1 Rights, liabilities and obligations upon termination

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

- (a) any rights of either party against the other 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.

15. REPRESENTATIONS AND WARRANTIES

15.1 Representations and warranties

- (a) As at the *commencement date*, each party represents and warrants to the other party that:
 - (i) it is duly formed and validly existing under the *laws* of Tasmania;
 - (ii) 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;
 - (iii) 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

- (iv) 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.
- (b) In performing the **services** TasNetworks represents and warrants that:
- (i) TasNetworks, or where **services** are provided by its agents or contractors those agents or contractors, are suitably qualified and experienced in the provision of the services; and
 - (ii) at all times it will exercise due skill care and attention in performing the **services** in accordance with this agreement.
- (c) IUSA Owner represents and warrants that:
- (i) the **IUSA** comply with all relevant **laws**, including, without limitation, those pertaining to health and safety, planning, cultural heritage, nature conservation and the environment;
 - (ii) it has obtained any relevant **approvals** required in relation to the **IUSA**;
 - (iii) the **IUSA** are fit and suitable for their purpose, mechanically complete and compatible with TasNetworks' *transmission network*;
 - (iv) the **IUSA** comply with the **specifications**;
 - (v) it is not in breach of clause 5.2A.7 of the **Rules**; and
 - (vi) the **IUSA** has been constructed in accordance with the requirements of the **IWCA**.

15.1 Continuing representations and warranties

The representations and warranties given in clause 15.1 are continuing representations and warranties, and will not merge on, and will remain in full force and effect after, the **commencement date**.

15.2 Separate representations and warranties

Each representation and warranty given in clause 15.1 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.

16. LIABILITY AND INDEMNITIES

16.1 Warranties

Subject to clause 16.2 and except as otherwise expressly set out in this agreement, TasNetworks gives no warranty or undertaking, and has made no representations in relation to the condition, suitability, quality, fitness or safety of the *services*.

16.2 Exclusion of implied terms

The parties exclude from this agreement all conditions, warranties and terms imposed or implied by *law*, except any condition, warranty or term the exclusion of which would:

- (a) contravene the *law* which imposed or implied it; or
- (b) cause this clause 16 to be void.

16.1 No waiver

Each party acknowledges that the terms of this agreement do not represent a waiver by the other party of, nor agreement to vary or exclude, any limitation of its liability, which it may have under the *National Electricity Law*.

16.2 Liability of both parties for damage to property and death and personal injury

Subject to clause 16.5, and except as specified in clause 12, neither party is liable to the other except in the event that any act or omission of either party or any of its *representatives*:

- (a) constitutes a failure to observe *good electricity industry practice* or an act of **wilful default** or negligence of that party 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 the offending party to the other party shall be limited to the following:
- (c) the **direct loss** or damage to the equipment or *facilities* of the other party;
 - (d) **damages** for death or personal injury to *representatives* of the other party; and
 - (e) the liability of the other party for any third party property damage.

16.1 Liability or other financial losses

Neither party is liable to the other party for any loss or damage suffered or incurred by a party not covered by clause 16.4(c), (d) or (e), whether directly or indirectly by the negligence or otherwise of the offending party or any of its *representatives*, including any losses actually suffered or incurred in relation to third parties, except where such loss or damage is caused by the **gross negligence** or **wilful default** of the offending party in which case the loss recoverable is limited to loss that is reasonably foreseeable at the time of entering into this **agreement**.

16.2 Cap amount

- (a) Subject to clause 16.6(b), the aggregate amount recoverable by one party from the other party in relation to events occurring in a *financial year* under this agreement is limited to the **cap amount**.
- (b) A party's liability in respect of the following is not limited by clause 16.6(a), and is not counted towards the limit on the party's liability under clause 16.6(a):
 - (i) IUSA Owner's liability for the **charges** under clause 12;
 - (ii) liability for personal injury or death;
 - (iii) liability for third party property damage; and
 - (iv) liability for fraud or **wilful default** of the party or its associates.

16.1 Limitations on liability

- (a) TasNetworks' liability under this clause 16 shall be reduced proportionally by the extent that the negligent act or omission of IUSA Owner or *representatives* of IUSA Owner contributes to any *claims* or loss or damage;
- (b) IUSA Owner's liability under this clause 16 shall be reduced proportionally by the extent that the negligent act or omission of TasNetworks or *representatives* of TasNetworks contributes to any *claims* or loss or damage;
- (c) to the maximum extent permitted by law, in no event or circumstance other than as specified in clauses 12 , 16.4 or 16.5 , shall either party or any of its representatives be liable to the other party under this agreement whether for direct or consequential loss or damage of any type; and
- (d) a party shall not be liable to the other party if the loss or damage suffered by a party results 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.

16.1 Limitation of TasNetworks' liability as a system operator

Despite any other provision of this agreement, IUSA Owner acknowledges and agrees that TasNetworks will not be liable to IUSA Owner for any *claims* or *damages* arising from any act or omission (including a negligent act or omission) of TasNetworks in relation to the performance, non-performance or purported performance by TasNetworks of any functions as *System Operator* to the maximum extent permitted by *law*.

16.2 Suspension or termination

- (a) TasNetworks shall not be liable for any loss, injury or damage suffered by IUSA Owner under this agreement that arises after or as a result of TasNetworks validly suspending its *services* in accordance with this agreement.
- (b) Neither party shall be liable for any loss, injury or damage suffered by the other party under this agreement that arises after or as a result of a party validly

terminating this agreement under clause 14 or clause 19 or if its obligations are suspended under clause 18.

- (c) For the avoidance of doubt, this clause 16.9 shall not apply in respect of any liability which arises prior to the time at which TasNetworks suspends its *services* under clause 18.4, obligations are suspended under clause 18 or on which the agreement is terminated under clause 14 or clause 18.

16.1 Threshold and timing limitations

A party may not claim against the other party under this clause 16:

- (a) unless details of the *claim* have been given to the other party within 12 months of the occurrence giving rise to the *claim*; or
- (b) if the amount of the *claim* in respect of a single event or series of associated events is less than \$20,000.

17. ASSIGNMENT AND SUBCONTRACTING

- (a) Neither party may assign or novate its interests in this agreement without the other party's prior written consent, which must not be unreasonably withheld.
- (b) TasNetworks may subcontract the performance of its obligations under this agreement.
- (c) It is taken to be an assignment or transfer of Network User's interest in this agreement in breach of clause 17 (a) if, without the prior written approval of TasNetworks (such approval to not be unreasonably withheld), by transfer or allotment of shares or amendment of its constitution or by some other act or deed, the party or parties with effective control of Network User as at the date of this agreement, ceases to have effective control of Network User.

18. FORCE MAJEURE

18.1 Suspension of obligations by either party

A party (“the *FM notifying party*”) may suspend the performance or observance of this agreement (other than monetary obligations) if a *force majeure event* prevents it performing or observing its obligations under this agreement.

18.2 Notice obligations

If a party invokes clause 18.1 it must:

- (a) immediately notify the other party;
- (b) as soon as practicable thereafter, but not later than 3 *business days* following the date on which the affected party became aware of a *force majeure event*, give particulars to the other party of the event and of the obligations of the affected party under this agreement which have been, will be or are likely to be affected by the *force majeure event*; and
- (c) keep the other party informed, both at reasonable intervals and upon request by the other party, as soon as practicable following the receipt of that request, of:
 - (i) the *FM notifying party's* estimate of the likely duration of the *force majeure event* and its likely implications on the affected party's ability to perform its obligations under this agreement;
 - (ii) the action taken and the action proposed to be taken to mitigate the effect of the *force majeure event*;
 - (iii) the cessation of the *force majeure event* or the successful mitigation or minimisation of the effects of the *force majeure event*; and
 - (iv) any other matter which the other party may reasonably request in connection with the occurrence of the *force majeure event*.

18.1 Mitigation

Subject to clause 18.4, the *FM notifying party* must:

- (a) as soon as practicable after the occurrence of a *force majeure event*, use its reasonable endeavours to mitigate the effects of the *force majeure event*;
- (b) use its reasonable endeavours to overcome or remove the *force majeure event*;
and
- (c) the other party must cooperate and give such assistance to the *notifying party* as may be reasonably requested.

18.1 Amendment or termination of agreement

- (a) If the *force majeure event* continues to prevent a party from performing or observing its substantial obligations under this agreement for a prolonged period (which shall not be less than six months) from the date of its occurrence, either party may upon not less than 10 *business days* but no more than 60 *business days*' notice either:
 - (i) request that the other party negotiate in good faith amendments to this agreement (including any obligations to make any payments under this agreement) which would remove the aspects of this agreement affected by the *force majeure event* from the operation of this agreement; or
 - (ii) notify the other party of its intention to terminate this agreement.
- (b) If the *force majeure event* continues substantially to impede the performance of this agreement after 20 *business days* from receipt of the written notice under clause 18.4 (a) , the party who gave the written notice may terminate this agreement at any time by issuing further written notice.

19. INSURANCE

19.1 Insurance by IUSA Owner

IUSA Owner must effect and maintain policies of insurance in relation to *IUSA* of not less than \$20,000,000.00 per occurrence in respect of public liability risk.

19.2 Insurances by TasNetworks

Before commencing the *services*, TasNetworks must procure and maintain the following:

- (a) workers' compensation insurance against liability for death of or injury to persons employed by TasNetworks and its subcontractors. The limit of liability shall be in accordance with legislative requirements and shall be maintained until termination of this agreement. The insurance policy must be extended to indemnify IUSA Owner for its legislative liability to persons employed by TasNetworks, to the extent permitted by *law*;
- (b) public liability and products liability insurance of not less than \$20,000,000.00 per occurrence, including loss, damage, death or personal injury to third parties or loss or damage to their property arising out of or in any way connected with TasNetworks' performance of this agreement;
- (c) insurance for TasNetworks' equipment, including all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with the provision of the *services*, including insurance that is compulsory under applicable *laws* governing the use of motor vehicles and liability for personal injury or death, as well as liability insurance for third party property damage with the sum insured of not less than \$20,000,000.00 per occurrence; and
- (d) insurance covering claims arising out of the use of unregistered or unregistrable motor vehicles or unregistered mobile plant and equipment used in connection with the provision of the *services*, and where the sum insured respectively is not less than \$20,000,000.00 per occurrence in respect of public liability risk.

19.1 Notices

- (a) Whenever requested in writing by the other party, a party liable to effect insurance pursuant to this clause 19 must provide satisfactory evidence that insurance has been effected and maintained in accordance with this clause 19. If, after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the

- other party may insure and the cost shall be a debt due and payable from the party in default.
- (b) A party effecting insurance must provide to the other party copies of all notices from or to an insurer.
 - (c) A party effecting insurance must, as soon as is practicable, inform the other party in writing of any occurrence which may give rise to a *claim* under an insurance policy required by this clause 19 and must keep the other party informed of subsequent developments concerning the *claim*.
 - (d) A party effecting insurance pursuant to this clause must ensure that each policy of insurance is endorsed:
 - (i) to name the other party as a party to whom the benefit of the insurance extends, in respect of its interests and liabilities arising out of any connection with this agreement; and
 - (ii) with a cross liabilities clause in which the insurer agrees that the policies applies as if a separate policy were issued to each named insured (with the exception of limits of liability).
 - (e) TasNetworks must ensure that its subcontractors procure and maintain contracts of insurance in respect of workers' compensation.

20. DISPUTE RESOLUTION

20.1 Disputes

Subject to clause 9 the parties agree that:

- (a) any *disputes* shall be settled in accordance with this clause 20;
- (b) all *services* and other obligations under this agreement shall continue to be performed notwithstanding any *dispute*; and
- (c) all payments the subject of a *dispute* shall be suspended to the extent of the amount in *dispute* until the *dispute* is resolved.

20.1 Rules Disputes

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*.

20.2 Non-Rules 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 20.3.
- (b) Either party may give to the other party a written notice (“*dispute notice*”) identifying the matters in *dispute*.
- (c) The parties must meet within 10 *days* after the Dispute 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 days after the Dispute Notice has been given, the parties must participate in a mediation of the *dispute* in accordance with provisions of the Mediation Determination Rules 2016 as published by Resolution Institute (or any replacement or successor body).
- (e) If the *dispute* has not been resolved within 20 *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 20.3 (h) or to arbitration in accordance with clause 20.3 (i) or either party may give to the other a notice referring the *dispute* to litigation.
- (f) Subject to clause 20.3(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 20.3(e).
- (g) Clause 20.3 (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 Expert Determination Rules 2016 as published by Resolution Institute (or any replacement or successor body). The parties agree that the determination of an expert will be binding on the parties.
- (j) Where this clause refers to rules of the Resolution Institute that reference is to the version of the rules in force at the date of the Dispute Notice or, if there is no such version, the version of the rules most recently published.
- (k) Unless otherwise agreed by the parties in writing, the costs of mediator, independent expert or arbitrator will be borne equally by the parties.

21. CONFIDENTIALITY

21.1 Non-disclosure

Subject to clause 21.2, 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.

21.2 Exceptions

Clause 21.1 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 21.1 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 party's lawyers;
- (d) to any consultant, bank, financier, insurer or professional adviser to the party 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 21.2(d) or (e);
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 21.2(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 21.2(d); or
- (j) to *AEMO* as required by this agreement or the *Rules*.

21.1 Enforcement of Undertaking

On request of a party, the other party whom has entered into the confidentiality undertaking in accordance with clauses 21.2(d) or (i) must do all things necessary to enforce its rights under the confidentiality undertaking.

21.2 Survive expiration

The obligations contained in clauses 21.1 and 21.2 will survive the termination of this agreement.

22. REVIEWS

22.1 Review of agreement

Subject to clause 22.2 the parties will review this agreement in the following circumstances:

- (a) following or in anticipation of a new *law* or a change in *law* which directly impacts on this agreement for a party in a way which has, or is likely to have a material adverse effect on that party;
- (b) at intervals of not less than 5 years from the *commencement date* or the last review under this clause; and
- (c) at any other time agreed by the parties.

22.1 Initiation of review

- (a) If a circumstance referred to in clause 22.1(a) or (b) exists either party may give notice (“review notice”) initiating a review.
- (b) A review notice under this clause must set out:
 - (i) the circumstances giving rise to the request;
 - (ii) if the request is made under clause 22.1(a), the manner in which the new *law* or the change in *law* materially adversely affects, or is likely to so affect, the notifying party’s rights and obligations under this agreement;
 - (iii) a summary of the provisions of the agreement which the notifying party considers require review and a summary of any variations to the agreement proposed by the notifying party.
- (c) A review notice is taken to be given on the date it is served on the other party in accordance with clause 23.

22.1 Good faith negotiations

If a review notice is given under clause 22.2, the parties must negotiate in good faith and use reasonable endeavours to agree:

- (a) such changes to the provisions of this agreement as may be necessary to reflect any new *law* or any change in *law* as it applies to either or both of the parties, including changes necessary, to the extent possible, to keep the parties in the same position they would have been in but for the change in *law*; and
- (b) modifications to the practices and arrangements that exist between the parties in connection with the performance of their obligations under this agreement.

22.1 Conduct of review

- (a) After a review notice is given the parties must promptly meet to discuss the timetable and conduct of the review.
- (b) Each party must bear its own cost of any review.
- (c) If the request for review is made under clause 22.1 (a) the review must be commenced within 1 month of the date the review notice is given.
- (d) Unless otherwise agreed by the parties, a review is taken to have ended 3 months after the relevant review notice was given.

22.1 Outcome of review

- (a) If and only if the parties reach agreement expressed in writing before the end of a review, then the parties will enter into a deed amending this agreement and with effect from the time agreed between the parties (or if no time is agreed, then from the end of the review).
- (b) If at the end of the review the parties are unable to agree on changes to accommodate a new *law* or a change in *law* a party can require (by notice in writing to the other party) the matter to be determined in accordance with clause 20 (dispute resolution).

23. NOTICES

23.1 Giving Notices

Any notice, demand or consent (each a “Notice”) which is given or made under this agreement:

- (a) must be in writing, signed by the sender or a person duly authorised by the sender and addressed to the recipient;
- (a) must be served by being:
 - (i) delivered by hand at the party’s then current address for service;
 - (ii) sent to the party’s then current address for service by pre-paid ordinary mail; or
 - (iii) sent to the party’s then current address for service by electronic mail.
- (b) will be taken to be duly given or made:
 - (i) in the case of delivery in person, on the day of delivery;
 - (ii) in the case of delivery by post, on the third *business day* after posting; and
 - (iii) if sent by electronic mail, on the day the sender receives a read receipt confirming the recipient viewed the message,

but if the result is that a Notice would be taken to be given or made on a day which is not a *business day* in the place to which the Notice is sent or is later than 5.00 pm (local time) will be taken to have been duly given or made on the next *business day* in that place.

23.1 Address Details

Notices must be delivered, sent or left at the person's address or emailed to the person’s electronic mail address, given below:

- (a) if to IUSA Owner:
 - Address: [insert]
 - Electronic mail: [insert]
 - Attention: [insert]
- (b) if to TasNetworks:

Address: 1 - 7 Maria Street, Lenah Valley Tasmania

Electronic mail: [insert]

Attention: [insert]

23.1 Change of Address or Details

A party may change its address, electronic mail address or contact person for notices by giving notice to the other party.

24. MISCELLANEOUS

24.1 Survival

The following provisions will survive termination or expiry of this agreement: [insert]

24.2 Waiver

No failure to exercise and no 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.

24.3 Amendment of agreement

Subject to clause 23 (Notices) any amendments or alterations to this agreement must be by agreement in writing executed by both parties.

24.4 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.

24.5 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.

24.6 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.

24.7 Governing law

This agreement will be governed by the laws of Tasmania.

24.8 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.

24.9 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 23. (Notices)

24.10 Acknowledgment of System Operator function

IUSA Owner agrees that, notwithstanding any other term of this agreement, the performance by TasNetworks of *System Operator* duties, rights, functions and responsibilities in accordance with clause 4.3.3 of the *Rules*, will not represent a breach

of this agreement or a failure to provide any service to the IUSA Owner under this agreement.

24.11 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 representative)
in the presence of:)

.....
Signature of representative

.....
Signature of witness

.....
Name of representative

.....
Name of witness

.....
Position of representative

Executed by [insert IUSA owner] in)
accordance with section 127 of the)
Corporations Act 2001)
)

.....
...
Director

.....
Secretary/Director

.....
...
Name of Director (print)

.....
Name of Secretary/Director (print)

SCHEDULE 1

IUSA

IUSA consist of [insert details] as shown in annexure 1 ([insert drawing name]).

SCHEDULE 2

Services

[insert details]

SCHEDULE 3 - CHARGES

Charges

[insert details]

SCHEDULE 4

IUSA Owner Representative:

Name: [insert]

Address: [insert]

Telephone: [insert]

Facsimile: [insert]