

ASX Announcement

1 November 2021

AusNet enters into Scheme Implementation Deed with Brookfield

Highlights

- AusNet has agreed the terms of a binding proposal and has entered into a Scheme Implementation Deed (**SID**), under which Brookfield is to acquire all the shares in AusNet for cash consideration by means of a scheme of arrangement (the **Scheme**). Brookfield is leading a consortium which includes co-investors Sunsuper Superannuation Fund, an Australian multi-industry superannuation fund (**Sunsuper**), Alberta Investment Management Corporation, an institutional investment manager for pension, endowment and government funds in the Province of Alberta Canada (**AIMCo**), the Investment Management Corporation of Ontario, an investment manager overseeing assets on behalf of public sector institutions in Ontario (**IMCO**) and Healthcare of Ontario Pension Plan, a defined benefit pension plan for Ontario healthcare workers (**HOOPP**).
- The Scheme values AusNet at an equity value of \$10.2 billion and an enterprise value of \$17.8 billion.
- If the Scheme is implemented, AusNet shareholders¹ will receive total value of \$2.65 cash per share², plus additional consideration if the Scheme has not been implemented before 31 March 2022.
- \$2.65 cash per AusNet share represents a 34% premium to the undisturbed AusNet share price of \$1.98 as at 17 September 2021.
- The AusNet Board of directors unanimously recommends that shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding in its report (and continuing to conclude) that the Scheme is in the best interests of AusNet shareholders.
- The Scheme is subject to various conditions including approval by AusNet shareholders at a scheme meeting which is proposed to be held before the end of March 2022.
- If the Scheme is implemented after 31 March 2022, AusNet shareholders will be entitled to additional consideration from Brookfield of \$0.000260274 per share for each day after 31 March 2022 that has elapsed by the date of implementation.
- Singapore Power (which currently owns 32.74% of the AusNet shares) has informed AusNet that it supports the Scheme and intends to vote in favour of it, subject to: the SID not being terminated, there not being a superior proposal, an independent expert concluding that the Scheme is in the best interests of AusNet shareholders (and not changing that conclusion)

¹ Subject to being on the AusNet register on the relevant record date.

² The Scheme consideration is \$2.65 per share, which will be reduced by the amount of any interim and final dividends for FY22.

and the Scheme being implemented by 30 June 2022. All else being equal, Singapore Power has expressed a preference for all cash consideration.

- The SID contains a customary term that AusNet is required to cease discussions with other parties. AusNet has therefore terminated APA's due diligence access. The Scheme consideration of \$2.65 cash per AusNet share is clearly superior to the current notional value of APA's cash and scrip proposal of \$2.54 (based on APA's closing price on 29 October 2021). However, APA is free to make a superior proposal and the SID has a customary fiduciary out which allows the AusNet Board to consider that further proposal.

Background

On 20 September 2021, AusNet announced that it had received an unsolicited, indicative, non-binding and conditional proposal from Brookfield to acquire, by way of scheme of arrangement, all of the issued shares in AusNet at an indicative price of \$2.50 cash per share (the **Brookfield Indicative Proposal**).

The Brookfield Indicative Proposal followed the receipt of an unsolicited, indicative, non-binding and conditional proposal from Brookfield on 30 August 2021 at an indicative price of \$2.35 cash per share (the **Brookfield Initial Proposal**) and a subsequent revised proposal at an indicative price of \$2.45 cash per share.

At that time, the AusNet Board considered that it was in the best interests of AusNet to engage further with Brookfield to seek to convert the Brookfield Indicative Proposal of \$2.50 cash per share into a binding proposal, and agreed to provide Brookfield with the opportunity to conduct due diligence on an exclusive basis on 20 September 2021, as it was a key condition of its willingness to proceed.

On 21 September 2021, AusNet received an unsolicited, indicative, non-binding and conditional proposal from APA to acquire all of the issued shares of AusNet (the **APA Indicative Proposal**) at an indicative price with a notional value of \$2.60 per share (at the time the proposal was made) by way of scheme of arrangement, with consideration in the form of cash and APA securities. The APA Indicative Proposal followed the receipt of a more complex unsolicited, indicative, non-binding and conditional proposal from APA on 1 September 2021 at an indicative price with a notional value of \$2.32 per share (at the time the proposal was made) by way of scheme of arrangement, with consideration in the form of cash and APA securities (the **APA Initial Proposal**).

Following the decision and final orders made by the Takeovers Panel (the **Panel**), AusNet granted APA due diligence on 23 October 2021 after entry into a Confidentiality Deed.

Rationale for the AusNet Board's decision to enter into a SID with Brookfield

The AusNet Board was not considering a sale of the company prior to receipt of the unsolicited, indicative, non-binding and conditional proposals from Brookfield and APA. It has sought to maximise the value created for shareholders at all times in responding to the unsolicited proposals that it has received.

Prior to the announcement of the Brookfield Indicative Proposal on 20 September 2021, the AusNet Board, taking advantage of the interest of two competing parties, received four indicative proposals (three from Brookfield and one from APA) ranging from a notional value of \$2.32 per AusNet share (from APA) to an indicative price of \$2.50 cash per share (from Brookfield). At that cash price per share, the AusNet Board was prepared to indicate its support and facilitate due diligence to Brookfield with a period of exclusivity, as it was a key condition of Brookfield's willingness to proceed. By indicating its willingness to support the Brookfield Indicative Proposal, the AusNet Board was signalling that the price was one capable of being recommended to shareholders (**Indicative Reserve**

Price). On 21 September 2021, the AusNet Board received a further indicative cash and scrip proposal from APA, notionally valued at \$2.60 per share (at the time the proposal was made).

These progressively increasing indicative proposals from Brookfield and APA are a clear indication that the AusNet Board has facilitated – and continues to facilitate -- a competitive process. Given that \$2.65 significantly exceeds the Indicative Reserve Price, the Board believes it has a responsibility to convert it into a binding offer while retaining the ability to consider superior proposals.

On 31 October 2021, AusNet received a binding offer from Brookfield (**Brookfield Binding Offer**) at \$2.65 per share which was subject to a condition that a SID be signed by 10pm the same day or the binding offer would expire. If the AusNet Board were to delay accepting the Brookfield Binding Offer, it would be subject to the very real risk that the Brookfield Binding Offer would expire and accordingly the APA Indicative Proposal would have been the sole proposal. The AusNet Board was also made aware that its major shareholder, Singapore Power, had a preference for cash consideration and was willing to support the Brookfield Binding Offer at the price and terms offered.

Based on AusNet's recent interactions with APA, APA had indicated that it was examining whether it could improve its indicative proposal as to value and the amount of cash offered. APA did not indicate that it would be able to offer a full cash alternative or the value level at which any improvement to its indicative proposal could be made. APA had been made aware that Brookfield might seek to make a revised proposal and were encouraged to have their best proposal in front of the AusNet Board at all times.

If APA wishes to make a further proposal, they are free to do so, as is any other party. The SID has a fiduciary out which allows the AusNet Board to consider that proposal and, if such proposal is or could reasonably be expected to become a superior proposal, the AusNet Board can engage with the party making the proposal.

However, in assessing whether a further cash and scrip proposal from APA is superior to the Scheme the AusNet Board will be required to take into account the potential volatility in the APA security price following any required equity fundraising or any large-scale sale of securities by shareholders such as Singapore Power who have a preference for cash consideration. These potential negative impacts may not be large but they are uncertain and would remain so until completion of a transaction.

AusNet will be required to pay Brookfield a break fee of \$101,674,267 (being 1% of the equity value of AusNet as implied by the Brookfield Binding Offer) if the AusNet Board ultimately recommends a competing, superior proposal. The AusNet Board has concluded agreeing to this break fee was appropriate to lock in a binding cash proposal from Brookfield at a price that the Board has concluded is significantly superior to APA's Indicative Proposal and represents value for AusNet shareholders.

Taking all these factors into account, the AusNet Board has concluded that it is appropriate to enter into a SID with Brookfield at \$2.65 cash per share while retaining the ability to respond to a superior proposal. Had the Board allowed the Brookfield Binding Offer at \$2.65 cash to lapse, it does not believe it would have been acting in the best interests of shareholders. Singapore Power's endorsement of the Scheme confirms that they support this decision.

Overview of the Scheme

Under the SID, it is proposed that Brookfield will acquire all of the shares in AusNet by way of the Scheme.

If the Scheme is implemented, Brookfield will pay each person who is recorded as an AusNet shareholder on the Scheme record date a cash amount of \$2.65 per share, less the total cash amounts of any dividend in respect of the half-year ending 30 September 2021 (up to a maximum of

\$0.0475 per share) and in respect of the full year ending 31 March 2022 (up to a maximum of \$0.0475 per share).

The total value to be paid to AusNet shareholders under the Scheme will be \$2.65 cash per share which represents:

- a \$0.30 per share increase to the \$2.35 indicative price offered under the Brookfield Initial Proposal (representing a 13% increase);
- a 34% premium to the undisturbed AusNet share price of \$1.98 as at 17 September 2021;
- a 36% premium to the 30 day volume weighted average price of AusNet shares prior to 17 September 2021 of \$1.95; and
- a 43% premium to the 90 day volume weighted average price of AusNet shares prior to 17 September 2021 of \$1.85.

Additional consideration in the event of delays

If the Scheme is implemented after 31 March 2022, AusNet shareholders will be entitled to additional cash consideration from Brookfield of \$0.000260274 for each day after 31 March 2022 that has elapsed by the date of implementation.

AusNet Board unanimously recommends the Scheme

The Board of Directors of AusNet unanimously recommends that shareholders vote in favour of the Scheme at the scheme meeting, in the absence of a superior proposal and subject to an independent expert concluding in its independent expert's report (and continuing to conclude) that the Scheme is in the best interests of AusNet shareholders. Subject to the same qualifications, each AusNet Board member intends to vote, or procure the voting of, the shares held or controlled by them in their personal capacity in favour of the Scheme.

AusNet is in the process of appointing an independent expert for the Scheme.

AusNet Chairman, Mr Peter Mason, said: "For the last several weeks the Board has been extremely focused on ensuring a competitive process. This has resulted in a binding proposal from Brookfield at a price that provides full value to all AusNet shareholders. The binding proposal, secured at a significant premium to where the share price was trading prior to the first of the six proposals being received, deserves to be put before our shareholders for their consideration.

The Board believes that the agreed Scheme value appropriately reflects AusNet's stable, growing and diversified portfolio of high quality regulated and contracted assets as well as the strong growth prospects that it is well positioned to pursue."

Major shareholder support

Singapore Power International Pte Ltd and SP eResources Pte Ltd (collectively, **SP Group**) (which currently owns 32.74% of the AusNet shares) has confirmed that it supports the Scheme and intends to vote in favour of the Scheme the AusNet shares that the SP Group holds or controls on the date to determine voting entitlements for the Scheme meeting, subject to:

- the SID not being terminated;
- there not being on or before the Scheme meeting date, any proposal in relation to AusNet or its assets which SP Group considers in its sole and absolute discretion to be a superior proposal to the Scheme;

- AusNet engaging an independent expert to prepare a report for inclusion in the explanatory materials for the Scheme to be sent to AusNet shareholders and that expert concluding to the effect that the Scheme is in the best interests of AusNet shareholders, and the independent expert not changing that conclusion at any time until and including the date of the Scheme meeting of AusNet shareholders; and
- the Scheme being implemented on or before 30 June 2022 or such later date as SP Group specifies from time to time.

All other things being equal, SP Group have confirmed their preference for all cash consideration for the AusNet shares held or controlled by SP Group.

Key details of the SID

A copy of the SID, which sets out the terms and conditions of the Scheme and associated matters, is attached to this announcement. Capitalised terms used in this section below have the meaning given to those terms in the SID.

The conditions for implementation of the Scheme, as set out in the SID, include:

- Australian Foreign Investment Review Board (**FIRB**) approval;
- Approval of AusNet shareholders;
- Court approval;
- The Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interest of AusNet Shareholders;
- No AusNet Material Adverse Change occurring; and
- Other customary conditions.

Under the SID, AusNet is subject to customary exclusivity obligations, including “no shop”, “no talk” (subject to customary fiduciary exceptions) and notification obligations. The SID also contains a matching right regime in respect of any Superior Proposal received by AusNet. The SID also details circumstances under which an AusNet Break Fee of \$101,674,267 may be payable by AusNet to Brookfield, or a reverse break fee (being a Bidder Break Fee) of \$101,674,267 may be payable by Brookfield to AusNet.

Next steps

A Scheme Booklet, which will contain important information relating to the Scheme and the Scheme Meeting, the reasons for AusNet's Board recommendation, and the Independent Expert's Report, is currently expected to be sent to shareholders in advance of the Scheme meeting, proposed to be held before the end of March 2022 at which shareholders will vote on whether to approve the Scheme.

AusNet is being advised by Adara Partners and Citi as financial advisers, and by Allens as legal adviser.

* * * *

This announcement was authorised for release by the Board of AusNet Services Ltd.

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About Brookfield

Brookfield Asset Management Inc. is a leading global alternative asset manager with more than US\$625 billion of assets under management across real estate, infrastructure, renewable power, private equity and credit. Brookfield owns and operates long-life assets and businesses, many of which form the backbone of the global economy. Utilising its global reach, access to large-scale capital and operational expertise, Brookfield offers a range of alternative investment products to investors around the world—including public and private pension plans, endowments and foundations, sovereign wealth funds, financial institutions, insurance companies and private wealth investors. Brookfield Asset Management is listed on the New York and Toronto stock exchanges under the symbol BAM and BAM.A respectively.

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Attachment – Scheme Implementation Deed

Australian Energy Holdings No 4 Pty Ltd

and

AusNet Services Ltd

Scheme Implementation Deed

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Contents

1	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	13
1.3	Business Day	14
1.4	Best and reasonable endeavours	14
1.5	Consents or approvals	14
1.6	Knowledge, belief or awareness of AusNet	14
1.7	Knowledge, belief or awareness of Bidder	14
1.8	Listing requirements included as law	15
2	Agreement to proceed with Scheme	15
2.1	AusNet to propose the Scheme	15
2.2	Bidder to assist	15
3	Conditions Precedent and pre-implementation steps	15
3.1	Conditions precedent	15
3.2	Best endeavours and co-operation	16
3.3	Regulatory Approvals	17
3.4	Waiver of Conditions Precedent	17
3.5	Notifications	18
3.6	Scheme voted down because of Headcount Test	18
3.7	Failure of Conditions Precedent	18
3.8	Certificates in relation to Conditions Precedent	19
4	Transaction steps	19
4.1	Scheme	19
4.2	Scheme Consideration	20
4.3	Provision of Scheme Consideration	20
4.4	Performance Rights and Deferred Rights	20
4.5	No amendment to Scheme without consent	21
5	Implementation	21
5.1	AusNet's obligations	21
5.2	Appeal process	23
5.3	Bidder's obligations	24
5.4	Appointment of directors	25
6	Conduct of business and requests for access	25
6.1	Conduct of AusNet business	25
6.2	Access to information and co-operation	29
6.3	Integration planning	30
6.4	Change of control consents	31
6.5	Directors' and officers' insurance and indemnities	32
6.6	AusNet Financing	32
6.7	Clear exit payment	33
7	AusNet Board recommendation	33
8	Representations and warranties	34
8.1	Bidder Representations and Warranties	34
8.2	AusNet Representations and Warranties	35
8.3	Timing of representations and warranties	35
8.4	Survival of representations	35

9	Releases	36
	9.1 AusNet Parties	36
	9.2 Bidder Parties	36
10	Public announcements	36
	10.1 Announcement of the Transaction	36
	10.2 Other public announcements	37
11	Exclusivity	37
	11.1 No current discussions regarding a Competing Proposal	37
	11.2 No-shop and no talk	37
	11.3 Limitation to no-talk and no-due diligence	37
	11.4 Notification by AusNet	38
	11.5 Bidder matching right	38
	11.6 Compliance with law	39
	11.7 Normal provision of information	40
12	Break fees	40
	12.1 Background	40
	12.2 Payment of AusNet Break Fee	40
	12.3 Payment of Bidder Break Fee	41
	12.4 Payment conditions	41
	12.5 Timing of payment	42
	12.6 Nature of payment	42
	12.7 Compliance with law	42
	12.8 Limitation of liability	43
13	Standstill	44
	13.1 No acquisition of Securities	44
	13.2 Exceptions	44
	13.3 Standstill arrangements with potential proponents of Competing Proposals	45
14	Termination	45
	14.1 General rights	45
	14.2 Effect of termination	46
	14.3 Termination by written agreement	46
15	Confidentiality	46
16	GST	46
	16.1 Recovery of GST	46
	16.2 Liability net of GST	47
	16.3 Adjustment events	47
	16.4 Survival	47
	16.5 Definitions	47
17	Notices	47
18	General provisions	48
	18.1 Amendment	48
	18.2 Assignment	48
	18.3 Costs and stamp duty	48
	18.4 Withholding tax	49
	18.5 Counterparts	50
	18.6 Entire agreement	50
	18.7 Further assurances	50

18.8	Governing law and jurisdiction	50
18.9	No merger	50
18.10	No waiver	50
18.11	Severability of provisions	50
	Schedule 1 – Bidder Representations and Warranties	51
	Schedule 2 – AusNet Representations and Warranties	54
	Schedule 3 – AusNet Regulated Events	56
	Schedule 4 - Timetable	58
	Execution page	59
	Annexure A – Form of Scheme	60
	Annexure B – Form of Deed Poll	72

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This Deed is made on 31 October 2021

Parties

- 1 **Australian Energy Holdings No 4 Pty Ltd** (ACN 654 673 793) of Level 21, 10 Carrington Street, Sydney NSW 2000 (*Bidder*).
- 2 **AusNet Services Ltd** (ACN 603 317 559) of Level 31, 2 Southbank Boulevard, Southbank, Melbourne, Victoria, 3006 (*AusNet*).

Recitals

- A The parties have agreed that Bidder will acquire all of the Scheme Shares by means of a scheme of arrangement under Part 5.1 of the Corporations Act between AusNet and its shareholders.
- B AusNet has agreed to propose and implement the Scheme, and Bidder has agreed to assist AusNet to propose and implement the Scheme, on the terms of this deed.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Additional Consideration means, where the Implementation Date has not occurred by 31 March 2022, \$0.000260274 for each day after 31 March 2022 that has elapsed by the date on which the Implementation Date occurs.

Adviser means, in relation to an entity, a professional adviser engaged (directly or indirectly) by the entity for the purposes of the Transaction (including financial adviser, legal adviser, accounting adviser, or a broker or insurer engaged to provide warranty or indemnity insurance).

Affiliate means, in respect of a person (the *primary person*), a person:

- (a) Controlled directly or indirectly by the primary person;
- (b) Controlling directly or indirectly the primary person; or
- (c) who is Controlled, directly or indirectly, by a person or persons who Control the primary person,

where **Control** means, with respect to any person (other than an individual) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person whether through the ownership of voting securities, by agreement or otherwise, and for the avoidance of doubt, a general partner is deemed to Control a limited partnership of which it is the general partner and, solely for the purposes of this Deed, a fund advised or managed directly or indirectly by a person will also be deemed to be Controlled by such person.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning set out in section 12(2)(b) and (c) of the Corporations Act, where for the purposes of section 12, the 'designated body' is AusNet.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

ASX Listing Rules means the official listing rules of ASX.

AusNet Bank Debt Facility means an AusNet Financing where the financial indebtedness is a cash advance, letter of credit or bank guarantee facility.

AusNet Board means the board of directors of AusNet.

AusNet Break Fee means \$101,674,267.

AusNet Financing means any existing financing agreement or arrangement for the provision of financial indebtedness by a third party to a member of the AusNet Group (including swap and derivative agreements or arrangements).

AusNet Financing Default means any 'event of default' (however described), any other matter, event or circumstance which, with the giving of notice, expiry of a grace period or both would be an 'event of default' (however described), any 'review event' (however described) or any other 'termination event' (however described) under and for the purposes of any AusNet Financing.

AusNet Finco means AusNet Services Holdings Pty Ltd (ABN 97 086 006 859).

AusNet Group means AusNet and each of its Subsidiaries. A reference to a **member of the AusNet Group** is a reference to AusNet or any such Subsidiary.

AusNet Information means all information in the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

AusNet Material Adverse Change means any event, circumstance, occurrence or matter which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, circumstances, occurrences or matters:

- (a) a diminution in the net assets of the AusNet Group by an amount exceeding \$343,490,000, as compared to what the net assets of the AusNet Group could reasonably be expected to have been but for the relevant events, circumstances, occurrences or matters; or
- (b) the EBITDAaL of the AusNet Group being reduced (but not only on a one-off basis) by an amount of more than \$118,890,000 as compared to what the consolidated annual EBITDAaL of the AusNet Group could reasonably be expected to have been but for the relevant events, circumstances, occurrences or matters,

in each case other than an event, circumstance, occurrence or matter:

- (c) required or expressly permitted by this deed or the Scheme;
- (d) which Bidder has previously approved or requested in writing;
- (e) Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
- (f) Fairly Disclosed to ASX within three years prior to the date of this deed;
- (g) arising out of the announcement or implementation of the Transaction or the Scheme (including any loss of or adverse change in the relationship of any member of the AusNet Group with its employees, customers, partners, creditors or suppliers as at the date of this deed, including the loss of any contract and including any consequences of a change of control provision in a contract being triggered, provided that the contract which has given rise to the relevant event, circumstance, occurrence or matter was Fairly Disclosed in the Due Diligence Material or the Disclosure Letter);
- (h) that is (including its impact) within the actual knowledge of Bidder as at the date of this deed (which does not include mere knowledge of the risk of an event, circumstance, occurrence or matter happening);
- (i) arising from any change in any law, or rule or regulation of any Government Agency, or any change in generally accepted accounting standards, after the date of this deed,

except where such changes affect AusNet more severely than other Australian businesses;

- (j) arising from accounting market value adjustments to derivatives or debt;
- (k) constituted by or arising from any determinations, announcements or rulings by:
 - (i) the Australian Taxation Office;
 - (ii) the Australian Energy Regulator, Australian Energy Market Commission, Australian Energy Market Operator, the Essential Services Commission or Energy Security Board; or
 - (iii) any other Government Agency in relation to electricity or gas networks or systems,

except where such changes affect AusNet more severely than other Australian businesses;

- (l) arising from changes in general economic, business or financial market conditions that impact Australian businesses generally, except to the extent such changes affect AusNet more severely than other Australian businesses;
- (m) arising from an act of terrorism, war (whether or not declared), natural disaster or adverse weather conditions or the like after the date of this deed;
- (n) arising from the COVID-19 virus (or any mutation, variation or derivative), or from any law, order, rule or direction of any Government Agency in relation thereto; or
- (o) relating to third party costs and expenses incurred by AusNet associated with the Transaction, including any fees payable to external Advisers of AusNet, to the extent such amounts are Fairly Disclosed in the Due Diligence Material or Disclosure Letter.

For the purposes of this definition of **AusNet Material Adverse Change**, the assessment of the resulting cost of an event, occurrence, circumstance or matter is to be assessed having regard to, where applicable, the ability to recover the cost (in whole or in part) resulting from the event, occurrence, circumstance or matter through a regulatory pass through mechanism applying in relation to the AusNet Group's assets (with any appropriate time value weighting for any such recoveries), having regard to any applicable economic advice obtained and feedback received from any relevant Government Agencies.

AusNet Party means any member of the AusNet Group or any officer, employee or Adviser of any member of the AusNet Group.

AusNet Regulated Event means the occurrence of any of the matters set out in Schedule 3, other than an occurrence:

- (a) required or expressly permitted by this deed or the Scheme;
- (b) Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
- (c) Fairly Disclosed to ASX within three years prior to the date of this deed; or
- (d) with the prior written consent of Bidder.

AusNet Registry means Computershare Investor Services Pty Limited (ABN 48 078 279 277) or any replacement provider of share registry services to AusNet.

AusNet Representation and Warranty means a representation and warranty of AusNet set out in Schedule 2.

AusNet Securities or Rights means:

- (a) AusNet Shares, Deferred Rights and Performance Rights;

- (b) any other shares, options, performance rights, convertible notes, warrants or other securities which may be or convert into AusNet Shares or other equity interests in AusNet;
- (c) any offers or agreements by an AusNet Group entity to issue or grant, or any rights by a person to call for the issue or grant by an AusNet Group entity, of:
- (i) any AusNet Shares, Deferred Rights and Performance Rights; or
 - (ii) any other shares, options, performance rights, convertible notes, warrants or other securities which may be or convert into AusNet Shares or other equity interests in AusNet; and
- (d) any rights by a person to call for the issue or grant by an AusNet Group entity of rights which are economically equivalent to:
- (i) any AusNet Shares, Deferred Rights and Performance Rights; or
 - (ii) any other shares, options, performance rights, convertible notes, warrants or other securities which may be or convert into AusNet Shares or other equity interests in AusNet.

AusNet Share means a fully paid ordinary share in the capital of AusNet.

AusNet Shareholder means a person who is registered in the AusNet Share Register as a holder of AusNet Shares.

AusNet Share Register means the register of members of AusNet maintained in accordance with the Corporations Act.

Bidder Break Fee means \$101,674,267.

Bidder Counterproposal has the meaning given in clause 11.5(a)(iii).

Bidder Group means Bidder and each of its Related Entities (excluding, at any time, AusNet and its Subsidiaries to the extent that AusNet and its Subsidiaries are subsidiaries of Bidder at that time). A reference to a **member of the Bidder Group** is a reference to Bidder or any such Related Entities.

Bidder Information means information about the Bidder Group provided or approved by Bidder or any of its Advisers to AusNet in writing for inclusion in the Scheme Booklet, as required by clauses 5.3(a) and 5.3(g).

Bidder Party means any member of the Bidder Group or any officer, employee or Adviser of any of them.

Bidder Representation and Warranty means a representation and warranty of Bidder set out in Schedule 1.

Business Day means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Melbourne, Australia.

Claim means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

Competing Proposal means any expression of interest, proposal, offer, transaction or arrangement (other than the Transaction) by or with any person pursuant to which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed

substantially in accordance with its terms, a Third Party will (other than as custodian, nominee or bare trustee):

- (a) acquire a relevant interest in 10% or more of the shares in, or voting power of 10% or more in, AusNet;
- (b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets or business of AusNet;
- (c) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of AusNet;
- (d) otherwise directly or indirectly acquire, merge or amalgamate with, or acquire a controlling shareholding or economic interest in AusNet or in all or substantially all of its assets or business; or
- (e) require AusNet to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for the Discloser or other synthetic merger or any other transaction or arrangement. For the avoidance of doubt, each successive material modification or variation of any expression of interest, proposal, offer, transaction or arrangement in relation to a Competing Proposal will constitute a new Competing Proposal.

Conditions Precedent has the meaning given in clause 3.1.

Confidentiality Deed means the confidentiality deed dated 19 September 2021 between Brookfield Infrastructure Group (Australia) Pty Ltd (ACN 127 051 174) and AusNet.

Corporations Act means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

Debt Facility Agreement means the syndicated facility agreement between Bidder and certain financial institutions a copy of which has been provided to AusNet before the date of this deed.

Deed Poll means a deed poll in favour of all Scheme Shareholders in the form of Annexure B (or such other form agreed to in writing between the parties to this deed).

Deferred Right means a performance right granted by AusNet under the AusNet Deferred Short Term Incentive Plan, which entitles the holder to receive an AusNet Share in certain circumstances.

Disclosure Letter means the letter identified as such provided by AusNet to Bidder and countersigned by or on behalf of Bidder on or prior to the date of this deed and any document identified in that letter as having been disclosed to Bidder subject to such document having been Fairly Disclosed in the Due Diligence Material on or prior to the date of that letter.

Due Diligence Material means the information disclosed by or on behalf of the AusNet Group (including in response to requests for information) to a Bidder Party contained in the electronic data room as at 2.30pm AEDT on 30 October 2021, as included in a digital archive (the URL of which has been sent by Allens to Herbert Smith Freehills via email at about 3.25pm AEDT on 30 October 2021) and consistent with an electronic index sent by Allens to Herbert Smith Freehills via email at about 3.06pm AEDT on 30 October 2021.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in

respect of any of them.

EBITDAal means statutory reported earnings before interest, tax, depreciation and amortisation after lease interest income based on the same methodology as in the AusNet Group's full-year financial report for 31 March 2021.

Effective means the coming into effect under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Scheme.

Effective Date means the date on which the Scheme becomes Effective.

End Date means the date that is eight (8) months after the date of this deed or such other date as may be agreed in writing between AusNet and Bidder.

Equity Commitment Letters means the binding, executed commitment letters addressed to Bidder and AusNet and provided on or before the date of this deed in a form acceptable to Bidder and AusNet.

Exclusivity Period means the period from and including the date of this deed to the earlier of:

- (a) the termination of this deed; and
- (b) the End Date.

Executive Leadership Team means the Managing Director of AusNet and each AusNet Group employee who reports directly to the Managing Director (other than executive assistants and other support staff).

Fairly Disclosed: A reference to 'Fairly Disclosed' in relation to a matter is to such matter being disclosed in sufficient detail to enable a reasonable person experienced in the industries in which the AusNet Group operates or transactions similar to the Transaction to identify the nature, substance and scope of the relevant matter and to reach a reasonably informed view on the impact of the relevant matter on the AusNet Group.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

FIRB means the Australian Foreign Investment Review Board.

First Court Date means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard or, if the application is adjourned for any reason, the day on which the adjourned application is heard.

Government Agency means any Australian or foreign government or governmental, semi-governmental or judicial entity or authority. It also includes any government minister (and his or her delegate), any self-regulatory organisation established under statute or any securities exchange and, for the avoidance of doubt, includes ASIC, ASX, FIRB, Australian Competition and Consumer Commission and equivalent bodies in jurisdictions outside Australia.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law has the same meaning as in the GST Act.

Guaranteed Service Level Payment means an amount paid, or payable, to a person by a member of the AusNet Group pursuant to:

- (a) clause 6 (or equivalent) of Version 12, Version 13 or any subsequent version of the *Electricity Distribution Code* published by the Essential Services Commission of Victoria; or

- (b) clause 2.3 (or equivalent) of Version 13.0, Version 14.0 or any subsequent version of the *Gas Distribution Code* published by the Essential Services Commission of Victoria.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of AusNet Shareholders present and voting, either in person or by proxy.

Implementation Date means the fifth Business Day after the Scheme Record Date or such other date agreed to in writing between Bidder and AusNet.

Independent Expert means an independent expert to be engaged by AusNet.

Independent Expert's Report means a report (including any written updates to such report) of the Independent Expert stating whether or not in its opinion the Scheme is in the best interests of AusNet Shareholders.

Insolvency Event means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) for:
 - (i) its winding up, dissolution or administration; or
 - (ii) it entering into an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (f) a:
 - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
 - (ii) security interest becomes enforceable or is enforced over; or
 - (iii) distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

Institutional Investor means an investor (including any fund, other investment vehicle or investment mandate) that is investing in Target Shares as part of its business of investing in, or managing investments in, listed, quoted or other liquid securities on a non-controlled and portfolio basis, or an entity that is a manager or adviser of such investor in its capacity as such.

Order means any decree, judgment, injunction, direction, writ or other order, whether temporary, preliminary or permanent, made or given by a court of competent jurisdiction or by another Government Agency.

Performance Right means a performance right granted by AusNet under the AusNet Long Term

Incentive Plan, which entitles the holder to receive an AusNet Share in certain circumstances.

Permitted Dividends means:

- (a) an unfranked interim dividend of not more than \$0.0475 per AusNet Share in respect of the financial half-year ending 30 September 2021; and
- (b) if the Implementation Date does not occur before 31 March 2022 – an unfranked dividend of not more than \$0.0475 per AusNet Share in respect of the financial year ending 31 March 2022.

Regulatory Approval means an approval or consent specified in the Condition Precedent set out in clause 3.1(a).

Related Entity means, in relation to an entity (the **first entity**):

- (a) any of:
 - (i) a subsidiary of the first entity;
 - (ii) an entity of which the first entity is a subsidiary; or
 - (iii) a subsidiary of another entity of which the first entity is also a subsidiary, where, for the purposes of this definition, **subsidiary** has the meaning given in the Corporations Act, amended as necessary such that:
 - (i) a body corporate or a trust will also be taken to be a subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act);
 - (ii) a trust, partnership or fund may be a subsidiary, for the purpose of which a unit, partnership interest or other beneficial interest in the trust, partnership or fund will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act); and
 - (iii) an entity may be a subsidiary of a trust, partnership or fund if it would have been a subsidiary if that trust, partnership or fund were a body corporate; or
- (b) an Affiliate of the first entity.

Representative means, in relation to Bidder or AusNet:

- (a) a Related Entity of that party;
- (b) an Adviser of that party or any of their Related Entities; and
- (c) a director, officer or employee of that party, or of an Adviser or Related Body Corporate of that party.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between AusNet and the Scheme Shareholders in the form of Annexure A (or such other form agreed to in writing between the parties to this deed).

Scheme Booklet means the scheme booklet to be prepared by AusNet in accordance with clause 5.1(a) and to be approved by the Court and despatched to AusNet Shareholders and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, notice of the Scheme Meeting and a proxy form for the Scheme Meeting.

Scheme Consideration has the meaning given in clause 4.2.

Scheme Meeting means the meeting of AusNet Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

Scheme Record Date means 7:00pm on the third Business Day after the Effective Date or such

other time and date agreed to in writing between the parties.

Scheme Shares means the AusNet Shares on issue as at the Scheme Record Date.

Scheme Shareholder means a person registered in the AusNet Share Register as the holder of one or more Scheme Shares at the Scheme Record Date.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned for any reason, the day on which the adjourned application is heard.

Securities means, in relation to a party:

- (a) any shares in the capital of the party or any of its Related Entities;
- (b) any units in a trust for which a party or any of its Related Entities is the trustee;
- (c) any securities convertible into any such shares or units of the party or any of its Related Entities; or
- (d) any legal, equitable or economic interest in any such shares, units or securities.

Subsidiary has the meaning given in Part 1.2, Division 6 of the Corporations Act, amended as necessary such that:

- (a) a body corporate or a trust will also be taken to be a subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act);
- (b) a trust, partnership or fund may be a subsidiary, for the purpose of which a unit, partnership interest or other beneficial interest in the trust, partnership or fund will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act); and
- (c) an entity may be a subsidiary of a trust, partnership or fund if it would have been a subsidiary if that trust, partnership or fund were a body corporate.

Superior Proposal means a bona fide written Competing Proposal received by AusNet that the AusNet Board determines, acting in good faith and in order to satisfy what the AusNet Board considers to be the AusNet Directors' statutory or fiduciary duties, and after having obtained advice from AusNet's external legal and financial advisers:

- (a) is reasonably capable of being valued and reasonably capable of being completed in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to AusNet Shareholders than the Transaction),

taking into account all aspects of the Competing Proposal (including the identity, reputation and financial condition of the person making such Competing Proposal and any conditions to which it is subject).

Tax means any past, present or future tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

Third Party means any person other than the following:

- (a) Bidder or any of its Related Entities; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which Bidder or any of its Related Entities has agreed in writing to be a participant.

Timetable means the indicative timetable for the implementation of the Transaction set out in Schedule 4.

Transaction means the acquisition of the Scheme Shares by Bidder through implementation of the Scheme in accordance with the terms of this deed and the Scheme.

Voltage Variation Guideline Payment means an amount paid, or payable, to a person by a member AusNet Group pursuant to clause 4.2.7 (or equivalent) of Version 12, Version 13 or any subsequent version of the *Electricity Distribution Code* published by the Essential Services Commission of Victoria.

Wholly-Owned Subsidiary means, in relation to a party, a body corporate, all of the issued shares of which are or will be directly or indirectly owned by that party.

1.2 Interpretation

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

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this deed.
- (f) A reference to an *agreement* or *document* (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and \$ is to Australian currency.
- (l) All references to time are to Sydney, Australia time.
- (m) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (n) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (o) A reference to *officer*, *relevant interest* or *voting power* is to that term as it is defined in the Corporations Act.

1.3 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.

1.4 Best and reasonable endeavours

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours or all reasonable endeavours does not oblige that party to:

- (a) pay money:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed;
 - (b) provide other valuable consideration to or for the benefit of any person; or
 - (c) agree to commercially onerous or unreasonable conditions,
- except where the provision expressly specifies otherwise.

1.5 Consents or approvals

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

1.6 Knowledge, belief or awareness of AusNet

- (a) Certain statements made in this deed (including certain AusNet Representations and Warranties) are given and made by AusNet only on the basis of its knowledge, belief or awareness. For the purposes of this deed, AusNet's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of each individual who is part of the Executive Leadership Team and each of his or her direct reports, and the knowledge, belief or awareness that such persons ought to have, having made reasonable inquiries. The knowledge, belief or awareness of any person other than the persons referred to in this clause will not be imputed to AusNet.
- (b) None of the persons named in clause 1.6(a) will bear any personal liability in respect of the AusNet Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

1.7 Knowledge, belief or awareness of Bidder

- (a) Certain statements made in this deed (including certain Bidder Representations and Warranties) are given and made by Bidder only on the basis of its knowledge, belief or awareness. For the purposes of this deed, Bidder's knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the directors and officers of Bidder as at the date of this deed, and the knowledge, belief or awareness that such persons ought to have, having made reasonable inquiries. The knowledge, belief or awareness of any person other than the persons referred to in this clause will not be imputed to Bidder.
- (b) None of the persons referred to in clause 1.7(a) will bear any personal liability in respect of the Bidder Representations and Warranties or otherwise under this deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

1.8 Listing requirements included as law

A listing rule or business rule of a securities exchange will be regarded as a *law*, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to a party.

2 Agreement to proceed with Scheme

2.1 AusNet to propose the Scheme

AusNet agrees to propose and implement the Scheme on and subject to the terms of this deed.

2.2 Bidder to assist

Bidder agrees to assist AusNet to propose and implement the Scheme, on and subject to the terms of this deed.

3 Conditions Precedent and pre-implementation steps

3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder under clause 4.3 are not binding, unless each of the following conditions precedent (the **Conditions Precedent**) is satisfied or waived in accordance with clauses 3.2 and 3.4:

- (a) **(FIRB approval)** before 8.00am on the Second Court Date, either of the following occur:
 - (i) the Treasurer of the Commonwealth of Australia (or his or her delegate) provides written notice under the FATA stating that, or to the effect that, the Commonwealth Government has no objection to the Transaction either on an unconditional basis or subject only to:
 - (A) 'standard' tax conditions which are in the form, or substantially in the form, of those set out in items 1 to 6 of Part D of the Australian Foreign Investment Review Board's Guidance Note 12 'Tax Conditions' (in the form last updated on 9 July 2021);
 - (B) any other conditions which are of a kind commonly imposed (prior to the date of this deed) by FIRB on transactions of a similar nature involving similar assets to the assets of the AusNet Group (including conditions commonly imposed on such transactions relating to board composition, security clearances, restrictions on access to sensitive data, restrictions on the location of data storage and restrictions on operational involvement by limited partners or other equity investors), provided that, for the avoidance of doubt, the parties agree that the foregoing does not extend to any condition imposed in connection with minimum Australian equity requirements for Bidder that is not acceptable to it;
 - (C) conditions which are similar in nature to the conditions which AusNet Group is already subject to under its licences from Government Agencies; and
 - (D) such other conditions acceptable to Bidder (acting reasonably); or
 - (ii) following Bidder giving notice under the FATA of the Transaction, the Treasurer of the Commonwealth of Australia becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the Transaction,

and in the case of (a)(i) above, the notice of no objection has not been withdrawn, suspended or revoked before 8.00am on the Second Court Date;

- (b) **(AusNet Shareholder approval)** AusNet Shareholders approve the Scheme by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting;
- (c) **(Independent Expert)** the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of AusNet Shareholders and does not publicly change or withdraw that conclusion before 8.00am on the Second Court Date;
- (d) **(Court approval)** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to by Bidder in accordance with clause 4.5);
- (e) **(No restraints)** no applicable law, regulation or rule shall have been enacted and no Order shall be in effect as at 8:00am on the Second Court Date (or the intended date for the Second Court Date, but for such law, regulation, rule or Order) that prevents, makes illegal or prohibits the implementation of the Scheme;
- (f) **(No AusNet Material Adverse Change)** no AusNet Material Adverse Change occurs between the date of this deed and 8:00am on the Second Court Date; and
- (g) **(No AusNet Regulated Event)** no AusNet Regulated Event occurs between the date of this deed and 8:00am on the Second Court Date.

3.2 Best endeavours and co-operation

Without prejudice to any other obligations of the parties under this deed:

- (a) Bidder must use its best endeavours to satisfy, or procure the satisfaction of, the Condition Precedent in clause 3.1(a);
- (b) AusNet must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(f) and 3.1(g);
- (c) each party must, to the extent it is within its power to do so, use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(b), 3.1(c), 3.1(d) and 3.1(e);
- (d) no party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this deed or the Scheme, or is required by law; and
- (e) without limiting clause 3.2(d), Bidder will ensure that no person will be introduced, as an equity investor or limited partner in Bidder, or any entity, fund, limited partnership or other collective investment vehicle which, directly or indirectly, has any shareholding or other interest in Bidder, if the introduction of that equity investor or limited partner is likely to hinder the satisfaction of any Regulatory Approval (provided that it is acknowledged that the inclusion of Canadian entities which are Canadian 'foreign government investors' as defined in the FATA will not breach this requirement, and also that inclusion of entities disclosed to AusNet either specifically or by description prior to execution of this deed will not breach this requirement).

3.3 Regulatory Approvals

Without limiting the generality of clause 3.2, Bidder must:

- (a) promptly provide AusNet with copies of all applications submitted prior to the date of this deed by Bidder or a Related Entity for any Regulatory Approval (provided that commercially sensitive information may be redacted);
- (b) promptly provide AusNet with a copy of all draft applications to be made by Bidder or a Related Entity for any Regulatory Approval that has not already been applied for as at the date of this deed (provided that commercially sensitive information may be redacted), and take all comments from AusNet into account (in good faith);
- (c) promptly provide AusNet with copies of all material correspondence between Bidder (or a Representative of Bidder) and any Government Agency in relation to any application for any Regulatory Approval (provided that commercially sensitive information may be redacted);
- (d) give AusNet reasonable notice of any proposed meetings or discussions with a Government Agency in relation to any Regulatory Approval where such meetings or discussions are expected to relate to matters that are material to the Regulatory Approval process and, if the participation of AusNet in any meeting or discussion is required by the relevant Government Agency, use reasonable endeavours to procure that the relevant meeting or discussion is held at such time that will enable Representatives of AusNet to attend; and
- (e) to the extent reasonably practicable and permitted by the relevant Governmental Agencies, consult with AusNet in advance in relation to the process and progress of obtaining all Regulatory Approvals.

3.4 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(d) and 3.1(e) are for the benefit of AusNet and Bidder. Any breach or non-satisfaction of any of the Conditions Precedent in clauses 3.1(a), 3.1(b) or 3.1(d) cannot be waived. Any breach or non-satisfaction of the Condition Precedent in clause 3.1(e) may only be waived by Bidder and AusNet giving their written consent.
- (b) The Conditions Precedent in clauses 3.1(f) and 3.1(g) are for the sole benefit of Bidder, and any breach or non-satisfaction of those Conditions Precedent may only be waived by Bidder giving its written consent.
- (c) The Condition Precedent in clause 3.1(c) is for the sole benefit of AusNet, and any breach or non-satisfaction of that Condition Precedent may only be waived by AusNet giving its written consent.
- (d) A party entitled to waive the breach or non-satisfaction of a Condition Precedent pursuant to this clause 3.4 may do so in its absolute discretion.
- (e) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (f) If a party waives the breach or non-satisfaction of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this deed constituted by the same event that gave rise to the breach or non-satisfaction of the Condition Precedent.

- (g) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
- (i) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event or circumstance.

3.5 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms.

3.6 Scheme voted down because of Headcount Test

- (a) If the Scheme is not approved by AusNet Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and AusNet or Bidder considers, acting reasonably, that the splitting by a holder of AusNet Shares into two or more parcels of AusNet Shares (whether or not it results in any change in beneficial ownership of the AusNet Shares) or some abusive or improper conduct may have caused or materially contributed to the Headcount Test not having been satisfied then AusNet must:
 - (i) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
 - (ii) make such submissions to the Court and file such evidence as counsel engaged by AusNet to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.
- (b) If the Court's approval of the Scheme under section 411(4)(b) of the Corporations Act is given, notwithstanding that the Headcount Test has not been satisfied, the Condition Precedent in clause 3.1(b) is deemed to be satisfied for all purposes.

3.7 Failure of Conditions Precedent

- (a) If:
 - (i) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied (which is not waived in accordance with this deed by the time or date specified in this deed for the satisfaction of the relevant Condition Precedent); or
 - (ii) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the

satisfaction of that Condition Precedent or such Condition Precedent is otherwise not satisfied by that time and date (and the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this deed),

then either party may serve a written notice on the other party, and the parties must promptly consult in good faith with a view to determining whether:

- (iii) the Scheme or the Transaction may proceed by way of alternative means or methods;
 - (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
 - (v) to change the First Court Date or to adjourn the application for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to another date agreed by the parties;
 - (vi) to change the Second Court Date or to adjourn the application for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme to another date agreed by the parties; or
 - (vii) to extend the End Date.
- (b) If AusNet and Bidder are unable to reach agreement under clauses 3.7(a)(iii), 3.7(a)(iv), 3.7(a)(v), 3.7(a)(vi) or 3.7(a)(vii) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5:00pm on the day before the Second Court Date, either party may terminate this deed by notice in writing to the other party, provided that:
- (i) the Condition Precedent to which the notice relates is for the benefit of that party (whether or not the Condition Precedent is also for the benefit of the other party); and
 - (ii) there has been no failure by that party to comply with its obligations under this deed, where that failure directly and materially contributed to the Condition Precedent to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 14.2 will have effect.

3.8 Certificates in relation to Conditions Precedent

- (a) On the Second Court Date each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8:00am on the Second Court Date the Conditions Precedent have been satisfied or waived in accordance with this deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.8(a) by 5:00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

4 Transaction steps

4.1 Scheme

AusNet must propose a scheme of arrangement under which:

- (a) all of the Scheme Shares will be transferred to Bidder; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration.

4.2 Scheme Consideration

The **Scheme Consideration** means, in respect of each Scheme Share:

- (a) a cash amount of \$2.65; less
- (b) the cash amount of any Permitted Dividend to which Scheme Shareholders become entitled on or before the Implementation Date; plus
- (c) the amount of any Additional Consideration.

4.3 Provision of Scheme Consideration

Bidder undertakes to AusNet (in its own right and as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to Bidder of the Scheme Shares under the terms of the Scheme, on the Implementation Date it will:

- (a) accept that transfer; and
- (b) pay or procure payment of the Scheme Consideration for each Scheme Share in accordance with the Scheme and the Deed Poll.

4.4 Performance Rights and Deferred Rights

- (a) AusNet must ensure that no Performance Rights or Deferred Rights (or any other AusNet Securities or Rights other than AusNet Shares) are in existence on the Scheme Record Date.
- (b) Bidder acknowledges that:
 - (i) the AusNet Board may, in order to satisfy the obligation in clause 4.4(a), exercise its discretions under relevant employee equity incentive plans to accelerate the vesting of all outstanding Performance Rights and Deferred Rights and/or to make cash equivalent or substitute payments (and Bidder acknowledges that any cash payments are not subject to the operation of clause 6); and
 - (ii) AusNet may make a 'Dividend Equivalent Payment' in respect of each Deferred Right that vests in accordance with the rules of the AusNet Deferred Short Term Incentive Plan.
- (c) AusNet must ensure that actions taken under clause 4.4(b)(i) involve a total outlay of no more than \$25,000,000, whether in cash or via the issuance of AusNet Shares (treating each Share issued as an outlay of \$2.65) or a combination, it being acknowledged and agreed by the parties that this amount does not take into account any tax costs.
- (d) AusNet must ensure that all 'Dividend Equivalent Payments' under clause 4.4(b)(ii) do not exceed \$175,000 in aggregate, it being acknowledged and agreed by the parties that this amount includes the maximum amount of Permitted Dividends, , and that if vesting occurs after the record date for the last Permitted Dividend in time the amount might increase depending on whether any additional AusNet dividends are paid.
- (e) AusNet agrees that:
 - (i) as soon as reasonably practicable after the date of this deed, AusNet must use its reasonable endeavours to procure that ASX either:
 - (A) confirms that rule 6.23 of the Listing Rules does not apply; or
 - (B) grants a waiver from rule 6.23 of the Listing Rules (to the extent required),
 in connection with any actions to be undertaken by AusNet under this clause 4.4; and

- (ii) If the confirmation or waiver referred to in clause 4.4(e)(i) is not obtained before the First Court Date, AusNet agrees to seek any approvals that are required from the AusNet Shareholders under rule 6.23 of the Listing Rules in connection with any actions to be undertaken by AusNet under this clause 4.4.

4.5 No amendment to Scheme without consent

AusNet must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder.

5 Implementation

5.1 AusNet's obligations

AusNet must take all steps necessary to propose and implement the Scheme as soon as is reasonably practicable after the date of this deed and must use best endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing any acts it is authorised and able to do on behalf of AusNet Shareholders and each of the following.

- (a) **(Preparation of Scheme Booklet)** Prepare the Scheme Booklet so that it complies with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules. The Scheme Booklet must include a statement to the effect that:
- (i) other than the Bidder Information and the Independent Expert's Report, the Scheme Booklet has been prepared by AusNet and is the responsibility of AusNet, and that no Bidder Party assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than the Bidder Information); and
 - (ii) the Bidder Information has been provided by Bidder and is the responsibility of Bidder, and that no AusNet Party assumes any responsibility for the accuracy or completeness of the Bidder Information.

The Scheme Booklet and all public announcements by AusNet in relation to the Scheme (other than announcements as to purely administrative matters) must also include the recommendation and statement required under clause 7.

- (b) **(Independent Expert)** Promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this deed), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (c) **(Consultation with Bidder)** Consult with Bidder as to the content and presentation of the Scheme Booklet, such consultation to include allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet a reasonable time before its lodgement with ASIC and obtain Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) prior to lodgement of the Scheme Booklet with ASIC. AusNet must consider in good faith any comments on drafts of the Scheme Booklet provided by or on behalf of Bidder.
- (d) **(Liaison with ASIC)** As soon as reasonably practicable after the date of this deed but no later than 14 days before the First Court Date, and following Bidder giving confirmation or providing changes as contemplated by clause 5.3(d), provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder, and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use reasonable endeavours, in consultation with Bidder, to resolve any such matters

(provided that AusNet may not resolve any such matters without the prior written consent of Bidder to the extent that such matters relate to the Bidder Information), and provide Bidder with copies of any material correspondence with ASIC in relation to the Scheme Booklet or the Transaction, and otherwise keep Bidder informed of any matters raised by ASIC to AusNet in relation to the Scheme or the Transaction (except if a matter relates to a Competing Proposal).

- (e) **(Indication of intent)** Apply to ASIC no later than 14 days before the First Court Date for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date.
- (f) **(Approval of Scheme Booklet)** As soon as practicable after ASIC has provided its indication of intent in accordance with clause 5.1(e), procure that a meeting of the AusNet Board is convened for the purpose of approving the Scheme Booklet for despatch to AusNet Shareholders.
- (g) **(Verification)** Undertake appropriate verification processes in relation to the AusNet Information.
- (h) **(Court direction)** Apply to the Court for orders directing AusNet to convene the Scheme Meeting, and consult with Bidder as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and AusNet must consider in good faith any comments provided by or on behalf of Bidder.
- (i) **(ASIC registration)** Request ASIC to register the Scheme Booklet in the form approved by the Court.
- (j) **(Despatch)** Send the Scheme Booklet to AusNet Shareholders following receipt of Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet.
- (k) **(Update Scheme Booklet)** If, after the Scheme Booklet has been sent to AusNet Shareholders, it becomes aware of information that is:
- (i) not included in the Scheme Booklet and that is:
 - (A) material for disclosure to AusNet Shareholders in deciding whether to approve the Scheme; or
 - (B) required to be disclosed to AusNet Shareholders under any applicable law; or
 - (ii) included in the Scheme Booklet and is misleading or deceptive in a material respect in the form and context in which it appears in the Scheme Booklet,
- inform AusNet Shareholders of the information in an appropriate and timely manner, in accordance with applicable law. AusNet must consult with Bidder as to the form and content of any supplementary disclosure before it is made to AusNet Shareholders, and, to the extent reasonably practicable, must provide Bidder with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of Bidder. To the extent that any supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with Bidder's prior written consent (not to be unreasonably withheld or delayed).
- (l) **(Promote Transaction)** Participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Bidder, meeting with key AusNet Shareholders and, in consultation with Bidder,

undertaking reasonable shareholder engagement and proxy solicitation actions to encourage AusNet Shareholders to vote on the Scheme in accordance with the recommendation of the AusNet Board, subject to applicable law and ASIC policy.

- (m) **(Scheme Meeting)** Convene the Scheme Meeting to approve the Scheme (in accordance with any orders made by the Court).
- (n) **(No objection statement)** Apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- (o) **(Court approval)** Subject to all Conditions Precedent in clause 3.1 (other than that in clause 3.1(d)) being (or being reasonably expected to be) satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme, and consult with Bidder as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and AusNet must consider in good faith any comments provided by or on behalf of Bidder.
- (p) **(Court order)** Lodge with ASIC an office copy of any Court order approving the Scheme by not later than the first Business Day after the day such office copy is received (or such later date as Bidder may agree in writing).
- (q) **(Representation)** Allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at the Court hearings in relation to the Scheme.
- (r) **(Information)** Provide all necessary information, and procure that the AusNet Registry provides all necessary information, in each case in a form reasonably requested by Bidder, for the purpose of understanding legal ownership of AusNet Shares and proxy appointments and directions received by AusNet prior to the Scheme Meeting.
- (s) **(Implementation)** If the Scheme becomes Effective:
 - (i) procure ASX to suspend trading in AusNet Shares from the close of trading on the Effective Date;
 - (ii) close the AusNet Share Register at the Scheme Record Date to determine the identity of Scheme Shareholders and their entitlements to the Scheme Consideration; and
 - (iii) subject to Bidder satisfying its obligations under clause 4.3, execute proper instruments of transfer of the Scheme Shares on behalf of the Scheme Shareholders in favour of Bidder and procure the registration in the AusNet Share Register of all transfers of Scheme Shares to Bidder under those instruments on the Implementation Date.
- (t) **(ASX listing)** Maintain AusNet's admission to the official list of ASX and the quotation of AusNet Shares on ASX up to and including the Implementation Date.

5.2 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme:

- (a) AusNet and Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and

- (b) AusNet must appeal the Court's decision (unless the parties agree otherwise, or an independent senior counsel of the New South Wales bar advises that, in their view, an appeal would have no reasonable prospect of success before the End Date).

5.3 Bidder's obligations

Bidder must take all steps necessary to assist AusNet to propose and implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, must use best endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing each of the following.

- (a) **(Bidder Information)** Prepare and provide to AusNet the Bidder Information for inclusion in the Scheme Booklet to comply with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules relevant to the Bidder Information and consult with AusNet as to the content and presentation of the Bidder Information in the Scheme Booklet, such consultation to include allowing AusNet a reasonable opportunity to review and make comments on successive drafts of the Bidder Information before lodgement of the Scheme Booklet with ASIC. Bidder must consider in good faith any comments on drafts of the Bidder Information provided by or on behalf of AusNet.
- (b) **(Review drafts of Scheme Booklet)** As soon as practicable after delivery, review drafts of the Scheme Booklet prepared by AusNet and provide any comments on those drafts.
- (c) **(Independent Expert information)** Provide all assistance and information reasonably requested by AusNet or by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (d) **(Confirmation of Bidder Information)** Before the Scheme Booklet is provided to ASIC pursuant to section 411(2) of the Corporations Act, procure that a meeting of the board of directors of Bidder is held to consider the Bidder Information included in the Scheme Booklet as being in a form appropriate for provision to ASIC for review, and either:
- (i) confirm in writing to AusNet that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
 - (ii) provide to AusNet the changes required to ensure that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission.
- (e) **(Approval and consent to inclusion of Bidder Information)** As soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet:
- (i) procure that a meeting of the board of directors of Bidder is held to consider the Bidder Information included in the Scheme Booklet as being in a form appropriate for despatch to AusNet Shareholders, subject to approval of the Court; and
 - (ii) confirm in writing to AusNet that Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears.
- (f) **(Verification)** Undertake appropriate verification processes in relation to the Bidder Information.
- (g) **(Update Bidder Information)** If at any time after the despatch of the Scheme Booklet, Bidder becomes aware:

- (i) of new information which, were it known at the time of despatch, should have been included in any Bidder Information included in that version of the Scheme Booklet; or
- (ii) that any part of the Bidder Information included in that version of the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise),

it must advise AusNet so that AusNet can determine whether supplementary disclosure to AusNet Shareholders is required in accordance with (and subject to the terms of) clause 5.1(k).

- (h) **(Deed Poll)** Before the first Court hearing on the First Court Date, enter into the Deed Poll and deliver it to AusNet.
- (i) **(Court representation)** Procure that it is represented by counsel at the Court hearings convened in relation to the Scheme, at which, through its counsel or solicitors, Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme.
- (j) **(Scheme Consideration)** If the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4.3 and the terms of the Scheme.
- (k) **(Promote Transaction)** Participate in efforts reasonably requested by AusNet to promote the merits of the Transaction and the Scheme Consideration, including, where requested by AusNet, meeting with key AusNet Shareholders.

5.4 Appointment of directors

On and from the Implementation Date, but subject to the Scheme Consideration having been paid by Bidder in accordance with the Scheme and receipt by AusNet of signed consents to act, AusNet must:

- (a) cause the appointment of the persons nominated by Bidder as new directors of AusNet and other members of the AusNet Group; and
- (b) procure that all directors on the AusNet Board or the board of another member of the AusNet Group (other than any directors nominated by Bidder or the new directors of AusNet appointed pursuant to clause 5.4(a)) resign from the AusNet Board or such other board (as applicable).

6 Conduct of business and requests for access

6.1 Conduct of AusNet business

During the period from the date of this deed up to and including the Implementation Date, AusNet must, and must procure that each other AusNet Group entity:

- (a) conduct(s) its business and operations in the ordinary course and substantially consistent (subject to any applicable laws and regulations) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this deed and in accordance with all applicable laws, regulations and regulatory approvals in all material respects;
- (b) use(s) its best endeavours to:
 - (i) preserve intact the AusNet Group's current business organisation;

- (ii) maintain all the material assets of the AusNet Group in the normal course and consistent with past practice;
- (iii) keep available the services of its officers and key employees; and
- (iv) preserve the AusNet Group's relationship with Government Agencies, ratings agencies, financiers, customers, suppliers, licensors, licensees, joint venturers and others having business dealings with it;
- (c) take all steps reasonably within its power to ensure that no AusNet Regulated Event occurs;
- (d) maintain(s) (and, where necessary, use reasonable efforts to renew) the policies of insurance held by the AusNet Group to insure any material risk of the AusNet Group that are in force as at the date of this deed and promptly notify Bidder if any renewal proposal is not accepted by the relevant insurer;
- (e) does not enter into, vary or amend any material contract or agreement if such action would result in the consent of the counterparty to that contract or agreement being required in respect of any aspect of the Scheme or the transactions contemplated by this deed, other than:
- (i) where the relevant consent has been obtained; or
- (ii) swaps, derivatives, swaptions or options (including any interest rate, currency or commodity or index linked (eg LIBOR) related swaps, derivatives or options) entered into in the ordinary course of business and consistent with past practice;
- (f) without limiting the other provisions of this clause 6.1, ensure(s) that none of the following occurs:
- (i) AusNet or any Subsidiary of AusNet enters into any guarantee or indemnity on behalf of any person or provides security for the obligations of any person, except for another member of the AusNet Group or in the ordinary course of business and consistent with past practice;
- (ii) AusNet or any Subsidiary of AusNet enters into any new employment or service agreement (other than in respect of any position publicly advertised prior to the date of this deed or to replace an individual who has ceased to be an AusNet Group employee), or terminates any employment or service agreement in existence at the date of this deed, with an individual in respect of which the total annual compensation is greater than \$1,000,000;
- (iii) AusNet or any Subsidiary of AusNet undertakes any of the following:
- (A) pays any bonus to any member of the Executive Leadership Team or officer of AusNet or any Subsidiary of AusNet, or any direct report of such person (other than executive assistants and other support staff) (**Relevant Employee**), other than:
- (1) subject to clause 6.1(g), bonuses payable to any Relevant Employee for the year ending 31 March 2022 in accordance with short term, deferred or long term incentive plans, the employment terms or any other contractual entitlement of that Relevant Employee in existence as at the date of this deed and Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
- (2) subject to clause 6.1(g), if the Implementation Date occurs after 31 March 2022, the making of cash equivalent or substitute

payments to any Relevant Employee in respect of the period between 31 March 2022 and the Implementation Date, as a substitute for any short term, deferred or long term incentives that would otherwise have been paid or granted to that employee in the ordinary and usual course of business in accordance with the short, deferred and long term plans Fairly Disclosed in the Due Diligence Material or the Disclosure Letter; or

- (3) any action taken in compliance with clause 4.4 in relation to any Performance Rights or Deferred Rights, which may include the making of cash equivalent or substitute payments;
- (B) increases the remuneration, compensation or benefits or accelerates the right to compensation or benefits of any kind (except any action taken in relation to any Performance Rights or Deferred Rights in compliance with clause 4.4, which may include the making of cash equivalent or substitute payments) of any Relevant Employee or employee of AusNet or any Subsidiary of AusNet holding a business, investment or project development role, other than:
 - (1) in accordance with AusNet's normal salary review procedure conducted in good faith and in the ordinary and usual course of business;
 - (2) subject to clause 6.1(g), cash retention payments;
 - (3) subject to clause 6.1(g), as AusNet considers necessary having regard to prevailing market conditions or retention; or
 - (4) as described in 6.1(f)(iii)(A)(2) above;
- (C) grants to or pays any Relevant Employee, any increase in severance or termination pay or superannuation entitlements other than as required by law or as provided for in an existing contract; or
- (D) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any material provisions of, any contract of employment with any Relevant Employee (other than by changing the terms of any contract of employment by extending a notice period for termination of the contract, as part of AusNet's retention arrangements),

however, the parties acknowledge and agree that AusNet or any Subsidiary of AusNet may undertake any of the actions referred to in sub-paragraphs (A) to (D) above where the action does not take effect unless this deed is terminated without the Scheme taking effect;

- (iv) except for actions permitted under clause 6.1(f)(iii), AusNet or any Subsidiary of AusNet (A) pays any bonus, (B) increases remuneration, compensation or benefits or accelerates rights to compensation or benefits of any kind, (C) grants to or pays any increase in severance or termination pay or superannuation entitlements, (D) makes or agrees to make any material change to the terms of, or waives any claims or rights under, or waives the benefit of any material provisions of, any contract of employment, or (E) makes a cash retention payment, in each case involving any employee other than in the ordinary course of business or as AusNet considers necessary having regard to prevailing market conditions;

- (v) enters into, renews, extends, alters or varies any agreement or arrangement relating to the engagement of a financial or other adviser in connection with the Transaction, or otherwise pays or undertakes to pay third party costs or expenses in connection with the Transaction, in each case where the relevant action will or is likely to result in aggregate third party costs or expenses in connection with the Transaction (including fees payable to financial and other advisers) materially exceeding the amount disclosed in the Disclosure Letter;
- (vi) AusNet or any Subsidiary of AusNet:
- (A) acquires, agrees to acquire, leases, agrees to lease, disposes of, agrees to dispose of or offers, proposes or announces a bid or tenders for any entity, business or assets;
 - (B) enters into any contract or commitment or materially varies any contract or commitment in existence as at the date of this deed; or
 - (C) other than contracts or commitments involving expenditure required to operate the business in the ordinary course and consistent with past practice, AusNet or any Subsidiary of AusNet agrees to incur or incurring capital expenditure,

where the amount involved in any such transactions, or the expenditure arising from any such new or varied commitments or contracts, exceeds \$150 million in aggregate, other than:

 - (D) trading inventories and consumables in the ordinary and usual course of business; or
 - (E) as legally committed or contemplated under any contract or commitment or proposed contract Fairly Disclosed to Bidder in the Due Diligence Material or the Disclosure Letter;
- (vii) AusNet or any Subsidiary of AusNet compromises, settles or offers to settle any legal proceedings, claim, investigation, arbitration or like proceeding (or series of related legal proceedings, claims, investigations, arbitrations or like proceedings), where the claimed or settlement amount (or, in the case of a series of related legal proceedings, claims, investigations, arbitrations or like proceedings, aggregate claimed or settlement amount) is in excess of \$25,000,000 provided that the aggregate amount of all such claimed or settlement amounts must not exceed \$50,000,000, other than any customer credits in the ordinary course of business, Guaranteed Service Level Payments or Voltage Variation Guideline Payments;
- (g) does not make payments under clauses 6.1(f)(iii)(A)(1)-(2) or (B)(2)-(3) that result in the AusNet Group incurring aggregate expenditure exceeding \$25,000,000;
- (h) in the case of AusNet only (and not any other AusNet Group entity), does not change any material accounting policy applied by it to report its financial position other than any change in policy required by a change in applicable accounting standards or law;
- (i) does not enter into a material contract or material commitment restraining a member of the AusNet Group or a controlling entity of such a member from competing with any person or conducting activities in any market (other than with the prior written consent of Bidder, such consent not to be unreasonably withheld where the restraint does not extend to any entity that is a controlling entity of AusNet and relates only to a specific transaction or project);

- (j) does not enter into, or resolve or agree to enter into, a transaction with, or give (or agree to give) a financial benefit to, any related party of AusNet (for these purposes “related party” has the meaning given in section 228 of the Corporations Act) except pursuant to section 211, 212 or 214 of the Corporations Act;

in each case except to the extent:

- (k) required or expressly permitted by this deed or the Scheme;
- (l) required in order to comply with any applicable law;
- (m) Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
- (n) Fairly Disclosed to ASX in the three years prior to the date of this deed;
- (o) the relevant expenditure is budgeted for in respect of the financial years ending 31 March 2022 or 31 March 2023, in the Corporate Model which is contained in the Due Diligence Material, and is undertaken in the ordinary course of business and consistent with past practice;
- (p) the relevant expenditure is capital expenditure funded by customers of the AusNet Group;
- (q) required to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property), provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, AusNet has consulted with the Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable) and considers any reasonable comments or requests of the Bidder in relation to such proposal in good faith; or
- (r) agreed to in writing by Bidder (such agreement not to be unreasonably withheld or delayed).

6.2 Access to information and co-operation

- (a) **(Provision of access and information)** During the period from the date of this deed up to and including the Implementation Date, AusNet must, and must procure each of its Subsidiaries to, respond to reasonable requests from Bidder and its Representatives for information concerning the AusNet Group businesses, operations and affairs as soon as reasonably practicable after such requests are made, and give Bidder and its Representatives reasonable access to AusNet's senior executive team and records, and otherwise provide reasonable co-operation to Bidder and its Representatives, in each case for the purposes of:
- (i) the implementation of the Scheme;
- (ii) integration planning prior to implementation of the Scheme which, for the avoidance of doubt, does not include ongoing due diligence on the AusNet Group;
- (iii) the refinancing or replacement of any AusNet Facilities which may need to be repaid or novated in connection with the Scheme, and the maintaining of AusNet's credit ratings prior to implementation of the Scheme;
- (iv) finalisation of the Bidder Group's structuring arrangements for the Transaction; or
- (v) any other purpose that is agreed in writing between the parties.
- (b) **(Limits on AusNet obligations)** The obligations in clause 6.2(a) and clause 6.3 do not require AusNet to:
- (i) do anything which would cause undue disruption to the operation of its business in the ordinary course;

- (ii) require a member of the AusNet Group to take any action that would be reasonably expected to result in an AusNet Group member breaching any applicable law or the entity's constituent documents;
 - (iii) require a member of the AusNet Group to take any action that would breach an obligation to any person (including any confidentiality obligations);
 - (iv) provide information to Bidder concerning the AusNet directors' and management's consideration of the Scheme; or
 - (v) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the AusNet Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege (provided AusNet must use reasonable endeavours to facilitate the provision of such information without waiving legal professional privilege or on the basis of a limited waiver, such that privilege more generally is not lost).
- (c) The parties acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Deed.

6.3 Integration planning

- (a) On and from the date of this deed, the parties agree to establish an integration committee comprising an equal number of members from each party.
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of the following:
 - (i) implementation of the Scheme;
 - (ii) matters related to integration and transition planning, stakeholder engagement and communications, business operations and functions or processes; and
 - (iii) the process referred to in clause 6.4.
- (c) Each party must ensure that its representatives on the Integration Committee act in good faith in their capacity as members of the Integration Committee with a view to fulfilling the role and objectives of such committee (to the extent within their power).
- (d) The Integration Committee will meet at such times and places as agreed between the members of the Integration Committee from time to time, taking into account the existing roles and duties of AusNet's representatives on the Integration Committee. Meetings may be held via telephone or other forms of technology that provide representatives with an opportunity to participate.
- (e) The members of the Integration Committee may agree to invite other persons to attend meetings of the Integration Committee from time to time.
- (f) From time to time, certain members of the Integration Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Integration Committee to discuss and progress matters considered or plans developed by the Integration Committee.
- (g) The parties acknowledge and agree that:
 - (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind any party or to give any consent, approval or waiver on behalf of any party;

- (ii) nothing in this clause 6.3 or elsewhere in this deed requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties;
- (iii) nothing in this clause 6.3 or elsewhere in this deed requires a party to take any action that would reasonably be expected to result in an AusNet Group member breaching any applicable law or the entity's constituent documents;
- (iv) the respective businesses of the Bidder Group and the AusNet Group are to continue to operate independently until (and subject to) implementation of the Scheme; and
- (v) nothing in this clause 6.3 requires any of AusNet's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to AusNet and the ongoing conduct of AusNet's business.

6.4 Change of control consents

As soon as practicable after the date of this deed, AusNet and Bidder must seek to identify any change of control or unilateral termination rights (or similar provisions) in material contracts to which AusNet or another member of the AusNet Group is party which may be triggered by or exercised in response to the implementation of the Transaction (or matters consequential on the implementation of the Transaction including the subsequent delisting of AusNet from the ASX). In respect of those contracts:

- (a) AusNet and Bidder will agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) and then AusNet will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate. Bidder must not contact any counterparties for this purpose without AusNet present or without AusNet's prior written consent (which is not to be unreasonably withheld, conditioned or delayed).
- (b) AusNet must cooperate with, and provide reasonable assistance to, Bidder to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires AusNet or Bidder to incur material expense).
- (c) Bidder must take all action necessary to comply with any requirements of the counterparties that are reasonably necessary to obtain the relevant consent or confirmation, in accordance with the proposed course of action agreed under paragraph (a) above, including providing any information required and entering into parent guarantees or such other forms of guarantee or security as counter-parties may reasonably require and make officers and employees available, where necessary to meet with counter-parties to deal with any issues arising in relation to the matter.
- (d) Provided that AusNet has complied with this clause 6.4 and the relevant contract has been Fairly Disclosed in the Due Diligence Material or the Disclosure Letter (**Relevant Contract**), a failure by a member of the AusNet Group to obtain any third party consent or confirmation, or the exercise of a termination right under a Relevant Contract, will not of itself constitute a breach of this deed by AusNet and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

6.5 Directors' and officers' insurance and indemnities

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Bidder undertakes in favour of AusNet and each person who is a director or officer of a member of the AusNet Group that it will:
- (i) for a period of seven years from the Implementation Date or until a company ceases to be part of the AusNet Group (whichever is earlier), ensure that the constitutions of AusNet and each other member of the AusNet Group continues to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its current and previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the AusNet Group; and
 - (ii) procure that each member of the AusNet Group complies with any deeds of indemnity, access and insurance made by them prior to the date of this deed (and the general terms of which have been Fairly Disclosed in the Due Diligence Material or the Disclosure Letter) in favour of their respective current and previous directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained, for a period of seven years from the retirement date of each director and officer (and AusNet may, at its election, put in place such run-off insurance and pay any amounts necessary to ensure such maintenance upfront prior to the implementation of the Scheme, provided that it consults with Bidder and uses reasonable endeavours to obtain the most attractive premiums and to obtain primary cover from the same insurers as currently provide the cover (including, in the case, of Side C cover, the captive insurer), and it is acknowledged that the scope of the cover is not to be increased from what currently applies).
- (b) Bidder acknowledges that, notwithstanding any other provision of this deed, AusNet may, prior to the Implementation Date, enter into arrangements to secure directors' and officers' run-off insurance for up to such seven year period, provided that it acts reasonably and in consultation with Bidder.
- (c) The undertakings contained in clause 6.5(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) AusNet receives and holds the benefit of clause 6.5(a), to the extent it relates to the other AusNet Parties, as trustee for them.
- (e) The undertakings contained in clause 6.5(a) are given until the earlier of the end of the relevant period specified in clause 6.5(a) or the relevant member of the AusNet Group ceasing to be part of the AusNet Group.]

6.6 AusNet Financing

- (a) Between the date of this deed and the Implementation Date, AusNet must, and must do all things reasonably within its power to procure that each member of the AusNet Group does, promptly notify the Bidder if:
- (i) it requests or grants a waiver or consent in respect of a material provision of an AusNet Financing, with reasonable detail of the reason for the request;
 - (ii) it becomes aware of a breach of an AusNet Financing or the occurrence of an AusNet Financing Default, together with reasonable information in relation to the

matter, event or circumstance giving rise to the breach or AusNet Financing Default;

- (iii) it becomes aware of any proposal by a rating agency to downgrade a rating of AusNet or any Subsidiary of AusNet or any notes, bonds or similar instruments issued by AusNet or any Subsidiary of AusNet;
 - (iv) AusNet or any Subsidiary of AusNet incurs or commits to incur any financial indebtedness or issues any indebtedness or debt securities;
 - (v) AusNet or any Subsidiary of AusNet enters into, unwinds or closes out any financial indebtedness in connection with derivative or similar transactions to manage exposure to the fluctuation in the rate or price of currency, interest rates or gas or electricity; or
 - (vi) AusNet or any Subsidiary of AusNet enters into any guarantee or indemnity on behalf of any person or provides security for the obligations of any person, except for another member of the AusNet Group or in the ordinary course of business and consistent with past practice.
- (b) AusNet must consult in good faith with the Bidder after the date on which a notice is given under clause 6.6(a)(ii) to consider and determine the steps that can be taken to avoid, remedy or cure (as the case may be) the relevant AusNet Financing Default, and use its best endeavours to avoid the occurrence of, or remedy or cure, any AusNet Financing Default.
- (c) Subject to the Scheme becoming Effective and if requested with reasonable notice by the Bidder in writing and provided that the Bidder has demonstrated to AusNet the availability of funding that will be provided by the Bidder to AusNet in order for AusNet to make any prepayment or break fee that AusNet Finco must pay to the providers of the relevant AusNet Bank Debt Facilities in connection with the prepayment (including if any prepayment or break fee is payable prior to the Implementation Date), AusNet will take such action between the Effective Date and the Implementation Date as is necessary to ensure that:
- (i) the AusNet Bank Debt Facilities specified in the notice will be cancelled; and
 - (ii) if any amounts have been utilised or drawn under the relevant AusNet Bank Debt Facility prior to the Implementation Date, prepayment notices are given which are effective for a prepayment,
- on or after the Implementation Date (on the date specified by the Bidder).

6.7 Clear exit payment

The parties shall use reasonable endeavours to determine clear exit payments (if any) required. .

7 AusNet Board recommendation

- (a) AusNet represents and warrants to Bidder that, as at the date of this deed, each AusNet Director has confirmed by unanimous resolution of the AusNet Board that he or she will act in accordance with clause 7(b).
- (b) Subject to clauses 7(c) and 7(d), AusNet must use its best endeavours to ensure that:
 - (i) unless otherwise agreed in writing by the parties, the AusNet Board unanimously recommends that, in the absence of a Superior Proposal and subject to the Independent Expert opining at all times prior to the Second Court Date that the

- Scheme is in the best interests of AusNet Shareholders, AusNet Shareholders vote in favour of the Scheme at the Scheme Meeting;
- (ii) the Scheme Booklet and all public announcements by AusNet in relation to the Scheme (other than announcements as to purely administrative matters) will include a statement by the AusNet Board to that effect, and to the effect that each director of AusNet will, in the absence of a Superior Proposal, vote (or procure the voting of) all AusNet Shares held or controlled by him or her in favour of the Scheme at the Scheme Meeting; and
 - (iii) unless otherwise agreed in writing by the parties, a director of AusNet does not change, withdraw, modify or qualify his or her recommendation under clause 7(b)(i) or a statement under clause 7(b)(ii) or make a recommendation or statement that is inconsistent with such recommendation or statement (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that he or she no longer supports the Scheme).
- (c) Clause 7(a) will cease to apply in either of the following circumstances:
- (i) the Independent Expert opines either prior to the despatch of the Scheme Booklet or prior to the Scheme Meeting to the effect that the Scheme is not in the best interests of AusNet Shareholders; or
 - (ii) AusNet receives a Competing Proposal and a majority of the AusNet Board determines, after all of Bidder's rights under clause 11.5 have been exhausted, that the Competing Proposal constitutes a Superior Proposal.
- (d) Bidder acknowledges and agrees that, notwithstanding any other term of this deed, one or more executive directors of AusNet may not make a recommendation under clause 7(b)(i) or may change, withdraw or modify his or her recommendation (but not so as to recommend voting against the Scheme at the Scheme Meeting) without being in breach of clause 7(b)(iii), in response to a requirement or request of the Court or a Government Agency that the relevant AusNet executive director abstain or withdraw from making a recommendation that AusNet Shareholders vote in favour of the Scheme at the Scheme Meeting.

8 Representations and warranties

8.1 Bidder Representations and Warranties

- (a) Bidder represents and warrants to AusNet (in its own right and separately as trustee or nominee for each of the other AusNet Parties) that each Bidder Representation and Warranty is true and correct.
- (b) Bidder must not take or omit to take any action, or allow any action to be taken or omit to be taken, which would cause any Bidder Representation and Warranty not to be true and correct.
- (c) Bidder indemnifies AusNet (in its own right and separately as trustee or nominee for each member of the AusNet Group) against, and must pay AusNet on demand the amount of, any losses, liabilities, damages, costs, charges or expenses suffered or incurred by any member of the AusNet Group as a result of, or in connection with, a breach of a Bidder Representation and Warranty.

8.2 AusNet Representations and Warranties

- (a) AusNet represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Parties) that each AusNet Representation and Warranty is true and correct.
- (b) AusNet must not take or omit to take any action, or allow any action to be taken or omit to be taken, which would cause any AusNet Representation and Warranty not to be true and correct.
- (c) Bidder acknowledges and agrees that the AusNet Representations and Warranties and the AusNet indemnity under clause 8.2(d) are given subject to those matters which:
- (i) are expressly provided for in this deed;
 - (ii) are Fairly Disclosed in the Due Diligence Material or the Disclosure Letter;
 - (iii) have been Fairly Disclosed to ASX within three years prior to the date of this deed;
 - (iv) would have been Fairly Disclosed to Bidder had Bidder conducted searches of public records maintained by:
 - (A) the register established under the *Personal Property Securities Act 2009* (Cth) on 29 September 2021; and
 - (B) the High Court of Australia, Federal Court of Australia and the Supreme Courts of each state and territory in Australia (other than Western Australia and the Northern Territory) on 24 September 2021; or
 - (v) are within the actual knowledge of Bidder as at the date of this deed.
- (d) AusNet indemnifies Bidder (in its own right and separately as trustee or nominee for each member of the Bidder Group) against, and must pay Bidder on demand the amount of, any losses, liabilities, damages, costs, charges or expenses suffered or incurred by any member of the Bidder Group as a result of, or in connection with, a breach of an AusNet Representation and Warranty.

8.3 Timing of representations and warranties

Unless expressed to be given at a particular time or during a particular period (in which case it is given at that time or during that period), each Bidder Representation and Warranty and each AusNet Representation and Warranty is given:

- (a) at the date of this deed;
- (b) on the date of the Scheme Booklet;
- (c) on the date of the Scheme Meeting; and
- (d) at 8:00am on the Second Court Date.

8.4 Survival of representations

Each Bidder Representation and Warranty and AusNet Representation and Warranty and the indemnities in clauses 8.1(c) and 8.2(d):

- (a) is severable; and
- (b) survives the termination of this deed (but does not survive, and will be taken to have no further force or effect following, implementation of the Scheme).

9 Releases

9.1 AusNet Parties

- (a) Without limiting Bidder's rights under clause 12, Bidder releases its rights against, and agrees with AusNet that it will not make a Claim against, any AusNet Party (other than AusNet) in connection with:
- (i) any breach of any representation, covenant and warranty of AusNet in this deed; or
 - (ii) any disclosure made (at any time) by any AusNet Party that contains any statement which is false or misleading whether in content or by omission,
- except to the extent the relevant AusNet Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 9.1 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. AusNet receives and holds the benefit of this clause as trustee for each other AusNet Party.

9.2 Bidder Parties

- (a) Without limiting its rights under clause 12, AusNet releases its rights against, and agrees with Bidder that it will not make a Claim against, any Bidder Party (other than Bidder) in connection with:
- (i) any breach of any representation, covenant and warranty of Bidder in this deed; or
 - (ii) any disclosure made (at any time) by any Bidder Party that contains any statement which is false or misleading whether in content or by omission,
- except to the extent that the relevant Bidder Party has not acted in good faith or has acted fraudulently or has engaged in wilful misconduct.
- (b) This clause 9.2 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.
- (c) For the avoidance of doubt, nothing in clause 9.2(a) limits the terms of any Equity Commitment Letter or AusNet's right to claim under any Equity Commitment Letter.

10 Public announcements

10.1 Announcement of the Transaction

Immediately after the execution of this deed, AusNet must issue a public announcement in a form previously agreed to in writing between the parties. The AusNet announcement must include:

- (a) a unanimous recommendation by the directors of AusNet to AusNet Shareholders consistent with that set out in clause 7(b)(i) (unless otherwise agreed by the parties in writing); and
- (b) a statement consistent with that set out in clause 7(b)(ii), although such statement will also be subject to the Independent Expert opining that the Scheme is in the best interests of AusNet Shareholders.

10.2 Other public announcements

Each party must:

- (a) prior to making any public announcement or disclosure of or in relation to the Transaction, to the extent reasonably practicable and lawful, consult with the other party as to the timing, form and content of that announcement or disclosure, including by giving the other party a reasonable opportunity to review the draft and taking into account all reasonable comments from them on the draft; and
- (b) not make any such public announcement or disclosure prior to such consultation, except as may be required by applicable law or the ASX Listing Rules.

11 Exclusivity

11.1 No current discussions regarding a Competing Proposal

AusNet represents and warrants that, as at the time of public release of the AusNet announcement described in clause 10.1, neither it nor any of its Representatives are in any negotiations or discussions, in respect of any Competing Proposal.

11.2 No-shop and no talk

During the Exclusivity Period, AusNet must not, and must ensure that each of its Representatives, does not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any Competing Proposal, or any enquiries, proposal, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to, any Competing Proposal, or communicate any intention to do any of those things; and
- (b) **(no talk or due diligence access)** subject to clause 11.3:
 - (i) enter into, continue or participate in negotiations or discussions with, or negotiate or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to encourage or lead to, any Competing Proposal; or
 - (ii) disclose or otherwise make available to any Third Party, or permit any Third Party to receive, any non-public information relating to AusNet or any of its Related Bodies Corporate in connection with, or which may reasonably be expected to encourage or lead to, such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any Competing Proposal; or
 - (iii) communicate any intention to do any of those things.

11.3 Limitation to no-talk and no-due diligence

Clause 11.2(b) does not prevent AusNet from taking or omitting to take any action in relation to a Competing Proposal (which was not solicited, invited, encouraged or initiated in breach of clause 11.2(a)), provided that the AusNet Board has first determined, in good faith, and in what the AusNet Board considers to be in the interests of AusNet and its shareholders, and after receiving advice from its external financial and external legal Advisers, that:

- (a) such Competing Proposal is, or could reasonably be expected to become, a Superior Proposal; and

- (b) compliance with clause 11.2(b) would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of the directors of AusNet.

11.4 Notification by AusNet

During the Exclusivity Period, AusNet must as soon as possible (and in any event within 24 hours) give Bidder notice in writing if it, or any of its Representatives receives a Competing Proposal (or any approach, inquiry or proposal made by any person to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal, or receives any request from a Third Party for any non-public information relating to the AusNet Group or any of its businesses or operations in connection with or to assist in the development of a Competing Proposal). Such notice must include the identity of the relevant person making, proposing or otherwise involved in the relevant Competing Proposal, together with all material terms and conditions of the relevant Competing Proposal (including price and form of consideration, value of any non-cash component of the consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent), in each case only to the extent known to AusNet.

11.5 Bidder matching right

- (a) Without limiting clause 11.2, during the Exclusivity Period, AusNet must not, and must procure that each of its Subsidiaries do not, enter into any legally binding agreement, arrangement or understanding pursuant to which AusNet or any Subsidiary of AusNet agrees to undertake or give effect to a Competing Proposal, unless:
- (i) the Competing Proposal is in a form which is able to be accepted by AusNet so as to give rise to a legally binding agreement, and the AusNet Board determines that the Competing Proposal is, or would be or would be reasonably likely to be, a Superior Proposal;
 - (ii) AusNet has provided Bidder with a notice stating that it is given for the purposes of this clause 11.5 and setting out:
 - (A) all the material terms and conditions of the Competing Proposal (including, but not limited to, price, form of consideration, value of any non-cash component of the consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and any conditions precedent);
 - (B) if the form of consideration being proposed under the Competing Proposal is not cash, or the consideration includes a component that is not cash (which may, for example, be in the form of shares in the competing bidder), or the Competing Proposal includes other features which affect its value, the cash equivalent value per AusNet Share that the AusNet Board considers the Competing Proposal to be worth, and guidance as to any other terms and conditions that Bidder would need to propose to AusNet in order to provide a matching outcome for AusNet Shareholders as a whole as compared with the Competing Proposal; and
 - (C) the identity of the Third Party making the Competing Proposal;
 - (iii) AusNet has given Bidder five Business Days after the date of the provision of the notice referred to in clause 11.5(a)(ii) to announce or provide to AusNet a counter proposal to the Competing Proposal (***Bidder Counterproposal***); and

- (iv) either:
- (A) Bidder has not announced or provided to AusNet a Bidder Counterproposal by the expiry of the five Business Day period in clause 11.5(a)(iii); or
 - (B) Bidder has announced or provided to AusNet a Bidder Counterproposal by the expiry of the five Business Day period in clause 11.5(a)(iii) that the AusNet Board, acting reasonably and in good faith, determines would not provide a matching or superior outcome for AusNet Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal.
- (b) If Bidder announces or provides to AusNet a Bidder Counterproposal by the expiry of the five Business Day period in clause 11.5(a)(ii), AusNet must procure that the AusNet Board considers the Bidder Counterproposal and if the AusNet Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide a matching or superior outcome for AusNet Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal, then AusNet and Bidder must use their best endeavours to agree the amendments to this deed, the Scheme and the Deed Poll (as applicable) that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable, and AusNet must use its best endeavours to procure that each AusNet director continues to recommend the Transaction (as modified by the Bidder Counterproposal) to AusNet Shareholders in accordance with clause 7.
- (c) For the purposes of this clause 11.5:
- (i) each successive material variation or amendment to a Competing Proposal will constitute a new Competing Proposal; and
 - (ii) for the avoidance of doubt, the process set out in this clause 11.5 must again be followed in respect of any such new Competing Proposal.

11.6 Compliance with law

- (a) This clause 11 imposes obligations on AusNet only to the extent that the performance of all or part of those obligations:
- (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the AusNet Board's fiduciary or statutory duties),
- subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 11.6(a) and, in the event that any such application is made by a Third Party, must take all reasonable steps (including by making submissions against the declaration or determination) to ensure that any such determination is not made or applies to the minimum extent possible.

11.7 Normal provision of information

Nothing in this clause 11 prevents a party from:

- (a) providing information to its Representatives for the purpose of implementing the Transaction;
- (b) providing information to any Government Agency for the purpose of implementing the Transaction;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency;
- (e) making presentations to, and responding to enquiries from, brokers, portfolio investors, analysts, institutional investors and institutional lenders in the ordinary course in relation to its business generally; or
- (f) engaging with its shareholders (in their capacity as a shareholder) in the ordinary course and consistent with past practice, in relation to AusNet Group, provided such engagement does not relate to AusNet soliciting, inviting, encouraging or initiating an actual or proposed or potential Competing Proposal.

12 Break fees**12.1 Background**

This clause 12 has been agreed to in circumstances where:

- (a) AusNet and Bidder believe the implementation of the Scheme will provide significant benefits to AusNet, Bidder and their respective shareholders, and acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, each will have incurred significant costs, including significant opportunity costs;
- (b) both parties have requested provision be made for the relevant payments outlined in this clause 12, without which neither party would have entered into this deed;
- (c) the board of directors of each party believes that it is appropriate to agree to the payments referred to in this clause 12 to secure the relevant party's entry into this deed; and
- (d) each party has received separate legal advice in relation to this deed and the operation of this clause 12.

The parties acknowledge and agree that the costs actually incurred by Bidder and AusNet as referred to in this clause 12 will be of such nature that they cannot be accurately ascertained, but that the AusNet Break Fee and the Bidder Break Fee are each a genuine and reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Bidder and AusNet respectively.

12.2 Payment of AusNet Break Fee

Subject to clause 12.4 and 12.7, AusNet must pay Bidder (or another entity as nominated by the Bidder) the AusNet Break Fee if:

- (a) during the Exclusivity Period, any director of AusNet:
 - (i) fails to make the recommendation under clause 7(b)(i) (unless otherwise agreed by the parties in writing) or statement under clause 7(b)(ii);

- (ii) withdraws or adversely changes, modifies or qualifies their recommendation that AusNet Shareholders vote in favour of the Scheme at the Scheme Meeting (unless the withdrawal, change, modification or qualification was otherwise agreed by the parties in writing); or
- (iii) recommends, supports or endorses a Competing Proposal, including by making a public statement recommending that AusNet Shareholders accept or vote in favour of a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period,

other than in circumstances where the Independent Expert concludes that the Scheme is not in the best interests of AusNet Shareholders (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal);

- (b) during the Exclusivity Period a Competing Proposal is announced by a Third Party or notified to AusNet (whether or not such proposal is stated to be subject to any pre-conditions) and, within nine (9) months after that occurring or after AusNet has given Bidder the last of all notices under clause 11.5(a)(ii) in relation to that Competing Proposal (whichever is later), the Third Party or any one or more Associate(s) of the Third Party:
 - (i) completes a transaction of the kind referred to in paragraph (b), (c) or (d) of the definition of Competing Proposal; or
 - (ii) has a relevant interest in at least 50% of AusNet Shares under a transaction that is or has become wholly unconditional; or
- (c) Bidder terminates this deed under:
 - (i) clause 14.1(a)(i); or
 - (ii) clause 14.1(b), other than in circumstances where the Independent Expert concludes that the Scheme is not in the best interests of AusNet Shareholders (except in circumstances where the Independent Expert reaches that conclusion as a result of a Competing Proposal).

12.3 Payment of Bidder Break Fee

Subject to clause 12.4 and 12.7, Bidder must pay AusNet the Bidder Break Fee if AusNet terminates this deed under clause 14.1(a)(i).

12.4 Payment conditions

- (a) Notwithstanding the occurrence of an event referred to in clause 12.2, no amount is payable under clause 12.2(a) or 12.2(c) if, prior to the event occurring:
 - (i) AusNet was entitled to terminate this deed under clause 14.1(a)(i); or
 - (ii) either party terminates this deed under clause 3.7 due to failure of a Condition Precedent in clause 3.1(a).
- (b) Without limiting clause 12.4(a), if an event referred to in clause 12.2(a) occurs no amount is payable under clause 12.2 unless Bidder has terminated this deed under clause 14.1(b) or the Scheme has failed to become Effective by the End Date.
- (c) Notwithstanding the occurrence of an event referred to in clause 12.3, no amount is payable under clause 12.3 if, prior to the event occurring:
 - (i) Bidder was entitled to terminate this deed under clause 14.1(a)(i) or clause 14.1(b); or

- (ii) either party terminates this deed under clause 3.7 due to failure of a Condition Precedent in clause 3.1(a).
- (d) Despite anything to the contrary in this deed, the AusNet Break Fee will not be payable to Bidder if the Scheme becomes Effective, notwithstanding the occurrence of an event referred to in clause 12.2 and, if the AusNet Break Fee has already been paid it must be refunded by Bidder within five Business Days after the Scheme becomes Effective.
- (e) Despite anything to the contrary in this deed, the Bidder Break Fee will not be payable to AusNet if the Scheme becomes Effective, notwithstanding the occurrence of an event referred to in clause 12.3 and, if the Bidder Break Fee has already been paid it must be refunded by AusNet within five Business Days after the Scheme becomes Effective.
- (f) AusNet can only ever be liable to pay the AusNet Break Fee once.
- (g) Bidder can only ever be liable to pay the Bidder Break Fee once.

12.5 Timing of payment

- (a) AusNet must pay Bidder the AusNet Break Fee, if it is payable pursuant to this clause 12, within five Business Days after receiving a written notice from Bidder setting out the relevant circumstances and requiring payment of the AusNet Break Fee.
- (b) Bidder must pay AusNet the Bidder Break Fee, if it is payable pursuant to this clause 12, within five Business Days after receiving a written notice from AusNet setting out the relevant circumstances and requiring payment of the Bidder Break Fee.
- (c) A written notice requiring payment of the AusNet Break Fee or the Bidder Break Fee, as applicable, may only be made after the Scheme fails to become Effective by the End Date or this Agreement is terminated in accordance with its terms.

12.6 Nature of payment

AusNet and Bidder acknowledge that the AusNet Break Fee and the Bidder Break Fee represent a reasonable amount to compensate the other for the following:

- (a) advisory costs (including costs of Advisers other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives.

12.7 Compliance with law

- (a) This clause 12 imposes obligations on AusNet and Bidder only to the extent that the performance of all or part of those obligations:
 - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
 - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the fiduciary or statutory duties of the directors of AusNet or Bidder), subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination

of a kind referred to in clause 12.7(a), or for or in relation to a declaration or determination which would reduce or impair Bidder's rights under clause 11 or this clause 12 of this deed. In the event that any application of the type described in this clause 12.7(b) is made by a Third Party, AusNet must make submissions, and where relevant, apply for review of or appeal from any declaration or determination, and for interim orders with the objective that any such declaration or determination is not made or applies to the minimum extent possible, in consultation with Bidder, provided that AusNet is not required to apply for any judicial review or appeal of any matter to a court where an independent senior counsel of the bar in the relevant State or Territory in Australia advises that, in their view, a judicial review application or appeal would have no reasonable prospect of success.

12.8 Limitation of liability

- (a) Notwithstanding any other provision of this deed, but subject to clause 12.8(b):
- (i) the maximum aggregate liability of AusNet to Bidder under or in connection with this deed including in respect of any breach of this deed will be the amount of the AusNet Break Fee;
 - (ii) a payment by AusNet of the AusNet Break Fee in accordance with this clause 12 represents the sole and absolute liability of AusNet to Bidder under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by AusNet to Bidder in connection with this deed; and
 - (iii) the amount of the AusNet Break Fee payable to Bidder under this clause 12 shall be reduced by the amount of any loss or damage recovered by Bidder in relation to a breach of any other clause of this deed.
- (b) Clause 12.8(a) does not limit the liability of AusNet under or in connection with this deed in respect of any fraud or wilful material breach of this deed by AusNet.
- (c) Notwithstanding any other provision of this deed, but subject to clause 12.8(d):
- (i) the maximum aggregate liability of Bidder to AusNet under or in connection with this deed including in respect of any breach of this deed will be the amount of the Bidder Break Fee;
 - (ii) a payment by Bidder of the Bidder Break Fee in accordance with this clause 12 represents the sole and absolute liability of Bidder to AusNet under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder to AusNet in connection with this deed; and
 - (iii) the amount of the Bidder Break Fee payable to AusNet under this clause 12 shall be reduced by the amount of any loss or damage recovered by AusNet in relation to a breach of any other clause of this deed.
- (d) Clause 12.8(c) does not limit the liability of Bidder under or in connection with this deed in respect of any fraud or wilful material breach of this deed by Bidder.

13 Standstill

13.1 No acquisition of Securities

Subject to clause 13.2, the Bidder agrees that, for a period of nine (9) months after the date of this deed, it will not (and will procure that each of its Related Entities do not):

- (a) **(acquire Securities)** directly or indirectly:
 - (i) make or cause to be made any offer, invitation or solicitation for; or
 - (ii) purchase or otherwise acquire,
 any of AusNet's Securities, or a relevant interest in any of AusNet's Securities;
- (b) **(acquire economic interest)** enter into any agreement, arrangement or understanding that would involve the conferring of rights on the Bidder, or a Related Entity of the Bidder, the economic effect of which is equivalent, or substantially equivalent, to the Bidder or a Related Entity (as the case may be) acquiring, holding or disposing of AusNet's Securities or a relevant interest in AusNet's Securities (including any cash-settled equity swap or similar derivative relating to any of AusNet's Securities);
- (c) **(solicit proxies)** solicit proxies from holders of AusNet's Securities or otherwise seek to influence or control the management or policy of AusNet; or
- (d) **(assistance)** co-operate with, assist, or enter into any agreement or arrangement of any kind with, any person relating to (or in any way connected with) any action contemplated in clause 13.1(a), 13.1(b) or 13.1(c).

13.2 Exceptions

- (a) Clause 13.1 does not apply to the acquisition of AusNet Shares pursuant to implementation of the Scheme.
- (b) The Bidder or any of its Related Entities are not prevented from taking any action referred to in clause 13.1 to the extent the relevant action:
 - (i) occurs after a Third Party publicly announces an intention to make a takeover offer to acquire at least a majority of the AusNet Shares;
 - (ii) occurs after any Third Party who is a substantial holder (as defined in the Corporations Act) in AusNet as at the date of this deed (other than any Institutional Investor (it being acknowledged by the parties that each of Franklin Resources, Inc and its Affiliates is an Institutional Investor), Singapore Power International Pte Ltd and its Affiliates, and State Grid Corporation of China and its Affiliates):
 - (A) acquires a relevant interest in an additional 1% or more of the AusNet Shares; or
 - (B) directly or indirectly acquires an interest in or equivalent to an additional 1% or more of the AusNet Shares by entering into any agreement, arrangement or understanding with any person involving the conferring of rights, the economic effect of which is equivalent or substantially equivalent to the acquisition, holding or disposal of AusNet Shares (including, but not limited to, cash-settled derivative contracts, swaps, contracts for differences or other derivative contracts) (**Equivalent Acquisition**);

- (iii) occurs after any Third Party who is not an Institutional Investor and not identified in a notice sent to ASX as a substantial holder (as defined in the *Corporations Act*) in AusNet as at the date of this deed:
- (A) becomes, or indicates an intention to become, the holder of a relevant interest in at least 5% of the AusNet Shares; or
 - (B) directly or indirectly acquires, or indicates an intention to acquire, an interest in or equivalent to 5% or more of the AusNet Shares through an Equivalent Acquisition; or
- (iv) is the acquisition of AusNet Shares after Singapore Power International Pte Ltd or its Affiliates, or State Grid Corporation of China or its Affiliates indicates that they are willing to dispose of at least 5% of the AusNet Shares other than pursuant to the Scheme.
- (c) Clause 13.1 does not apply to any acquisition of AusNet Shares arising from participation in AusNet's dividend reinvestment plan.
- (d) Clause 13.1 ceases to apply if the standstill provisions in any of the confidentiality deeds entered into prior to the date of this deed between AusNet and a Third Party in relation to a Competing Proposal cease to apply to that Third Party or are waived or amended in a manner favourable to the Third Party.

13.3 Standstill arrangements with potential proponents of Competing Proposals

AusNet warrants and represents to Bidder that it has entered into an agreement containing provisions materially identical to (or no more favourable to the relevant Third Party than) those in clauses 13.1 and 13.2 with any potential proponent of a Competing Proposal to which it has granted due diligence access (and undertakes to enforce those provisions (and not to vary or waive them)).

14 Termination

14.1 General rights

- (a) Either party (or, where relevant, the party specified below) may terminate this deed by written notice to the other at any time before 8.00am on the Second Court Date:
- (i) if:
 - (A) either:
 - (1) the other party is in material breach of any provision of this deed (other than a Bidder Representation and Warranty or an AusNet Representation and Warranty not being true and correct); or
 - (2) a representation and warranty given by the other party (being the Bidder Representations and Warranties where the "other party" is Bidder, and being the AusNet Representations and Warranties where the "other party" is AusNet) is not true and correct, where that breach of representation and warranty is material in the context of the Transaction as a whole;
 - (B) the party wishing to terminate has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this deed; and

- (C) the relevant circumstances continue to exist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date), or AusNet breaches clause 12.7(b) of this deed (in which case the only party that may terminate is Bidder); or
- (ii) in the circumstances set out in, and in accordance with, clause 3.7(b).
- (b) Bidder may terminate this deed by written notice to AusNet at any time before 8:00am on the Second Court Date if any director of AusNet:
- (i) fails to provide the recommendation under clause 7(b)(i) (unless otherwise agreed by the parties in writing) or statement under clause 7(b)(ii);
- (ii) has changed, withdrawn or adversely modified or qualified, or made a public statement that is inconsistent with, their recommendation that AusNet Shareholders vote in favour of the Scheme at the Scheme Meeting (unless the withdrawal, change or modification or qualification was otherwise agreed by the parties in writing) or statement under clause 7(b)(ii); or
- (iii) has made a statement indicating that they no longer recommend the Transaction or recommending, supporting or endorsing another transaction (including any Competing Proposal).
- (c) Without limiting AusNet's obligations under clause 7 and 11.5, AusNet may terminate this deed by written notice to Bidder at any time before 8:00am on the Second Court Date if a majority of the directors of AusNet withdraw their recommendation that AusNet Shareholders vote in favour of the Scheme at the Scheme Meeting in the manner permitted by clause 7(c).

14.2 Effect of termination

If this deed is terminated by a party under clause 3.7(b) or 14.1, this deed will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued before termination and the provisions of this clause 14 and of clauses 1, 8.4, 9, 10, 12, 13, 15, 16, 17 and 18, which will remain in force after the termination.

14.3 Termination by written agreement

The parties may terminate this deed by another written agreement between them.

15 Confidentiality

AusNet and Bidder acknowledge and agree that the Confidentiality Deed:

- (a) continues to operate in full force and effect after the date of this deed; and
- (b) survives any termination of this deed,

in each case subject to, and in accordance with, the terms of the Confidentiality Deed.

16 GST

16.1 Recovery of GST

If GST is or becomes payable, or notionally payable, on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply (the **Supplier**) in accordance with the GST Law. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time and in the same manner that the other consideration for the supply is

provided. This clause 16 does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

16.2 Liability net of GST

Notwithstanding any other provision in this deed, where any indemnity, reimbursement or similar payment under this deed is based on any cost, expense or other liability incurred by a party, it may be reduced by any input tax credit entitlement, or notional input tax credit entitlement, of that party (or its representative member) in relation to the relevant cost, expense or other liability.

16.3 Adjustment events

If an adjustment event occurs in relation to a supply under or in connection with this deed, the GST Amount will be recalculated in accordance with the GST Law to reflect that adjustment and an appropriate payment will be made between the parties and the Supplier shall issue an adjustment note to the recipient within 10 Business Days after becoming aware of the occurrence of the adjustment event.

16.4 Survival

This clause 16 will continue to apply after expiration or termination of this deed.

16.5 Definitions

Unless the context requires otherwise, words used in this clause 16 that have a specific meaning in the GST Law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) have the same meaning in this clause 16.

17 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this deed:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient:
 - (i) by prepaid post (or, if posted to an address in another country, by registered airmail) or by hand to the address below or the address last notified by the intended recipient to the sender; or
 - (ii) by email to the email address below or the email address last notified by the intended recipient to the sender:

to Bidder:	Address:	Level 19, 10 Carrington Street, Sydney NSW 2000
	Email:	Ray.Neill@brookfield.com ; Michael.Ryan@brookfield.com
	Attention:	Ray Neill, Michael Ryan with a copy (which by itself does not constitute a Notice) to: philippa.stone@hsf.com ; nick.baker@hsf.com ; ken.ooi@hsf.com

to AusNet: Address: Level 21, 2 Southbank Boulevard,
Southbank, Victoria, 3006

Email: naomi.kelly@ausnetservices.com.au

Attention: Naomi Kelly (Executive General
Manager Governance, General
Counsel and Company Secretary)

with a copy (which by itself does not constitute a
Notice) to: Wendy.Rae@allens.com.au;
Craig.Henderson@allens.com.au;
Andrew.Wong@allens.com.au;

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, six Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of delivery by email, the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, during that two hour period, an automated message that the email has not been delivered,
- but if the result is that a Notice would be taken to be given or made:
- (iv) on a day that is not a business day in the place to which the Notice is sent or later than 5:00pm (local time), then it will be taken to have been duly given or made at the start of business on the next business day in that place; or
 - (v) before 9:00am (local time) on a business day in the place to which the Notice is sent, then it will be taken to have been duly given or made at 9:00am (local time) on that business day in that place.

18 General provisions

18.1 Amendment

This deed may be amended only by another deed executed by all the parties.

18.2 Assignment

A party cannot assign, charge, encumber or otherwise deal with at law or in equity any of its rights or obligations under this deed, or attempt or purport to do so, without the prior consent of the other party.

18.3 Costs and stamp duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed. All stamp duty (including Duty, fines, penalties and interest) payable on or in

connection with this deed and any instrument executed under or any transaction evidenced by this deed must be borne by Bidder.

18.4 Withholding tax

- (a) If Bidder is required by Subdivision 14-D of Schedule 1 of *the Taxation Administration Act 1953* (Cth) (**Subdivision 14-D**) to pay amounts to the Commissioner of Taxation in respect of the acquisition of AusNet Shares from certain AusNet Shareholders, Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those AusNet Shareholders, and remit such amounts to the Commissioner of Taxation. The aggregate sum payable to AusNet Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those AusNet Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those AusNet Shareholders.
- (b) The Bidder acknowledges and agrees that it shall not pay any amounts to the Commissioner of Taxation under clause 18.4(a) with respect to an AusNet Shareholder where it receives an entity declaration from the AusNet Shareholder prior to the Implementation Date, where:
- (i) the entity declaration is made in accordance with the requirements in section 14-225 of Subdivision 14-D and covers the Implementation Date (**Entity Declaration**); and
 - (ii) the Bidder does not know that the Entity Declaration is false.
- (c) If the Bidder forms the view that it has knowledge that an Entity Declaration it has received is false, and the Bidder received the Entity Declaration more than 30 days before the Implementation Date, the Bidder agrees that it shall not pay any amounts to the Commissioner of Taxation in respect of that AusNet Shareholder until it has:
- (i) provided information upon which it relied to form that view to the AusNet Shareholder who has provided that Entity Declaration no less than 20 days before the Implementation Date;
 - (ii) provided the AusNet Shareholder by notice in writing the opportunity to review the information provided to it and respond with their views no less than 10 days before the Implementation Date; and
 - (iii) reviewed any response from the AusNet Shareholder and, after having reconsidered its view, still be of the view that it has knowledge that the Entity Declaration it has received is false.
- (d) AusNet agrees that Bidder may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that Bidder reasonably requires in making any such approach. Bidder agrees:
- (i) to provide AusNet a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office, and must incorporate AusNet's reasonable comments on those materials, and more generally to take into account AusNet's comments in relation to Bidder's engagement with the Australian Taxation Office, and provide AusNet a reasonable opportunity to participate in any discussions and correspondence between Bidder and the Australian Taxation Office in connection with the application of Subdivision 14-D to the Transaction; and

- (ii) not to contact any AusNet Shareholders in connection with the application of Subdivision 14-D to the Transaction without AusNet's prior written consent.
- (e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the Australian Taxation Office following any process described in clause 18.4(d). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this deed, the Scheme and the Deed Poll to ensure that relevant representations are obtained from AusNet Shareholders.

18.5 Counterparts

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

18.6 Entire agreement

This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 18.6 contain the entire agreement between the parties with respect to their subject matter. This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 18.6 set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter.

18.7 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this deed and the transactions contemplated by it.

18.8 Governing law and jurisdiction

This deed is governed by the laws of Victoria. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

18.9 No merger

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

18.10 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

18.11 Severability of provisions

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

Schedule 1 – Bidder Representations and Warranties

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and the performance of this deed by it and to carry out the transactions contemplated by this deed.
- 4 **(Documents binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
- (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Related Bodies Corporate; or
 - (b) its constituent documents.
- 6 **(Solvency)** None of the Bidder, nor any holding entity or Subsidiary of the Bidder is affected by an Insolvency Event.
- 7 **(Bidder)** As at the date of this deed, Australian Energy Holdings No 3 Pty Ltd (ACN 654 673 300) is the sole legal and beneficial owner of all of the shares in Bidder and no other person has any right to be issued or transferred any share or interest in Bidder.
- 8 **(Bidder Ownership)** The document provided by Herbert Smith Freehills to Allens via email at about 12.41pm AEDT on 30 October 2021, regarding the direct and indirect ownership of Bidder, is true and accurate in all material respects as at the date of this deed.
- 9 **(Scheme Booklet)** At the time AusNet commenced sending the Scheme Booklet to AusNet Shareholders, the Bidder Information contained in the Scheme Booklet (in the form consented to by Bidder) is true and correct in all material respects, complies in all material respect with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 10 **(No regulatory approvals):** As far as Bidder is aware, no approval from any Government Agency is required to be obtained by Bidder in order to execute and perform this deed, other than the Regulatory Approvals and, for the avoidance of doubt, approvals from ASIC and the Court, as contemplated by this deed.
- 11 **(No voting power)** As at the date of this deed:
- (a) no member of the Bidder Group has any voting power in AusNet, except for:
 - (i) any voting power not exceeding 1% in aggregate that may be held by Related Entities of Bidder in its public securities group which is separated from Bidder by information barrier arrangements; and
 - (ii) any voting power that may be held by direct or indirect co-investors in the Bidder through externally managed funds or portfolios or public securities groups or similar which are behind information barrier arrangements; and
 - (b) the Bidder is not aware that its direct or indirect co-investors hold any voting power in AusNet exceeding 1% in aggregate.

- 12 **(No dealings with AusNet Shareholders):** No member of the Bidder Group has any agreement, arrangement or understanding with any AusNet Shareholder under which that AusNet Shareholder (or an Associate of that AusNet Shareholder):
- (a) would be entitled to receive consideration for their Scheme Shares different from the Scheme Consideration or any benefit in connection with the Scheme that is not also offered to all other AusNet Shareholders on the same terms; or
 - (b) has agreed to vote in a certain way in respect of the Scheme or any Competing Proposal.
- 13 **(No dealings with AusNet directors or employees):** Other than as disclosed to AusNet and approved by the AusNet Board, no member of the Bidder Group has any agreement, arrangement or understanding with any director or employee of AusNet relating in any way to the Transaction or operations of AusNet after the Effective Date.
- 14 **(Equity Commitment Letters)**
- (a) Bidder has disclosed a true and complete copy of the Equity Commitment Letters to AusNet.
 - (b) Each Equity Commitment Letter has been executed by the parties thereto and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with its terms.
 - (c) As continuing obligations, without the prior written consent of AusNet, the Bidder will not do any of the following:
 - (i) amend, or agree to amend, any Equity Commitment Letters where that would, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme or the Deed Poll or to pay the Bidder Break Fee (if it becomes payable) in accordance with this deed;
 - (ii) waive, or agree to waive, any of its rights under any Equity Commitment Letter where to do so will prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll or to pay the Bidder Break Fee (if it becomes payable) in accordance with this deed; or
 - (iii) agree or consent to any novation, assignment or transfer of any counter-party's obligations under any Equity Commitment Letter, except as expressly permitted under the relevant Equity Commitment Letter.
 - (d) The Bidder will enforce its rights under each Equity Commitment Letter.
 - (e) Each Equity Commitment Letter has not been:
 - (i) terminated or rescinded, and Bidder is not in default thereunder; or
 - (ii) amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll or to pay the Bidder Break Fee (if it becomes payable) in accordance with this deed.
- 15 **(Debt Facility Agreement)**
- (a) Bidder has disclosed a true and complete copy of the Debt Facility Agreement to AusNet.
 - (b) The Debt Facility Agreement has been executed by the parties thereto and constitutes legally valid and enforceable obligations on, and rights of, those parties that are enforceable in accordance with its terms.
 - (c) As continuing obligations, without the prior written consent of AusNet, the Bidder will not do any of the following:

- (i) amend, or agree to amend, the Debt Facility Agreement where that would, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll;
 - (ii) waive, or agree to waive, any of its rights under the Debt Facility Agreement where to do so will prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll; or
 - (iii) agree or consent to any novation, assignment or transfer of any counter-party's obligations under the Debt Facility Agreement, except as expressly permitted under the Debt Facility Agreement.
- (d) The Bidder will enforce its rights under the Debt Facility Agreement.
- (e) The Debt Facility Agreement has not been:
- (i) terminated or rescinded, and Bidder is not in default thereunder; or
 - (ii) amended in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll.

16 **(Sufficient cash amounts - reasonable expectation at the date of this deed)** At all times between the date of this deed and 8.00am on the Second Court Date, Bidder has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

17 **(Sufficient cash amounts - unconditional at Second Court Date)** By 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to, or which will cease to apply or be satisfied following, the Scheme becoming Effective or which, in the case of the Debt Facility Agreement only, are only capable of being satisfied, for funding on the Business Day prior to the Implementation Date, after the Scheme becomes Effective) sufficient cash amounts (whether from internal cash resources or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

Schedule 2 – AusNet Representations and Warranties

- 1 **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- 2 **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
- 3 **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this deed by it and to carry out the transactions contemplated by this deed.
- 4 **(Deed binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
- 5 **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
- (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Related Bodies Corporate; or
 - (b) its constitution or other constituent documents.
- 6 **(Capital structure)** As at the date of this deed, AusNet has:
- (a) 3,829,964,486 AusNet Shares on issue;
 - (b) 8,570,857 Performance Rights on issue;
 - (c) 834,177 Deferred Rights on issue;
- and, other than the above, there are and will be (including on the Scheme Record Date) no other AusNet Securities or Rights in existence, subject (after the date of this deed) to changes to the foregoing which may occur as a result of steps taken in compliance with clause 4.4.
- 7 **(Continuous disclosure):**
- (a) it has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1; and
 - (b) as at the date of this deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Transaction).
- 8 **(Scheme Booklet)** At the time AusNet commenced sending the Scheme Booklet to AusNet Shareholders, the information contained in the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 9 **(Solvency)** No member of the AusNet Group is affected by an Insolvency Event.
- 10 **(Material compliance with laws and material contracts)** So far as AusNet is aware, as at the time immediately prior to entry into this deed, each member of the AusNet Group has complied in all material respects with:
- (a) all Australian or foreign laws and regulations applicable to them or orders of Australian or foreign Government Agencies having jurisdiction over them; and
 - (b) all material contracts to which any AusNet Group entity is a party.
- 11 **(Material licences and permits)** So far as AusNet is aware, as at the time immediately prior to the entry into this deed:

- (a) the AusNet Group has, and is in material compliance with, all material licences and permits necessary for it to conduct its activities as they are conducted as at the date of this deed; and
- (b) there is no reason to expect that any such material licences or permits will be terminated or withdrawn.

12 **(Due Diligence Material)** The Due Diligence Material has been collated and prepared in good faith and for the purposes of a due diligence process, and in this context, as far as AusNet is aware:

- (a) the Due Diligence Material have been collated with all reasonable care and skill;
- (b) the information contained in the Due Diligence Material is not false or misleading in any material respect; and
- (c) no information has been omitted from the Due Diligence Material that would render the Due Diligence Material false, incomplete, misleading or deceptive in any material respect,

in each case having regard to the categories of information that the Bidder and its Representatives have requested from AusNet.

For the avoidance of doubt, AusNet makes no representation or warranty whatsoever:

- (d) as to the adequacy or sufficiency of the Due Diligence Material for the purpose of Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisition, which are matters of which Bidder has to satisfy itself; or
- (e) in relation to any forecast or forward-looking information provided by AusNet or its Representatives to the Bidder or its Representatives.

13 **(No AusNet Material Adverse Change)**: As far as AusNet is aware as at the time immediately prior to entry into this deed, there is no information relating to AusNet or any AusNet Group entity or its respective businesses or operations (having made reasonable enquiries) that could reasonably be expected to give rise to an AusNet Material Adverse Change (or a situation which would be an AusNet Material Adverse Change if the exceptions in paragraphs (c) to (o) inclusive of the definition of 'AusNet Material Adverse Change' did not apply).

14 **(No regulatory approvals)** As far as AusNet is aware, no approval from any Government Agency is required to be obtained by AusNet in order to execute and perform this deed, other than, for the avoidance of doubt, approvals from ASIC and the Court, as contemplated by this deed.

15 **(Litigation and enforcement)** So far as AusNet is aware, as at the day prior to the date of this deed:

- (a) no person has commenced or threatened any claim, dispute or litigation (including any court proceeding, arbitration or expert determination) against any AusNet Group entity, which could reasonably be expected to give rise to a material liability for the AusNet Group; and
- (b) no enforcement action or investigation has been announced or commenced by any Government Agency against or involving an AusNet Group entity, which could reasonably be expected to give rise to a material liability for the AusNet Group.

Schedule 3 – AusNet Regulated Events

- 1 AusNet converts all or any of its shares into a larger or smaller number of shares.
- 2 Any AusNet Group entity resolves to reduce its share capital in any way.
- 3 Any AusNet Group entity:
- (a) enters into a buy-back agreement; or
 - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
- 4 Any member of the AusNet Group issues shares or other securities (including any AusNet Securities or Rights) to a person, or grants an option over or a right to receive its shares or other securities (including any AusNet Securities or Rights), or agrees to make such an issue or grant such an option or right, other than:
- (a) where the shares or other securities are issued, or where the options are granted, to AusNet or an entity which is a wholly-owned Subsidiary of AusNet, provided that AusNet itself is not the issuing entity; or
 - (b) the issue of AusNet Shares upon the vesting of Performance Rights or Deferred Rights which are in existence as at the date of this deed in compliance with clause 4.4.
- 5 Any member of the AusNet Group issues, or agrees to issue, convertible notes or any other instrument or security convertible into shares or securities in or of any member of the AusNet Group.
- 6 Any AusNet Group entity disposes, or agrees to dispose, of the whole or a substantial part of the business or property of the AusNet Group (whether by way of single transaction or series of related transaction).
- 7 Any AusNet Group entity grants, or agrees to grant, a security interest in or over the whole or a substantial part of the business or property of the AusNet Group, other than the granting of security interests that are permitted by the AusNet Group's financing documents which are contained in the Due Diligence Material.
- 8 Any member of the AusNet Group agrees to pay, declares, determines, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital (whether in cash or in specie), other than:
- (a) the declaration and payment by AusNet of any Permitted Dividend; or
 - (b) the declaration and payment by any Subsidiary of AusNet of a dividend, where the recipient of that dividend is AusNet or a Wholly-Owned Subsidiary of AusNet.
- 9 Any member of the AusNet Group resolves to be wound up, other than the dormant companies Geomatic Holdings Pty Limited (ACN 062 555 373) and Geomatic Technologies Pty. Ltd. (ACN 081 782 863).
- 10 A liquidator or provisional liquidator of any member of the AusNet Group is appointed.
- 11 A court makes an order for the winding up of any member of the AusNet Group.
- 12 An administrator of any member of the AusNet Group is appointed under section 436A, 436B or 436C of the Corporations Act.
- 13 Any member of the AusNet Group executes a deed of company arrangement.
- 14 A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the AusNet Group.
- 15 Any member of the AusNet Group (other than other than the dormant companies Geomatic Holdings Pty Limited (ACN 062 555 373) and Geomatic Technologies Pty. Ltd. (ACN 081 782

863)) ceasing, or threatening to cease, carrying on the whole or a material part of the business of the AusNet Group.

16 AusNet Shares cease to be quoted, or are suspended from quotation, on ASX.

17 Any AusNet Group entity makes any change to its constitution.

18 Any expenditure or borrowing occurs or is committed which will, or will be likely to, result in the AusNet Group's consolidated net debt (calculated having regard to actual financial indebtedness and not market value of debt, i.e. excluding mark-to-market impacts, including in relation to hedges):

(a) at any time from the date of this deed until 31 March 2022, exceeding \$8.2 billion (and the excess remains in place for at least 2 Business Days); and

(b) at any time from 1 April 2022, exceeding \$8.5 billion (and the excess remains in place for at least 2 Business Days),

(excluding any future increments in net debt which may arise from new financing arrangements to be put in place at or after the implementation of the Scheme). For the purposes of this AusNet Regulated Event only, the exclusions set out in paragraphs (a), (b) and (c) of the definition of AusNet Regulated Event will not apply.

19 One or more AusNet Financing Defaults arise (in any case other than an AusNet Financing Default which arises as a consequence of the Scheme or the implementation of the Transaction) under AusNet Financings where the aggregate financial indebtedness which may be accelerated, redeemed or otherwise declared due and payable or cancelled earlier than its original scheduled maturity date under those AusNet Financings exceeds \$343,490,000, and the situation has not been remedied to the satisfaction of Bidder (acting reasonably) within 5 Business Days (or in any event before the Second Court Date).

Schedule 4 - Timetable¹

Event	Indicative date
AusNet submits draft Scheme Booklet to ASIC	December 2021
Bidder executes Deed Poll	January or February 2022
First Court hearing for Scheme	Early February 2022
AusNet sends Scheme Booklet to AusNet Shareholders	February 2022
Scheme Meeting	March 2022
Second Court hearing for Scheme	March 2022
Effective Date	March 2022
Scheme Record Date	March 2022
Implementation Date	March 2022

However, the parties acknowledge and agree that they will, to the extent practicable, seek to achieve these events earlier so that the Scheme can be implemented as soon as is reasonably practicable after the date of this deed.

¹ Timetable is subject to FIRB approval process.

Execution page

Executed and delivered as a deed

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **Australian Energy Holdings No 4 Pty Ltd:**



Director Signature

Raymond Neill

Print Name



Director/Secretary Signature

Michael Ryan

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **AusNet Services Ltd:**



Director Signature

PETER MASON

Print Name



Director/Secretary Signature

TONY NARVAEZ

Print Name

For personal use only

Annexure A – Form of Scheme

For personal use only

Scheme of Arrangement pursuant to section 411 of the *Corporations Act 2001* (Cth)**Between**

AusNet Services Ltd (ACN 603 317 559) of Level 31, 2 Southbank Boulevard, Southbank, Victoria, 3006 (**AusNet**).

And

Each holder of AusNet Shares recorded in the AusNet Share Register as at the Scheme Record Date (each a **Scheme Shareholder** and, together, the **Scheme Shareholders**).

Recitals

- A AusNet is an Australian public company limited by shares, registered under the Corporations Act, and has been admitted to the official list of the ASX. AusNet Shares are quoted for trading on the ASX.
- B Australian Energy Holdings No 4 Pty Ltd (ACN 654 673 793) is a company incorporated in Victoria, Australia (**Bidder**).
- C AusNet and Bidder have entered into a Scheme Implementation Deed dated **[insert]** 2021 (the **Scheme Implementation Deed**) pursuant to which:
- (a) AusNet has agreed to propose this Scheme to AusNet Shareholders; and
 - (b) AusNet and Bidder have agreed to take certain steps to give effect to this Scheme.
- D If this Scheme becomes Effective, then:
- (a) all of the Scheme Shares and all of the rights and entitlements attaching to them on the Implementation Date will be transferred to Bidder; and
 - (b) the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
 - (c) AusNet will enter the name and address of Bidder in the AusNet Share Register as the holder of all of the Scheme Shares.
- E By executing the Scheme Implementation Deed, AusNet has agreed to propose and implement this Scheme, and Bidder has agreed to assist with that proposal and implementation, on and subject to the terms of the Scheme Implementation Deed.
- F Bidder has entered into the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders that Bidder will observe and perform the obligations contemplated of it under this Scheme.

It is agreed as follows.

1 Definitions and interpretation**1.1 Definitions**

In this document, unless the context requires otherwise:

Additional Consideration means, where the Implementation Date has not occurred by 31 March 2022, \$0.000260274 for each day after 31 March 2022 that has elapsed by the date on which the Implementation Date occurs.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by it.

ASX Listing Rules means the official listing rules of the ASX.

AusNet Share Register means the register of members of AusNet maintained in accordance with the Corporations Act.

AusNet Share Register means the register of members of AusNet maintained by or on behalf of AusNet in accordance with section 168(1) of the Corporations Act.

AusNet Share Registry means Computershare Investor Services Pty Limited of level 3, 60 Carrington Street, Sydney, New South Wales, 2000, or any replacement share registry services provider to AusNet.

AusNet Shares means fully paid ordinary shares issued in the capital of AusNet.

AusNet Shareholder means a person who is registered in the AusNet Share Register as a holder of AusNet Shares.

Business Day means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Melbourne, Australia.

CHESS means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

Constitution means the constitution of AusNet, as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed to in writing between AusNet and Bidder.

Deed Poll means the deed poll executed on [insert] 2021 by Bidder in favour of the Scheme Shareholders.

Effective means, when used in relation to this Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to this Scheme.

Effective Date means the date on which this Scheme becomes Effective.

End Date means the date which is eight (8) months after the date of the Scheme Implementation Deed, subject to any extension under clause 3.7 of the Scheme Implementation Deed.

Government Agency means any Australian or foreign government or governmental, semi-governmental or judicial entity or authority. It also includes any government minister (and his or her delegate), any self-regulatory organisation established under statute or any securities exchange and, for the avoidance of doubt, includes ASIC, ASX, Foreign Investment Review Board, Australian Competition and Consumer Commission and equivalent bodies in jurisdictions outside Australia.

Implementation Date means the fifth Business Day after the Scheme Record Date, or such other date as AusNet and Bidder may agree in writing.

Permitted Dividends means:

- (a) an unfranked interim dividend of not more than \$0.0475 per AusNet Share in respect of the financial half-year ending 30 September 2021; and

- (b) if the Implementation Date does not occur before 31 March 2022 – an unfranked dividend of not more than \$0.0475 per AusNet Share in respect of the financial year ending 31 March 2022.

Registered Address means, in relation to a Scheme Shareholder, the address of that Scheme Shareholder shown in the AusNet Share Register as at the Scheme Record Date.

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between AusNet and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court and agreed to by Bidder and AusNet (such agreement not to be unreasonably withheld or delayed) made or required by the Court under section 411(6) of the Corporations Act and agreed to by AusNet and Bidder.

Scheme Consideration means the consideration to be provided to each AusNet Shareholder for the transfer to Bidder of each Scheme Share being, in respect of each Scheme Share:

- (a) a cash amount of \$2.65; less
- (b) the cash amount of any Permitted Dividend to which Scheme Shareholders become entitled on or before the Implementation Date; plus
- (c) the amount of any Additional Consideration.

Scheme Meeting means the meeting of AusNet Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to this Scheme, and includes any adjournment or postponement of that meeting.

Scheme Orders means the orders of the Court made under section 411(4)(b) of the Corporations Act (and if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

Scheme Record Date means 7:00pm on the third Business Day after the Effective Date or such other time and date agreed to in writing between AusNet and Bidder.

Scheme Shares means the AusNet Shares on issue as at the Scheme Record Date.

Scheme Transfer means, in relation to each Scheme Shareholder, a proper instrument of transfer of their Scheme Shares for the purpose of section 1071B of the Corporations Act.

Second Court Date means the first day of hearing of an application made to the Court for orders pursuant to section 411(4)(b) of the Corporations Act approving this Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Trust Account means an Australian dollar denominated trust account held with an Australian bank operated by AusNet (or by the AusNet Share Registry on behalf of AusNet) as trustee for the Scheme Shareholders.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

- (v) A reference to a clause is a reference to a clause of this Scheme.
- (vi) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
- (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).
- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to *dollars* or \$ is to Australian currency.
- (xi) Words and phrases not specifically defined in this Scheme have the same meanings (if any) given to them in the Corporations Act.
- (xii) A reference to time is to Sydney, Australia time.
- (xiii) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.

2 Conditions

2.1 Conditions Precedent

This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8:00am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent relating to the approval of the Court set out in clause 3.1(d) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the Scheme Implementation Deed;
- (b) as at 8:00am on the Second Court Date, neither the Scheme Implementation Deed nor the Deed Poll has been terminated in accordance with its terms;
- (c) the Court makes orders approving this Scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act and that are agreed to AusNet and Bidder (such agreement not to be unreasonably withheld or delayed);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and that are agreed to AusNet and Bidder (such agreement not to be unreasonably withheld or delayed) having been satisfied or waived; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme come into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date.

2.2 Lapsing

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms unless AusNet and Bidder otherwise agree in writing.

3 Scheme becoming Effective

Subject to clause 2, this Scheme will take effect on and from the Effective Date.

4 Implementation of Scheme

On the Implementation Date, subject to Bidder having satisfied its obligations in clause 5.2, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by AusNet or any of its directors and officers as attorney and agent for Scheme Shareholders under this Scheme), by:

- (a) AusNet delivering to Bidder for execution duly completed (and, if necessary, stamped) Scheme Transfers to transfer all of the Scheme Shares to Bidder (and one or more Scheme Transfers can be a master transfer of all or part of all of the Scheme Shares), duly executed by AusNet (or any of its directors and officers) as the attorney and agent of each Scheme Shareholder as transferor under clause 8.3;
- (b) Bidder executing the Scheme Transfers as transferee and delivering them to AusNet for registration; and
- (c) AusNet, immediately after receipt of the Scheme Transfers under clause 4(b), entering, or procuring the entry of, the name and address of Bidder in the AusNet Share Register as the holder of all of the Scheme Shares.

5 Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share held by that Scheme Shareholder.

5.2 Deposit of Scheme Consideration

Bidder must, by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds into the Trust Account an amount at least equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account.

5.3 Payment to Scheme Shareholders

- (a) On the Implementation Date, subject to Bidder having satisfied its obligations in clause 5.2, AusNet must pay or procure the payment, from the Trust Account, to each Scheme Shareholder the Scheme Consideration as that Scheme Shareholder is entitled under this clause 5.
- (b) The obligations of AusNet under clause 5.3(a) will be satisfied by AusNet (in its absolute discretion):

- (i) where a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the AusNet Share Registry to receive dividend payments from AusNet by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
- (ii) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 5.3(b)(i), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.4).

5.4 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of AusNet, the holder whose name appears first in the AusNet Share Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of AusNet, the holder whose name appears first in the AusNet Share Register as at the Scheme Record Date or to the joint holders.

5.5 Fractional entitlements

Where the calculation of the Scheme Consideration to be paid to a Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, that fractional entitlement will be rounded down to the nearest whole cent.

5.6 Unclaimed monies

- (a) The *Unclaimed Money Act 2008* (VIC) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (VIC)).
- (b) AusNet may cancel a cheque issued under this clause 5 if the cheque:
 - (i) is returned to AusNet; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (c) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to AusNet (or the AusNet Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), AusNet must reissue a cheque that was previously cancelled under this clause 5.6.

5.7 Remaining monies (if any) in Trust Account

To the extent that, following satisfaction of AusNet's obligations under the other provisions of this clause 5 and provided Bidder has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Scheme Implementation Deed, that

surplus (less any bank fees and related charges) shall be paid by AusNet (or the AusNet Share Registry on AusNet's behalf) to Bidder.

5.8 Orders of a court

- (a) If written notice is given to AusNet (or the AusNet Share Registry) of an order or direction made by a court of competent jurisdiction or another Government Agency that:
- (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by AusNet in accordance with this clause 5, then AusNet shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
 - (ii) prevents AusNet from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, AusNet shall be entitled to (as applicable) retain an amount equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration, until such time as payment in accordance with this clause 5 is permitted by that (or another) court or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 5.8(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

6 Dealings in AusNet Shares

6.1 Dealings in AusNet Shares by Scheme Shareholders

For the purpose of establishing the persons who are Scheme Shareholders, dealings in AusNet Shares will be recognised by AusNet provided that:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the AusNet Share Register as the holder of the relevant AusNet Shares by the Scheme Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the AusNet Share Registry by 5.00pm on the day which is the Scheme Record Date at the place where the AusNet Share Register is located (in which case AusNet must register such transfers or transmission applications before 7.00pm on that day),

and AusNet will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders nor for any other purpose (other than to transfer to Bidder pursuant to this Scheme and any subsequent transfers by Bidder and its successors in title), any transfer or transmission application in respect of AusNet Shares received after such times, or received prior to such times but not in actionable or registrable form (as appropriate).

6.2 Register

- (a) AusNet will, until the Scheme Consideration has been provided and the name and address of Bidder has been entered in the AusNet Share Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the AusNet Share Register

in accordance with this clause 6, and the AusNet Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

- (b) As from the Scheme Record Date (and other than for Bidder following the Implementation Date), each entry in the AusNet Share Register as at the Scheme Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Scheme Shares.
- (c) As soon as possible on or after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, AusNet will ensure that details of the names, Registered Addresses and holdings of AusNet Shares for each Scheme Shareholder as shown in the AusNet Share Register are available to Bidder in the form Bidder reasonably requires.

6.3 Effect of share certificates and holding statements

As from the Scheme Record Date (and other than for Bidder following the Implementation Date), all share certificates and holding statements for Scheme Shares (other than statements of holding in favour of Bidder) will cease to have effect as documents of title in respect of those Scheme Shares.

6.4 No disposals after Record Date

If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after 5.00pm on the Scheme Record Date (other than to Bidder in accordance with this Scheme and any subsequent transfers by Bidder and its successors in title), and any attempt to do so will have no effect and AusNet shall be entitled to disregard any such disposal, purported disposal or agreement.

7 Suspension and termination of quotation of AusNet Shares

- (a) AusNet must use best endeavours to ensure that ASX suspends trading of the AusNet Shares on ASX with effect from the close of business on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Bidder, AusNet must apply to ASX for termination of official quotation of the AusNet Shares on ASX and the removal of AusNet from the official list of ASX.

8 General provisions

8.1 Further assurances

- (a) Each Scheme Shareholder and AusNet will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it.
- (b) Without limiting AusNet's other powers under this Scheme, AusNet has power to do all things that it considers necessary or desirable to give effect to this Scheme and the transactions contemplated by it.

8.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;

- (b) acknowledges and agrees that this Scheme binds AusNet and all Scheme Shareholders (including those that did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting) and, to the extent of any inconsistency, overrides the Constitution; and
- (c) irrevocably consents to AusNet and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it,

without the need for any further act by that Scheme Shareholder.

8.3 Appointment of AusNet as attorney for implementation of Scheme

Each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints AusNet as that Scheme Shareholder's agent and attorney for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4(b); and
- (b) enforcing the Deed Poll against Bidder,

and AusNet accepts such appointment. AusNet, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.3 to all or any of its directors and officers (jointly, severally, or jointly and severally).

8.4 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised AusNet as that Scheme Shareholder's agent and attorney to warrant to Bidder, that all of their Scheme Shares (including all rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Bidder pursuant to this Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to this Scheme. AusNet undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Shareholder.

8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) Immediately upon the deposit of the Scheme Consideration in the manner contemplated by clause 5.2, Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by AusNet of the name and address of Bidder in the AusNet Share Register as the holder of the Scheme Shares.

8.6 Appointment of Bidder as attorney and agent for Scheme Shares

- (a) From the time that Bidder has satisfied its obligations in clause 5.2 and until Bidder is registered in the AusNet Share Register as the holder of all Scheme Shares, each AusNet Shareholder:
- (i) without the need for any further act by that AusNet Shareholder, irrevocably appoints Bidder as its proxy to (and irrevocably appoints Bidder as its agent and attorney for the purpose of appointing any director or officer of Bidder as that AusNet Shareholder's sole proxy and, where applicable or appropriate, its corporate representative to):
 - (A) attend shareholders' meetings of AusNet;
 - (B) exercise the votes attaching to the AusNet Shares registered in the name of the AusNet Shareholder; and
 - (C) sign any AusNet Shareholders' resolution or document;
 - (ii) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.6(a));
 - (iii) must take all other action in the capacity of an AusNet Shareholder as Bidder reasonably directs; and
 - (iv) acknowledges and agrees that in exercising the powers referred to in clause 8.6(a), Bidder and any person nominated by Bidder under clause 8.6(a) may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.
- (b) From the time that Bidder has satisfied its obligations in clause 5.2 until Bidder is registered in the AusNet Share Register as the holder of all Scheme Shares, no AusNet Shareholder may attend or vote at any meetings of AusNet Shareholders or sign any AusNet Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 8.6.

8.7 Alterations and conditions to Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions, AusNet may, by its counsel or solicitors, and with the prior written consent of Bidder:

- (a) consent on behalf of all persons concerned, including each AusNet Shareholder, to those alterations or conditions; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which AusNet has consented to.

8.8 Enforcement of Deed Poll

AusNet undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Shareholders.

8.9 Consent

Each of the Scheme Shareholders consents to AusNet doing all things necessary or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, AusNet or otherwise.

8.10 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to AusNet, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at AusNet's registered office or by the AusNet Share Registry, as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by an AusNet Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

8.11 Duty

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with this Deed Poll and any instrument executed under or any transaction evidenced by this Deed Poll (including, the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme); and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 8.11(a).

8.12 Governing law and jurisdiction

This document is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there and courts of appeal from them in connection with matters concerning this document. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

8.13 No liability when acting in good faith

Each Scheme Shareholder agrees that neither AusNet, nor Bidder nor any director, officer, secretary or employee of any of those companies shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

Annexure B – Form of Deed Poll

For personal use only

Deed Poll

This Deed Poll is made on

By

Australian Energy Holdings No 4 Pty Ltd (ACN 654 673 793) (**Bidder**)

In favour of

Each Scheme Shareholder

Recitals

- A Bidder and AusNet Services Ltd (ACN 603 317 559) of Level 31, 2 Southbank Boulevard, Southbank, Victoria, 3006 (**AusNet**) have entered into a Scheme Implementation Deed dated [*] 2021 (the **Scheme Implementation Deed**).
- B AusNet has agreed in the Scheme Implementation Deed to propose the Scheme, pursuant to which, subject to the satisfaction or waiver of certain conditions precedent, Bidder will acquire all of the Scheme Shares from Scheme Shareholders for the payment of the Scheme Consideration.
- C In accordance with the Scheme Implementation Deed, Bidder is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders that Bidder will observe and perform the obligations contemplated of it under the Scheme.

It is agreed as follows.

1 Definitions and interpretation**1.1 Definitions**

Terms defined in the Scheme Implementation Deed have the same meaning in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the Scheme Implementation Deed form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this deed' in that clause are references to 'this Deed Poll'.

2 Nature of Deed Poll

Bidder acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder appoints AusNet as its agent and attorney to enforce this Deed Poll against Bidder on behalf of that Scheme Shareholder.

3 Conditions precedent and termination**3.1 Conditions precedent**

This Deed Poll and the obligations of Bidder under this Deed Poll are subject to the Scheme becoming Effective.

3.2 Termination

If the Scheme Implementation Deed is terminated before the Effective Date or the Scheme does not become Effective on or before the End Date, the obligations of Bidder under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless AusNet and Bidder otherwise agree in writing.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder is released from its obligations under this Deed Poll, except those obligations under clause 8.6; and
- (b) each Scheme Shareholder retains any rights, powers or remedies that Scheme Shareholder has against Bidder in respect of any breach of Bidder's obligations under this Deed Poll that occurred before termination of this Deed Poll.

4 Compliance with Scheme obligations

4.1 Obligations of Bidder

Subject to clause 3, Bidder covenants in favour of each Scheme Shareholder that it will observe and perform all obligations contemplated of Bidder under the Scheme, including the relevant obligations relating to the provision of the Scheme Consideration, subject to and in accordance with the terms of the Scheme.

5 Representations and warranties

Bidder makes the following representations and warranties in respect of itself.

- (a) **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
- (b) **(Power)** It has the power to enter into and perform its obligations under this Deed, and to carry out the transactions contemplated by this Deed.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Deed Poll by it and to carry out the transactions contemplated by this Deed Poll.
- (d) **(Document binding)** This Deed Poll is its valid and binding obligation enforceable in accordance with its terms.
- (e) **(Transactions permitted)** The execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
 - (ii) its constitution or other constituent documents.

6 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Bidder having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

7 Further assurances

Bidder will, on its own behalf and, to the extent authorised by the Scheme, on behalf of each Scheme Shareholder, do all things and execute all deeds, instruments, transfers or other documents as may be necessary to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

8 General

8.1 Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be sent by regular ordinary post (airmail if appropriate) to the addresses referred to below, or sent by email to the addresses referred to below:

(i)	to Bidder:	Address:	Level 19, 10 Carrington Street, Sydney NSW 2000
		Email:	Ray.Neill@brookfield.com; Michael.Ryan@brookfield.com

Attention: Ray Neill, Michael Ryan
with a copy to (which by itself does not constitute a Notice) to:

philippa.stone@hsf.com; nick.baker@hsf.com ;
ken.ooi@hsf.com

- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, six Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made:

- (iv) in the case of delivery by hand or post, at a time that is later than 5pm;
- (v) in the case of delivery by email, at a time that is later than 7pm; or
- (vi) on a day that is not a business day,

in the place specified by the intended recipient as its postal address under clause 8.1(b), it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

8.2 No waiver

No failure to exercise nor any delay in exercising any right, power or remedy by Bidder or by any Scheme Shareholder operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy. A waiver is not valid or binding on the person granting that waiver unless made in writing.

8.3 Remedies cumulative

The rights, powers and remedies of Bidder and of each Scheme Shareholder under this Deed Poll are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

8.4 Amendment

No amendment or variation of this Deed Poll is valid or binding unless:

- (a) either:
 - (i) before the Second Court Date, the amendment or variation is agreed to in writing by AusNet and Bidder (which such agreement may be given or withheld without reference to or approval by any Scheme Shareholder); or
 - (ii) on or after the Second Court Date, the amendment or variation is agreed to in writing by AusNet and Bidder (which such agreement may be given or withheld without reference to or approval by any Scheme Shareholder), and is approved by the Court; and
- (b) Bidder enters into a further deed poll in favour of the Scheme Shareholders giving effect to that amendment or variation.

8.5 Assignment

The rights and obligations of Bidder and of each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of Bidder and AusNet.

8.6 Duty

Bidder will:

- (a) pay all duty (including stamp duty and any related fines, penalties and interest) payable on the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 8.6(a).

8.7 Governing law and jurisdiction

This Deed Poll is governed by the laws of Victoria. Bidder submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed Poll.

For personal use only

Executed and delivered as a Deed Poll.

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **Australian Energy Holdings No 4 Pty Ltd:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

For personal use only