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|  | Agreement |
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| Barangaroo South Embedded Network Use of System Agreement |  |
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Date ►

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| --- | --- |
| Between the parties |  |
| Distributor | **Lend Lease Embedded Network (Barangaroo South) Pty Ltd as trustee of the Lend Lease Embedded Network (Barangaroo South) Trust** ABN 88 600 161 528 of Level 4, 30 The Bond, 30 Hickson Road, Millers Point, NSW, 2000**(Distributor)** |
| Retailer | **[•]**ABN **[•]** of **[•]****(Retailer)** |

|  |  |
| --- | --- |
| Recitals | 1. The Distributor is the owner or operator of the Barangaroo Network System.
2. The Retailer is the holder of a Retail Licence or is otherwise entitled to sell electricity to Customers at Child Connection Points within Barangaroo South.
3. The Retailer wishes to sell electricity to Customers at Child Connection Points within Barangaroo South.
4. The Retailer may also wish to procure Supply, and the provision of other services, to or on behalf of its Customers at Child Connection Points within Barangaroo South.
5. This agreement sets out the rights and obligations of the parties in respect of the provision of the UoS Services by the Distributor to the Retailer in respect of Customers, and the payment for those UoS Services by the Retailer.
 |
| The parties agree as follows: |

# Definitions and interpretation

## Definitions

The meanings of the terms used in this agreement are set out below.

| Term | Meaning |
| --- | --- |
| Additional Charges  | any charge imposed on the Distributor by a Regulatory Authority which is referable to the Retailer or a Customer, and where such charge is referable to a class of electricity retailers or Customers rather than an individual retailer or Customer, that charge will be allocated between the retailers or Customers (as the case may be) on a fair and reasonable basis by the Distributor. |
| AEMO | the Australian Energy Market Operator Limited (ACN 072 010 327). |
| AER | the Australian Energy Regulator established by section 44AE of the Consumer and Competition Act 2010 (Cth). |
| Assurance Notification | in relation to Customer, a notice by the Retailer to the Distributor advising that the Retailer has ceased, or is entitled to cease, Supply to that Customer under the Retail Contract with that Customer and otherwise in accordance with the Electricity Law. |
| Bank Bill Rate  | the bank bill standard rate defined to be equal to:1. the “bid rate” (rounded up to four decimal places) quoted on the page entitled “BBSY” of the Reuters Monitor System at or about 10:00am (Sydney time) on any Business Day for bank accepted bills of exchange which have a tenor of 30 days; or
2. if the Bank Bill Rate cannot be determined in accordance with paragraph (a) of this definition, the rate percent per annum agreed by the parties in good faith to be the appropriate rate having regard to comparable indices then available in the then current bill market, and in default of agreement within 14 days, the rate nominated by the Distributor as an appropriate rate.
 |
| Barangaroo Network System | the system of electric lines (generally at nominal voltage levels of 33kV or below) and related electrical infrastructure which the Distributor owns or operates within Barangaroo South.  |
| Barangaroo South  | that part of Barangaroo (as that term is defined in the *Barangaroo Delivery Act 2009* (NSW)) which comprises lots 200 to 205 (inclusive) in DP 1204948. |
| Business Day  | a day that is not a Saturday, Sunday or a state wide public holiday in NSW. |
| Child Connection Point | a connection point within the Barangaroo Network System other than a Parent Connection Point. |
| Claim  | any claim, action, dispute, proceeding, loss, liability, demand, cost or expense whether arising in contract, tort (including negligence), equity or otherwise in respect of an event occurring after the Commencement Date. |
| Commencement Date  | the date on which this agreement is executed by both parties. |
| Controller  | has the meaning given to that term in the Corporations Act2001 (Cth). |
| Connection  | the contact between:1. the electrical systems of two persons; or
2. any electrical system and an Electrical Installation, such as will allow the delivery of electricity between those systems or that system and that Electrical Installation, but does not include energisation.
 |
| Connection Request  | a request, in a form reasonably required by the Distributor, given by the Retailer to the Distributor requesting the Connection of a Child Connection Point. |
| Connection Services  | in relation to a Customer, the service of establishing Connection between the Barangaroo Network System and that Customer’s Electrical Installation so as to allow the delivery of electricity from the Barangaroo Network System to that Electrical Installation, including maintenance of that Connection but excluding augmentation of the Barangaroo Network System or energisation. |
| Consequential Loss  | loss of profits, business or anticipated savings or any other indirect or consequential loss of whatever kind arising out of any failure to comply with this agreement in contract, tort (including negligence) or otherwise. |
| Customer  | in relation to the Retailer, a person:1. who has a Child Connection Point within Barangaroo South or is seeking to establish a Child Connection Point within Barangaroo South; and
2. either:
* whose NMI the Retailer is financially responsible for under the National Electricity Rules; or
* to whom the Retailer agrees to sell electricity under a Retail Contract, or to whom the Retailer is deemed under the Electricity Law to have a contract for the sale and supply of electricity (whether as a “local or default retailer” or a Retailer of Last Resort or otherwise).
 |
| Default Rate  | on any date the rate percent per annum which is the aggregate of 2% per annum and the Bank Bill Rate. |
| Direct Loss  | loss resulting directly from any failure to comply with this agreement in contract, tort (including negligence) or otherwise, but excludes any Consequential Loss. |
| Disconnect  | the operation of switching equipment or other deliberate action so as to prevent the flow of electricity at a single Child Connection Point. |
| Disconnection Request  | a request in a form reasonably required by the Distributor and consistent with any electricity industry practice and as may be required under the Electricity Law given by the Retailer to the Distributor requesting the Disconnection of a Child Connection Point. |
| Electricity Industry Ombudsman | an electricity industry ombudsman under an electricity ombudsman scheme as approved by the relevant Minister under the Electricity Supply Act. |
| Electricity Supply Act  | the *Electricity Supply Act 1995* (NSW). |
| Electrical Installation  | electrical equipment that is fixed or to be fixed in, on, under or over any land that is not part of the Barangaroo Network System. |
| Electricity Law  | the *National Electricity (New South Wales) Act 1997*, the National Electricity Law and the National Energy Retail Law, the Electricity Supply Act and regulations under that Act, the Retailer’s Retail Licence and any other law, statute, regulation, proclamation, order in council, direction, tariff, guideline or standard which can be enforced by law or by a Regulatory Authority against a participant in the New South Wales region of the National Electricity Market. |
| Emergency  | an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages or threatens to destroy or damage any property. |
| Fault  | any problem in Supply to a Child Connection Point or any damage to or breakdown of the Barangaroo Network System. |
| Financially Responsible Market Participant or FRMP | has the meaning given to the terms “financially responsible” and “market participant” in the National Electricity Rules. |
| Force Majeure Event  | with respect to any party, any event or circumstances which are not within the reasonable control of that party including:1. acts of God, including lightning, storm, action of the elements, earthquakes, flood and natural disaster;
2. strikes, lockouts or other industrial disturbances;
3. acts of public enemy, wars (declared or undeclared), blockades, insurrections, riots, revolution, sabotage, vandalism and civil disturbance;
4. unavoidable accident, including fire, explosion, radioactive contamination and toxic dangerous chemical contamination;
5. any generation, transmission or distribution shut-down or interruption which is required or directed by the State of New South Wales or Commonwealth Government or a Regulatory Authority or the System Operator;
6. any generation or transmission shut down or interruption which is required to avoid serious and immediate risks of a significant plant or equipment failure;
7. a partial or complete failure of any generator or transmission owner, operator or controller in the National Electricity Market to provide Connection or to supply network transmission services or to deliver electricity to the Distributor or any deficiency in such delivery;
8. any event caused by any Customer’s or other third party’s Electrical Installation; or
9. a failure of the owner or controller of a transmission system used to transmit to provide Connection or to supply network transmission services.
 |
| Good Electricity Industry Practice  | has the meaning given to that term in the National Electricity Rules. |
| Insolvency Event  | the happening of one or more of the following events in relation to the Retailer:1. an order is made that it be wound up or that a Controller be appointed to it or any of its assets;
2. a resolution that it be wound up is passed;
3. a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
4. an administrator is appointed to it or a resolution that an administrator be appointed to it is passed;
5. it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or shareholders, or an assignment for the benefit of any of, or any class of, its creditors;
6. any action is taken by the Australian Securities and Investment Commission to cancel its registration or to dissolve it;
7. it is insolvent within the meaning of Section 95A of the Corporations Act 2001 (Cth), as disclosed in its accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
8. it stops or suspends:
* the payment of all or a class of its debts; or
* the conduct of all or a substantial part of its business; or
1. if the Retailer is constituted in another jurisdiction, any event having a substantially similar effect to any of the events specified in the preceding paragraphs happens to it under the law of that other jurisdiction.
 |
| Interruption  | the planned or unplanned temporary interruption of the Supply of electricity to one or more Child Connection Points, but does not include Disconnection. |
| Loss | any loss, damage, liability, costs, charges and expenses. |
| Metering Data  | in relation to a Customer, data obtained from a Metering Installation. |
| Metering Installation  | has the meaning given to that term in the National Electricity Rules. |
| Metering Provider  | a person accredited by and registered by AEMO as a metering provider in accordance with the National Electricity Rules and nominated by Distributor as the metering provider for the Barangaroo Network System.  |
| Metering Charges | the charges payable by the Retailer for the provision by the Distributor of Metering Services in respect of a Child Connection Point. |
| Metering Services | 1. the provision, installation and maintenance of Metering Installations for the Barangaroo Network System and each Customer;
2. the management of relevant NMI Standing Data, in accordance with the National Electricity Rules; and
3. the collection, processing, storage and delivery of meter data in respect of Customer’s meters in accordance with the National Electricity Rules and for the purposes of:
* the performance by the Distributor of its obligations, and exercise of its rights, under this agreement;
* the safe and efficient operation of the Barangaroo Network System; and
* the Distributor’s reporting obligations in connection with the operation of the Barangaroo Network System.
 |
| Metrology Procedure  | has the meaning given to that term in the National Electricity Rules. |
| National Electricity Law  | the National Electricity Law which applies in New South Wales as a result of the operation of section 6 of the *National Electricity (New South Wales) Act* 1997. |
| National Electricity Market  | the market for wholesale trading in electricity operated by AEMO under the National Electricity Law and the National Electricity Rules. |
| National Electricity Rules  | has the meaning given to that term by the National Electricity Law. |
| Network Service Charges | 1. the Network Tariff;
2. the Metering Charges; and
3. any Additional Charges.
 |
| Network Tariff  | the tariff charged by the Distributor to the Retailer for the distribution of electricity to Customers using the Barangaroo Network System which includes an amount on account of external distribution and transmission services charges associated with the Customers’ electricity consumption. |
| NMI  | “National Metering Identifier” as described in clause 7.3.1(d) of the National Electricity Rules. |
| NMI Standing Data | has the meaning given to that term in the National Electricity Rules. |
| Parent Connection Point | the connection point(s) between the Barangaroo Network System and the distribution system of Ausgrid. |
| Regulatory Authority  | any government or regulatory department (including the AER and AEMO), body, instrumentality, minister, agency or other authority. |
| Representative | in relation to a person, means any employee, agent, trustee, permitted assignee, liquidator, administrator or third party contractor. |
| Retail Contract  | a contract (whether written, oral, deemed or otherwise) between the Retailer and a Customer for the provision by the Retailer to the Customer of any one or more of:1. the sale of electricity; and
2. procuring Supply.
 |
| Retail Licence  | a licence or authorisation required to be held by the Retailer in order to lawfully sell electricity to Customers. |
| Retailer of Last Resort | the retailer nominated by the AER as the Retailer of Last Resort (RoLR) for customers connected to the distribution system of Ausgrid. |
| Supply  | the delivery of electricity. |
| System Operator  | has the meaning given to that term in the National Electricity Rules. |
| Trust | the Lend Lease Embedded Network (Barangaroo South) Trust constituted by a deed entered into by the Distributor (as trustee) dated 14 May 2015. |
| UoS Services  | means:1. the transportation and delivery of electricity through the Barangaroo Network System;
2. Metering Services at Barangaroo South; and
3. any other services which the Distributor charges for in its Network Tariff.
 |

## Interpretation

In this agreement:

### Headings and bold type are for convenience only and do not affect the interpretation of this agreement.

### The singular includes the plural and the plural includes the singular.

### Words of any gender include all genders.

### Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.

### An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.

### A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.

### A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re enactments of any of them.

### A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.

### A reference to a party to a document includes that party’s successors and permitted assignees.

### A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.

### (No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.

### reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:

##### which ceases to exist; or

##### whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

## Interpretation of inclusive expressions

Specifying anything in this agreement after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included.

## Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## Agreement components

This agreement includes any schedule.

# UoS Services

## Provision of UoS Services

### The Distributor will provide to the Retailer in relation to each Customer the UoS Services in accordance with:

#### Good Electricity Industry Practice; and

#### the terms and conditions of this agreement.

### In respect of each Customer, this agreement applies:

#### from and including the date the Retailer requests (or is deemed under clause 2.2 to have requested) the provision of the UoS Services in respect of the Customer (or any later date nominated by the Retailer in any such request); and

#### subject to clause 11, until and including the earlier of the dates described in clause 2.3(a) or 2.3(b) in relation to that Customer, or, if clause 2.3(c) applies to the Customer, the date that the Customer is no longer entitled to be reconnected by a Retailer under the Electricity Law.

## Deemed request for UoS Services

### The Retailer shall be deemed to have requested the Distributor to provide UoS Services in respect of a Customer in relation to a Child Connection Point which is connected to the Barangaroo Network System.

## Cessation of provision of UoS Services

The Distributor shall cease to provide the UoS Services to the Retailer in respect of a Child Connection Point upon the first to occur of:

### the time at which AEMO transfers financial responsibility for the Customer’s NMI from the Retailer to another electricity retailer or to the Customer directly;

### the time agreed between the Retailer and the Distributor on which the Customer ceases to, or ceases to be entitled to, receive Supply in respect of that Child Connection Point, which may or may not include Disconnection; or

### the time at which the Distributor Disconnects the Customer in response to the Customer’s request or otherwise in accordance with this agreement or the Electricity Law.

## Charges subsequent to cessation of UoS Services to a Customer

Following the cessation of UoS Services to the Retailer in respect of a Customer, no further Network Service Charges will be payable by the Retailer to the Distributor in respect of that Customer under this agreement. Nothing in this clause 2.4 affects the enforcement of any right or claim which arises on, or has arisen before, the cessation of UoS Services to the Retailer in respect of a Customer

## Refusal to supply under Electricity Law

Nothing in this agreement requires the Distributor to supply or deliver electricity to or in respect of a Customer in circumstances where the Electricity Law requires or permits the Distributor to refuse to supply or deliver electricity.

## Suspension for Retailer of Last Resort

The obligations of the Distributor under this agreement are suspended for so long as a person other than the Retailer is acting as the Retailer of Last Resort in respect of the Retailer under the Electricity Law.

# Connection

### If the Retailer receives a request for Connection from a Customer, the Retailer must submit to the Distributor through the FRMP for a Parent Connection Point a Connection Request in respect of the Customer without delay and in accordance with any electricity industry standards, but no later than the next Business Day following receipt of the Customer’s request for Connection.

### The Retailer will provide through the FRMP for a parent Connection Point to the Distributor any information reasonably required by the Distributor for the purposes of effecting the Connection of Supply to a Child Connection Point. Without limiting the information required from a Retailer under this clause 3(b), such information will include the information described in clause 8.4(a) and any information which the Distributor is entitled to or required to receive for the purposes of Connection under the Electricity Law.

### This clause 3 does not apply to reconnection following Disconnection.

# Disconnection and Interruption of Customer

## Interpretation

In this clause **Supply Point** means:

### in respect of a Customer who occupies one or more of a number of premises which are connected to one Child Connection Point, the Electrical Installation at the boundary of each of the premises occupied by the Customer; and

### in any other case, the meaning given to the term “Child Connection Point” in clause 1.1.

## Disconnection and Interruption

The Retailer acknowledges that in addition to the Distributor’s rights under clauses 4.3 and 4.4, the Distributor may:

### Disconnect; or

### Interrupt Supply to,

a Customer’s Supply Point in accordance with the Electricity Law.

## Disconnection at the request of the Retailer

### The Retailer may request through the FRMP for a Parent Connection Point, in a Disconnection Request, the Distributor to Disconnect a Customer’s Supply Point.

### Subject to the Electricity Law and this clause, if the Retailer provides a Disconnection Request to the Distributor, the Distributor will Disconnect the Customer’s Supply Points specified in the Disconnection Request on the later of:

#### the time specified in the Disconnection Request; and

#### the soonest practicable time, which must be no more than 2 Business Days from the date of receipt by the Distributor of the Disconnection Request.

If a Disconnection Request is received by the Distributor after 3 pm on any day, it will be deemed to have been received on the next Business Day.

### The Distributor may refuse to Disconnect a Customer’s Supply Point where the Distributor reasonably considers that:

#### such Disconnection would be detrimental to the health or safety of any person (including the Customer); or

#### where the Retailer has issued a Disconnection Request after non-payment, and the Retailer has failed within 5 Business Days of the issue of the Disconnection Request to provide an Assurance Notice to the Distributor transmitted electronically in respect of that Customer.

In the case of clause 4.3(c)(1), the Distributor will use reasonable endeavours to remove or mitigate the risk of detriment. In each case under clause 4.3(c), the Distributor must notify the Retailer of the reasons for its refusal to Disconnect without delay.

### Where the Distributor refuses to Disconnect a Customer on any of the grounds set out in clause 4.3(c), the Retailer will continue to be liable for the Network Service Charges in respect of the use of the Barangaroo Network System by the Customer and the consumption of electricity by the Customer.

### By providing a Disconnection Request to the Distributor, the Retailer represents and warrants to the Distributor that the Retailer is entitled to make a request for Disconnection under its Retail Contract with the Customer and under any applicable Electricity Law, and it has complied with the procedures for Disconnection prescribed in that contract and any other procedures under the Electricity Law.

### The Retailer shall indemnify the Distributor against all Claims arising from, or incurred by the Distributor as a consequence of the cessation of Supply as a result of any Disconnection by the Distributor pursuant to a Disconnection Request, except to the extent that the Claim arises from the wilful or negligent act or omission of the Distributor or from any breach by the Distributor of this agreement or the Electricity Law.

## Disconnection at the request of a Customer

### If the Retailer receives from a Customer a request for Disconnection, the Retailer must pass on to the Distributor that request in a Disconnection Request as soon as reasonably practicable, in which case clause 4.3 will apply.

### If the Distributor receives from a Customer a request for Disconnection, the Distributor must pass on to the Retailer that request in a Disconnection Request as soon as reasonably practicable, in which case clause 4.3 will apply.

## Reconnection or restoration of Supply

### Subject to clause 4.5(b), the Distributor must reconnect and restore Supply to the affected Customer’s Supply Point:

#### when required to do so under the Electricity Law, following Disconnection or Interruption; and

#### when requested by the Retailer in a form reasonably required by the Distributor through the FRMP for a Parent Connection Point and consistent with any electricity industry practice, following Disconnection at the request of the Retailer, and such reconnection or restoration shall be carried out in accordance with the Electricity Law.

### The Distributor may refuse to reconnect or restore Supply to a Customer’s Supply Point where the Distributor is permitted by the Electricity Law to do so.

### The Retailer will provide to the Distributor any information reasonably required by the Distributor in connection with the reconnection or restoration of Supply to a Customer’s Supply Point. Such information will include any information which the Distributor is entitled to or required to receive for the purposes of reconnection or restoration of Supply under the Electricity Law.

# Fees, Billing and Payment

## Network Service Charges

### The Retailer shall pay the Distributor the Network Service Charges in respect of each Customer for the entire period after the Commencement Date during which the Customer is a customer of the Retailer and during which the Distributor provides UoS Services to the Retailer in respect of the Customer in accordance with this agreement.

### The Retailer acknowledges and agrees that the Distributor will be entitled to render an invoice to the Retailer for any Network Services Charges incurred by or on behalf of the Retailer where the Distributor has been unable to carry out or complete the UoS Services as a result of any act or omission of the Retailer or the Customer. Any such Network Service Charges will be invoiced and payable in accordance with this clause 5.

## Invoices

### Subject to clauses 5.2(b) the Distributor will use its reasonable endeavours to render invoices each month for UoS Services provided, on the same Business Day of each month (or such other invoicing period as agreed between the Distributor and the Retailer).

### The Distributor may render invoices at any time for UoS Services provided at any time while a person was a Customer (whether or not during the period described in clause 5.2(a)) if the UoS Services were obtained as a result of the Customer’s or the Retailer’s fraud or the use of electricity otherwise than in accordance with the Electricity Law.

### Invoices issued under clauses 5.2(a) or 5.2(b) shall be in a format determined by the Distributor and must be consistent with electricity industry practice and must contain sufficient information as is reasonable to allow the Retailer:

#### to assess the accuracy of the charges specified in each invoice; and

#### to comply with its obligation under the Electricity Law in relation to the provision to the Customer of information concerning such charges.

## Metering Data

### Subject to clauses 5.3(b) and 5.3(e), the Distributor must ensure that a Metering Provider uses reasonable endeavours to ensure that:

#### the Customer’s meter is as a minimum a Type 4 Meter Installation in accordance with Electricity Law;

#### the Meter Installation is able to share through a dedicated communication port on its measured and un-validated electricity consumption and demand data seamlessly with third party energy metering systems for the sole purposes of customer and building energy reporting requirements;

#### the Customer’s meter is read (or attempted to be read) in accordance with the frequency specified in Item 2 of the Attachment;

#### subject to any exemptions required to be given under the Electricity Law, the Customer’s meter is read at the time the Customer ceases to be a Customer of the Retailer;

#### any consent of the Customer to the provision of all Metering Data to the other party has been obtained; and

#### the Retailer receives a copy of all Metering Data in respect of each of the Customers in accordance with the Metrology Procedure, and any additional data in a form sufficient to enable the Distributor to invoice those of its Network Service Charges that require Metering Data.

### The Retailer acknowledges that the FRMP for the Parent Meter will provide all Metering Data in respect of each Child Connection Point to the Distributor for the purposes of calculating charges.

### Where, for the purposes of a Retail Contract, a Retailer wishes to read a meter at the end of a period other than in accordance with the frequency specified in Item 2 of the Attachment, the Network Service Charges may, with the agreement of the Distributor, be based on estimated meter readings or meters read at the end of the other period.

### Subject to clause 5.3(e) and clause 5.4, actual Metering Data in respect of a Child Connection Point shall be conclusive evidence of electricity supplied to a Customer and shall be the basis for determining Network Service Charges.

### Network Service Charges may be based upon estimated meter readings in accordance with the Electricity Law.

### Where the Metering Data becomes available subsequent to the issuing of a bill based on estimated meter readings in accordance with clause 5.3(b) or 5.3(e), the charge must be adjusted in accordance with clause 5.4.

### Estimated meter readings shall be determined by reference to the method set out in the Electricity Law and the Metrology Procedure or, if there is no such method, by reference to prior billing history or subsequent meter readings or any other method agreed between the parties.

### A party must promptly notify the other party if it becomes aware of or perceives any errors in Metering Data provided by the other party.

## Adjustment of Invoices

### Subject to clause 5.4(b), an incorrect charge in an invoice rendered under this agreement must be altered by the party rendering the invoice in a subsequent invoice to rectify the error. Causes of error may include:

#### meter tampering or bypass;

#### defective meters or defective meter readings;

#### errors in the billed electricity consumption of a Customer;

#### differences between estimated meter readings and Metering Data obtained after the invoice is issued; or

#### amounts imposed or adjusted by a Regulatory Authority.

### An adjusted invoice issued under clause 5.4(a) must include, or be accompanied by, an explanation of the reason why the adjusted invoice is being issued.

## Payment and interest

### Subject to clause 5.6, a party must pay the amount specified in each invoice rendered to it in accordance with this agreement to the other party within 20 Business Days after the day on which the invoice is received (or deemed to be received) by the first party.

### Payment shall be made by deposit into the nominated account of the party issuing the invoice, or in a manner otherwise agreed between the Retailer and the Distributor.

### If an invoice is not paid in full in accordance with this clause, the party who has failed to make the payment must pay interest on the outstanding amount (excluding any amount genuinely disputed in accordance with clause 5.6) from the day the invoice is received (or deemed to be received) until payment in full of the amount of the invoice plus all accrued interest. Interest will be calculated at the Default Rate applicable on the first day of the month in which the invoice was issued and will be capitalised on the first day of each following month and calculated on actual days elapsed and a 365 day year.

## Disputed invoices

### A party in receipt of an invoice (**Disputing Party**) must notify the party which issued the invoice (**Invoicing Party**) not less than 2 Business Days before the due date for payment of an invoice under clause 5.5(a) if it disputes its obligation under this agreement to pay all or part of that invoice (**Disputed Invoice**) and must include in that notice its grounds for disputing the Disputed Invoice and the amount disputed.

### Unless the Disputing Party gives notice to the Invoicing Party no later than 2 Business Days before the due date for payment under clause 5.5(a), the Disputing Party must pay the Disputed Invoice in full, subject to its right to seek a subsequent adjustment under clause 5.3 or to dispute the amount of the invoice under clause 5.6(d) after the invoice has been paid in full.

### If the Disputing Party notifies the Invoicing Party of a Disputed Invoice no later than 2 Business Days before the due date for payment of the Disputed Invoice under clause 5.6(a), the parties will seek to resolve that dispute in accordance with clause 5.6(d), and the Disputing Party will be required to pay the greater of the following amounts within the applicable period for payment of the relevant invoice under clause 5.6(a):

#### the amount of the invoice not genuinely disputed by the Disputing Party; or

#### 80% of the amount of the previous undisputed invoice from the Invoicing Party (or any other reasonable amount agreed by the parties).

For the purposes of this clause 5.6(c), where a dispute as to an invoice is resolved, the resolved amount will be deemed to be an undisputed invoice amount.

### Any dispute as to an invoice shall be resolved in accordance with this clause and neither party may refer the dispute to the dispute resolution procedure under clause 13 until the parties have satisfied obligations under clause 5.6(a), 5.6(d)(1) and, if applicable, 5.6(d)(2).

The Invoicing Party will:

#### discuss with the Disputing Party any queries that the Disputing Party may have in relation to an invoice; and

#### if it receives a reasonable request in writing from the Disputing Party within 20 Business Days after receipt of the invoice setting out the grounds giving rise to the request, conduct an internal review of the invoice within 10 Business Days after receipt of the request, and report its findings to the Disputing Party as soon as practicable after completion of that review.

If the matter is not resolved within 2 Business Days from the receipt by the Disputing Party of the Invoicing Party’s report under clause 5.6(d)(2), either party may refer it to dispute resolution under clause 13.

### If, following the resolution of a dispute in accordance with clause 5.6(d) or clause 13, it is determined that the amount that is properly due to the Invoicing Party in relation to that invoice is:

#### more than the amount already paid by the Disputing Party, then the Disputing Party must pay within 20 Business Days to the Invoicing Party the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the underpayment;

#### less than the amount already paid by the Disputing Party, then the Invoicing Party must pay within 20 Business Days to the Disputing Party the difference between the amount already paid and the amount determined to be payable, together with interest on that amount for the period of the overpayment.

### Interest on the difference payable under clause 5.6(d) shall be calculated at the Default Rate applicable on the first day of each month, capitalised on the first day of each month and calculated on actual days elapsed and a 365 day year for each day after that invoice was due to be paid up to and including the date the difference and any accrued interest payable under this clause 5.6(d) (if any) is paid.

### Unless the parties otherwise agree, no party may set off or deduct any money which it owes to the other party against any money which the other party owes to the first party.

### The payment by the Disputing Party of all or part of an invoice from the Invoicing Party (whether or not that invoice was disputed by the Disputing Party at the time) will not preclude the Disputing Party from subsequently challenging its liability to pay that invoice or a part of that invoice (unless the challenge relates to a dispute which has already been finally determined in accordance with this clause 5.6).

# GST

## Consideration GST exclusive

Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.

## Payment of GST

If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

### the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;

### if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and

### this clause 6.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

## Reimbursements

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

## Calculation of payments

If an amount payable under this agreement is to be calculated by reference to:

### the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and

### the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

## Interpretation

For the purposes of this clause 6:

### a term which has a defined meaning in the GST Act has the same meaning when used in this clause 6;

### “GST Act” means the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and

### each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

# Information Exchange

## Compliance with privacy laws

Each party agrees that:

### any obligation under this agreement to provide information is subject to any applicable laws (including the Electricity Law) imposing obligations in respect of privacy, disclosure, use or confidentiality of information; and

### it will hold any information which it receives under this agreement in accordance with any requirements of this agreement and any applicable laws (including the Electricity Law) relating to privacy, disclosure, use or confidentiality of information.

## Provision of information

To the extent permitted by law, and subject to any legislative, contractual or other obligations of confidentiality (including under the Electricity Law), each party must use its reasonable endeavours to provide the other party at no cost and in a timely manner any information or documentation which the other party reasonably requires to carry out its obligations under this agreement or under the Electricity Law including using the B2B Procedures.

## Use of information

Subject to clause 16, a recipient may only use or disclose the information disclosed to it under clause 7.2 for the purposes for which the information was provided by the party providing the information or to the extent that it is permitted to use or disclose the information under the law or any contractual obligation.

## Changes in information

If either party becomes aware of any change in any of the information provided under clause 7.2, that party must notify the other party as soon as reasonably practicable of that change.

## Accuracy of information

Each party must take all reasonable steps to ensure that all information which it provides to the other party (whether that information is generated by the first mentioned party or a third person) under this agreement (including this clause 7 and clause 8) is accurate and complete.

# Communications regarding Customers and System Data

## Answering Fault calls

### Subject to clause 8.1(c), 8.1(f) and 8.1(g), if a Customer contacts the Retailer by telephone about a Fault or an unplanned Interruption within Barangaroo South, the Retailer must:

#### transfer the Customer to the Distributor’s faults telephone number, where communication systems are technically capable of identifying the area from which the telephone call was made by the Customer upon transfer of the call; or

#### otherwise, refer the Customer to the Distributor’s faults telephone number.

### The Retailer must not handle, deal with or advise on a Customer’s enquiry regarding a Fault other than to the extent that it is permitted to provide information to the Customer in the circumstances described in clause 8.1(c).

### If the Retailer:

#### is informed by the Customer that the Customer has been unable to contact the Distributor through the Distributor’s faults telephone number;

#### believes on reasonable grounds that the Distributor’s fault telephone number is not properly functioning; or

#### is informed by the Customer that the Customer declines to contact or (where appropriate) be transferred to the Distributor,

then the Retailer may provide the Customer with the information regarding the Fault that has been provided to the Retailer by the Distributor in accordance with clause 8.2. The Retailer must not provide any other information regarding the Fault to the Customer.

### The Distributor will provide to the Retailer a contact telephone number which the Retailer must publish on its Customers’ accounts as the “fault number”. Until otherwise notified, the Distributor advises the Retailer for the purpose of this clause 8.1(d) that the fault number is as specified in item 4 of the Attachment.

### The Distributor will provide to the Retailer a contact telephone number for Emergencies. The Retailer must not call the emergency number or transfer a telephone call to the emergency number unless the Retailer reasonably considers that the subject of the call comprises an Emergency situation. The Retailer acknowledges that the emergency number is confidential information for the purposes of clause 16.

### If the Fault identified by the Customer relates to an Emergency, the Retailer must transfer the Customer to the telephone number provided by the Distributor to the Retailer for Emergencies.

### Nothing contained in this clause affects the particular arrangements between the Distributor, the Retailer and any Customer regarding notification of and dealing with Faults and Interruptions.

## Provision of information concerning Faults and unplanned Interruptions

### The Distributor must provide to the Retailer information regarding Faults, or unplanned Interruptions as soon as reasonably practicable.

### Any information described in clause 8.2(a) is not required to distinguish between Faults affecting Customers and Faults affecting customers of other retailers.

### The Retailer indemnifies the Distributor against any liability to a Customer arising as a result of the Retailer providing fault information to the Customer other than the information described in clause 8.2(a).

## Provision of information for Planned Interruptions and Disconnections

### The notification which the Distributor sends out to Customers notifying them of any planned Interruptions or Disconnections which are not the subject of a Disconnection Request in accordance with the Electricity Law must bear the Distributor’s contact details and should state that any enquiries regarding planned Interruptions or such Disconnections should be directed to the Distributor.

### The Distributor must make available to the Retailer information which the Distributor provides to a Customer under clause 8.3(a).

### If a Customer contacts the Retailer about a planned Interruption or a Disconnection requested or proposed by a Distributor, the Retailer must:

#### subject to 8.3(c)(2), refer the Customer to the Distributor; or

#### where the Customer informs the Retailer that it declines to contact or (where appropriate) be transferred to the Distributor, deal with the Customer itself.

### Any information referred to in clause 8.3(b) in respect of planned Interruptions must include information regarding specific premises where such information is readily available or otherwise must include at least information regarding the area in which the planned Interruption is to occur.

## Customer Details

### In respect of each Customer, the Retailer must provide to the Distributor the following details:

#### name;

#### contact name;

#### telephone number;

#### address for service of notices;

#### site address for NMI in accordance with market standing data needs;

#### NMI; and

#### details of any special circumstances or hazards (such as meter access restrictions) of which the Customer has informed the Retailer or of which the Retailer is otherwise aware, and which the Distributor requires to assist it to comply with its obligations under the Electricity Law.

### Information described in clause 8.4(a) must be provided in the following manner:

#### on or before the Commencement Date, by an electronic transfer of the requisite details from the Retailer’s database;

#### on a transaction by transaction basis as Customers are Connected or Disconnected or as the details described in clause 8.4(a) otherwise change; and

#### by monthly electronic transfers of the requisite details from the Retailer’s database (or at any other agreed intervals) for the purposes of the reconciliation of information provided under this clause 8.4.

## Ombudsman complaints

### If a party to this agreement (**First Party**) receives an Enquiry, Consultation, Complaint or Dispute or notice of an Enquiry, Consultation, Complaint or Dispute from the Electricity Industry Ombudsman (**Ombudsman**) and the Enquiry, Consultation, Complaint or Dispute relates to an act or omission of the other party to this agreement (**Second Party**):

#### the First Party must:

##### notify the Second Party as soon as reasonably practicable, setting out the details of the Enquiry, Consultation, Complaint or Dispute (as applicable), including any relevant time frames;

##### consult in advance with, and use its best endeavours to take into account the interest of, the Second Party in preparing any response to any Enquiry, Consultation, Complaint or Dispute (as applicable); and

##### keep the Second Party informed of the progress of the Enquiry, Consultation, Complaint or Dispute (as applicable); and

##### use its best endeavours to take account of the Second Party’s interests in deciding what compensation is payable or in incurring costs because of the Enquiry, Consultation, Complaint or Dispute (as applicable);

#### the Second Party must:

##### as soon as practicable after receipt of the notification under clause 8.5(a)(1)(A) and in any case within sufficient time to permit the First Party to comply with its obligations to the Ombudsman, supply the First Party all information relevant to the Enquiry, Consultation, Complaint or Dispute (as applicable) which the Second Party would reasonably be expected to have, or have access to, as a Retailer or Distributor (as applicable);

##### provide all reasonable assistance that the Second Party could provide having regard to the nature of the Enquiry, Consultation, Complaint or Dispute (as applicable); and

##### permit its employees, agents or sub-contractors to attend and provide information at any meeting, conference or interview convened by the Ombudsman to consider the case being investigated; and

#### both the First Party and the Second Party must use their best endeavours to resolve any Enquiry, Consultation, Complaint or Dispute (as applicable) as quickly as practicable in the circumstances provided, however, that neither the First Party nor the Second Party shall be prevented from defending any Enquiry, Consultation, Complaint or Dispute (as applicable).

### Prior to the First Party settling any Consultation, Complaint or Dispute relating to an act or omission of the other party, the First Party must provide not less than 5 Business Days advance written notification to the Second Party of the terms of the proposed settlement and must take into consideration any views expressed by the Second Party.

### If following an Enquiry, Consultation, Complaint or Dispute the First Party is required or agrees to compensate a person, then to the extent that such compensation relates directly to acts or omissions of the Second Party, the Second Party will, within 10 Business Days of receipt of notification from the First Party (which notification shall include a copy of the Ombudsman’s Binding Decision if applicable) reimburse the First Party for such part of the compensation required to be paid by the First Party as relates directly to the acts or omissions of the Second Party, including reasonable disbursements incurred by the First Party, including the Ombudsman’s case handling charges because of the Enquiry, Consultation, Complaint or Dispute.

### Subject to clause 8.7(b), nothing in this clause prevents the First Party from settling any Enquiry, Consultation, Complaint or Dispute.

### In this clause 8.5, the terms “**Enquiry**”, “**Consultation**”, “**Complaint**” and “**Dispute**” mean any enquiry, question, consultation, discussion, written or verbal expression of dissatisfaction, dispute or disagreement (as applicable) arising from a person in relation to the Customer, the Retailer or the Distributor which the Ombudsman receives, facilitates, investigates or resolves.

## Changes in Network Tariffs or Network Services

### If the Retailer requests a change in Network Tariffs applicable to a Customer, the Distributor must advise the Retailer within 10 Business Days after receiving notice of the request either:

#### that the change in Network Tariffs can occur, and when the change will occur; or

#### that the change in Network Tariffs cannot occur, with reasons.

### The Distributor must notify the Retailer of:

#### any proposed changes in the level of Network Tariffs;

#### any changes in the level of Network Tariffs; and

#### any changes in the level of a Network Service Charge other than a Network Tariff as soon as reasonably practicable after the Distributor becomes aware of that change.

### If the Distributor requests, the Retailer must notify each affected Customer of any change in the Network Tariff.

### The Retailer must notify the Distributor within 10 Business Days if it is informed by a Customer of a change in the use of the Customer’s premises which may result in the Customer no longer satisfying the conditions relating to the Distributor’s Network Tariff applying to that Customer.

### If a Customer requests a Retailer to re-assign the Customer to a different Network Tariff, the Retailer must refer the request to the Distributor within 2 Business Days after receiving the request.

### If a Customer requests a Distributor, or a Retailer refers a request from a Customer, to re-assign the Customer to a different Network Tariff, the Distributor may deal with the request or require the Retailer to deal with the request. If the Distributor deals with the request and the request is not immediately rejected or withdrawn, the Distributor must:

#### where the request was received directly from the Customer, notify the Retailer of the request as soon as practicable after receiving the request; and

#### notify the Retailer of the outcome of the request at the same time that the Customer is notified.

If the Retailer is required to deal with the request, the Distributor must use its reasonable endeavours to assist the Retailer to resolve an outcome for the request and the Retailer must notify the Distributor of the outcome of the request at the same time as the Customer is notified.

## Theft of electricity

A party must promptly notify the other party if it reasonably believes that a person is committing or has committed theft of electricity from the Barangaroo Network System and the other party may be affected by the theft.

# Force Majeure

## Suspension of Obligations

If a party is unable wholly or in part to perform on time as required any obligation under this agreement (other than an obligation to pay money) by reason of the occurrence of a Force Majeure Event, that obligation shall be suspended, without liability, so far as the party’s ability to perform is affected by the Force Majeure Event.

## Mitigation of Force Majeure Event

A party affected by a Force Majeure Event shall use its best endeavours to remove the effect of each Force Majeure Event affecting its performance of this agreement, but nothing in this clause 9.2 requires it to settle any industrial dispute otherwise than as that party in its absolute discretion sees fit.

## Notice

Subject to clause 9.2, if a party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in a Force Majeure Event, it shall as soon as reasonably practicable thereafter give to the other party notice containing full particulars of the Force Majeure Event including its nature and likely duration, the obligations affected by it and the nature and extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.

# Enforcement of Distributor’s Rights Against Customers

## Restriction on Distributor’s enforcement rights

Subject to clauses 10.2(a) and 10.2(c), the Distributor is not entitled to enforce its rights directly against the Customer (whether under the Electricity Law or otherwise) without notifying or consulting with the Retailer.

## Consultation prior to Disconnection

### Prior to the Distributor Disconnecting a Child Connection Point (other than pursuant to a Disconnection Request), the Distributor and the Retailer must use reasonable endeavours to agree:

#### the procedure to be followed in effecting the Disconnection; and

#### the manner in which the costs incurred in taking the action will be allocated between the parties, subject to the Distributor’s and Retailer’s obligations under the Electricity Law.

### If the Distributor and the Retailer fail to agree a procedure or cost allocation under clause 10.2(a) within 3 Business Days of the Distributor first advising the Retailer of its desire to Disconnect the Child Connection Point, the Distributor may effect the Disconnection and otherwise enforce its rights against the Customer.

### Notwithstanding clauses 10.2(a) and 10.2(b), the Distributor may take action to Disconnect a Child Connection Point without notifying or consulting with the Retailer where the Disconnection is due to an Emergency.

# Term and Termination

## Term

This agreement commences on the Commencement Date and continues until terminated under this clause 11, or as otherwise agreed by the parties.

## Termination for default or insolvency of Retailer

### Where:

#### the Retailer defaults in due and punctual payment of any money at the time and in the manner prescribed under this agreement;

#### the Retailer defaults in the performance of any of its other promises or obligations under this agreement;

#### there is an Insolvency Event in relation to the Retailer,

then the Retailer is in default and the Distributor may give written notice of the default to the Retailer stating:

#### that the Distributor considers that the Retailer is in default; and

#### the cause of the default.

### If the Retailer does not remedy the default specified in the notice given under clause 11.2(a) within the following times:

#### in the case of a default described in clause 11.2(a)(1) or clause 11.2(a)(3), 5 Business Days; and

#### in the case of any other default described in clause 11.2(a), 15 Business Days,

then the Distributor may terminate this agreement with effect from the date specified in the notice.

## Termination where no Customers

If at any time there is no Customer in respect of whom the Retailer requires UoS Services under this agreement, the Retailer may, by notice to the Distributor, terminate this agreement.

## Consequences of Termination

Upon termination or expiration of this agreement, or replacement of this agreement with an agreement having similar effect, this agreement, other than clauses 5.4, 11.6, 11.7, 12, 13, 16, 17 and 18, is at an end as to its future operation except for the enforcement of any right or claim which arises on, or has arisen before, termination.

## Remedies for Default

Subject to clause 11.7, without limiting any other rights of the parties under this agreement or otherwise at law, if a party has defaulted on the performance of an obligation to pay any amount to the other party under this agreement, the non- defaulting party may:

### set off, apply or draw on any accrued interest for the amount then due and payable by the defaulting party to the non-defaulting party; or

### sue the defaulting party for compensation for that default and exercise all available legal and equitable remedies including without limitation, suing for specific performance, injunctive relief or such other orders as it deems appropriate.

## Preservation of rights

Nothing in this clause 11 will operate to exclude, limit or otherwise affect the parties’ rights, remedies or powers under statute, common law or in equity and the parties’ rights under this clause 11 to terminate this agreement will be without prejudice to the parties’ rights to pursue relief by way of damages, injunction or specific performance in respect of a breach of this agreement. Without limiting the foregoing, each party shall be entitled to render an invoice to the other party for UoS Services provided and not invoiced up to and including the date of termination, and any such invoice will be payable in accordance with clause 5.

## Network Services after termination

Notwithstanding the termination of this agreement, the Distributor and the Retailer acknowledge that the Distributor may continue to provide UoS Services to the Retailer in respect of any Customer of the Retailer until the first to occur of the events specified in clause 2.3. In respect of any such UoS Services provided after termination of this agreement, all provisions of this agreement which relate to the provision of Network Services shall continue to apply.

# Limitation of liability

## Limitation of liability

The Retailer agrees that the Distributor will not be liable for any Loss suffered or sustained by the Retailer or a Customer arising from the failure by the Distributor to provide UoS Services in accordance with this agreement.

## Terms implied by law

The *Competition & Consumer Act 2010 (Cth)* and other Laws imply certain conditions, warranties and rights into contracts that cannot be excluded or limited. Unless one of these Laws requires it, the Distributor gives no condition, warranty or undertaking, and the Distributor makes no representation to the Retailer about the condition or suitability of the UoS Services other than as expressly set out in this agreement. Any liability the Distributor has to the Retailer or a Customer under the Laws that cannot be excluded but can be limited is (at the Distributor’s option) limited to:

### providing equivalent goods or services provided under this agreement; or

### paying the Retailer the cost of replacing the goods or services provided under this agreement, or acquiring equivalent goods or services.

## Third Party Claims and Demands

### A party (the **Indemnified Party**) must:

#### notify the other party (the **Responsible Party**) of any third party Claim, for which it may be indemnified under this clause 12;

#### permit the Responsible Party (entirely at the Responsible Party’s expense) to defend or settle that third party Claim as the Responsible Party sees fit, or where the Responsible Party does not elect to defend or settle that third party Claim, to have a watching brief and be kept fully informed by the Indemnified Party of the progress of that third party Claim; and

#### provide the Responsible Party (at the Responsible Party’s expense) with such assistance in respect of the third party Claim as the Responsible Party may reasonably request.

### If the Responsible Party elects to take over conduct of a third party Claim as contemplated in clause 12.3(a) the Responsible Party must:

#### consult with and where reasonably possible, take account of the views of the Indemnified Party in relation to the progress of the third party Claim; and

#### if it becomes aware that the Indemnified Party may have some liability in respect of that third party Claim for which the Indemnified Party will not be indemnified under this clause 12, notify the Indemnified Party of that fact, consult with and keep the Indemnified Party informed in respect of the progress of that third party Claim and comply with the provisions of clause 12.3 as if references in that clause to the Indemnified Party were to the Responsible Party, and vice versa.

### If the Responsible Party elects not to take over the conduct of a third party Claim as contemplated in clause 12.3(a) the Responsible Party must indemnify the Indemnified Party against all costs (including reasonable legal costs) incurred by the Indemnified Party in defending the third party Claim, to the extent that those costs are not recovered from any other person.

## No Admissions

Except where required by law to do so, the Indemnified Party must not, in relation to any Claim of the type referred to in clause 12:

### make any admission or representation prejudicial to the Responsible Party;

### agree to any compromise or settlement; and

### do anything else that may be prejudicial to the Responsible Party, without the Responsible Party’s written consent.

# Dispute Resolution

## Disputes

Subject to clause 5.6, any dispute or difference arising between the parties out of or in connection with this agreement must be resolved in accordance with this clause 13.

## Notice of Dispute

Should any dispute or difference arise between the parties out of or in connection with this agreement, either party may give written notice of the dispute or difference to the other party. The notice shall state that it is a notice under this clause 13 and shall identify the dispute concerned and the clauses of this agreement relevant to the dispute.

## Referral to Chief Executive Officers or nominees

### If the parties fail to resolve a dispute or difference within 10 Business Days of a notice of dispute being given under clause 13.2, the dispute or difference must be referred for resolution to the respective chief executive officers (or the chief executive officer’s nominee) of the parties whose decision shall be binding.

### Subject to clause 13.5, the parties waive their rights to commence court proceedings for resolution of the dispute prior to referral of the issue to the chief executive officers (or their nominees) under this clause. If the matter is not resolved within 5 Business Days of such referral either party may then take further action in accordance with clause 13.4.

## Mediation

### The parties must comply with clauses 13.2 and 13.3 as a pre-condition to submitting a dispute to mediation in accordance with this clause 13.4.

### If a dispute is not resolved by the chief executive officer (or nominees, as applicable) of the parties as contemplated in clause 13.3 within 5 Business Days of it being referred to those persons, either party may submit the dispute to mediation in accordance with and subject to the Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes by giving notice in writing to the other party, that the dispute remains unresolved and will be submitted to mediation.

### The Distributor and the Retailer will bear their own costs in respect of the mediation.

### If a dispute has been submitted to mediation in accordance with this clause 13, subject to clause 13.5, the parties waive their rights to commence court or arbitration proceedings for resolution of the dispute until completion of the mediation.

### Once a party submits a dispute to mediation, the other party must participate in the mediation.

## Summary or Urgent Relief and other exclusions

### Nothing in clause 13 shall prejudice the right of a party to seek urgent injunctive or declaratory relief in a court in respect of any matter arising under this agreement.

### To the extent that clause 8.2 of the National Electricity Rules applies to a dispute under this agreement the parties agree to apply the dispute resolution procedures set out in clause 8.2 of the National Electricity Rules to that dispute.

## Customer Disputes

### If any Customer brings any legal proceedings in any court against any party to this agreement (the **Defendant Party**) and the Defendant Party wishes to make a third party claim (as defined in clause 13.6(b)) against the other party to this agreement, then the parties agree that the third party claim can be dealt with in the legal proceedings brought by the Customer rather than being dealt with under clause 13.4.

### For the purposes of clause 13.6(a), **third party claim** shall mean:

#### any claim by a Defendant Party against the other party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or

#### any claim by a Defendant Party against the other party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the Customer; or

#### any requirement by a Defendant Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the Customer and the Defendant Party but also as between either or both of them and the other party (whether or not already a party to the legal proceedings).

## Obligations Continuing

Notwithstanding a reference of a dispute to the dispute resolution procedure in this clause 13:

### the parties shall, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this agreement to the extent that such obligations are not the subject of that dispute; and

### the parties are not precluded by this clause 13 from exercising their rights of termination in accordance with clause 11.

# Representations and Warranties

## Retailer’s representations and warranties

The Retailer represents and warrants to the Distributor that it holds and will continue to hold a Retail Licence for the duration of this agreement.

## Distributor’s representations and warranties

The Distributor represents and warrants to the Retailer that it can operate the Barangaroo Network System for the duration of this agreement.

## Other representations and warranties

Each party to this agreement represents and warrants that:

### it is incorporated or established and validly existing;

### it has full power, authority and legal right to execute, deliver and perform its obligations under this agreement; and

### that execution of and performance of that party’s obligations under this agreement will not amount to a breach of any contractual or other obligation owed by that party to a third party.

## No reliance

Except as otherwise provided in clauses 5.3(f) and 14, each party to this agreement acknowledges that in entering into this agreement it has not relied on any representations or warranties about its subject matter.

# Notices

## Method of Giving Notices

Unless otherwise agreed by the parties, a notice, consent, approval or other communication (each a **Notice**) under this agreement shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

### delivered;

### sent by pre-paid mail; or

### transmitted electronically, to that person’s address, as specified in Item 4 of the Attachment.

## Time of receipt of notice

A Notice given to a person in accordance with this clause is treated as having been given and received:

### if delivered to a person’s address, on the day of delivery if prior to 5.00 pm on a Business Day, otherwise on the next Business Day;

### if sent by pre-paid mail, on the third Business Day after posting;

### if transmitted by facsimile and a correct and complete transmission report is received, on the day of transmission if the transmission report states that the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day; or

### if transmitted electronically, on the day of transmission if the information technology system of the person giving the notice states that the transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day.

## Time of receipt of Invoices

An invoice payable under clause 5 is deemed to have been received when a summary statement of the invoice is delivered as if it were a Notice. The date of deemed receipt of an invoice will be extended by each day that the supporting documentation relating to the invoice is delivered after delivery of the invoice summary statement.

## Confirmation of electronic delivery

Without prejudice to the effectiveness of service of a notice transmitted electronically, if a notice is given electronically the notice must also be sent simultaneously by any one of the means listed in clauses 15.1(a) to 15.1(b) (inclusive).

# Confidentiality

## General obligation

Subject to clauses 7, 16.3 and 16.4, and any confidentiality requirement under the Electricity Law, this agreement and all information exchanged between the parties under this agreement or during the negotiations preceding the Commencement Date is confidential to the party who provided it and may not be disclosed to any person except:

### by a party, to:

#### its employees and contractors, and the employees and contractors of any of its related bodies corporate, within the meaning of the Corporations Act, requiring the information for the purposes of this agreement (or any transactions contemplated by it); and

#### its legal and other professional advisers, requiring the information for the purposes of this agreement (or any transactions contemplated by it) or for the purpose of advising that party in relation thereto;

#### CCWP in accordance with clause 5.3(b);

### with the consent of the party who provided the information;

### if the information is at the time lawfully in the possession of the proposed recipient of the information through sources other than the other party;

### to the extent required by:

###

### hidden

####

#### law or by a lawful requirement of any Regulatory Authority having jurisdiction over a party (whether pursuant to a licence held by that party or otherwise); or

#### a lawful requirement of any stock exchange having jurisdiction over a party;

### if required in connection with legal proceedings or other dispute resolution relating to this agreement or for the purpose of advising a party in relation thereto;

### if the information is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information or a person to whom it has disclosed the information;

### if the information relates to a Customer, in addition to the circumstances described in paragraphs (a) to (f) of this clause 16.1, the party may disclose that information to any person if the party has received the explicit informed consent in writing of the Customer to do so;

### if disclosure is necessary to ensure the stability of the Barangaroo Network System or to protect the safety of personnel or equipment;

### pursuant to, and in accordance with, clauses 7 and 8; or

### to confirm the existence of a use of system agreement between the parties.

For the purposes of this agreement, information is not generally and publicly available merely because it is known to the AER, the System Operator, another network service provider, a generator or another retailer.

## Representatives to keep information confidential

Subject to clauses 16.3 and 16.4, each party shall procure that its employees and contractors, and the employees and contractors of any of its related bodies corporate, its legal and other professional advisers do not disclose (otherwise than to the party) any information concerning the other party or a Customer obtained under this agreement except in the circumstances specified in clause 16.1, or use the information other than for the purpose for which it was disclosed in accordance with this agreement.

## Conditions on disclosure

### In the case of a disclosure under clause 16.1(d) or 16.1(e), the party proposing to make the disclosure shall inform the proposed recipient of the confidentiality of the information and the party proposing to disclose shall take all reasonable precautions to ensure that the proposed recipient keeps the information confidential.

### If a party is permitted to disclose any confidential information in accordance with this clause 16, the party proposing to disclose shall use reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

## Notice to other Party

Each party, shall:

### promptly inform the other party of any request received by that party from any person referred to in clause 16.1(a)(1) to disclose information under that clause;

### inform the other party as soon as reasonably practicable after information is disclosed by the party under clause 16.1(a)(1); and

### where possible, not disclose any information under clause 16.1(d)(2) or 16.1(e) unless the other party has been informed of the proposed disclosure.

# Compliance with Electricity Law

## Electricity Law to take precedence

In the event of any inconsistency between:

### a party’s obligations or rights under the Electricity Law; and

### its obligations or rights under this agreement,

its obligations and rights under the Electricity Law shall take precedence to the extent of the inconsistency.

## Parties must comply with Electricity Law

Notwithstanding any other provision of this agreement, each party will comply with the obligations imposed on that party by the Electricity Law.

## Parties must co-operate

Each party will:

### give to the other party all reasonable assistance; and

### co-operate with the other party,

so as to allow that other party to comply with any obligations imposed upon that other party under the Electricity Law or this agreement.

## Preservation of rights

Nothing in this agreement will limit any right either party may have under the Electricity Law unless the Electricity Law permits that right to be limited by agreement, and this agreement directly or indirectly limits that right.

## Waiver of Compliance

### Notwithstanding clauses 17.1 to 17.4 (inclusive), if:

#### a party has been excused from strict compliance with any aspect of the Electricity Law; or

#### the application of the Electricity Law to a party has been varied by express written consent from the Regulatory Authority responsible for enforcing that aspect of the Electricity Law,

the relevant party will not be obliged under this agreement to comply with that aspect of the Electricity Law to the extent excused or to the extent of the consent.

### A party who has received a written consent described in clause 17.5(a)(2) must provide to the other party a copy of any such consent if that consent is likely to affect the performance of any of the Services for that other party.

## Regulatory Relief

For the purposes of this agreement, a party shall not have breached the terms of the Electricity Law if it has acted:

### under the direction of a relevant Regulatory Authority; or

### in accordance with the terms of any relief from compliance granted in writing by a relevant Regulatory Authority.

## Change in Law

If there is a change in the Electricity Law that, in the reasonable opinion of the Distributor, creates an opportunity for the Distributor to better coordinate or conduct any aspect of the UoS Services within the Barangaroo Network System by, for example, registering as a NEM participant, obtaining direct access to the Market Settlement and Transfer Solution procedures or appointing a nominee or contractor to either role, then following its receipt of notice from the Distributor the Retailer must take all reasonable steps to facilitate any such registration or appointment and must negotiate in good faith such changes to this agreement as may be reasonably necessary to facilitate the Distributor having the benefit of the change in the Electricity Law.

# Trustee limitation of liability

### The Distributor enters into this agreement only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this agreement is limited to and can be enforced against the Distributor only to the extent to which it can be satisfied out of the assets of the Trust out of which the Distributor is actually indemnified for the liability. Subject to clause 18(c), this limitation of the Distributor’s liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the Distributor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.

### The Retailer shall not:

#### sue the Distributor personally or in any capacity other than as trustee of the Trust;

#### seek to appoint or take any steps to procure or support the appointment of a receiver (except in relation to the assets of the Trust), a liquidator, an administrator or any similar person to the Distributor or prove in any liquidation, administration or arrangement of or affecting the Distributor (except in relation to assets of the Trust); or

#### enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this agreement against any property of the Distributor other than property held by the Distributor as trustee of the Trust.

### The provisions of this clause 18 do not apply to any obligation or liability of the Distributor to the extent that it is not satisfied because under the trust deed of the Trust or by operation of law there is a reduction in the extent of the Distributor’s indemnification out of the assets of the Trust, as a result of the Distributor’s failure to properly perform its duties as trustee of the Trust or as a result of the Distributor's fraud, negligence or breach of trust.

# Law and Jurisdiction

## Governing Law

This agreement is governed by the law in force in the State of New South Wales.

## Submission to Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this agreement.

# General

## Waiver

### The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.

### A power or right may only be waived in writing, signed by the party to be bound by the waiver.

## Amendment

This agreement may only be amended or supplemented in writing, executed by the parties in the same manner as the parties executed this agreement.

## Attorneys

Each attorney who executes this agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this agreement.

## Severability

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

## Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

## Further Assurance

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this agreement and the rights and obligations of the parties under it.

## Entire Agreement

This agreement is the entire agreement of the parties on the subject matter of this agreement.

## Assignment

### Subject to clause 20.8(b) neither party may assign any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

### The Distributor may assign its rights, and transfer its obligations, under this agreement to a person who is the owner and/or operator of the Barangaroo Network System.

## Remedies Cumulative

The rights and remedies provided in this agreement do not exclude any rights or remedies provided by law.

## Review of Agreement

The parties acknowledge that the Electricity Law to which this agreement is subject may be the subject of ongoing changes and that those changes may in turn require amendments to be made to this agreement. The parties agree to negotiate in good faith any amendments to this agreement that may be reasonably required as a consequence of any changes to the Electricity Law or in light of commercial experience.

## No Agency or partnership

Nothing in this agreement constitutes any agency, partnership or joint venture relationship between the parties.

## Restriction on Authority

Neither party shall make or give any representation or warranty in relation to the other party or agree to any obligation on behalf of the other party, unless the representation, warranty or obligation has been expressly approved in advance in writing by the other party.

## Costs

### Each party will bear its own legal and other costs in relation to the negotiation and documentation of their agreement.

### Each party will bear half of any stamp duty payable in respect of this agreement.

## Attachment and Schedules

The Attachment and Schedules form part of this agreement and in the event of inconsistency, the Attachment and Schedules will prevail over the other terms of this agreement.

 Signing page

Executed as an agreement

|  |  |
| --- | --- |
|  | Distributor |
|  | Signed forLend Lease Embedded Network (Barangaroo South) Pty Ltd as trustee of the Lend Lease Embedded Network (Barangaroo South) Trustby their attorney |
| sign here ► |  |  |
|  | Attorney |  |
| print name |  |  |
|  | in the presence of |  |
| sign here ► |  |  |
|  | Witness |  |
| print name |  |  |
|  |

|  |  |
| --- | --- |
|  | Retailer |
|  | Signed for[•]by its duly authorised officer |
| sign here ► |  |  |
|  | Authorised Officer |  |
| print name |  |  |
|  | in the presence of |  |
| sign here ► |  |  |
|  | Witness |  |
| print name |  |  |
|  |

Attachment 1

|  |  |
| --- | --- |
| **Item 1: Date of Agreement** |  |
| **Item 2: Frequency of meter reads****(Clause 5.4)** | For all Child Connection Points connected to the Barangaroo Network System as at the Commencement Date, [#].For all new Customers, once every month or as otherwise reasonably determined by the Distributor. |
| **Item 3: Addresses for Notices (clause 15.1)** | **Set out in the tables below.** |
| **Item 4: Distributor’s faults telephone number** | [ ] |

|  |  |
| --- | --- |
| Distributor |  |
| Address |  |
| Attention |  |
| Phone |  |
|  |  |
| Email |  |

|  |  |
| --- | --- |
| Retailer |  |
| Address |  |
| Attention |  |
| Phone |  |
|  |  |
| Email |  |