



Version: 2.1

Template Network Operating Agreement – Load and Generation

Template – Network Operating Agreement – Load and Generation

AMENDMENTS

Powerlink reserves the right, in its absolute discretion to amend this template from time to time in such manner as it thinks fit.

INTELLECTUAL PROPERTY

Powerlink will retain all intellectual property in in this Template and all of the materials it prepares in relation to this document. A Connection Applicant is granted a licence to use this Template but only for the purposes of obtaining and retaining a connection to Powerlink's network. A person who accesses this document should obtain their own legal advice in relation to its contents

TEMPLATE ONLY

This document is a template only and does not cover all commercial scenarios that may apply for an Identified User Shared Asset (IUSA) or Designated Network Asset (DNA). It assumes that all contestable components of an IUSA or DNA are to be designed, constructed and owned by a third party (not Powerlink or a Connection Applicant). If the Connection Applicant will instead design, construct and own all or part of an IUSA or DNA then it will need to enter into an NOA with Powerlink. Additional considerations could also apply for 'daisy-chain' DNAs (i.e. a DNA interconnecting into an earlier DNA).



Network Operating Agreement

Version History

Version No	Date	Details of Amendment
1.0	01/07/2018	New published document
2.0	14/10/2021	Updated for the <i>National Electricity Amendment (Connection to dedicated connection assets) Rule 2021 No. 7</i>
2.1	24/12/2021	General updates

[#name of IUSA and/or DNA#]
~ Network Operating Agreement

Dated:

Queensland Electricity Transmission Corporation Limited (trading as Powerlink Queensland)
ABN 82 078 849 233 ("**Powerlink**")

and

[Insert Owner Name] ABN **xx xxx xxx xxx** ("**Owner**")

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Network Operating Agreement

Details

Parties	Powerlink and Owner	
Powerlink	Name	Queensland Electricity Transmission Corporation Limited (trading as Powerlink Queensland)
	ABN	82 078 849 233
Owner	Name	Xxxx
	ABN	Xxxx
Recitals	A	The Owner will own the Owner Negotiated Assets and Powerlink will own the Powerlink Negotiated Assets.
	B	On and from the First Practical Completion Date, Powerlink will be given unrestricted use of and access to the Negotiated Assets and the NAPA Rights, and will provide the O&M Services to the Owner under this agreement.
	C	The Interactions between the Parties will be managed by the O&M Coordination Committee under this Agreement on and from the First Practical Completion Date.
[Customer or Generator]¹	Name	
	ABN	
Negotiated Asset	[[##] IUSA / [##] DNA]²	
Start Date	Date of agreement	
End Date	The date that Powerlink ceases to be a party to any <i>connection agreements</i> with <i>Transmission Network Users</i> whose facilities require Powerlink to utilise the Negotiated Assets.	
Date of agreement	The date that the last party signs this agreement - see Signing page	

¹ [Note: if the Connection and Access Agreement is for a Generator, references to Customer in this document will be replaced by 'Generator' with such other changes (e.g. reference to 'load' and connection dates) as may be necessary. If the Generator/Customer owns any component of an IUSA or DNA then it should be a party to an NOA with Powerlink and this item in the table should be deleted.]

² [If there is more than one Negotiated Asset for a Project (e.g. an IUSA and a DNA) a separate NOA should be negotiated for each Negotiated Asset].

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Agreement

Part A – Commercial Terms

1. Term

- (a) This agreement has effect during the Term.
 - (b) The "**Term**" starts on the Start Date and, subject to clause 22, ends on the End Date, unless terminated earlier under clause 20.
-

2. Use and control of the Negotiated Assets and NAPA Rights

2.1 Approvals and NAPA Rights

- (a) The Owner must obtain:
 - (i) all NAPA Rights in accordance with the Property and Approvals Specification and the Progress Schedule, which are necessary and required for Powerlink to comply with its obligations under this agreement; and
 - (ii) all Works Approvals in accordance with the Property and Approvals Specification and the Progress Schedule which are necessary and required for Powerlink to comply with its obligations under this agreement.
- (b) During the Operating Period, the Owner is responsible for maintaining and retaining all NAPA Rights and Works Approvals in accordance with their terms.

2.2 Unrestricted use of, and access to, the Negotiated Assets

During the Operating Period, the Owner:

- (a) grants Powerlink an exclusive, irrevocable licence to access and use the Owner Negotiated Assets and the NAPA Rights or any part of them at any time;
- (b) must not in any way prevent or restrict Powerlink from:
 - (i) accessing and using the NAPA Rights and the Owner Negotiated Assets; or
 - (ii) undertaking and performing the O&M Services in accordance with this agreement,

and must comply with all laws, including the Electricity Laws and WHS Laws, applicable to its Owner Negotiated Assets or to it as owner of the Owner Negotiated Assets.

2.3 Utilisation of the Negotiated Assets

The Owner acknowledges and agrees that, during the Operating Period, Powerlink will:

- (a) be entitled to treat the Negotiated Assets as forming part of Powerlink's *Transmission Network* in all material respects (notwithstanding that Powerlink is not the legal owner of the Owner Negotiated Assets);

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- (b) exclusively operate and control the Negotiated Assets to provide *Transmission Services* to *Transmission Network Users*; and
- (c) be entitled to connect, disconnect and reconnect and other *Transmission Network Users* to the Negotiated Assets in accordance with:
 - (i) the Rules;
 - (ii) the Connection and Access Agreement;
 - (iii) *connection agreements* between Powerlink and other *Transmission Network Users*; and
 - (iv) comply with applicable Law.

2.4 Transfer of operational control and finalisation of Works

The parties acknowledge and agree that transfer of operational control of the Negotiated Assets and the NAPA Rights from the Owner to Powerlink will occur on the First Practical Completion Date in accordance with the Works Coordination Agreement, the Delivery Specification and the Property and Approvals Specification.

2.5 Alteration, repair and replacement of Negotiated Assets

Subject to clause 2.6 and without limiting clauses 3.3, 5.6 and 19, during the Operating Period, Powerlink may:

- (a) alter, repair, augment or replace;
- (b) de-energise and re-energise; or
- (c) disconnect and reconnect from the *Transmission Network*,
all or part of the Negotiated Assets if thought necessary or desirable by Powerlink to:
 - (d) provide the O&M Services; and
 - (e) to maintain *Power System Security* or to avoid damage to the *Transmission Network* and other assets connected to the Negotiated Assets.

2.6 [DNA services

During the Operating Period, if the Owner wishes to undertake *DNA services*, this will be addressed as a Configuration Change in accordance with clause [31.3] of the Works Coordination Agreement.]

2.7 Safe System of Work

During the Operating Period:

- (a) management and control of the Negotiated Assets will reside with Powerlink, except where:
 - (i) Powerlink has suspended the O&M Services in accordance with clause 5.6 and has handed management and control of the Negotiated Assets back to the Owner; or

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- (ii) in the case of a DNA, the Owner is performing *DNA services* on the DNA, in which case coordination of the O&M Services and the *DNA services* will be managed by the O&M Coordination Committee]; and
- (b) Powerlink's ESMS Applicable Requirements, including Powerlink's Safe System of Work, will apply to all persons, activities and assets on the Negotiated Assets, except:
 - (i) in the circumstances referred to in clauses 2.7(a), in which case the Owner's reasonable operating rules and safety management system requirements will apply to the extent that the Owner has management and control of the Negotiated Assets; or
 - (ii) if otherwise agreed under the Works Coordination Agreement.

2.8 Conditions of Owner's access to the Negotiated Assets (primary systems) and the NAPA Rights

If, during the Operating Period, the Owner seeks access to the Negotiated Assets (other than the Telecommunications or the Secondary Systems) or the NAPA Rights, the Owner agrees to, and agrees to procure its Personnel to, as a pre-condition to such access being granted:

- (a) give reasonable notice to Powerlink before exercising its right of access (and, to avoid doubt, is not entitled to access unless that notice is given in writing);
- (b) comply with all applicable law, including the WHS Laws and Environmental Laws;
- (c) not cause another party to breach any applicable law, including the WHS Laws and Environmental Laws;
- (d) comply with Powerlink's ESMS Applicable Requirements including without limitation Powerlink's Safe System of Work, including:
 - (i) all preconditions, and obtaining all authorisations and certifications, required by Powerlink prior to accessing the Negotiated Assets; and
 - (ii) applicable requirements of Powerlink's operating rules, SAHVEA and the Green Book; and
 - (iii) if required by under (i) or (ii) above, having appropriate instruction or supervision from Powerlink (and pay Powerlink's reasonable charges for providing such supervision);
- (e) apply and comply with [Schedule 8] of the Works Coordination Agreement to any operational activities involved in the access activities as if [Schedule 8] of the Works Coordination Agreement expressly referenced those operational activities;
- (f) apply and comply with [Schedule 9] of the Works Coordination Agreement to any Interaction involved in the access activities;
- (g) comply with the requirements of the NAPA Rights;
- (h) ensure that their access:

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- (i) does not impede Powerlink's provision of the O&M Services or ability to comply with applicable laws or this agreement; and
- (ii) does not interfere with or damage any plant, materials, stores, or any other property on the Negotiated Assets; and
- (iii) allow Powerlink to reasonably oversee their activities and conduct when exercising a right of access under this clause;
- (i) allow Powerlink to oversee the Owner's or its Personnel's activities and conduct when accessing the Negotiated Assets, but any such oversight will not relieve the Owner from responsibility for its activities; and
- (j) comply with any other condition or requirement reasonably imposed by Powerlink.

2.9 No fee payable by Powerlink

No fee or other consideration is payable by Powerlink to exercise any of its rights or entitlements under this agreement.

3. Operation and maintenance of the Negotiated Assets

3.1 Provision of O&M Services by Powerlink

- (a) Subject to clauses 3.6 and 5.6, during the Operating Period Powerlink agrees to provide the O&M Services to the Owner, in accordance with this agreement, applicable law, including the Electricity Laws, and:
 - (i) in relation to Preferred Equipment, Powerlink's operating standards from time to time; and
 - (ii) in relation to Non-Preferred Equipment, the higher of Powerlink's operating standards from time to time and the manufacturer's recommendations.
- (b) The Owner acknowledges that, in performing the O&M Services, Powerlink will be exercising rights:
 - (i) under the *Electricity Act 1994* (Qld) in respect of 'works' and 'operating works' (as those terms are defined by that Act) in relation to the Negotiated Assets; and
 - (ii) under the *Electrical Safety Act 2002* (Qld) as the operator of 'works' of an electricity entity (as that term is defined by that Act and as is also known as 'Entity Works') in relation to the Negotiated Assets.

3.2 Acceptance of services by Owner

During the Operating Period, the Owner agrees to accept the O&M Services, subject to applicable law, including the Electricity Laws, and this agreement.

3.3 Maintenance of spares and spare parts

- (a) Each party agrees to comply with its obligations in Schedule 3 of this agreement.
- (b) If any spare, spare part or component is not provided to Powerlink by the Owner in breach of Schedule 3, Powerlink may, in providing the O&M Services and, at the

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Owner's cost, utilise any spare, spare part or component that Powerlink is able to source from its own stock or from a third party.

- (c) The Owner must notify Powerlink as soon as reasonably practicable after becoming aware that any component of the Owner Negotiated Assets or the spares, spare parts or components (if any) supplied by the Owner to Powerlink:
- (i) are no longer being manufactured, supplied or supported by the equipment manufacturer or supplier;
 - (ii) are not able to be procured within usual timeframes due to supply shortages or other reasons;
 - (iii) have been, or are proposed to be, recalled by the manufacturer or supplier; or
 - (iv) are known to suffer from, or give rise to, a systemic safety or performance defect or hazard.

3.4 Records

During the Operating Period, Powerlink agrees to take and retain records in relation to the provision of the O&M Services to the Owner, in accordance with applicable law, including the Electricity Laws.

3.5 Regulatory Information

The Owner must, if requested by Powerlink, acting reasonably:

- (a) provide the Regulatory Information held by the Owner for, or in respect of, the Negotiated Assets to Powerlink at the times nominated by Powerlink;
- (b) validate the accuracy of all Regulatory Information held by the Owner for, or in respect of, the Negotiated Assets;
- (c) use the estimation methods nominated by Powerlink in relation to the Regulatory Information held by the Owner for, or in respect of, the Negotiated Assets;
- (d) consult with Powerlink regarding any elections available under law in relation to the Regulatory Information held by the Owner for, or in respect of, the Negotiated Assets and adopt any elections nominated by Powerlink in relation to such matters; and
- (e) provide the Regulatory Information held by the Owner for, or in respect of, the Negotiated Assets to Powerlink in the format (and with the supporting material) required by Powerlink.

3.6 When suspension or reduction of O&M Services is allowed

Without limiting clause 26, Powerlink may suspend the O&M Services during any of the following conditions (or any combination of them):

- (a) to the extent that Powerlink is unable to access the Negotiated Assets or the NAPA Rights for any reason;

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- (b) any change in law, the existence of a court order or any order or direction made by an Authority under applicable law preventing:
 - (i) the transfer of electricity through the Negotiated Assets; or
 - (ii) the provision of the O&M Services by Powerlink; or
- (c) a breach of clauses 2.2, 3.3, 5.1, 5.4, 5.6 or 12 by the Owner.

3.7 Mitigation

In exercising its rights under clause 3.6, Powerlink:

- (a) may reduce or suspend the O&M Services to the extent and for the time that it reasonably considers necessary to deal with the relevant condition; and
- (b) agrees to restore the provision of O&M Services as soon as reasonably practicable after the relevant condition has ended or no longer requires Powerlink to take action under clause 3.6, provided that the Owner has first complied with any pre-conditions imposed by Powerlink for that restoration to occur.

3.8 No effect on Payment of Charges

Any exercise of Powerlink's rights under clause 3.6 does not affect the Owner's obligations relating to the Payment of Charges.

4. Coordination Committees and Coordination Plans

4.1 Role of the Works Coordination Committee

The Interactions between the Parties will continue to be managed under the Works Coordination Agreement until the Works Coordination Committee dissolves in accordance with the terms of the Works Coordination Agreement.

4.2 Role of the O&M Coordination Committee

Prior to the dissolution of the Works Coordination Committee in accordance with the terms of the Works Coordination Agreement, Powerlink and the Owner must establish a committee (**O&M Coordination Committee**) which will be a forum in which the parties may manage ongoing Interactions between the parties on and from the date of the dissolution, including:

- (a) the Owner's access activities under clause 2.8; and
- (b) the Generator's activities under clause [10(b)] of the Connection and Access Agreement.

4.3 Membership and procedures

The O&M Coordination Committee must:

- (a) consist of two appropriately qualified representatives from each party;
- (b) meet at once every 6 months, and more often on a party's written request;
- (c) keep written records of each meeting signed by a representative of each party; and

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- (d) allow each party to include additional representatives at any meeting, where the party can demonstrate to the O&M Coordination Committee's reasonable satisfaction that the presence of the representatives is required.

4.4 Limitations and disputes

The parties agree that:

- (a) this clause does not give the O&M Coordination Committee any right to amend the Project Documents; and
- (b) any disputes arising under this clause must be resolved under clause 24.

4.5 Works Coordination Plan

The Works Coordination Plan prepared by the Parties in accordance with clause [4] of the Works Coordination Agreement will continue to apply until the First Practical Completion Date.

4.6 O&M Coordination Plan

As soon as practicable after the First Practical Completion Date, the O&M Coordination Plan must be prepared by the Parties in accordance with [Schedule 9] of the Works Coordination Agreement.

5. Guaranties, Defects Liability Period and reinstatement of the Negotiated Assets

5.1 Warranties at First Practical Completion Date

The Owner guarantees to Powerlink that, on the First Practical Completion Date, the Owner Negotiated Assets and, to the extent applicable, the NAPA Rights:

- (a) comply with the Functional Specification, the Interface Specification, the Property and Approvals Specification and the Detailed Design (to the extent applicable to the Owner Works and the Owner Negotiated Assets);
- (b) are fit for the purpose for which they were designed; and
- (c) are capable of being safely operated by, or accessed by, Powerlink in accordance with applicable law, including the Electricity Laws.

5.2 Additional warranties

The Owner warrants to Powerlink:

- (a) the Owner is and will remain lawfully entitled to enter into and observe its obligations under the agreement;
- (b) the matters (if any) in item 2 of Schedule 1.

5.3 Approval by Powerlink not to imply release of the Owner

No inspection, review, consent, authorisation or approval given by Powerlink under the Works Coordination Agreement or this agreement grants or implies any release of the Owner from its obligations under this agreement, including the warranties in clause 5.1 and, if applicable, clause 5.2.

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5.4 Defects Liability Period

- (a) The Defects Liability Period will commence on the First Practical Completion Date and continue for the period stated in item 3 of Schedule 1.
- (b) During the Defects Liability Period, Powerlink will rectify (or procure the rectification of) all Defects relating to the Negotiated Assets, and Powerlink's costs of doing so, as certified by Powerlink, will be a debt due from the Owner to Powerlink assessed in accordance with item 1.4 of Schedule 2.

5.5 No limitation

Neither Powerlink's rights, nor the Owner's liabilities, under this agreement or otherwise at law in respect of Defects, whether before or after the expiry of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon Powerlink by clause 5.4 or any other provision of this agreement; or
- (b) the exercise of any such rights, or the failure to exercise any rights, by Powerlink under clause 5.4.

5.6 Reinstatement of the Negotiated Assets

During the Operating Period, the Owner must reinstate and restore the Owner Negotiated Assets if the Owner Negotiated Assets:

- (a) systemically or catastrophically fail; or
- (b) are totally or substantially destroyed.

6. Telecommunications and Secondary Systems

6.1 No use of Telecommunications or Secondary Systems

Except to the extent set out in Schedule 5, on and from the First Practical Completion Date, the Owner must not (and must ensure that its Related Bodies Corporate and Personnel do not):

- (a) access or use the Secondary Systems;
- (b) access or use any Telecommunications;
- (c) purport to sell, let for hire, assign rights in or otherwise dispose of or commercially exploit any Telecommunications or the Secondary Systems; or
- (d) alter the Telecommunications or the Secondary Systems in any way,

that are in the ownership, possession, custody or control of Powerlink under this Agreement.

6.2 Safeguarding Telecommunications and Secondary Systems

- (a) The Owner must not cause, or have caused or permit, any Encumbrance or any other security interest of a third party to be placed on:

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- (i) the Telecommunications or the Secondary Systems that are in the ownership, possession, custody or control of Powerlink under this Agreement; or
 - (ii) any database (whether electronic or otherwise) in which data from those Telecommunications or Secondary Systems is stored.
- (b) The Owner must establish and maintain safeguards against the destruction, loss or alteration of Telecommunications in the possession, custody or control of the Owner, that:
- (i) are no less rigorous than those safeguards employed by Powerlink, and in any event are no less rigorous than safeguards that meet *Good Electricity Industry Practice*; and
 - (ii) comply with all applicable laws including, without limitation, the *Security of Critical Infrastructure Act 2018* (Cth).

7. Intellectual Property

The parties acknowledge that the obligations in clause [15] (Intellectual Property) of the Works Coordination Agreement apply to intellectual property rights relevant to this agreement.

Part B - Financial terms

8. Charges

8.1 Commencement of Charges

On and from the First Practical Completion Date, Powerlink will charge to the Owner, and the Owner must pay to Powerlink, the Charges for the provision of the O&M Services and other services provided under this agreement by Powerlink for each Billing Period.

8.2 How Charges are worked out

The Charges for O&M Services that the Owner must pay to Powerlink are set out or determined in Schedule 2.

8.3 [Settlements Residue

If the Negotiated Assets are, or include, a DNA:

- (a) on and from the First Practical Completion Date, Powerlink will calculate the portion of the *Settlements Residue* that accrues on the DNA in each Billing Period in accordance with the *Settlements Residue Methodology*; and
- (b) Powerlink will adjust the Charges payable by the Owner in accordance with clause 8.1 by adding or subtracting any amount to account for the portion of the *Settlements Residue* to be distributed to the Owner, or recovered from the Owner, by Powerlink as determined in accordance with clause 8.3(a).]

8.4 Part Billing Periods

Where Charges are incurred for part of a Billing Period, the Charges will be worked out, at Powerlink's reasonable discretion pro-rata based on the number of days during the Billing Period for which Powerlink provided the O&M Services to the Owner.

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8.5 Owner information

The Owner agrees to provide to Powerlink the items specified in Schedule 2 and any other information required by the Electricity Laws or reasonably requested in writing by Powerlink from time to time, to enable Powerlink to work out the Charges, or any change to them, during the Operating Period.

8.6 Varying Charges

- (a) The Owner agrees that Powerlink may vary the Fixed Charges, or the way it works out the Fixed Charges to the extent necessary to reflect:
 - (i) changes to any laws or their application or interpretation (including by determinations or decisions of any *Commercial Arbitrator* or the AER in accordance with the Rules) that affect the O&M Services or any of Powerlink's obligations under this agreement; or
 - (ii) any Cost Variation, provided any change to the Charges due to a Cost Variation is determined by Powerlink, acting reasonably.
- (b) Powerlink agrees to give the Owner notice of any changes to the Fixed Charges under clause 8.6(a) before the change takes effect.

8.7 Additional Taxes

- (a) If any Taxes become payable or are paid by Powerlink in relation to the O&M Services or any services provided by Powerlink under this agreement, those Taxes will be added to the Charges payable by the Owner.
- (b) Powerlink agrees to provide the Owner with reasonable information as to the basis on which any additional Taxes are to be added to the Charges as soon as reasonably practicable before that occurs.

8.8 Escalation

The parties agree that the escalation formula set out in item 1.5 of Schedule 2 will apply for the escalation of the Fixed Charges.

9. Billing and payment

9.1 Invoice

Powerlink may invoice the Owner after the end of each Billing Period for:

- (a) any Charges, Taxes and GST payable for that Billing Period;
- (b) any amounts owing to Powerlink under clauses 2.8(d), 3.3(b), 22.1, 23.2 and 23.3;
- (c) the portion of the *Settlements Residue* that has accrued on the DNA in that Billing Period calculated by Powerlink in accordance with clause 8.3;
- (d) any amounts carried forward by Powerlink from the previous Billing Period in accordance with clause 9.2(b); and
- (e) the net amount owing by one party to another party,

under this agreement (**Invoiced Amount**).

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9.2 Payment

Unless this agreement states otherwise:

- (a) if the Invoiced Amount is an amount payable by the Owner, the Owner agrees to pay the Invoiced Amount or any other invoice issued in accordance with this agreement, within 5 Business Days from the date of the invoice; and
- (b) if the Invoiced Amount is an amount payable by Powerlink, Powerlink may withhold that amount until the end of the next Billing Period, and include that amount as a reduction to the Invoiced Amount in the invoice for the next Billing Period.

9.3 Method of payment

All payments to be made by the Owner under this agreement must be made by paying the invoiced amount into an account nominated in writing from time to time by Powerlink.

9.4 Set off

Powerlink may set off and reduce any obligation it has to make payment to the Owner under this agreement [(including an obligation to distribute the portion of the *Settlements Residue* determined in accordance with clause 8.3)] by an amount that is at the relevant time due and payable to Powerlink by the Owner under this agreement, but which remains unpaid.

9.5 Default interest

If this agreement requires a party to pay an amount by a due date, then interest accrues daily at the Interest Rate (compounding daily) on that amount from the day after the due date until the day the party pays the outstanding amount plus any accrued interest.

10. Disputed invoices

10.1 Substantiating Charges

Each party must provide any relevant supporting material, data or information reasonably requested (in writing) by the other party to substantiate Charges appearing on an invoice issued under clause 9.1.

10.2 Payment of disputed amounts

If the Owner, acting reasonably and in good faith, disputes an item appearing on an invoice issued under clause 9.1 (not solely to delay payment of amounts that are properly payable), then the Owner must pay all undisputed amounts on the invoice and 50% of the disputed amounts by the due date and try to resolve the dispute under clause 10.3.

10.3 Resolving dispute

The parties must try to resolve any disputes under clause 10.2 promptly and in good faith.

10.4 Referral to dispute resolution

If the dispute cannot be resolved informally within 10 Business Days of the original due date for payment, either party may refer the dispute to the dispute resolution procedure under clause 24.

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10.5 Payment following resolution

If the resolution of the dispute requires that any outstanding amounts be paid, then those amounts plus interest must be paid within 10 Business Days of resolution of the dispute with interest accruing at the Interest Rate from the original due date for payment.

10.6 Refund following resolution

If the resolution of the dispute requires that any amounts already paid must be refunded, then those amounts plus interest must be refunded within 10 Business Days of resolution of the dispute with the interest accruing at the Interest Rate from the date the amounts were paid.

11. Financial Security

11.1 The Financial Security obligation

- (a) The Owner agrees that:
 - (i) it must provide financial security to Powerlink for the period from and including the Security Start Date up to and including the last Security End Date; and
 - (ii) such financial security must be maintained at all times, continuously and in full force and effect during the whole of this period and in all other respects comply with this clause 11.
- (b) Powerlink has agreed:
 - (i) to stage and shape the financial security arrangement into successive, contiguous and time-linked Security Periods and Security Amounts; and
 - (ii) without limiting clause 11.1(a)(ii), to accept from the Owner the provision of successive, contiguous and time-linked financial securities provided that the financial securities at all times comply with this clause 11.

11.2 Provision of Financial Security

- (a) On or before each Security Provision Date for a Security Period, the Owner must ensure that Powerlink holds Financial Security:
 - (i) for the Security Amount applicable to the Security Period and taking effect on and from the applicable Security Start Date;
 - (ii) to secure on demand, without reference to the Owner, the performance of the Owner's obligations to pay any amounts to Powerlink under or in connection with this agreement and the Works Coordination Agreement; and
 - (iii) that at all times complies with clause 11.3 and all other provisions of this clause 11,

(Financial Security).
- (b) The Owner is taken to have complied with its obligations under clause 11.2(a), to the extent that, at the relevant Security Provision Date, Powerlink already holds Financial Security that complies with this clause 11 for the Security Amount

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applicable to the whole of the relevant Security Period, including where, in compliance with this clause 11, the Owner has provided to Powerlink Financial Security that secures the Security Amount for the relevant Security Period as well as Security Amounts for other Security Periods.

11.3 Requirements for Financial Security

- (a) This clause 11.3 applies to the provision and acceptance of all Financial Security required to be provided, or otherwise given by the Owner under this clause 11.
- (b) The Owner agrees that Financial Security must, at all times, be:
 - (i) in the form of one or more bank guarantees given by an Australian Bank (lawfully carrying on business under the *Banking Act 1959* (Cth)) that meet the Bank Credit Threshold and which Australian Bank is otherwise acceptable to Powerlink;
 - (ii) an irrevocable and unconditional commitment by the Australian Bank to pay, without enquiry or reference to the Owner, the amount demanded by Powerlink, without set-off or counterclaim, up to the Security Amount; applicable to the Security Period;
 - (iii) issued from a branch of the issuing Australian Bank in the City of Brisbane and provide for presentation and payment at that branch;
 - (iv) be governed by the law of Queensland; and
 - (v) otherwise on terms acceptable to Powerlink.
- (c) The Owner acknowledges that, in addition to the requirements referred to in clause 11.3(b) and (d), in considering the acceptance of a Financial Security, Powerlink will assess:
 - (i) the credit risk associated with the proposed Financial Security; and
 - (ii) whether any such credit risk exposes Powerlink to financial risk.
- (d) Powerlink may impose reasonable conditions and requirements in connection with the provision and acceptance of Financial Security. An example of a condition/ requirement includes the adjustment of Charges to reflect the assessments made by Powerlink under clause 11.3(c).
- (e) The Owner agrees to:
 - (i) comply with any reasonable conditions or requirements imposed by Powerlink under clause 11.3(d); and
 - (ii) execute any documents requested by Powerlink to give effect to clauses 11.3(d) and (e)(i).
- (f) If the Owner does not execute a document requested by Powerlink under clause 11.3(e)(ii) within five Business Days of Powerlink submitting the document to the Owner, then the Owner will be deemed to have committed an Owner Financial Breach and the provisions of clause 11.4(c) will apply.
- (g) This clause does not limit the operation of clauses 11.12 or 11.13.

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11.4 Failure to provide Financial Security

- (a) If the Initial Financial Security is not provided, or is not currently in place on or before its applicable Security Provision Date, then Powerlink may suspend the O&M Services until the Initial Financial Security is provided in accordance with clause 11.2. This breach by the Owner does not constitute an Owner Financial Breach unless clause 11.4(b)(i) applies.
- (b) If the Owner does not:
 - (i) provide the Initial Financial Security within one month of its applicable Security Provision Date;
 - (ii) provide or have in place all other Financial Security by its applicable Security Provision Date; or
 - (iii) maintain Financial Security in accordance with clause 11.2,then such breach will be taken to be an Owner Financial Breach.
- (c) If the Owner commits an Owner Financial Breach referred to in clause 11.3(f), clause 11.4(b), clause 11.5(b), clause 11.12(c) or clause 11.16(d), then in addition to, and without limiting the rights and remedies available to Powerlink for such Owner Financial Breach, Powerlink may, until the relevant breach is remedied, do any one or more of the following:
 - (i) stop performing any inspection and testing services under the Works Coordination Agreement;
 - (ii) refuse to commence or recommence any inspection and testing services under the Works Coordination Agreement; or
 - (iii) suspend the O&M Services.

11.5 Replacement Financial Security following payment under Financial Security

- (a) If Powerlink draws or calls on Financial Security, then the Owner must, within 10 Business Days from the date of Powerlink's notice, provide Powerlink with further Financial Security, that complies with this clause 11, to ensure that the total amount secured by Financial Security held by Powerlink for the applicable Security Period, at all times, is at least equal to the applicable Security Amount.
- (b) If the Owner has not provided the further Financial Security in accordance with clause 11.5(a), then the Owner will be taken to be in Owner Financial Breach and the provisions of clause 11.4(c) will apply.

11.6 Right to access Financial Security

Powerlink may draw or call on Financial Security in satisfaction of any of the following amounts, where the amounts (or part of them) have not been paid by the Owner to Powerlink:

- (a) amounts that are due and payable by the Owner to Powerlink under or in connection with this agreement (including under clause 22) or the Works Coordination Agreement;

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- (b) any damages or other amounts awarded by a court against the Owner in Powerlink's favour under or in connection with this agreement or the Works Coordination Agreement;
- (c) any damages, compensation, indemnity or settlement amounts agreed between the parties in relation to either or both of this agreement and the Works Coordination Agreement; and
- (d) any reasonable costs, charges and expenses incurred or losses suffered by Powerlink because the Owner has failed to comply with its obligations under this agreement or the Works Coordination Agreement.

11.7 Procedure before accessing Financial Security

Before exercising its right under clause 11.6, Powerlink must give the Owner:

- (a) notice of the amount to be drawn or called on from the Financial Security; and
- (b) three Business Days from receiving the notice to pay that amount.

11.8 Other rights

Exercising its rights under clause 11.6 does not merge, extinguish, postpone, lessen, waive or limit any of Powerlink's other rights or remedies against the Owner under this agreement or the Works Coordination Agreement.

11.9 Return of Financial Security on provision of further Financial Security for the next Security Period

Subject to clauses 11.1 and 11.11, Powerlink must, on the applicable Security End Date return the expiring Financial Security held by Powerlink to the Owner promptly after Powerlink receives from the Owner further Financial Security, for the next Security Period, in the form of a Financial Security that complies with this clause 11.

11.10 Return of Financial Security on expiry and termination

- (a) Subject to clause 11.11, Powerlink must return the Financial Security to the Owner:
 - (i) where the agreement expires, on the day that is one month after the last Security End Date; and
 - (ii) where the agreement is terminated, on the day that is three months after termination of this agreement.
- (b) However, Powerlink may agree to return the Financial Security earlier if Powerlink does not believe it is necessary for the Owner to maintain the Financial Security for the relevant stipulated period of time.

11.11 Outstanding claims

Clauses 11.9 and 11.10 do not apply if the Owner has an actual or contingent liability to Powerlink for any amount or amounts of the kind referred to in clause 11.6 at the applicable date (including any amount under clause 21). In that case, the date for return of the Financial Security is the next Business Day after all claims have been finalised.

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11.12 Change in circumstances of Owner

- (a) Powerlink may, by notice, request the Owner to provide a New Financial Security for an amount greater or less than the Security Amount, at any time during the Term, taking into account any one or more of the following factors:
 - (i) any material change in the financial strength of the Owner (for example, after an assignment or Change in Control of the Owner); or
 - (ii) the remaining payments the Owner owes to Powerlink in connection with this agreement and the Works Coordination Agreement.
- (b) Powerlink must act reasonably in making a request under this clause 11.12.
- (c) The Owner must comply with any reasonable request under this clause 11.12 within 10 Business Days from the date of Powerlink's notice and a failure to do so will be deemed to be an Owner Financial Breach and the provisions of clause 11.4(c) will apply.

11.13 Change in circumstances of bank providing Financial Security

- (a) The Owner must immediately notify Powerlink if the bank that issued a Financial Security that has been provided by the Owner to Powerlink under this clause 11 fails to hold and maintain a credit rating in accordance with the Bank Credit Threshold.
- (b) Powerlink may, by notice, request the Owner to provide a New Financial Security for an amount greater or less than the Security Amount, at any time during the Term, if the bank issuing a Financial Security fails to hold and maintain a credit rating in accordance with the Bank Credit Threshold, whether or not Powerlink has been given a notice under clause 11.13(a).
- (c) The Owner must comply with a notice from Powerlink under clause 11.13(b) within 10 Business Days from the date of Powerlink's notice and a failure to do so will be taken to be a Financial Breach and the provisions of clause 11.4(c) will apply.

11.14 Owner may request swap of Financial Security

- (a) In this clause 11.14 a "**Financial Swap Condition**" means:
 - (i) a Financial Security has been provided by the Owner to Powerlink under this clause 11;
 - (ii) the Owner, by notice to Powerlink, requests Powerlink to accept a New Financial Security to replace the existing Financial Security;
 - (iii) the New Financial Security complies with this clause 11;
 - (iv) Powerlink agrees to accept the New Financial Security in replacement of the existing Financial Security; and
 - (v) the Owner provides the New Financial Security to Powerlink.
- (b) If a Financial Swap Condition is satisfied for a Financial Security, then Powerlink agrees to return the existing Financial Security to the Owner at the same time as the Owner provides the New Financial Security.

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11.15 Liability of provider of Financial Security

- (a) The liability of the provider of a Financial Security is not affected by:
 - (i) any variation, change, alteration or amendment of this agreement; or
 - (ii) any Change in Control or transfer or assignment by the Owner of any of its rights under this agreement, whether with or without the consent of Powerlink.
- (b) The Owner consents to the provisions of this clause 11.14 and must ensure that its provisions are agreed to by the provider of the Financial Security and set out in the relevant security instrument.

11.16 Meaning of Bank Credit Threshold

- (a) In this clause 11, "Bank Credit Threshold" means, for an Australian Bank, the long term senior credit rating of the bank as determined by Standard and Poor's to be not less than A-.
- (b) If after the Start Date, any of the following circumstances occur, either generally or for a Financial Security, or a bank giving a Financial Security:
 - (i) Standard and Poor's materially changes the methodology it uses to determine credit ratings (as determined by Powerlink);
 - (ii) Standard and Poor's changes the description or nomenclature of the credit ratings;
 - (iii) Standard and Poor's ceases to exist;
 - (iv) Standard and Poor's no longer determines, issues or assigns credit ratings; or
 - (v) Powerlink, acting reasonably, determines that the Standard and Poor's is no longer an appropriate organisation for the assessment of credit risk for the purposes of this agreement,

then Powerlink may, by notice to the Owner, take any one or more of the following actions:

- (vi) nominate an alternative ratings agency, provided that the agency is recognised in global financial markets as a major and reputable ratings agency and once notified the nominated ratings agency is then taken to be the ratings agency for the purposes of this clause 11; or
 - (vii) revise the Bank Credit Threshold, for a Financial Security, or the bank giving the Financial Security, provided that the revised Bank Credit Threshold must (as far as reasonably practicable) correspond to the Bank Credit Threshold for the relevant Financial Security or entity as at the Start Date.
- (c) If clause 11.14(b) applies, Powerlink must give the Owner a notice setting out its determination.

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- (d) The Owner agrees to comply with Powerlink's determination as contained in the notice under clause 11.14(b). The Owner agrees to execute any documents requested by Powerlink to give effect to clause 11.16(b) and 11.16(c). If the Owner does not execute a document within five Business Days of Powerlink submitting the document to the Owner, then the Owner will be deemed to have committed an Owner Financial Breach and the provisions of clause 11.4(c) (Owner Financial Breach) will apply.

12. Insurance

12.1 Owner to take out insurance

The parties acknowledge that clauses [20.2 – 20.4] of the Works Coordination Agreement details the insurance required to be held by the Owner.

12.2 Powerlink to take out insurance

The parties acknowledge that clause [20.5] (Powerlink to take out Insurance) of the Works Coordination Agreement details the insurance required to be held by Powerlink.

13. Costs and duty

The parties acknowledge that clause [21] (Costs and duty) of the Works Coordination Agreement details their responsibilities as to expenses and duty.

14. GST

The parties acknowledge that clause [22] (GST) of the Works Coordination Agreement details their responsibilities as to GST.

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Part C - Title and Transfer

15. Title, risk and PPSA Security Interests

15.1 Title and risk in the Owner Negotiated Assets remains with the Owner

Except in relation to any Sale Assets transferred to Powerlink (following exercise of the Purchase Option) or in relation to property secured under the Purchase Option Security (if granted in accordance with this clause 15):

- (a) both:
 - (i) the Owner Negotiated Assets; and
 - (ii) any spares or spare parts supplied by the Owner in accordance with Schedule 3,will at all times remain the property of the Owner, and Powerlink will have no right, title or interest in or to the Owner Negotiated Assets;
- (b) risk in the Owner Negotiated Assets and any spares or spare parts supplied by the Owner in accordance with Schedule 3 will remain, at all times, with the Owner.

15.2 No Encumbrance

Other than a Purchase Option Security referred to in clause 15.7, the Owner must not create or permit to subsist any Encumbrance over the Owner Negotiated Assets.

15.3 PPSA

A term used in the PPSA has the same meaning when used in this clause 15.

15.4 Owner's PPSA Security Interest

- (a) Powerlink consents to the Owner notifying or registering a financing statement under the PPSA in relation to any PPSA Security Interest arising in connection with any spares or spare parts supplied by the Owner to Powerlink in accordance with Schedule 3.
- (b) Powerlink must immediately notify the Owner if any other person attempts to enforce an Encumbrance in any spares or spare parts supplied by the Owner in accordance with Schedule 3.

15.5 Title in the Powerlink Negotiated Assets remains with Powerlink

Except if the parties otherwise agree in writing:

- (a) the Powerlink Negotiated Assets will at all times remain the property of Powerlink, and the Owner will have no right, title or interest in or to the Powerlink Negotiated Assets; and
- (b) the Owner must not do or permit to be done any act or thing which will or may jeopardise the right, title and interest of Powerlink in the Powerlink Negotiated Assets.

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15.6 Powerlink's PPSA Security Interest

- (a) The Owner consents to Powerlink notifying or registering a financing statement under the PPSA in relation to any PPSA Security Interest arising in connection with any Powerlink Negotiated Assets which are located on the NAPA Rights or attached to the Owner Negotiated Assets (**Co-located Assets**).
- (b) The Owner must immediately notify Powerlink if any other person attempts to enforce an Encumbrance in any Co-located Assets.

15.7 Powerlink's Purchase Option Security

- (a) The Owner must grant a first ranking PPSA Security Interest in respect of all its assets and undertakings in favour of, and in form and substance satisfactory to, Powerlink (acting reasonably) securing Powerlink's rights in connection with the Purchase Option (**Purchase Option Security**) on request by Powerlink.
- (b) The Owner agrees and acknowledges that:
 - (i) in connection with the Purchase Option Security, Powerlink may at the Owner's expense take all steps that Powerlink considers advisable to:
 - (A) ensure that the Purchase Option Security is first ranking;
 - (B) perfect, protect, record, register, amend or remove the registration of the Purchase Option Security in any relevant personal property that is the subject of the Purchase Option Security; and
 - (C) better secure Powerlink's position in respect of relevant personal property under the PPSA;
 - (ii) it will do all things reasonably necessary to assist Powerlink to take the steps described in paragraph (i).
- (c) Nothing in this clause may be construed as an agreement or consent by Powerlink to:
 - (i) subordinate any Encumbrance granted in favour of Powerlink in favour of any person; or
 - (ii) defer or postpone the date of attachment of any Encumbrance granted in favour of Powerlink.
- (d) The Owner must immediately notify Powerlink if any other person attempts to or purportedly attempts to enforce an Encumbrance in the Owner Negotiated Assets.
- (e) The Owner undertakes not to change any of its details recorded in a financing statement registered by Powerlink (including changing its ACN or any ABN allocated to a trust of which it is trustee or becoming the trustee of a trust) without giving Powerlink ten Business Days' prior notice.
- (f) To the extent permitted by law, the Owner irrevocably waives its right to receive notice of a verification statement (as defined in the PPSA) in respect of the registration contemplated under clause 15.7(a).

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- (g) To the extent permitted by law, the Owner and Powerlink contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA. The Owner irrevocably waives any rights under sections 95, 118, 121(4), 130 and 132(4) of the PPSA.
- (h) Where Powerlink has rights or powers in addition to, or existing separately from, those in Chapter 4 of the PPSA, those rights and powers will continue to apply and are not limited or excluded (or otherwise adversely affected) by the PPSA.

16. Option to Purchase

16.1 Exercise on termination or expiry

- (a) Subject to clause 16.2, Powerlink (or its nominee) may, in its absolute discretion, exercise the Purchase Option by giving the Owner a Purchase Notice at any time during a period of sixty Business Days commencing on the earlier of:
 - (i) the End Date; and
 - (ii) the date of termination of this agreement.
- (b) Within thirty Business Days of written request by Powerlink, the Owner must provide Powerlink with copies of all agreements, documents and other material relevant to the Sale Assets to enable Powerlink to assess whether it (or its nominee) will exercise the Purchase Option.

16.2 Purchase Notice

A Purchase Notice must:

- (a) state Powerlink's (or its nominee's) intention to purchase the Sale Assets from the Owner for the Purchase Price; and
- (b) specify a target closing date (**Target Closing Date**) on or before the date that is sixty Business Days after the date of issue of the Purchase Notice (or such other date as the parties may agree in writing).

16.3 Sale Assets

The assets the subject of the Purchase Option:

- (a) will, at a minimum, be:
 - (i) the Owner Negotiated Assets; and
 - (ii) the benefit of all unexpired manufacturers warranties relating to the Owner Negotiated Assets; and
- (b) if Powerlink so elects in the Purchase Notice, will include:
 - (i) any spares, spare parts or consumables (including any manufacturer or supplier warranties relating to such spares, spare parts or consumables) owned by the Owner and within the possession or control of Powerlink on the date the Purchase Notice is received by the Owner; and
 - (ii) the NAPA Rights or the transfer or the NAPA Rights (as applicable),

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(together, the **Sale Assets**).

16.4 Purchase of the Sale Assets

- (a) Not less than ten Business Days prior to the Target Closing Date, the parties will agree the time, place and any changes to the date, to give effect to the transactions described in the Purchase Notice (or, in default of agreement, the time, place and date to be nominated by Powerlink acting reasonably).
- (b) The Owner must cause all obligations and liabilities under this Agreement or which relate to the Sale Assets (including all Encumbrances that are registered over the Sale Assets) to be discharged on or before completion of the transactions described in the Purchase Notice unless agreed in writing with Powerlink (or its nominee) that such obligation or liability does not require discharge.
- (c) No debt or other liability relating to the Sale Assets incurred by the Owner before the date of the Purchase Notice is given, will be assumed by Powerlink (or its nominee) unless Powerlink (or its nominee):
 - (i) otherwise elects to do so; and
 - (ii) is able to reach agreement with the Owner's applicable creditors as to the terms upon which Powerlink (or its nominee) will assume any such debt or liability.
- (d) The Owner will, if so required by Powerlink (or its nominee), use all reasonable endeavours to procure the novation to Powerlink (or its nominee) or failing that, to assign the underlying rights held by the Owner of:
 - (i) the transactions described in the Purchase Notice;
 - (ii) each and any relevant contract relating to the Sale Assets;
 - (iii) the access agreements and other access rights relating to the NAPA Rights (if requested by Powerlink or its nominee); and
 - (iv) the authorisations, licences, approvals, permits, registrations or acknowledgements applicable to the Sale Assets,on such terms as Powerlink (or its nominee) may reasonably require.
- (e) On the nominated date the Owner will, in exchange for receipt of the Purchase Price, deliver to Powerlink (or its nominee) all documents, and will sign all deeds and instruments, and do all other things within its power to effect a transfer of all of its right, title and interest in the Sale Assets, to Powerlink (or its nominee).
- (f) The parties will use all reasonable endeavours to do everything necessary to give effect to the transactions contemplated by the Purchase Notice.
- (g) Concurrently with the acquisition of the Sale Assets by Powerlink (or its nominee), Powerlink (or its nominee) will pay the Purchase Price in immediately available funds to the Owner or its nominee.

16.5 Purchase Price

The Purchase Price is the amount equal to:

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- (a) the Independent Valuation (determined in accordance with clause 16.6); less
- (b) any accrued, but outstanding, Charges, fees or other amounts owing to Powerlink from the Owner; less
- (c) any taxes, duty and regulatory fees and charges incurred or borne by Powerlink on, or in relation to, the acquisition of the Sale Assets to Powerlink (or its nominee).

16.6 Independent Valuation

An '**Independent Valuation**' means a market valuation of the Sale Assets which is:

- (a) prepared by a licensed, independent industrial asset valuer engaged by Powerlink, acting reasonably;
- (b) given, in writing, on a basis which reflects the price that a willing buyer would pay to a willing seller for the Sale Assets on the open market:
 - (i) recognising the age, quality and operating capacity of the Sale Assets and their capability to reliably and continuously perform to the Functional Specification, the Interface Specification, the Property and Approvals Specification and the Detailed Design; and
 - (ii) allowing for decommissioning costs and site rehabilitation costs for the Negotiated Assets and the NAPA Rights at the end of the life of the Negotiated Assets; and
- (c) addressed to Powerlink on terms which Powerlink and the Owner are entitled to rely on.

17. Transfer to a third party

17.1 Owner not to transfer ownership

The Owner must not transfer ownership of the Owner Negotiated Assets or the NAPA Rights to any person unless the Owner concurrently assigns or transfers its rights and obligations under this agreement to the same person in accordance with clause 17.2.

17.2 Assignment

A party may only assign or transfer its rights and obligations under this agreement in accordance with clause [33.7] (Assignment) of the Works Coordination Agreement.

17.3 Subcontracting

Powerlink may subcontract the whole or any part of the O&M Services without the Owner's prior consent.

18. Owner Change in Control

- (a) There is to be no Change in Control of the Owner without Powerlink's prior written consent.
- (b) The Owner must provide Powerlink with notice of any Change in Control of the Owner, including any imminent or proposed Change in Control of the Owner. The notice must include sufficient details of the Change in Control and the Owner

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agrees to promptly provide Powerlink with information requested by Powerlink about the nature and effect of the Change in Control.

- (c) If there is a Change in Control of the Owner without Powerlink's prior written consent first being obtained, Powerlink may terminate this agreement by notice to the Owner if:
 - (i) Powerlink requests, and the Owner fails to provide, a New Financial Security in accordance with clause 11.12; or
 - (ii) the Owner, or any Related Body Corporate of the Owner, is listed on a sanctions list published by an Australian government or is otherwise prohibited by law from conducting business in Australia.

Part D – Disconnection and Termination

19. Disconnection

19.1 Disconnection of Negotiated Assets

Powerlink may disconnect or de-energise the Negotiated Assets if:

- (a) directed by AEMO or an Authority;
- (b) Powerlink reasonably believes that the operation of the Negotiated Asset, or any part of it:
 - (i) poses a threat to *Power System Security*;
 - (ii) poses a threat to life, limb, property or the environment; or
 - (iii) may lead to damage to either or both of the *transmission system* and the Negotiated Asset;
- (c) any component of the Owner Negotiated Assets or the spares, spare parts or components (if any) supplied by the Owner to Powerlink:
 - (i) are recalled by the manufacturer or supplier; or
 - (ii) are identified by the Owner or by Powerlink, acting reasonably, to suffer from, or give rise to, a systemic safety, environmental or performance defect or hazard;
- (d) the Owner breaches this agreement and fails to remedy the breach:
 - (i) for an Owner Financial Breach in circumstances where no Financial Security is currently held by Powerlink; or
 - (ii) for an Owner Non-Financial Breach, within the reasonable period of time specified in the notice;
- (e) the Owner fails to commence works to restore or reinstate the Owner Negotiated Assets within [xx] Business Days after the Negotiated Assets:
 - (i) systemically or catastrophically fails; or

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- (ii) is substantially or completely destroyed; or
- (f) the Owner breaches clause 17.1 or 18.

19.2 Reconnection

Where Powerlink exercises its right to disconnect under clause 19.1 it must reconnect the Powerlink Assets as soon as reasonably practicable after the condition leading to the disconnection has ended and all matters relevant to the exercise of the right of disconnection have been rectified to Powerlink's reasonable satisfaction.

19.3 Automatic disconnection

- (a) Despite anything else in this agreement, the Owner must ensure that the Negotiated Assets will automatically disconnect from the *Transmission Network* if the operation of any part of the Negotiated Assets or conditions on the *Transmission Network* might damage or reduce the life of the Negotiated Assets.
- (b) The Owner must install all necessary monitoring equipment and redundancy to ensure that it complies with clause 19.3(a).

19.4 Other disconnection rights and obligations

Nothing in this clause 19 limits:

- (a) Powerlink's right to suspend the O&M Services under clause 3.6;
- (b) Powerlink's right to terminate under clause 20.2(b);
- (c) Powerlink's disconnection rights or entitlements under the Electricity Laws.

20. Termination

20.1 No termination by Owner

- (a) Subject to clause 20.1(b), the Owner may not terminate this agreement prior to the expiry of the Term and foregoes any right or entitlement under law to do so.
- (b) The Owner may terminate this agreement if Powerlink ceases to hold:
 - (i) a transmission authority; and
 - (ii) registration as a *Network Service Provider*,
in relation to its *Transmission Network*.
- (c) Nothing in clause 20.1(a) affects or limits any remedy, other than termination, available to the Owner in respect of a breach of agreement by Powerlink, including damages for breach.

20.2 Termination by Powerlink for Owner breach

Powerlink may terminate this agreement by notice to the Owner where the Owner breaches this agreement or another Project Document and fails to remedy the breach:

- (a) for an Owner Financial Breach, within 10 Business Days of receiving notice requiring it to do so; or

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- (b) for an Owner Non-Financial Breach, within the reasonable period of time specified in the notice.

20.3 Termination for insolvency

Powerlink party may, provided Powerlink is not prohibited from doing so under the Ipso Facto Laws, terminate this agreement by notice to the Owner where the Owner is Insolvent. The Owner must immediately notify Powerlink if the Owner becomes Insolvent.

20.4 Termination for unauthorised Owner Assignment

Powerlink may terminate this agreement the Owner breaches clauses 17.

20.5 Termination due to termination of the Works Coordination Agreement

If the Works Coordination Agreement is terminated for any reason prior to the First Practical Completion Date, Powerlink may terminate this agreement by notice to the Owner.

20.6 Termination by Powerlink for Extended Force Majeure

Powerlink may terminate this agreement under clause 26.8.

21. End of term Costs

If this agreement expires or is terminated during the Operating Period, then (in addition to any other money payable by the Owner to Powerlink under this agreement or a Project Document), the Owner agrees to pay Powerlink the End of Term Costs in accordance with item 2 of Schedule 2.

22. After expiry or termination

22.1 Removal of infrastructure

On or after termination or expiry of this agreement:

- (a) Powerlink may, at the Owner's cost, de-energise and disconnect the Negotiated Assets from the *Transmission Network* and may decommission and remove any Powerlink Negotiated Assets from the NAPA Rights; and
- (b) subject to clause 22.1(a), if Powerlink does not exercise the Purchase Option under clause 16.1:
 - (i) the Owner must, at its own cost:
 - (A) decommission and remove the Negotiated Assets from the NAPA Rights; and
 - (B) rehabilitate the NAPA Rights and make them safe in accordance with applicable law and its obligations under the NAPA Rights; and
 - (C) reclaim and collect any spares, spare parts or consumables owned by the Owner, but warehoused by, or otherwise in the possession of, Powerlink; and
 - (ii) Powerlink must surrender any easements in gross and other NAPA Rights,

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after the expiry of the period referred to in clause 16.1(a).

22.2 Continuing Charges

On and after termination or expiry of this agreement, Powerlink may continue to invoice the Owner for, and the Owner must pay Powerlink all Charges for, all O&M Services (including services provided under Schedule 3) that Powerlink continues to provide to the Owner.

22.3 Survival of terms

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

- (a) any rights of any party against another party that:
 - (i) arose before the termination or expiry; and
 - (ii) otherwise relate to any breach or non-observance of this agreement occurring before termination or expiry; or
- (b) the rights and obligations of the parties under this clause 22 and clauses 9, 11.10, 16, 21, 23 and 25 and any other clauses to the extent they are necessary for the interpretation or effectiveness of these clauses.

Part E - Legal terms

23. Liability and indemnity

23.1 Extent of Powerlink's liability

As far as the law permits, and unless specified otherwise in this clause 23, Powerlink will not be liable to the Owner for any loss, injury, damage or expense suffered or incurred by the Owner in relation to the Project Documents (whether in contract, tort or otherwise), except:

- (a) for Direct Loss; and
- (b) under clause 23.2.

23.2 Mutual Indemnity

Subject to clauses 23.4, 23.10 and 23.11, a party ("**First Party**") indemnifies the other party ("**Affected Party**") and its officers, employees and agents, against any Third Party Claim against the Affected Party that results in loss, damage or expense to the Affected Party that is caused or contributed to (directly or indirectly) by the Wilful Misconduct or Gross Negligence of the First Party.

23.3 Indemnity by Owner

Subject to clauses 23.10 and 23.11, the Owner indemnifies Powerlink and its officers, employees and agents, against any loss, damage or Costs incurred by Powerlink, including under any Third Party Claims, arising out of or in connection with:

- (a) a breach of the Rules, the Electricity Laws or other relevant laws by the Owner;
- (b) the Owner's breach of the Project Documents;

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- (c) personal injury, illness or death to any person, or damage to the *Facilities* of a third party, as a result of:
 - (i) the Owner accessing the Owner Negotiated Assets;
 - (ii) a defect in the design, construction or commissioning of the Owner Negotiated Assets;
 - (iii) a defect in any spares, spare parts or components supplied by the Owner to Powerlink; or
 - (iv) the Owner's breach of the Project Documents;
- (d) reinstatement or rectification of either or both of Powerlink's *transmission network* and the Negotiated Assets, to the extent damaged or destroyed by, or as a result of:
 - (i) a defect in the design, construction or commissioning of the Owner Negotiated Assets;
 - (ii) a defect in, or failure of, any spares, spare parts or components supplied by the Owner to Powerlink; or
 - (iii) the Owner's breach of the Project Documents;
- (e) any regulatory losses, discounts or deductions suffered or incurred by, or imposed on, Powerlink as a result of:
 - (i) a defect in the design, construction or commissioning of the Owner Negotiated Assets;
 - (ii) a defect in any spares, spare parts or components supplied by the Owner to Powerlink; or
 - (iii) the Owner's breach of the Project Documents;
- (f) any component of the Owner Negotiated Assets or any spares, spare parts or components supplied by the Owner to Powerlink:
 - (i) being recalled by the manufacturer or supplier; or
 - (ii) being identified by Powerlink, acting reasonably, to suffer from, or give rise to, a systemic safety or performance defect or hazard;
- (g) the exercise by Powerlink of its rights to disconnect or de-energise the Negotiated Assets under clause 19.1;
- (h) any work undertaken by Powerlink to rectify any breach by the Owner of clauses 2.1, 3.3, 5.1, 5.4 or 5.6; or
- (i) any spare, spare part or component not being provided to Powerlink by the Owner in breach of Schedule 3.

23.4 Limitation of liability for Direct Loss

The parties agree that Powerlink's liability to the Owner for Direct Loss is limited as follows:

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- (a) Powerlink's aggregate liability to the Owner for the total of all claims for Direct Loss in relation to the Project Documents will not exceed the Aggregate Cap; and
- (b) Powerlink will not be liable to the Owner for Direct Loss if 12 months elapse from the time that the right to make the claim accrues and the Owner has not instituted legal proceedings to enforce the claim.

23.5 Particular exclusions

Despite any other clause in the Project Documents, Powerlink will not be liable for any loss, injury, damage or expense the Owner suffers or incurs as a direct or indirect result of:

- (a) Powerlink exercising its rights under clause 22.1(a), other than in relation to any property damage caused by the exercise of those rights;
- (b) a reduction or suspension of the O&M Services under clause 3.6; or
- (c) a breach of clauses 2.1, 3.3, 5.1, 5.4 or 5.6 by the Owner.

23.6 Conduct of Third Party Claims

If a Third Party Claim is made against an Affected Party and the Affected Party wishes to rely on the indemnity in clause 23.2, then the Affected Party agrees:

- (a) to notify the First Party about the Third Party Claim within 10 Business Days of receiving it;
- (b) not to settle or pay the Third Party Claim without the First Party's consent (which may not be unreasonably withheld); and
- (c) if requested to do so, to not unreasonably refuse to allow the First Party to conduct proceedings relating to the Third Party Claim in the Affected Party's name, provided the Affected Party:
 - (i) is reasonably secured for costs arising from such proceeding; and
 - (ii) is permitted to do so under law and by its insurers.

23.7 Exclusions under National Electricity Law

Where the operation of the National Electricity Law would, in the absence of this clause 23, exclude any liability that Powerlink has to the owner for any Direct Loss or Third Party Claim ("**Relevant Exclusion**"), then despite anything in this clause 23, Powerlink's liability will be determined on the basis that it is entitled to claim the benefit of the Relevant Exclusion.

23.8 Limitations under National Electricity Law

Where the operation of the National Electricity Law would, in the absence of this clause 23, limit or reduce any liability that Powerlink has to the Owner for any Direct Loss or Third Party Claim, whether by way of a per event liability cap or an aggregate liability cap ("**Relevant Limitation**") and the Relevant Limitation is more favourable than a limitation of liability provided under this clause 23, Powerlink's liability will be determined on the basis that it is entitled to claim the benefit of the Relevant Limitation.

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23.9 Other statutory limitations of liability preserved

Except to the extent expressly stated in this clause 23, nothing in the Project Documents waives, varies or excludes the operation of any statutory limitations of liability available to Powerlink (or its officers and employees), including, the applicable sections of the National Electricity Law, the *National Electricity (South Australia) Regulations 1998* and the Electricity Laws.

23.10 Mitigation

A party must take all reasonable steps to mitigate the extent of any:

- (a) Direct Loss that it suffers or incurs; and
- (b) loss, damage or expense that it suffers or incurs resulting from a Third Party Claim.

23.11 Contribution to loss suffered

If a party makes a claim against the other party under this agreement and the party making the claim has contributed to the loss that it has suffered, any entitlement to damages or compensation of the party making the claim will be proportionally reduced, taking into account the extent to which it has contributed to the loss.

24. Dispute resolution

Any dispute that arises between the parties under this agreement must be resolved in accordance with clause [28] (Dispute Resolution) in the Works Coordination Agreement.

25. Confidentiality

The parties acknowledge that all Confidential Information (as defined in the Works Coordination Agreement), and the fact of its existence, must be held and kept confidential by the parties in accordance with clause [29] (Confidentiality) of the Works Coordination Agreement.

26. Force Majeure

26.1 Suspension of obligations

If Powerlink is unable wholly or in part to perform any Non-Financial Obligation under this agreement on time and as required because of the occurrence of a Force Majeure Event (whether occurring before or after the Start Date), then for the duration of the Force Majeure Event, Powerlink's Non-Financial Obligations will be suspended in whole or in part, as the case may require, to the extent that Powerlink's ability to perform any of its Non-Financial Obligations is adversely affected by a Force Majeure Event.

26.2 Effect of Force Majeure Event

Suspension of any Non-Financial Obligations under clause 26.1 does not affect any rights or obligations that may have accrued prior to the suspension or, if the Force Majeure Event affects only some Non-Financial Obligations, any other obligations or rights of the parties.

26.3 Mitigation of Force Majeure Event

Subject to clause 26.6, Powerlink must use all reasonable endeavours to remove, overcome or minimise the effects of the Force Majeure Event as quickly as possible, and the Owner

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must cooperate and give such assistance as Powerlink may reasonably request in connection with the Force Majeure Event.

26.4 Failure to mitigate

The period of suspension under clause 26.1 will exclude any delay in Powerlink's performance of those Non-Financial Obligations attributable to a failure by Powerlink to comply with clause 26.3.

26.5 Industrial action

Nothing in this clause 26 requires Powerlink to settle any industrial dispute or landholder dispute in any way it does not want to.

26.6 End of Force Majeure Event

Powerlink must resume performance of any suspended obligation as soon as possible after the Force Majeure Event ends.

26.7 Notice of Force Majeure Event

If Powerlink reasonably considers that a Force Majeure Event has occurred or continues to occur affecting it, it must:

- (a) notify the Owner of the circumstances and affected obligations;
- (b) keep the Owner informed reasonably regularly of the likely duration of the Force Majeure Event and the mitigation action being taken; and
- (c) notify the Owner when the Force Majeure Event ends or has been successfully mitigated.

26.8 Extended Force Majeure

Powerlink may notify the Owner that this agreement is terminated if:

- (a) Powerlink has notified the Owner of a Force Majeure Event under clause 26.7; and
- (b) either:
 - (i) the Force Majeure Event has continued for more than 6 months from the date of the notice; or
 - (ii) in Powerlink's reasonable opinion, the Force Majeure Event has and is likely to continue to have a material adverse effect on the ability of Powerlink to provide the O&M Services for a substantial period of time.

27. General

27.1 Contact details

On and from the First Practical Completion Date, the parties contact details for notices are set out in Schedule 4.

A party may notify the other in writing from time to time of any change to the contact details for operational communications and notices.

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27.2 Dictionary

Defined terms in this agreement are contained in Schedule 6.

EXECUTED as an agreement.

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Schedule 1 – Negotiated Assets

1. Description of Negotiated Assets

See the Details and Schedule 1 (Interfaces and Boundaries) of the Works Coordination Agreement.

2. Additional warranties

[Insert specific warranties or insert N/A]

3. Defects Liability Period

[xx] months.

4. Specific exclusions from the O&M Services

(a) The Owner will be at all times during the Term responsible for:

(i) the payment of any amounts under, or in relation to, any NAPA Rights (including by way of offsets, charges, compensation or contributions under the terms of the NAPA Rights or at law); and

(ii) the performance of any Offset Obligations that relate to the NAPA Rights,

and the Owner acknowledges and agrees that the O&M Services do not include the payment of any of those amounts, or the performance of those Offset Obligations.

[Insert any further specific exclusions (if applicable)]

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Schedule 2 – Charges and other amounts

1. Charges & rates

1.1 Fixed Charges

Subject to items 1.2 to 1.5 of this Schedule 2, as at the Start Date, the Fixed Charges are: [Note: To be inserted].

1.2 Assumptions and exclusions

The Fixed Charges are based on the following assumptions or allowances:

Item	Assumption or Allowance

The Fixed Charges do not include the following fees or charges:

Item	Exclusions and basis of fee recovery
	[e.g. Charges for Powerlink to provide personnel supervision and support to allow Owner to access the NAPA Rights]

1.3 Additional Cost Variations

The following will each also constitute a Cost Variation: [describe or insert N/A]

1.4 Time and materials

All O&M Services undertaken by Powerlink in excess of the assumptions and allowances in item 1.2 of this Schedule 2 will be provided by Powerlink a 'time & materials' basis at the rates notified by Powerlink to the Owner from time to time during the Term.

1.5 Escalation of Charges

The Fixed Charges [and other amounts] in this Schedule 2 will be adjusted for changes in the CPI with effect on and from the first day of each Quarter in accordance with the formula.

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$$A_n = A_{n-1} \times \left[\frac{CPI_n}{CPI_{n-1}} \right] \text{ where:}$$

A_n = the applicable adjusted Fixed Charge;

A_{n-1} = the applicable Fixed Charge at [insert relevant base reference date];

CPI_n = the CPI published for the Quarter ending immediately before the Quarter preceding the Quarter of the relevant adjustment date; and

CPI_{n-1} = the CPI published for the Quarter commencing [insert base Quarter reference].

1.6 Information to be provided by Owner

The Owner agrees to provide to Powerlink:

- (a) [insert information requirements for invoicing under the charging regime agreed between Powerlink and the Owner]
- (b) any other information reasonably requested in writing by Powerlink from time to time, to enable Powerlink to work out the Charges, or any change to the Charges, during the Operating Period.

1.7 Billing Period

A 'Billing Period' is a [calendar month].

2. End of Term costs

2.1 Amount of End of Term Costs

Where clause 21 applies, the End of Term Costs payable by the Owner to Powerlink are Powerlink's reasonable costs of:

- (a) disconnecting the Negotiated Assets from Powerlink's *Transmission Network*; and
- (b) undertaking works on Powerlink's *Transmission Network* to bypass the Negotiated Assets.

2.2 Payment of End of Term Costs

After termination or expiry of this agreement, the Owner must pay the End of Term Costs to Powerlink within 10 Business Days of being notified of the termination or expiry of this agreement, which notification must also include a tax invoice for the End of Term Costs.

2.3 Scope of End of Term Costs

The parties agree that the End of Term Costs are not Powerlink's sole remedy in relation to the termination of this agreement by Powerlink.

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3. Security Amount

Security Period	Security Amount
Between the Start Date (Security Start Date) and the date that is 10 Business Days after the First Practical Completion Date (Security End Date) (inclusive) – <u>Initial Financial Security to be given on or before the Start Date</u> (Security Provision Date).	\$ xxx
Between the date that is 11 Business Days after the First Practical Completion Date (Security Start Date) and the date that is three months after the End Date (Security End Date) (inclusive) – <u>Financial Security to be given on or before 4pm on the date that is 10 Business Days after the First Practical Completion Date</u> (Security Provision Date).	\$ xxx
Between the date that is 11 Business Days after [] (Security Start Date) and the date that is three months after [] (Security End Date) (inclusive) – <u>Financial Security to be given on or before 4pm on the date that is 10 Business Days after []</u> (Security Provision Date).	\$ xxx
Between the date that is 11 Business Days after [] (Security Start Date) and the date that is three months after [] (Security End Date) (inclusive) – <u>Financial Security to be given on or before 4pm on the date that is 10 Business Days after []</u> (Security Provision Date).	\$ xxx

4. Maximum Unpaid Amount

The Maximum Unpaid Amount is [xx].

5. Aggregate Cap for Powerlink

For the purposes of clause 23, the Aggregate Cap is [yyy] x [the total of the] Fixed Charges, as at the Start Date.

6. Insurance amounts

- (a) The Property Insurance Amount is \$[insert minimum amount of property insurance to be held by the Owner] million.
- (b) The Liability Insurance Amount is \$100 million.

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Schedule 3 – Spares and spare parts

[Drafting Note: *This Schedule is to be discussed and negotiated to address the procurement, storage, testing and provision of spare parts, spares and consumables, once the proposed equipment for the DNA and/or IUSA is known]*

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Schedule 4 - Communication Contacts

1. Operational Communications

The parties nominate the following Personnel to be responsible for operational communications between them about the items set out below:

Responsibility	Powerlink	Owner
Media or information release to third parties	[insert]	Xxx
General queries	[insert]	Xxx

2. Contacts for Notices

	Powerlink	Owner
Address	[insert]	xxx
Telephone	[insert]	xxx
Fax	[insert]	xxx
E-mail	[insert]	xxx
Contact	[insert]	xxx

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Schedule 5 – Telecommunications and Secondary Systems

1. Access to Telecommunications

On and from the First Practical Completion Date, the Owner may only access the Telecommunications that are under the ownership, possession, custody or control of Powerlink in the following circumstances:

- (a) [insert].

2. Access to Secondary Systems

On and from the First Practical Completion Date, the Owner may only access the Secondary Systems that are under the ownership, possession, custody or control of Powerlink in the following circumstances:

- (a) [insert].

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Schedule 6 – Dictionary

1. Defined terms and the Rules

- (a) Capitalised terms used in this agreement which are not italicised have the meanings given in item 2 of this Schedule 6.
- (b) Capitalised terms used in this agreement which are *italicised* have the meanings given in the Rules.
- (c) If there is any inconsistency between a term defined in item 2 of this Schedule 6, or a term which is also defined in the Rules, the definition in item 2 of this Schedule 6 will prevail to the extent of the inconsistency.

2. Defined terms

In this agreement, unless the context clearly indicates otherwise, the following terms have the following meanings.

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

AEMO means the Australian Energy Market Operator.

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

Affected Party has the meaning given in clause 23.1 or clause 26.1, as the context requires.

Aggregate Cap means the amount set out as such in item 5 of Schedule 2.

Australian Bank means an "Australian bank" as defined in the *Corporations Act 2001* (Cth) which is incorporated in Australia.

Authority means the Crown, a government minister, a government department, a corporation, or other authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, tribunal, board or any officer or agent of any of these persons (and to avoid doubt, includes the AEMC, the AER and AEMO).

Bank Credit Threshold has the meaning in clause 11.16.

Billing Period has the meaning given in item 1.7 of Schedule 2.

Business Day has the meaning given in the Works Coordination Agreement.

Change in Control has the meaning given in the Works Coordination Agreement.

Charges means the amounts referred to in clause 8 and Schedule 2.

Connection and Access Agreement means the agreement of that name between Powerlink and the [*Customer or Generator*] dated on or about the date of this agreement.

Costs include costs, charges and expenses, including those incurred in connection with advisers and, for a Cost Variation, includes an amount for Powerlink's profit and overhead relating to the performance of the O&M Services the subject of the Cost Variation.

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Cost Variation means:

- (a) any actual increase to the cost of providing the O&M Services which is beyond Powerlink's reasonable control, including as a result of:
 - (i) any change to the input costs of the O&M Services or Powerlink's ability to utilise the Negotiated Assets or the NAPA Rights;
 - (ii) an Owner Works Change which is approved by Powerlink under the Works Coordination Agreement;
 - (iii) any delay in completion of the Works to the extent that the delay was not caused or contributed to by Powerlink;
 - (iv) any new or revised requirement to consult with, or meet a requirement imposed by, an Authority for or in relation to the Negotiated Assets to ensure the safety, reliability, security of, or exclusion of foreign interference or espionage on, the *Transmission Network*;
 - (v) any material change in operating requirements to comply with *Good Electricity Industry Practice* including, without limitation, as a result of changes in Australian standards or other operating standards widely adopted in the electricity industry in Australia;
 - (vi) any component of the Negotiated Assets having to be replaced, modified or altered by Powerlink as a result of a spare or spare part:
 - (A) ceasing to be manufactured or supplied; or
 - (B) not being provided to Powerlink by the Owner in breach of Schedule 3;
 - (vii) a new or additional *Transmission Network User* being connected to the Negotiated Assets;
 - (viii) any requirements that Powerlink must perform or undertake in relation to the NAPA Rights and/or Works Approvals that are not consistent with the Property and Approvals Specification; or
- (b) the occurrence of an event or circumstance listed in item 1.3 of Schedule 2.

CPI means:

- (a) the Quarterly Consumer Price Index: All Groups - Brisbane index number published by the Australian Bureau of Statistics (publication No. 6401.0); or
- (b) if the index referred to in paragraph (a) ceases to be published, or its basis of assessment is changed such that it no longer accurately reflects changes in the prevailing level of prices substantially in the same manner as it did before the change, the nearest equivalent index as agreed between the parties, or if the parties do not agree, the index nominated by the head of the Australian Bureau of Statistics or its nominee (acting as an expert), whose decision is final and binding.

[Customer or Generator] means the person or persons described as such in the Details of the Works Coordination Agreement or their successors or assigns under the Project Documents.

[Customer or Generator] Facility has the meaning given in the Works Coordination Agreement.

Defect means:

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- (a) any defect or deficiency in materials or workmanship that is part of the Owner Negotiated Assets or the Owner Works;
- (b) any defect, shrinkage or fault in the Owner Negotiated Assets or the Owner Works;
- (c) any omission of the Owner Negotiated Assets or in the Owner Works;
- (d) any aspect of the Owner Negotiated Assets or the Owner Works, or any part thereof, that is not in accordance with the requirements of the Works Coordination Agreement or this agreement (including a breach of any warranty or non-compliance with any performance level or performance requirement stated in the Works Coordination Agreement or this agreement);
- (e) any physical damage to the Owner Works, or any part thereof, resulting from any such defect, deficiency, shrinkage, fault, omission or non-conformance; and
- (f) any other condition or event stated in the Works Coordination Agreement or this agreement to constitute a defect.

Defects Liability Period has the meaning given in clause 5.4.

Delivery Specification has the meaning given to that term in the Works Coordination Agreement.

Detailed Design has the meaning given to that term in the Works Coordination Agreement.

Details means the section of this agreement headed "Details".

Direct Loss means loss, injury, damage or expense suffered or incurred by a party (**relevant party**) that results directly from, whether solely or in part, the other party's breach of this agreement (whether negligent or otherwise), but does not include:

- (a) if the relevant party is the Owner, any loss, damage or expense arising out of interruption to business, increased Costs of working, loss of use of property, loss of contract, loss of production, loss of revenue, loss of profit or loss of goodwill suffered by the Owner; or
- (b) any indirect or consequential loss, damage, injury or expense,

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

DNA has the meaning given in the Works Coordination Agreement.

Electricity Laws means the *Electricity Act 1994* (Qld), the National Electricity Law, the Rules and any other laws and codes that may regulate or govern the generation, transmission, supply or use of electrical energy in Queensland from time to time.

End Date is as set out in the Details.

End of Term Costs means the applicable amount set out in item 2.1 of Schedule 2.

Encumbrance means any mortgage, pledge, charge, lien, assignment, security interest (including a PPSA Security Interest), preferential right or trust arrangement and any other security agreement or arrangement of any kind given, arising or created.

Entity Works has the meaning given to that term in the Works Coordination Agreement.

Environmental Laws means all laws relating to the environment applicable to the NAPA Rights or the performance of obligations or exercise of rights of a party and its Personnel or property under this agreement.

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ESMS Applicable Requirements has the meaning given to that term in the Works Coordination Agreement.

Financial Breach means:

- (a) failure by the Owner to comply with clause 11;
- (b) failure of the Owner to pay two consecutive invoices under clause 9.2; or
- (c) a failure by the Owner to pay any other amount (including any interest) as and when required by this agreement, where the total of all amounts outstanding exceeds the Maximum Unpaid Amount.

Financial Security means a financial security of the kind described in clause 11.1, including the following:

- (a) the Initial Financial Security,
- (b) any New Financial Security; and
- (c) all other Financial Securities, together with any replacement, substitution, swap or any amendment of any of them.

First Party has the meaning given in clause 23.2.

First Practical Completion Date has the meaning given to that term for the Negotiated Assets in the Works Coordination Agreement.

Fixed Charges means the amount(s) referred to in item 1.1 of Schedule 2.

Force Majeure Event means an event, act, occurrence or omission, or combination of them, (whether occurring before or after the Start Date), that (despite the observance of *Good Electricity Industry Practice*) is beyond the reasonable control of Powerlink, including:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, mudslides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war, acts of public enemies, acts of terrorism, riots, civil commotions, malicious damage, sabotage, blockades and revolutions;
- (b) any serious risks to health or safety;
- (c) without limiting paragraph (b) above, the occurrence or outbreak of any Infectious Disease or Illness including an epidemic and/or pandemic,
- (d) without limiting paragraph (f) below any international, Commonwealth, State or Territory orders, directions, proclamations, determinations, requirements, exercise of (or the invoking of) any emergency powers, change to a law or the introduction of a new law in relation to or in connection with any of the matters referred to in paragraphs (a), (b) and (c) above;
- (e) strikes, lockouts, industrial or labour disputes or difficulties, work bans, blockages or picketing or other inability to access the Negotiated Assets;
- (f) action or inaction by, or an order, determination, direction or finding of, a court, government or Authority including an injunction or a denial, refusal or failure to grant any authorisation, licence, approval, permit, registration or acknowledgement;
- (g) mechanical or electrical breakdown of any equipment beyond Powerlink's reasonable control;
- (h) unplanned outages of a party's equipment beyond Powerlink's reasonable control;

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- (i) the failure of any manufacturer, supplier or provider of goods, materials, equipment, plant, machinery or services to Powerlink to provide those goods or services to Powerlink; and
- (j) the cancellation, revocation or withdrawal of a party's licence or authorisations by a relevant Authority except as a result of any act, omission or default on that party's part.

Functional Specification has the meaning given to that term in the Works Coordination Agreement.

Green Book means Powerlink's *Electrical Safety Rules*, as updated from time to time.

Gross Negligence has the meaning given in the Works Coordination Agreement.

Infectious Disease or Illness means any serious infectious disease or illness (of any kind, including any derivatives or mutations and howsoever caused, including from zoonotic causes) that is transmitted, transmittable, transferable or contagious in any other way, directly or indirectly, from person to person.

Independent Valuation has the meaning given in clause 16.6.

Initial Financial Security means the Financial Security referred to by that name in the table in item 3 of Schedule 2.

Insolvent has the meaning given in the Works Coordination Agreement.

Interactions has the meaning given to that term in the Works Coordination Agreement.

Interest Rate has the meaning given to that term in the Works Coordination Agreement.

Interface Specification has the meaning given to that term in the Works Coordination Agreement.

Ipsa Facto Laws has the meaning given to that term in the Works Coordination Agreement.

Liability Insurance Amount is as set out in item 6 of Schedule 2.

[Load Connection Date / Relevant Unit Synchronisation Date] has the meaning given to that term in the Works Coordination Agreement.

Maximum Unpaid Amount is as set out in item 4 of Schedule 2.

NAPA Rights has the meaning given in the Works Coordination Agreement.

National Electricity Law means the National Electricity Law referred to in section 12 of the *National Electricity (South Australia) Act 1996* (SA) as given effect in Queensland.

Negotiated Assets means the asset or assets specified as such in the Details, as altered, repaired or reinstated from time to time.

New Financial Security means new or substitute Financial Security as required by clause 11.12, clause 11.13 or clause 11.14.

Non-Financial Obligation means any obligation in this agreement other than one requiring a person to pay money or provide security.

Non-Preferred Equipment means equipment relating to the Owner Negotiated Assets that is not Preferred Equipment.

O&M Coordination Committee means the committee established under clause 4.2.

O&M Coordination Plan has the meaning given in clause 4.6.

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O&M Services means the management, operation, repair, replacement and maintenance of the Negotiated Assets, except for:

- (a) [provision of the spares, materials or consumables required to be provided by the Owner under Schedule 3;]
- (b) reinstatement or rectification of the Owner Negotiated Assets if the Negotiated Assets:
 - (i) systemically or catastrophically fails; or
 - (ii) is totally or substantially destroyed,other than due to Powerlink's negligence, breach of law or breach of this agreement;
- (c) *DNA services* or any obligation of the Owner under this agreement or the Works Coordination Agreement;
- (d) any matter listed in item 4 of Schedule 1.

Offset Obligation has the meaning given in the Works Coordination Agreement.

Operating Period means the period commencing on the First Practical Completion Date and ending on the date this agreement terminates or expires.

Owner means the person so described in the Details.

Owner Financial Breach means, for the Owner:

- (a) failure by the Owner to comply with clause 11;
- (b) a failure by the Owner to pay End of Term Costs as and when required by clause 21 of this agreement;
- (c) a failure by the Owner to pay any Charges (including any interest) as and when required by this agreement; or
- (d) a failure by the Owner to pay any other amount (including any interest) as and when required by this agreement, where the total of all amounts outstanding exceeds the Maximum Unpaid Amount.

Owner Negotiated Assets has the meaning given to that term in the Works Coordination Agreement.

Owner Non-Financial Breach means, for the Owner:

- (a) a repeated or systemic failure to provide spares, spare parts or components to Powerlink in breach of Schedule 3;
- (b) a breach of clause 12;
- (c) a breach of its obligations under clause 17.2;
- (d) a breach of any other obligation of the Owner under this agreement (other than a Financial Breach); or
- (e) a 'Non-Financial Breach' as defined in the Works Coordination Agreement on the part of the Owner.

Owner Works has the meaning given to that term in the Works Coordination Agreement.

Owner Works Change has the meaning given to that term in the Works Coordination Agreement.

Network Operating Agreement

Payment of Charges means the obligation of a party to pay any amount to the other party as required under this agreement, including the obligation to pay Charges and End of Term Costs.

Personnel means, in relation to a party, the officers, employees, secondees, contractors and agents employed or engaged by, or under the direction or influence of, that party in connection with or relating to this agreement (but, in the case of a party, excludes the other party)

Powerlink means the person so described in the Details.

Powerlink Assets has the meaning given to that term in the Works Coordination Agreement.

Powerlink Negotiated Assets has the meaning given to that term in the Works Coordination Agreement.

Powerlink Works has the meaning given to that term in the Works Coordination Agreement.

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

PPSA Security Interest means a security interest within the meaning of the PPSA, including a security interest that is notifiable or registerable on the Australian Personal Properties Security Register.

Preferred Equipment means equipment relating to the Owner Negotiated Assets identified as such in the Functional Specification.

Progress Schedule has the meaning given to that term in the Works Coordination Agreement.

Project Document has the meaning given to that term in the Works Coordination Agreement.

Property and Approvals Specification has the meaning given to that term in the Works Coordination Agreement.

Property Insurance Amount is as set out in item 6 of Schedule 2.

Purchase Notice means a notice that Powerlink wishes to exercise the Purchase Option.

Purchase Option means Powerlink's right to purchase the Sale Assets from the Owner in accordance with this agreement.

Purchase Option Security has the meaning in clause 15.7.

Purchase Price means an amount calculated as such in accordance with clause 16.5.

Quarter means a period of three consecutive months commencing on 1 January, 1 April, 1 July or 1 October in any year.

Regulatory Information means all information and data required to be reported to an Authority in connection with the Negotiated Assets.

Related Body Corporate has the meaning given to it by sections 9 and 50 of the *Corporations Act 2001* (Cth).

Rules means the rules called the National Electricity Rules made under the National Electricity Law.

Safe System of Work has the meaning given in the Works Coordination Agreement.

Network Operating Agreement

SAHVEA means the *Queensland Electricity Entity Procedures for Safe Access to High Voltage Electrical Apparatus* as updated from time to time.

Sale Assets has the meaning given in clause 16.3.

Secondary System has the meaning given to that term in the Works Coordination Agreement.

Second Practical Completion Date has the meaning given to that term for the Negotiated Assets in the Works Coordination Agreement.

Security Amount means, for a Financial Security, the amount set out in the second column of the table in item 3 of Schedule 2 for the applicable Security Period.

Security End Date means, for a Security Period, the Security End Date referred to in the first column of the table in item 3 of Schedule 2, applicable to the relevant Security Period.

Security Period, for a Financial Security in a Security Period, is the period starting on and from the applicable Security Start Date and ending on and including the applicable Security End Date during which period the relevant Financial Security must be held by Powerlink.

Security Provision Date means, for a Financial Security in a Security Period, the Security Provision Date referred to in the first column of the table in item 3 of Schedule 2 applicable to the relevant Financial Security, being the date by which the relevant Financial Security must be provided to Powerlink.

Security Start Date means, for a Financial Security in a Security Period, the Security Start Date referred to in the first column of the table in item 3 of Schedule 2, applicable to the relevant Security Period.

Settlements Residue Methodology means Powerlink's methodology for calculating the portion of the *Settlements Residue* that accrues on the Negotiated Assets, which is published on Powerlink's website.

Standard and Poor's and S&P means Standard and Poor's (a division of McGraw-Hill Inc) or Standard & Poor's (Australia) Pty Ltd or the successor of either of them.

Start Date is as set out in the Details.

Taxes means any taxes (including without limitation any carbon tax or other environmental levy but excluding any income or corporate taxes), levies, imposts, charges, assessments, fees, deductions, withholdings and duties (including stamp and transaction duties) imposed by any Authority, together with any related interest, penalties, fines and expenses in connection with them.

Telecommunications means communications (as that term is defined in the *Telecommunications Act 1997* (Cth)) that are generated by, carried across, or derived from any or all of:

- (a) the Owner Negotiated Assets;
- (b) the Powerlink Assets; or
- (c) the telecommunications network (as that term is defined in the *Telecommunications Act 1997* (Cth)) which is owned or operated by, or which is under the authorised control of, Powerlink.

Term has the meaning given in clause 1.

Third Party Claim means any claim, action or proceeding by a third party against the Affected Party that is caused or contributed to (directly or indirectly) by the Wilful

Network Operating Agreement

Misconduct or Gross Negligence of the First Party, in connection with this agreement or the Works Coordination Agreement (whether a breach of contract, negligence or otherwise). However, for the purposes of clause 23, "third party" does not include any entity or person or body corporate that is:

- (a) related to the Affected Party within the meaning of section 50 of the *Corporations Act 2001* (Cth); or
- (b) is an associate of the Affected Party under section 50AAA of the *Corporations Act 2001* (Cth) or
- (c) a participant in a joint venture with the Affected Party.

WHS Laws means the laws relating to work health and safety applicable to the Negotiated Assets and the NAPA Rights, and any areas accessed or used by Powerlink (or its Personnel) to provide the O&M Services.

Wilful Misconduct has the meaning given to that term in the Works Coordination Agreement.

Works has the meaning given to that term in the Works Coordination Agreement.

Works Approvals has the meaning given in in the Works Coordination Agreement.

Works Coordination Agreement means the agreement of that name between Powerlink, the [*Customer or Generator*] and the Owner dated on or about the date of this agreement.

Works Coordination Committee has the meaning given in the Works Coordination Agreement.

Works Coordination Plan has the meaning given in the Works Coordination Agreement.

3. Rules of interpretation

In this agreement:

- (a) **(reference to documents)** a reference to this agreement or another instrument includes any variation or replacement of any of them;
- (b) **(reference to parties)** a reference to a party (including any reference to "Powerlink" or "the Owner") includes (where relevant) the party's officers, employees, agents and contractors;
- (c) **(reference to laws)** a reference to a statute, ordinance, code, law or Powerlink document includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(singular and plural)** the singular includes the plural and vice versa;
- (e) **(persons)** the word "person" includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Authority;
- (f) **(successors and assigns)** a reference to a person (including a party) includes a reference to the person's executors, administrators, successors, substitutes (including, persons taking by novation) and assigns;
- (g) **(reckoning of days)** if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

Network Operating Agreement

- (h) **(day)** a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) **(non Business Days)** if a payment under this agreement must be made on a stipulated day that is not a Business Day, then the stipulated day will be taken to be the next Business Day;
- (j) **(whole and parts)** a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (k) **(includes)** the verb “include” (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation; and
- (l) **(including)** the words “including”, “for example” or “such as” do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

4. Headings

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

Network Operating Agreement

Signing page

DATED (Powerlink): _____

**THE OFFICIAL SEAL of QUEENSLAND
ELECTRICITY TRANSMISSION
CORPORATION LIMITED**
(ACN 078 849 233) trading as **Powerlink
Queensland** was affixed in accordance with its
constitution in the presence of:

Signature of Chief Executive or authorised person

Signature of Secretary or authorised person

CHIEF EXECUTIVE
Office held

SECRETARY
Office held

Name of Chief Executive or authorised person (block
letters)

Name of Secretary or authorised person (block
letters)

Item No.

DATED (Owner): _____

Executed by [Insert Owner Name]
(ABN **XX XXX XXX XXX**) in accordance with
Section 127 of the *Corporations Act 2001*

Signature of Director

Signature of Director/Secretary

Name of Director (block letters)

Name of Director/Secretary (block letters)