

# Electricity Transfer Access Contract

BETWEEN:

Electricity Networks Corporation  
ABN 18 540 492 861

~ and ~

[Name of User]  
[ABN/ACN/ARBN]

~ and ~

[Name of Indemnifier]<sup>1</sup>  
[ABN/ACN/ARBN]

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{Note: This contract has been prepared in accordance with the requirements of the Electricity Networks Access Code 2004, including proposed Electricity Networks Access Code Amendments (No 2) 2008}

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## PARTIES

**ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861**, a statutory body corporate established under section 4(1)(b) of the *Electricity Corporations Act 2005 (WA)*, of 363 Wellington Street, Perth, Western Australia (Western Power\*)

- and -

[ ] of [ ] (User\*)

- and -

[ ] of [ ] (Indemnifier\*)

## INTRODUCTION

### 1. Background

- (a) The User\* has made an Application\* requesting Covered Services\* at one or more Connection Points\*.
- (b) Western Power\* has made an Access Offer\* in accordance with the Applications and Queuing Policy\* to provide the Covered Services\* to the User\*.
- (c) The User\* has signed the Access Offer\*, which has become this Access Contract\*.
- (d) The Indemnifier\* has agreed to indemnify Western Power\* in respect of the User's\* liabilities under this Access Contract\*. <sup>1</sup>

### 2. Defined terms

- (a) Words appearing with an asterisk(\*) in this Contract\* are defined terms and have the respective meanings detailed in the dictionary in Schedule 1.

## OPERATIVE PROVISIONS

### 1. Interpretation

#### 1.1 Interpretation

In this Contract\*:

- (a) a reference to:
  - (i) the singular includes the plural and the plural includes the singular; and
  - (ii) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body; and
  - (iii) this Contract\* or any other instrument includes any variation or replacement of it; and
  - (iv) “**under**” includes “**by**”, “**by virtue of**”, “**pursuant to**” and “**in accordance with**”; and

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<sup>1</sup> Delete this paragraph if there is no Indemnifier\*.

- (v) “**day**” means a calendar day; and
  - (vi) “**person**” includes a public body, company, or association or body of persons, corporate or unincorporated; and
  - (vii) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
  - (viii) any monetary amount means that amount in Australian dollars, and
- (b) a word of any gender includes the corresponding words of each other gender; and
  - (c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
  - (d) “**copy**” includes a facsimile copy, photocopy or (subject to the Electronic Communication Protocol in Schedule 7) electronic copy; and
  - (e) “**including**” and similar expressions are not words of limitation; and
  - (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
  - (g) where information is set out in braces (namely “{” and “}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information:
    - (i) is provided for information only and does not form part of this Contract\*; and
    - (ii) is to be disregarded in interpreting this Contract\*; and
    - (iii) might not reflect amendments to this Contract\* or other documents or Laws\*, and
  - (h) a reference to:
    - (i) this Contract\* includes any Schedule to this Contract\*; and
    - (ii) a clause is a reference to a clause of this Contract\*; and
    - (iii) a series of consecutive clauses or Schedules is to be read as inclusive of the first and last in the series; and
    - (iv) “**other party**”, in relation to Indemnifier\*, means Western Power\*.

## **1.2 Interpretation Act applies**

Unless the contrary intention is apparent, the rules of interpretation in the *Interpretation Act 1984 (WA)* apply to the interpretation of this Contract\*.

## **1.3 CPI\* adjustment**

In this Contract\*, “**CPI-Adjusted\***” in reference to an amount means that amount is adjusted under the following formula:

$$N = C \times \left(1 + \frac{CPI_n - CPI_c}{CPI_c}\right)$$

where:

“**N**” is the new amount being calculated; and



“C” is the current amount being adjusted; and

“CPI<sub>n</sub>” is the CPI\* applicable at the end of the calendar quarter (quarter n) most recently ended prior to the current adjustment date; and

“CPI<sub>c</sub>” is the value of CPI\* applicable at the previous adjustment date.

## **2. Duration**

### **2.1 Commencement and Term\***

- (a) This Contract\* commences on the Commencement Date\*.
- (b) This Contract\* ends on the Termination Date\* (unless terminated earlier under this Contract\*).

### **2.2 Option to extend Term\***

- (a) Subject to clause 2.2(b), the User\* may, by notice to Western Power\* given no later than 6 months prior to the expiration of the Term\* as at the time the notice is given, elect to extend the Term\* by such period as is specified in Part 2 of Schedule 2 as the “Extension Period\*”, in which event the Termination Date\* shall be the last day of the Extension Period\*.
- (b) The Term\* shall not in any event be extended such that the Termination Date\* is later than the date specified in Part 2 of Schedule 2 as the “**Latest Termination Date\***”, except by mutual agreement between the Parties\*.

### **2.3 Conditions Precedent\***

- (a) The formation of this Contract\*, other than this clause 2.3 and clauses 29.1 to 29.5 {disputes}, 31.1 to 31.3 {assignment}, 33.1 to 33.10 {confidentiality}, 35 {notices} and 37.14 {governing law} is subject to and conditional upon each of the Conditions Precedent\* being satisfied on or before the date specified in Part 3 of Schedule 2 or:
  - (i) where a Condition Precedent\* is not specified to be for the benefit of a particular Party\*, that Condition Precedent\* being waived by agreement between all Parties\*; and
  - (ii) where a Condition Precedent\* is specified to be for the benefit of a particular Party\*, that Condition Precedent\* being waived by that Party\*,
 on or before the respective date specified in Part 3 of Schedule 2.
- (b) Where a Condition Precedent\* is not specified to be for the benefit of a particular Party\*, each of the Parties\* must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent\*.
- (c) Where a Condition Precedent\* is specified to be for the benefit of a particular Party\*, that Party\* must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent\* and the other Party\* shall not, by wilful act or omission, prevent its fulfilment.
- (d) A Party\* must promptly notify the other Parties\* if it:
  - (i) discovers that any of the Conditions Precedent\* are not satisfied by the date specified in Part 3 of Schedule 2; or

- (ii) discovers that any of the Conditions Precedent\* have become incapable of being satisfied by the date specified in Part 3 of Schedule 2; or
  - (iii) waives any right to continue to treat any of the Conditions Precedent\* as conditions precedent to the formation of this Contract\*.
- (e) If a Condition Precedent\* is not satisfied or waived by the date specified in Part 3 of Schedule 2 (or such longer period as the Parties\* may in writing agree) then, if the Party\* who seeks to terminate this Contract\* has complied with clause 2.3(b) or 2.3(c), as the case requires, that Party\* may, without prejudice to any other right or remedy it may have, terminate this Contract\* by giving written notice to the other Party\*.

## ELECTRICITY TRANSFER PROVISIONS

### 3. Services

#### 3.1 Provision and use of Services\*

- (a) For each Connection Point\*, on and from the Start Date\* and up to and including the End Date\*, subject to and under this Contract\*:
  - (i) Western Power\* must provide the Services\*, up to the Contracted Capacity\*; and
  - (ii) the User\* must pay the Charges\* for, and may use, the Services\*.
- (b) The User\* must not:
  - (i) transfer electricity out of the Network\* at a Connection Point\* unless it has an Exit Service\* for that Connection Point\*; and
  - (ii) transfer electricity into the Network\* at a Connection Point\* unless it has an Entry Service\* for that Connection Point\*.
- (c) For each Service\* at each Connection Point\*, the User\* must endeavour, as a Reasonable and Prudent Person\*, to ensure that the rate at which electricity is transferred into or out of the Network\* by or on behalf of the User\* does not exceed the Contracted Capacity\* for that Service\*.
- (d) Notwithstanding clause 3.1(a)(i), Western Power\* may provide the User\* with a Modified Service\* for a Connection Point\* stipulated in Part 4 of Schedule 3 (if any) until:
  - (i) the date set out in Part 4 of Schedule 3 for the Connection Point\*; or
  - (ii) until the events or works (as applicable) set out in Part 4 of Schedule 3 for that Connection Point\* are completed to Western Power\*'s satisfaction (acting as a Reasonable and Prudent Person\*),
 as applicable.

#### 3.2 User\* may select Services\*

- (a) The User\* may from time to time give notice to Western Power\* seeking to change the Service\* in respect of a Connection Point\* in accordance with the Applications and Queuing Policy\*.
- (b) If Western Power\* receives a notice from the User\* under clause 3.2(a), then Western Power\* must process that request in accordance with the Applications and Queuing Policy\*.

### **3.3 Eligibility Criteria\***

The User\* must in relation to each Reference Service Point\*, comply with the Eligibility Criteria\* applicable to the Reference Service\* provided, or to be provided, at the Reference Service Point\*.

### **3.4 Increase of Contracted Capacity\* or addition of Connection Point\***

- (a) The User\* may not increase the Contracted Capacity\* at an existing Connection Point\* or add an additional Connection Point\* to this Contract\* unless the User\* makes an application to Western Power\* under:
  - (i) the Applications and Queuing Policy\*; or
  - (ii) the Customer Transfer Code\*; and
  - (iii) this Contract\*,
 as applicable.
- (b) If the User\* makes an application to Western Power\* under clause 3.4, then Western Power\* must process the application under:
  - (i) the Applications and Queuing Policy\*; or
  - (ii) the Customer Transfer Code\*; and
  - (iii) this Contract\*,
 as applicable.

### **3.5 Decrease of Contracted Capacity\***

- (a) The User\* may give notice to Western Power\* seeking to reduce the Contracted Capacity\* of a Service\* at a Connection Point\* under this Contract\*.
- (b) If Western Power\* receives a notice from the User\* under clause 3.5(a), then, subject to clause 3.5(c), it must notify the User\* within 10 Business Days\* that it accepts the reduction in Contracted Capacity\*, and the date that the reduction takes effect.
- (c) If Western Power\* receives more than one notice seeking to reduce Contracted Capacity\* with respect to a single Connection Point\* in any rolling period of 12 months, then in relation to each additional notice Western Power\*:
  - (i) may notify the User\* that it accepts the reduction in Contracted Capacity\* and the date that the reduction takes effect, where Western Power\* is satisfied, as a Reasonable and Prudent Person\*, that the reduced Contracted Capacity\* will be sufficient to meet the actual requirements of the User\* and that the reduction in Contracted Capacity\* is required by reason of one or more of the following circumstances:
    - (A) a reduction in the actual Consumption\* or Generation\* by the User\* in the respect of that Connection Point\* over the 12 month period prior to the User\* giving notice under clause 3.5(a), as recorded by the Metering Equipment\*; or
    - (B) a change in the nature of the business or operation conducted at the Connection Point\*; or
    - (C) a shutdown of the business or operation conducted at the Connection Point\* (including a shutdown for maintenance purposes) for longer than one continuous month; or

- (D) a rapid increase or decline in the business at the Connection Point\*; or
- (E) a decrease in the number of capacity credits (as defined in the Market Rules\*) allocated to any Generating Plant\* at the Connection Point\* under the Market Rules\*; or
- (F) as part of a Relocation\*; or
- (G) some other special circumstance,

and

- (ii) is entitled to refuse the reduction in Contracted Capacity\* where Western Power\* is satisfied, as a Reasonable and Prudent Person\*, that the reduction is sought by reason of the seasonal nature of the business or operation at the Connection Point\*.

### **3.6 Deletion of a Connection Point\***

- (a) The User\* may give notice to Western Power\* seeking to delete a Connection Point\* from this Contract\*.
- (b) If the User\* seeks to permanently Disconnect\* any Facilities and Equipment\* at a Connection Point\*, then the notice under clause 3.6(a) must be given to Western Power\*:
  - (i) for Generating Plant\* at a Connection Point\*, at least 6 months before the planned Disconnection\*; and
  - (ii) for Consuming\* plant at a Connection Point\*, at least one month before the planned Disconnection\*.
- (c) If Western Power\* receives a notice from the User\* under clause 3.6(a), then it must notify the User\* that it accepts the deletion, and the date that the deletion takes effect, if:
  - (i) Western Power\* has successfully processed a Customer\* transfer request in relation to the Connection Point\* under the Customer Transfer Code\*; or
  - (ii) the Connection Point\* has been added to another Access Contract\* by some other means; or
  - (iii) Western Power\* has De-energised\* the Connection Point\* under this Contract\* or a Law\*; or
  - (iv) the Facilities and Equipment\* in respect of the Connection Point\* have been permanently Disconnected\* from the Connection Point\*,
 otherwise Western Power\* may notify the User\* that it rejects the deletion.

### **3.7 Amendment to Schedule 3**

- (a) Subject to clauses 3.7(b) and 3.7(d), the Parties\* must update the information contained in Schedule 3 following any variation made under this clause 3;
- (b) If the User\* is a Metering Code Participant\*, then the User\* and Western Power\* agree that Western Power\* will, subject to clause 3.7, in accordance with the provisions of the Metering Code\* record and update in the Metering Database\* the information in Part 1 of Schedule 3, and will provide the User\* with secure access to this information. For the purposes of this Contract\*, a reference to Part 1 of Schedule 3 or the information contained within it shall be read as a reference to the information recorded in the Metering Database\*.

- (c) Western Power\* will record and update the CMD\* and DSOC\* information in Part 1 of Schedule 3 within a database maintained by Western Power\* and provide the User\* with reasonable access to the information upon request by the User\*.
- (d) Subject to clause 3.7(e), where Western Power causes a Permanent Reconfiguration\* of the Network\* which results in the information contained in Schedule 3 having to be updated:
  - (i) Western Power\* is not required to update the information contained in Schedule 3 before the next 1 July following the Permanent Reconfiguration\* of the Network\*; and
  - (ii) Western Power\* must update the information contained in Schedule 3 before the next 21 July following the Permanent Reconfiguration\* of the Network\*.
- (e) Where a Permanent Reconfiguration\* of the Network\* occurs as a result of, or arising from, a notice or application by the User\* under clause 3.4, 3.5 or 3.6 which results in the information contained in Schedule 3 having to be updated:
  - (i) clause 3.7(d) does not apply; and
  - (ii) each Party\* must update the information contained in Schedule 3 as soon as reasonably practicable after the Permanent Reconfiguration\* of the Network\*.

### **3.8 Contracted Capacity\* not utilised**

- (a) Subject to clauses 3.8(c), where, in relation to Contracted Capacity\* at a Connection Point\*:
  - (i) the Contracted Capacity is not being used by the User\*;
  - (ii) it is unlikely, in the opinion of Western Power\* as a Reasonable and Prudent Person\* that the unused Contracted Capacity\* will be used by the User\* to satisfy the User\*'s actual or forecast requirements; and
  - (iii) the unused Contracted Capacity\* is the subject of an Application\* from a person who is not the User\*,

Western Power may give 30 days notice to the User\* stating its intention to reduce the User\*'s Contracted Capacity\* and the amount and timing of the reduction.

- (b) If the User\* fails within the period specified in the notice to:
  - (i) use the Contracted Capacity\*; or
  - (ii) demonstrate to the satisfaction of Western Power\* as a Reasonable and Prudent Person\* that the unused Contracted Capacity\* will be used to satisfy the User\*'s actual or forecast requirements,

Western Power may reduce the User\*'s Contracted Capacity\* in accordance with the notice.

- (c) Western Power\* is not entitled to reduce Contracted Capacity\* at a Connection Point\* where the unused Contracted Capacity is attributable to Force Majeure\*.

## **4. The User\* must provide forecast information**

### **4.1 Western Power\* may request information**

Western Power\* may as a Reasonable and Prudent Person\*, in respect of a Connection Point\*, request power and energy forecast information from the User\*.

#### **4.2 When Western Power\* may request information**

A request under clause 4.1 must not be made more than once in any 12 month period, except in an Emergency\* or where any forecasts provided by the User\* materially differ from the User\*'s actual performance and, in the opinion of Western Power\* (as a Reasonable and Prudent Person\*), require revision in order to facilitate the operation of the Network\* in accordance with Good Electricity Industry Practice\*.

#### **4.3 User\* must comply with request**

The User\* must comply with Western Power\*'s reasonable request under clause 4.1.

### **5. Title to electricity**

#### **5.1 Transfer into the Network\***

Title to electricity that is transferred into the Network\* at a Connection Point\* passes from the User\* to Western Power\* at the time it passes through the Connection Point\*.

#### **5.2 Transfer out of the Network\***

Title to electricity that is transferred out of the Network\* at a Connection Point\* passes from Western Power\* to the User\* at the time it passes through the Connection Point\*.

### **6. Controllers**

#### **6.1 User\* must nominate Controller\* where Connection Point\* exceeds threshold**

- (a) If the User\* is not the Controller\* of a Connection Point\* then the User\* must, by notice to Western Power\* before the Start Date\* of the relevant Services\*, nominate a person as the Controller\* for a Connection Point\* where:
  - (i) the Generating Plant\* with installed capacity exceeding 30 kVA is connected at the Connection Point\*; or
  - (ii) the Connection Assets\* for the Connection Point\* are operated at 66 kV or greater; or
  - (iii) the rating of the largest motor connected at the Connection Point\* is greater than 0.4% of the three phase short circuit fault level at the Attachment Point\*.
- (b) The User\* may, from time to time, by notice to Western Power\*, change the person the User\* nominates as the Controller\* of a Connection Point\*.
- (c) The Parties\* must amend Schedule 3 following any variation made under this clause 6.1.
- (d) Western Power\*, acting as a Reasonable and Prudent Person\*, may at any time on reasonable technical or commercial grounds object to a person nominated by the User\* as a Controller\* under clause 6.1, in which case the User\* must either:
  - (i) Dispute\* Western Power\*'s objection; or
  - (ii) nominate a different person as a Controller\*.
- (e) If Western Power\* requires, the User\* must procure that the person nominated by the User\* as a Controller\* enters into a Connection Contract\* with Western Power\* in respect of the Connection Point\*.

## **6.2 Where the User\* is not the Controller\***

- (a) If the User\* is not the Controller\* of a Connection Point\*, and the Controller\* of that Connection Point\* has not entered into a Connection Contract\* with Western Power\* in respect of the Connection Point\*, then the User\* must ensure that the Controller\* of that Connection Point\* complies, and will continue to comply, with the obligations set out in this Contract\*, to the extent that such compliance is reasonably necessary for the Parties\* to satisfy their obligations under this Contract\*, including, but not limited to:
- (i) clause 11 (Good Electricity Industry Practice\*); and
  - (ii) clause 12 (Technical Rules\*); and
  - (iii) clause 13 (Technical characteristics of Facilities and Equipment\*); and
  - (iv) clause 14 (Cooperation); and
  - (v) clause 15 (Access to premises); and
  - (vi) clause 16 (Directions from System Operator\*); and
  - (vii) clause 17 (Removal of equipment); and
  - (viii) clause 25 (Curtailment\*).
- (b) If the User\* is not the Controller\* of a Connection Point\*, and the Controller\* of that Connection Point\* has not entered into a Connection Contract\* with Western Power\* in respect of the Connection Point\*, then the User\* must ensure that any Contract\* entered into between the User\* and a Controller\* relating to Services\* under this Contract\* contains a provision that neither the User\* nor Western Power\* is in any circumstances liable for Indirect Damage\* suffered by the Controller\*, however arising, excluding any damage caused by, consequent upon or arising out of fraud.
- (c) On reasonable request from Western Power\*, the User\* must (unless the Controller\* has already entered into a Connection Contract\* with Western Power\*) provide evidence to Western Power\*'s satisfaction as a Reasonable and Prudent Person\* that the User\* is complying, and will continue to comply, with clause 6.2(a).
- (d) If the User\* does not satisfy Western Power\* under clause 6.2(c), Western Power\* may refuse to commence the Services\* or may Curtail\* the provision of Services\* in respect of the relevant Connection Point\* unless and until:
- (i) the Controller\* has entered into a Connection Contract\* with Western Power\* in respect of the Connection Point\*; or
  - (ii) the User\* satisfies Western Power\* under clause 6.2(c).
- (e) For the avoidance of doubt, if the User\* is in breach of clause 6.2(a), then the User\* is liable for, and must indemnify Western Power\* pursuant to clause 19.2 against any Direct Damage\* caused by, consequent upon or arising out of the acts and omissions, negligent or otherwise, of the Controller\* to the extent that the acts or omissions, negligent or otherwise, of the Controller\* are attributable to that breach, unless the Controller\* has entered into a Connection Contract\* with Western Power\*.

## **6.3 Western Power\* may enter into Access Contracts\***

Nothing in clause 6.2 is to be taken to prevent Western Power\* from entering into an Access Contract\* with any person, including a person who is a Controller\*.

#### **6.4 Liability and Force Majeure\* not limited**

Nothing in clause 6.2 limits the operation of clauses 19.2 or 22.1 in respect of either the User\* or Western Power\*.

### **7. Tariff\* and Charges\***

#### **7.1 Tariff\***

(a) The tariff payable under this Contract\* for a Service\* is the tariff, or tariffs, as applicable, specified in the Price List\* from time to time for the Service\*.

(b) If:

- (i) no Price List\* is published by the Authority\* on the date required under the Code\*; or
- (ii) a purported Price List\* which does not comply with the Access Arrangement\* is published,

then to the extent that the effect of a Price List\* (if it had been published on the date required under the Code\* and had been compliant with the Access Arrangement\*) would have been to reduce the Tariff\* payable by the User\*, then the User\* may recover the Tariff\* reduction as an overpayment under clause 8.6.

(c) If applicable, the Tariff\* payable under clause 7.1(a) for a Service\* after the end of the current Access Arrangement\* period is to be determined as follows:

- (i) if the new Access Arrangement\* contains a Reference Service\* ("**Equivalent Reference Service\***") which is materially the same as the Service\* then the tariff for the Service\* is to be the tariff for the Equivalent Reference Service\*; and
- (ii) if the new Access Arrangement\* does not contain an Equivalent Reference Service\*, or if for any reason there is no new Access Arrangement\* or new Price List\* under the new Access Arrangement\*, then the tariff for each quarter will be the Tariff\* in the final Price List\* which Western Power\* was required to publish under the previous Access Arrangement\*, CPI-Adjusted\* annually each 1 July.

(d) Clause 7.1(c) applies, with appropriate modifications, in respect of the end of each successive Access Arrangement\* period.

(e) Western Power\* must notify the User\* of the Tariffs\* calculated from time to time under clause 7.1(c).

(f) For the purposes of calculating Tariffs\* and Charges\* for a Service\*:

- (i) Western Power\* is entitled to rely on the information contained in Schedule 3 (as updated from time to time in accordance with this Contract\*); and
- (ii) where information contained in Schedule 3 is updated, or to be updated, in accordance with this Contract\*, the updated information:
  - (A) will not apply to any period before; and
  - (B) must not be used to calculate a Tariff\* or Charge\* until,
    - the date that the information is actually updated in accordance with this Contract\*.

#### **7.2 Charges\***

The User\* must pay to Western Power\*:



- (a) the Charge\* for each Service\* calculated at the Tariff\* determined under clause 7.1; and
- (b) nothing in this clause 7.2 prevents Western Power\* from recovering any other monies otherwise payable by the User\* to Western Power\* under this Contract\* or at Law\*.

### **7.3 Charges\* during Western Power\*'s Force Majeure Event\***

- (a) If a Service\* ("**Affected Service\***") is unavailable for any consecutive period of two days or longer ("**Affected Service Period\***") due to a Force Majeure Event\* where:
  - (i) Western Power\* is the Affected Person\*;
  - (ii) the User\* is unable to use the Affected Service\* because of the Force Majeure Event\*; and
  - (iii) Western Power\*'s inability to provide the Affected Service\* has not been caused by the User\*'s default or negligence,

then, for that part of the Affected Service Period\* in which the User\*'s Facilities and Equipment\* in respect of the Affected Service\* were not or would not have been subject to a scheduled or unscheduled outage by which the User\*'s Facilities and Equipment\* were De-energised\*, the User\* is relieved of its obligation under clause 7.2 and instead must pay 10% of the "**Standing Charges\***" (as defined in clause 7.3(b)) for the Affected Service\* during that part of the Affected Service Period\*.

- (b) Under this clause 7.3, Standing Charges\* means:
  - (i) those Charges\* or components of a Charge\* which apply to a Service\* regardless of the actual Generation\* or Consumption\* by the User\* in respect of that Service\*, as recorded by the Metering Equipment\*; and
  - (ii) is not those components of a Charge\* which are determined by reference to the actual Generation\* or Consumption\* by the User\* in the respect of that Service\*, as recorded by the Metering Equipment\*.

## **8. Invoicing and payment**

### **8.1 Western Power\* invoices**

- (a) Subject to clause 8.1(d), Western Power\* must, within 14 Business Days\* after the end of an Accounting Period\*, issue to the User\* a Tax Invoice\* for the Accounting Period\* showing:
  - (i) all amounts payable by the User\* to Western Power\* under this Contract\* for the Accounting Period\*; and
  - (ii) all outstanding amounts as at the end of the Accounting Period\* and interest payable on those amounts; and
  - (iii) GST\* payable on those amounts under clause 8.8.
- (b) A Tax Invoice\* issued by Western Power\* under clause 8.1(a) or 8.1(d) may include other amounts payable by the User\* to Western Power\* with regards to the Service\* under this Contract\* or at Law\*.
- (c) At the same time as issuing a Tax Invoice\* under this clause 8.1, Western Power\* must provide to the User\*, in electronic form, the metering information used to calculate the Charges\* shown on the Tax Invoice\* in sufficient detail to enable the User\* to understand how Western Power\* calculated the Charges\*.

- (d) Notwithstanding clause 8.1(a), the Parties\* may, by mutual agreement, implement a different system of invoicing to that stipulated in clause 8.1(a) including, for example, issuing two or more Tax Invoices\* per Accounting Period\*, and separate invoicing for different classes or groups of consumers, Connection Points\* or Services\*.

## 8.2 User\* invoices

- (a) At the same time as Western Power\* issues to the User\* a Tax Invoice\* for an Accounting Period\* under clause 8.1, Western Power\* must provide the User\* with all information necessary for the User\* to determine any amounts payable by Western Power\* to the User\* for the Accounting Period\*.
- (b) The User\* must, within 5 Business Days\* after receiving the information under clause 8.2(a), issue to Western Power\* a Tax Invoice\* for the Accounting Period\* showing:
- (i) all amounts payable by Western Power\* to the User\* under this Contract\*, which amounts may be calculated using the information provided to the User\* by Western Power\* under clause 8.2(a); and
  - (ii) all outstanding amounts as at the end of the Accounting Period\* and interest payable on those amounts; and
  - (iii) GST\* payable on those amounts payable under clause 8.8.
- (c) If the User\* Disputes\* the information provided by Western Power\* under clause 8.2(a), then:
- (i) the User\* may issue a Tax Invoice\* under clause 8.2(b) for an amount the User\* (acting as a Reasonable and Prudent Person\*) estimates to be the correct amount payable; and
  - (ii) the User\* must, before the Due Date\* of the Tax Invoice\* under clause 8.2(b), give notice to Western Power\* that it Disputes\* the information provided under clause 8.2(a) and provide in that notice full details of the Dispute\*, including the difference between the amount for which the Tax Invoice\* has been issued by the User\* and the amount for which that Tax Invoice\* would have been issued had the information provided by Western Power\* under clause 8.2(a) been accepted by the User\* as correct.
- (d) Clause 8.4 applies in respect of a Tax Invoice\* issued under clause 8.2(b), for the purposes of which the "**Undisputed Portion\***" is taken to be an amount calculated in accordance with the information provided by Western Power\* under clause 8.2(a).

## 8.3 Payment of invoices

- (a) Each Party\* which receives a Tax Invoice\* under clause 8.1 or 8.2, must on or before the Due Date\* of the Tax Invoice\* pay to the Party\* issuing the Tax Invoice\* all amounts shown on the Tax Invoice\* which are payable under this Contract\*.
- (b) If a Party\* fails to comply with clause 8.3(a) then, without prejudice to the other Party\*'s other rights, the Party\* must pay interest on any unpaid amount, calculated daily at the Prescribed Rate\* from the Due Date\* of the Tax Invoice\* until payment.

#### **8.4 Disputed\* invoices**

- (a) If a Party\* Disputes\* any amount set out in a Tax Invoice\* issued under clause 8.1 or 8.2 then that Party\* must pay the Undisputed Portion\* (if any) and must, prior to the Due Date\* of the Tax Invoice\*, give notice to the other Party\* that it Disputes\* the amount and provide in that notice full details of the Dispute\*.
- (b) Without prejudice to the other Party\*'s other rights, any amount withheld by a Party\* under clause 8.4(a) but subsequently found to have been payable attracts interest calculated daily at the Prescribed Rate\* from the Due Date\* of the Tax Invoice\* until payment.
- (c) Without prejudice to the other Party\*'s other rights, any amount paid by a Party\* under clause 8.4(a) but subsequently found not to have been payable attracts interest calculated daily at the Prescribed Rate\* from the date the Party\* paid the amount to the date the other Party\* repays the amount.

#### **8.5 Charge\* errors**

Nothing in this clause or elsewhere in this Contract\* affects or limits the operation of sections 65 and 66 of the Energy Operators (Powers) Act 1979 (WA) in relation to Charges\* paid or payable by the User\* under this Contract\*.

#### **8.6 Under and over payments**

- (a) Subject to clause 8.6(e), if a Party\* detects a Payment Error\* by a Party\* of any amount within 18 calendar months after the Payment Error\*:
  - (i) the Party\* must as soon as reasonably practicable give notice to the other Parties\* of the Payment Error\*; and
  - (ii) an adjusting payment must be made by the appropriate Party\* within 10 Business Days\* of the notice.
- (b) Except where clause 8.6(c) applies, the adjusting payment must, without prejudice to the Party\*'s other rights, include interest calculated daily at the Prescribed Rate\* from the date of the Payment Error\* until the date of the adjusting payment.
- (c) An adjusting payment by a Party\* will not attract interest under clause 8.6(b) if it is made in relation to an underpayment and the underpayment was the result of an error by the other Party\*.
- (d) Subject to clause 8.6(e), a Party\* is not entitled to an adjusting payment for a Payment Error\* notified to the other Parties\* after the expiry of 18 calendar months after the Payment Error\*.
- (e) Notwithstanding clauses 8.6(a) and 8.6(d), where:
  - (i) Payment Errors\* have occurred as a result of an error in the data used to calculate the Charges\*; and
  - (ii) the Payment Errors\* occurred in one or more Accounting Periods\*,
 the Party\* who was underpaid or who made an overpayment (as applicable) is entitled to an adjusting payment only for the Payment Errors\* that occurred in the Accounting Periods\* that were within the 12 month period preceding the date that the Payment Errors\* were notified by one Party\* to the other.

## **8.7 Interest on overdue payment**

If a Party\* Defaults\* in due and punctual payment of a Tax Invoice\*:

- (a) clauses 27.1 to 28.1(d)(i) apply; and
- (b) the overdue payments attract interest payable at the Prescribed Rate\* from the Due Date\* of the Tax Invoice\* until the Default\* is remedied.

## **8.8 GST\***

- (a) Unless expressly included, the consideration for any supply under or in connection with this Contract\* (including any Charge\* or Tariff\* derived from a Price List\* and any Contribution\*) is GST\* exclusive.
- (b) To the extent that any supply made under or in connection with this Contract\* is a taxable supply and the price for it (including any Charge\* or Tariff\* derived from a Price List\* and any Contribution\*) is stated to be GST\* exclusive, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of the consideration (or its market value) multiplied by the rate at which GST\* is imposed in respect of the supply.
- (c) Without limiting the obligation to provide a Tax Invoice\* under clauses 8.1 and 8.2, the supplier must issue a Tax Invoice\* to the recipient of a supply to which clause 8.8(b) applies before the payment of the GST\* inclusive consideration determined under that clause.
- (d) If a Party\* is entitled under this Contract\* to be reimbursed or indemnified by another Party\* for a cost or expense incurred in connection with this Contract\*, the reimbursement or indemnity payment must not include any GST\* component of the cost or expense for which an input tax credit may be claimed by the Party\* entitled to be reimbursed or indemnified, or by its representative member.
- (e) If a Party\* becomes aware of an adjustment event, that Party\* agrees to notify the other Party\* as soon as practicable after becoming so aware, and the Parties\* agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST\* or additional GST\* on that supply or any refund of any GST\* (or part of GST\*) is paid as soon as is practicable but no later than 10 Business Days\* after the Party\* has satisfied itself that the adjustment event has occurred.
- (f) Definitions in the GST Act\* apply also in this clause 8.8 unless the context indicates otherwise.

## **9. Security for Charges\***

- (a) Subject to clause 9(b), if Western Power\* determines at any time during the Term\* that either or both of the User\*'s or the Indemnifier\*'s technical or financial resources are such that a Reasonable and Prudent Person\* would consider there to be a material risk that the User\* will be unable to meet its obligations under this Contract\*, then Western Power\* may require the User\* to nominate which of the User\* or the Indemnifier\* ("**Nominated Person\***") is to provide the following security, and then require the Nominated Person\*, at the User\*'s election to:
  - (i) pay a cash deposit equal to the Charges\* for two months' services; or

- (ii) provide an irrevocable and unconditional bank guarantee or equivalent financial instrument in terms acceptable to Western Power\* (acting as a Reasonable and Prudent Person\*), guaranteeing or otherwise securing the Charges\* for two months' services; or
  - (iii) if Western Power\* is satisfied, as a Reasonable and Prudent Person\*, that the User\*'s parent company's financial and technical resources are such that the User\*'s parent company would be able to meet the User\*'s obligations under this Contract\* (including because the User\*'s parent company meets at least one of the credit ratings given in clauses 9(b)(i) and 9(b)(ii)), procure from the User\*'s parent company a guarantee substantially in the form set out in Schedule 8.
- (b) If the User\* or the Indemnifier\* has an unqualified credit rating of at least:
- (i) BBB from Standard and Poor's Australia Pty Ltd; or
  - (ii) Baa from Moody's Investor Service Pty Ltd,
- and provides evidence to this effect to Western Power\*, then Western Power\* is not entitled to determine under clause 9(a) that the User\*'s financial resources are such that there would be a material risk that the User\* will be unable to meet its obligations under this Contract\*.

## **10. Security for Contribution\***

Without limiting the User\*'s security obligations related to clause 26, the Nominated Person\* must provide an irrevocable and unconditional bank guarantee (or equivalent financial instrument) in terms acceptable to Western Power\* (acting as a Reasonable and Prudent Person\*), guaranteeing the present value of any amount of any Contribution\* that remains unpaid or unprovided as calculated by Western Power\* under the Contributions Policy\*.

## TECHNICAL COMPLIANCE PROVISIONS

### **11. Good Electricity Industry Practice\***

#### **11.1 Western Power\* must comply with Good Electricity Industry Practice\***

Western Power\* must comply with Good Electricity Industry Practice\* when providing Services\* and performing its obligations under this Contract\*.

#### **11.2 User\* must comply with Good Electricity Industry Practice\***

The User\* must comply with Good Electricity Industry Practice\* in using the Services\* and performing its obligations under this Contract\*.

### **12. Technical Rules\***

#### **12.1 Western Power\* and the User\* must comply**

Western Power\* and the User\* must each comply with the Technical Rules\*, subject to any exemptions given to Western Power\* or the User\*, respectively, under Chapter 1 of the Technical Rules\*. (For the avoidance of doubt, this includes a requirement on the User\* to comply with the Technical Rules\* with respect to any other person or person's equipment that will gain access, or Connect\*, to the Network\* through a Connection Point\*).

**12.2 User\* to bear costs**

- (a) The User\* must bear its own costs in relation to compliance with the Technical Rules\*.
- (b) Western Power\* must bear its own costs in relation to compliance with the Technical Rules\*.
- (c) Notwithstanding clause 12.2(b), where an act or omission of the User\* causes Western Power\* to incur extra costs in order to ensure Western Power\* complies with the Technical Rules\*, the User\* shall bear Western Power\*'s reasonable extra costs so incurred to the extent that such costs are not already payable by the User\* under the Contributions Policy\*.
- (d) Without limiting clause 12.2(c), where a User\*'s equipment increases the fault levels in the Network\*, the User\* must bear Western Power\*'s reasonable costs of any upgrades to the Network\* required under the Technical Rules\* to the extent that such costs are not already payable by the User\* under the Contributions Policy\*.
- (e) For the avoidance of doubt, the User\* is not liable for any costs incurred by another user of the Network\* arising from compliance by the other user with the Technical Rules\*.

**12.3 Actions of third parties**

- (a) Subject to clause 6.2(e), if the actions of a third party cause a Party\* to breach the Technical Rules\*, then the Party\* is not in breach of clause 12.1 unless the Party\* has:
  - (i) been negligent; or
  - (ii) has not acted as a Reasonable and Prudent Person\*.
- (b) Nothing in this clause 12.3 limits the operation of clauses 19.2 or 22 in respect of either Party\*.

**13. Technical characteristics of Facilities and Equipment\***

- (a) The Parties\* must record:
  - (i) in Part 2 of Schedule 3 any technical information that the User\* was required to provide to Western Power\* under the Applications and Queuing Policy\*; and
  - (ii) in Part 3 of Schedule 3 any exemptions to the Technical Rules\* given to the User\* under Chapter 1 of the Technical Rules\*
- (b) Each Party\* must record any other information required to be recorded in this Contract\* by the Technical Rules\* within a database maintained by that Party\*, and provide the other Parties\* with reasonable access to the information upon request by that Party\*.
- (c) The User\* must not materially modify any Generating Plant\* connected at a Connection Point\* unless:
  - (i) the User\* makes an Application\* to do so under the Applications and Queuing Policy\*; and
  - (ii) the Application\* is processed by Western Power\* under the Applications and Queuing Policy\*, resulting in an Access Offer\* for the change, which the User\* accepted.

## 14. Cooperation

The User\* and Western Power\* (each acting as a Reasonable and Prudent Person\*) must cooperate and coordinate with each other where reasonably necessary in relation to:

- (a) the planning, development, inspection, testing and commissioning of Facilities and Equipment\* for a Connection Point\* and Network Assets\* for the Network\*; and
- (b) the development and implementation of Maintenance\* schedules for Facilities and Equipment\* for a Connection Point\* and Network Assets\* for the Network\*.

## 15. Access to premises

### 15.1 Parties\* must allow reasonable rights of entry

Each Party\* ("**Host Party\***") must allow, or use its reasonable endeavours to procure for, the other Party\* ("**Guest Party\***") all reasonable rights of entry to the Host Party\*'s premises:

- (a) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment\* or other equipment or thing; and
- (b) to inspect for safety or other reasons the construction, installation, operation, maintenance and repair of any Metering Equipment\* or other equipment or thing; and
- (c) for any other reasonable purpose connected with or arising out of this Contract\*.

### 15.2 Entry made at risk of Guest Party\*

Any entry under clause 15.1 is made in all respects at the expense and risk of the Guest Party\*, who must, subject to clauses 19.3 and 19.5, make good any damage occasioned by or resulting from the entry, other than to the extent the damage is caused by:

- (a) fair wear and tear; or
- (b) the negligence or Default\* of the Host Party\* or any of its Workers\* or Visitors\*; or
- (c) a Force Majeure Event\*.

### 15.3 Guest Party\* obligations

A Guest Party\* must:

- (a) before exercising a right of entry under clause 15.1, give reasonable notice to the Host Party\* specifying the purpose, proposed time and estimated duration of entry, except where it is not practicable to do so due to any Emergency\*; and
- (b) while exercising a right of entry under clause 15.1:
  - (i) act as a Reasonable and Prudent Person\*; and
  - (ii) without limiting clause 15.3(b)(i), take steps that are reasonable in the circumstances to ensure that during the entry its Workers\* and Visitors\* cause as little inconvenience to the Host Party\* as possible, except to the extent that it is not practicable to do so due to any Emergency\*, and at all times comply with:
    - (A) all reasonable health and safety standards, induction and supervision requirements and other requirements of the Host Party\*; and
    - (B) all reasonable and lawful directions by or on behalf of the Host Party\*.

#### **15.4 Third person's premises**

To the extent that any equipment or thing relevant to the obligations or rights of a Party\* under this Contract\* is located on the premises of a third person, the Parties\* must use their reasonable endeavours to secure for either or both of the Parties\* a reasonable right of entry to the third person's premises.

### **16. Directions from System Operator\***

#### **16.1 Western Power\* and the User\* must comply**

Without limiting the generality of clause 14, Western Power\* and the User\* must each comply with any directions given by the System Operator\*.

### **17. Removal of equipment**

On the permanent Disconnection\* of Facilities and Equipment\* at any Connection Point\*:

- (a) Western Power\* may dismantle, decommission and remove Western Power\*'s Works\* and any Metering Equipment\* installed on the User's Premises\*; and
- (b) under Western Power\*'s reasonable instructions, the User\* must dismantle and decommission or remove any of the User\*'s Works\* at or connected to the Connection Point\*.

## COMMON PROVISIONS

### **18. Representations and warranties**

#### **18.1 The User\*'s representations and warranties**

- (a) The User\* represents and warrants to Western Power\* that:
  - (i) the User\* has complied with the Applications and Queuing Policy\* in the Access Arrangement\* and the requirements in the Code\* in respect of its Application\* under the Access Arrangement\*; and
  - (ii) the User\*'s obligations under this Contract\* are valid and binding and are enforceable against the User\* under their terms; and
  - (iii) this Contract\* and any other transaction under it does not contravene the User\*'s constituent documents or any Law\* or any of the User\*'s obligations or undertakings by which the User\* or any of the User\*'s assets are bound or cause to be exceeded any limitation on the User's\* or the User\*'s directors' powers; and
  - (iv) neither the User\* nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).
- (b) The representations and warranties in clause 18.1 are to be taken to be made on each day on which:
  - (i) this Contract\* is in effect; or



- (ii) any amount payable by the User\* to Western Power\* under this Contract\* is or may be outstanding.
- (c) To the maximum extent permitted by Law\*, the only warranties given by and terms which apply to the User\* under this Contract\* are those expressly contained in this Contract\*, and all warranties and terms implied by Law\*, including those on the part of the User\* implied by the Trade Practices Act 1974 of the Commonwealth or the Fair Trading Act 1987(WA) or any other Law\* to similar effect do not apply to this Contract\*.
- (d) If at Law\* the exclusion of any warranty or term is prohibited, then the User\*'s liability in respect of a breach of such warranty or term is limited to the maximum extent permitted by Law\*. For example, where any Law\* permits the User\* to limit its liability in respect of a breach of an implied warranty or condition to the replacement or resupply of equivalent goods and services, then the User\*'s liability will be so limited.

## **18.2 Western Power\*'s representations and warranties**

- (a) Western Power\* represents and warrants to the User\* that:
  - (i) Western Power\* has complied with the Applications and Queuing Policy\* in the Access Arrangement\* and the requirements in the Code\* in respect of the User's\* Application\* under the Access Arrangement\*; and
  - (ii) Western Power\*'s obligations under this Contract\* are valid and binding and are enforceable against Western Power\* under their terms; and
  - (iii) this Contract\* and any other transaction under it does not contravene Western Power\*'s constituent documents or any Law\* or any of Western Power\*'s obligations or undertakings by which Western Power\* or any of Western Power\*'s assets are bound or cause to be exceeded any limitation on Western Power\*'s or Western Power\*'s directors' powers; and
  - (iv) neither Western Power\* nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).
- (b) The representations and warranties in clause 18.1(c) are to be taken to be made on each day on which:
  - (i) this Contract\* is in effect; or
  - (ii) any amount payable by Western Power\* to the User\* under this Contract\* is or may be outstanding.
- (c) To the maximum extent permitted by Law\*, the only warranties given by and terms which apply to Western Power\* under this Contract\* are those expressly contained in this Contract\*, and all warranties and terms implied by Law\*, including those on the part of Western Power\* implied by the Trade Practices Act 1974 of the Commonwealth or the Fair Trading Act 1987(WA) or any other Law\* to similar effect do not apply to this Contract\*.
- (d) If at Law\* the exclusion of any warranty or term is prohibited, then Western Power\*'s liability in respect of a breach of such warranty or term is limited to the maximum extent permitted by Law\*. For example, where any Law\* permits Western Power\* to limit its liability in respect of a breach of an implied warranty or condition to the replacement or resupply of equivalent goods and services, then Western Power\*'s liability will be so limited.

### **18.3 Indemnifier\*'s representations and warranties**

The Indemnifier\* represents and warrants to Western Power\* that, as at the Commencement Date\*, there has been no material change in the Indemnifier\*'s financial position since the date Western Power\* received information from the Indemnifier\* stating that position.

## **19. Liability and indemnity**

### **19.1 No several liability**

All parties constituting the User\* shall be liable under this Contract\* jointly, or jointly and severally, but not severally.

### **19.2 Liability for Direct Damage\***

Subject to the terms of this Contract\*:

- (a) a Party\* who
  - (i) is negligent; or
  - (ii) commits a Default\* under this Contract\*,
 is liable to the other Party\* for, and must indemnify the other Party\* against, any Direct Damage\* caused by, consequent upon or arising out of the negligence or Default\*; and
- (b) the Indemnifier\* must indemnify Western Power\* in respect of the liabilities of the User\* under this Contract\*.

### **19.3 Exclusion of Indirect Damage\***

- (a) Subject to clause 19.3(b):
  - (i) either or both of the User\* or the Indemnifier\* is not in any circumstances liable to Western Power\* for any Indirect Damage\* suffered by Western Power\*, however arising; and
  - (ii) Western Power\* is not in any circumstances liable to either or both of the User\* or the Indemnifier\* for any Indirect Damage\* suffered by the User\*, however arising.
- (b) Where this Contract\* states that "the exclusion of Indirect Damage\* in clause 19.3 does not apply", or words to a similar effect, in relation to a matter, then:
  - (i) the exclusion of Indirect Damage\* in clause 19.3 does not apply in relation to that matter; and
  - (ii) the Parties\*' liability in relation to the matter is to be determined by Law\*, and to avoid doubt the definition of Indirect Damage\* in this Contract\* is to be disregarded for the purposes of that determination.

### **19.4 Fraud**

- (a) If Western Power\* is fraudulent in respect of its obligations to the User\* under this Contract\*, then Western Power\* is liable to either the User\* or the Indemnifier\* for, and is to indemnify both the User\* and the Indemnifier\* against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage\* in clause 19.3 does not apply.

- (b) If the User\* or the Indemnifier\* is fraudulent in respect of its obligations to Western Power\* under this Contract\*, then the User\* or the Indemnifier\* is liable to Western Power\* for, and is to indemnify Western Power\* against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage\* in clause 19.3 does not apply.

### **19.5 Limitation of liability**

- (a) Subject to clause 19.5(c), the maximum liability of Western Power\* to the User\* and the Indemnifier\* collectively under and in connection with this Contract\* is limited to an amount of \$5 million in the aggregate and refreshed annually each 1 July, except that the liability described in clause 20 is not counted for the purposes of Western Power\*'s maximum liability under this Contract\*.
- (b) Subject to clause 19.5(c), the maximum liability of both the User\* and the Indemnifier\* collectively to Western Power\* under and in connection with this Contract\* is limited to the sum of:
- (A) for each Connection Point\* at which Generation Plant\* (other than wind or solar powered generation) is connected at a voltage of 66 kV and above - \$22 million in the aggregate, refreshed annually each 1 July; and
  - (B) for each Connection Point\* at which wind or solar powered Generation Plant\* is connected at a voltage of 66 kV or above - \$11 million in the aggregate, refreshed annually each 1 July; and
  - (C) for each Connection Point\* at which Generation Plant\* is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July; and
  - (D) for each Connection Point\* at which Consuming\* plant is connected at a voltage of 66 kV and above - \$6 million in the aggregate, refreshed annually each 1 July; and
  - (E) for every 100 Connection Points\* at which Consuming\* plant is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July,

except that the liabilities described in clause 20 are not counted for the purposes of both the User\*'s and the Indemnifier\*'s collective maximum liability under this Contract\*.

- (c) The maximum liability amounts applicable under clauses 19.5(a) and 19.5(b) shall be CPI\*-Adjusted\* annually each 1 July.
- (d) At the end of each period of three Years\* from the Commencement Date\*, the Parties\* shall negotiate in good faith to re-set the maximum liability amounts applicable under clauses 19.5(a) and 19.5(b) having regard for any relevant changed circumstances in that period. If the Parties\* are unable to agree on re-setting of the maximum liability amounts, the matter shall be determined as a Dispute\*. The resolver of the Dispute\* is required to consider any changed circumstances during the period and adjust the maximum liability limit the subject of the Dispute\* to a reasonable limit, first having regard to the maintenance of the existing limit and then reducing or increasing the limit by reason of any relevant changed circumstances found to have occurred.

### **19.6 Procedure for party seeking to rely on indemnity**

If any Claim\* is made or instituted against:

- (a) either or both of the User\* or the Indemnifier\* in respect of which either or both of the User\* or the Indemnifier\* ("**Indemnified Party\***") may seek to claim indemnity under this Contract\* against Western Power\* ("**Indemnifying Party\***"); or
- (b) Western Power\* in respect of which Western Power\* ("**Indemnified Party\***") may seek to claim indemnity under this Contract\* against either or both of the User\* or the Indemnifier\* ("**Indemnifying Party\***"),  
  
the following procedure applies:
  - (c) the Indemnified Party\* must give notice of the Claim\* to the Indemnifying Party\* as soon as reasonably practicable; and
  - (d) the Indemnified Party\* must not admit, compromise, settle or pay any Claim\* or take any other steps which may in any way prejudice the defence or challenge of the Claim\* without the prior written consent of the Indemnifying Party\* (which must not be unreasonably withheld) except as may be reasonably required in order to defend any judgment against the Indemnified Party\* (to avoid doubt, Part 1E of the *Civil Liability Act 2002(WA)* applies in respect of any 'apology' (as defined in Section 5AF of that Act) given by the Indemnified Party\*); and
  - (e) the Indemnified Party\* must permit the Indemnifying Party\* to take, at the Indemnifying Party\*'s expense, any reasonable action in the name of the Indemnified Party\* to defend or otherwise settle the claim as the Indemnifying Party\* may reasonably require; and
  - (f) the Indemnified Party\* must ensure that the Indemnifying Party\* and its representatives are given reasonable access to any of the documents, records, staff, premises and advisers of the Indemnified Party\* as may be reasonably required by the Indemnifying Party\* in relation to any action taken or proposed to be taken by the Indemnifying Party\* under clause 19.6(e).

#### **19.7 Obligation to pay and right to indemnities survives termination**

- (a) A Party\*'s and the Indemnifier\*'s obligation to pay an amount to another Party\* under this Contract\* is a continuing obligation, separate and independent from the other obligations of either or both of the Party\* and the Indemnifier\* and survives termination (for any reason) of this Contract\*.
- (b) Each indemnity in this Contract\* is a continuing obligation, separate and independent from the other obligations of both the Parties\* and the Indemnifier\* and survives termination (for any reason) of this Contract\*. It is not necessary for either or both of a Party\* or an Indemnifier\* to incur expense or make payment before enforcing a right of indemnity conferred by this Contract\*.

#### **19.8 Apportionment of liability**

- (a) For the avoidance of doubt, where either or both of the User\* or the Indemnifier\* is liable to, or is to indemnify, the other Party\* under this Contract\*, the liability or indemnity owed by either or both of the User\* or the Indemnifier\* is limited to the proportion of the damage suffered by Western Power\* as a consequence of the Default\*, negligence or fraud of the either or both of the User\* or the Indemnifier\* giving rise to the liability or indemnity.

- (b) For the avoidance of doubt, where Western Power\* is liable to, or is to indemnify, either or both of the User\* or the Indemnifier\* under this Contract\*, the liability or indemnity owed by Western Power\* is limited to the proportion of the damage suffered by either or both of the User\* or the Indemnifier\* as a consequence of the Default\*, negligence or fraud of Western Power\* giving rise to the liability or indemnity.

### **19.9 Mitigation of losses**

A Party\* and the Indemnifier\* must take such action as is reasonably required to mitigate any loss or damage to it for which indemnity may be claimed under this Contract\* or otherwise.

### **19.10 Recoveries under insurance**

- (a) To the extent that Western Power\* recovers against any insurer under an insurance policy effected by either Party\* or the Indemnifier\* for a Claim\* in connection with this Contract\* in respect of which either or both of the User\* or the Indemnifier\* is liable, for any reason (including negligence), the amount as recovered shall, for the purposes of clause 19.5, be deemed to have been paid.
- (b) To the extent that the User\* recovers against any insurer under an insurance policy effected by either Party\* or the Indemnifier\* for a Claim\* in connection with this Contract\* in respect of which Western Power\* is liable, for any reason (including negligence), the amount as recovered shall, for the purposes of clause 19.5, be deemed to have been paid.

## **20. Personal injury**

The liability for any personal injury Claim\* will be determined under Law\*.

## **21. Insurances**

### **21.1 The User\*'s insurances**

- (a) Subject to clause 21.1(b), the User\* must obtain and maintain insurance, commencing from the Commencement Date\*, covering those matters, on the terms and basis, and for the amounts, referred to in Part 1 of Schedule 5.
- (b) To the extent that Western Power\* consents (such consent not to be unreasonably withheld), the User\* may self-insure for some or all of the matters and amounts referred to in Schedule 5.
- (c) For each Connection Point\*, prior to the Start Date\* of a Service\* at the Connection Point\*, and at such other times as Western Power\* shall reasonably request in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), the User\* must provide Western Power\* with certificates of currency for the insurances required under clause 21.1(a).

### **21.2 Western Power\*'s insurances**

- (a) Subject to clause 21.2(b), Western Power\* must obtain and maintain insurance, commencing from the Commencement Date\*, covering those matters, on the terms and basis, and for the amounts referred to in Part 2 of Schedule 5.

- (b) To the extent that the User\* consents (such consent not to be unreasonably withheld), Western Power\* may self-insure for some or all of the matters and amounts referred to in Part 2 of Schedule 5.
- (c) Western Power\* must, before the Commencement Date\* and at such other times as the User\* reasonably requests in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide the User\* with certificates of currency for the insurances required under clause 21.2(a).

### **21.3 Names of insured**

In respect of the insurances referred to in Schedule 5 Part 1 (a)(i) (public and products liability insurance) and Schedule 5 Part 1 (a)(iv) (contractors' plant and equipment insurance) the insurance must be:

- (a) effected in the joint names of the Parties\*; or
- (b) Western Power\* must be endorsed on the policies referred to in Schedule 5 Part 1 and the User\* must be endorsed on the policies referred to in Schedule 5 Part 2,

for their respective rights and interests.

### **21.4 Cross liability**

Every policy of public and products liability insurance must include a cross liability clause in which the insurer expressly accepts that the term insured applies to every person who is named in the policy as if there was a separate policy of insurance for each of them but not so as to increase the limit of liability.

### **21.5 Notice of cancellation**

A Party\* must notify the other Party\* immediately on being advised by its insurer of cancellation or non-renewal of any of insurance policies in Schedule 5, and immediately use all reasonable endeavours to reobtain the insurance policies in Schedule 5.

### **21.6 Further obligation**

Both Parties\* and the Indemnifier\* must not do any act or make any omission that would be grounds for an insurer to refuse to pay a claim under any of the policies of insurance.

## **22. Force Majeure\***

### **22.1 Affected Person\*'s obligations are suspended**

If a Party\* ("Affected Person\*") is unable wholly or in part to perform any obligation ("Affected Obligation\*") under this Contract\* (other than an obligation to pay money) because of the occurrence of a Force Majeure Event\*, then, subject to this clause 22.1, the Affected Person\*'s obligation to perform the Affected Obligation\* is suspended to the extent that, and for so long as, the Affected Person\*'s ability to perform the Affected Obligation\* is affected by the Force Majeure Event\* (such period being the "FM Period\*").

**22.2 When Services\* are Curtailed\***

Without limiting clause 22.1, Western Power\*'s obligation in respect of a Connection Point\* to provide the Services\* is suspended during any period that the provision of the Services\* in respect of that Connection Point\* is Curtailed\* under clause 25.1, to the extent of the Curtailment\*.

**22.3 Affected Person\*'s obligations**

Subject to clauses 22.4 and 22.6, if a Force Majeure Event\* occurs and the Affected Person\* is unable wholly or in part to perform any obligation under this Contract\*, then the Affected Person\* must:

- (a) notify the other Party\* if the FM Period\* continues for a period of two days or longer; and
- (b) use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to:
  - (i) mitigate the consequences of the Force Majeure Event\*; and
  - (ii) minimise any resulting delay in the performance of the Affected Obligation\*.

**22.4 In case of breach**

An Affected Person\* is not obliged to incur an expenditure in complying with clause 22.3(b) if the Force Majeure Event\* is constituted by a breach of, or failure to comply with, this Contract\* by the other Party\*.

**22.5 Failure to minimise delays**

If an Affected Person\* fails to comply with clause 22.3(b)(ii), then the only consequence of that failure is that the FM Period\* is reduced by the period of any delay in the performance of the Affected Obligation\* attributable to that failure.

**22.6 Settlement of a labour dispute**

The settlement of a labour dispute which constitutes a Force Majeure Event\* is a matter which is within the absolute discretion of the Affected Person\*.

**23. Provisions of Access Arrangement\* on Supplementary Matters\* apply**

The provisions of the Access Arrangement\* in respect of Supplementary Matters\* apply also as terms of this Contract\*, to the extent they are relevant.

**24. User\* does not acquire interest in Network\***

To avoid doubt, nothing in, and nothing done under or in connection with, this Contract\* causes the User\* to acquire any right, title or interest in or to the Network\* or any part of it.

**25. Curtailment\*****25.1 Western Power\* may Curtail\* Services\***

Western Power\* may, in accordance with Good Electricity Industry Practice\*, Curtail\* the provision of Services\* in respect of a Connection Point\*:

- (a) to carry out planned Augmentation\* or Maintenance\* to the Network\*; or
- (b) to carry out unplanned Maintenance\* to the Network\* where Western Power\* considers it necessary to do so to avoid injury to any person or material damage to any property or the environment; or
- (c) if there is any breakdown of or damage to the Network\* that affects Western Power\*'s ability to provide Services\* at that Connection Point\*; or
- (d) if a Force Majeure Event\* occurs affecting Western Power\*'s ability to provide Services\* at the Connection Point\*, for so long as Western Power\*'s ability to provide Services\* is affected by the Force Majeure Event\*; or
- (e) to the extent necessary for Western Power\* to comply with a Law\*.

## **25.2 Extent of Curtailment\***

Western Power\* must keep the extent and duration of any Curtailment\* under clause 25.1 to the minimum reasonably required in accordance with Good Electricity Industry Practice\*.

## **25.3 Notification of Curtailment\***

Western Power\* must use reasonable endeavours to notify the User\* of any Curtailment\* under clause 25.1 as soon as practicable.

## **25.4 User\* must comply with Curtailment\***

If Western Power\* notifies the User\* of a Curtailment\* of Services\* under clause 25.3 in respect of a Connection Point\*, the User\* (acting as a Reasonable and Prudent Person\*) must comply, or procure compliance, with any reasonable requirements set out in the notice concerning the Curtailment\*.

## **25.5 Contract\* does not limit other powers and rights**

This Contract\* does not limit any power or right conferred on Western Power\* by any other agreement between the Parties\* or any Law\*, including Section 57 of the *Energy Operators (Powers) Act 1979(WA)*.

## **26. Payments and recoveries under the Contributions Policy\***

The Parties\* must comply with the provisions set out in Schedule 4 regarding any Contributions\*.

## **27. Default\***

### **27.1 Default\***

A Party\* is in "Default\*" if:

- (a) that Party\* defaults in the due and punctual payment, at the time and in the manner required for payment by this Contract\*, of any amount payable under this Contract\*; or
- (b) that Party\* defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of Law\* in this Contract\*; or



- (c) an Insolvency Event\* occurs in respect of that Party\*; or
- (d) that Party\* materially breaches any representation or warranty given to the other Party\* under this Contract\*.

### **27.2 Default\* by the User\***

In the event of the User's Default\*, then Western Power\* may:

- (a) notify the User\* of the User's Default\* and require the User\* to remedy the User's Default\*; or
- (b) if the User's Default\* is a Default\* in the payment of any amount and has not been remedied by the end of the third Business Day\* after the notice was given, De-energise\*, or Curtail\* the provision of Services\* in respect of, all or any of the User\*'s Connection Point\*s from the Network\* whilst the User's Default\* is continuing; or
- (c) if the User's Default\* is any other type of Default\* and at the end of the 5<sup>th</sup> Business Day\* after the notice was given:
  - (i) the User's Default\* has not been remedied; or
  - (ii) the User\* has not to the reasonable satisfaction of Western Power\* begun remedying the User's Default\* or has begun remedying but is not, in the reasonable opinion of Western Power\*, diligently proceeding to remedy the User's Default\*,

De-energise\*, or Curtail\* the provision of Services\* in respect of, all or any of the User\*'s Connection Point\*s from the Network\* whilst the User's Default\* is continuing; and

- (d) if the User's Default\* has not been remedied at the end of the 20<sup>th</sup> Business Day\* after the notice was given, terminate this Contract\*.

### **27.3 Western Power\*'s rights not affected**

The User's Default\* under clause 27.2 does not prejudice the rights or remedies accrued to Western Power\* at the date of the User's Default\*.

### **27.4 Default\* by Western Power\***

If Western Power\* is in Default\*, the User\* may:

- (a) notify Western Power\* of Western Power's Default\* and require Western Power\* to remedy the Default\*; and
- (b) if Western Power's Default\* has not been remedied at the end of the 20<sup>th</sup> Business Day\* after the notice was given:
  - (i) terminate this Contract\*; or
  - (ii) withhold payment of any charges payable by the User\* from the date of Default\* under this Contract\* for so long as the Default\* continues unremedied (and no interest is payable by the User\* on any amounts so withheld provided they are paid within 10 Business Days\* after the Default\* is remedied).

### **27.5 User\*'s rights not affected**

Western Power's Default\* under clause 27.4 does not prejudice the rights or remedies accrued to the User\* at the date of Western Power's Default\*.

## 28. Termination

### 28.1 Termination

- (a) Subject to clause 28.1(b), this Contract\* terminates on the Termination Date\*.
- (b) This Contract\* may be terminated before the Termination Date\* by:
  - (i) written agreement between Western Power\* and the User\*;  
or
  - (ii) notice by either Party\* at any time at which this Contract\* does not include at least one Connection Point\*;  
or
  - (iii) notice by either Party\* where there is a Default\* by the other Party\* under this Contract\*, subject to clauses 27.2 or 27.4, as the case may be;  
or
  - (iv) notice by either Party\* to an Affected Person\* if a Force Majeure Event\* occurs and then:
    - (A) the Affected Person\* is unable wholly or in part to perform any obligation under this Contract\*;  
and
    - (B) the FM Period\* continues for a period of greater than 180 days in aggregate in any 12-month period.
- (c) On termination of this Contract\* Western Power\* may Disconnect\* any one or more of the User\*'s Connection Points\*, permanently (under clause 17) or otherwise.
- (d) On termination of this Contract\*, unless otherwise agreed by the Parties\*:
  - (i) the User\* must pay any unpaid amount owed to Western Power\* pursuant to this Contract\*;  
and
  - (ii) Western Power\* must pay any unpaid amount owed to the User\* pursuant to this Contract\*.

### 28.2 Rights of Parties\* not affected

Termination of this Contract\* under clause 28.1(b) does not prejudice the rights or remedies accrued to either Party\* at the date of termination.

## 29. Disputes

### 29.1 Party\* may give notice of Dispute\* and require Representatives' Meeting\*

If a Dispute\* arises between the Parties\*, either Party\* may give to the other Party\* written notice setting out the material particulars of the Dispute\* and requiring duly authorised representatives of each Party\* to meet at a place, agreed between the Parties\*, within 10 Business Days\* of the date of receipt of such notice by the relevant Party\* ("**Receipt Date\***"), to attempt in good faith by way of discussions and using their best endeavours to resolve the Dispute\* ("**Representatives' Meeting\***") and the Parties\* must do so.

**29.2 Party\* may require CEO Meeting\***

If the Dispute\* is not resolved (as evidenced by the terms of a written settlement signed by each Party\*'s duly authorised representative) within 20 Business Days\* after the Receipt Date\* then either Party\* may, by written notice, require that the senior executive officer of each Party\* meet at a place agreed between the Parties\* within 30 Business Days\* after the Receipt Date\* and must attempt in good faith by way of discussions and using their best endeavours to resolve the Dispute\* within 35 Business Days\* after the Receipt Date\* ("**CEO Meeting\***").

**29.3 Method of Meetings**

- (a) A Representatives' Meeting\* or CEO Meeting\* may be conducted in person, by telephone, video conference or similar method of real time communication.
- (b) If the Parties\* are unable to agree on a meeting place under clause 29.1 or 29.2 in the allocated time frame, the meeting will take place at a place determined by Western Power\*.

**29.4 Party\* may commence court proceedings**

If, after complying with the process set out in clauses 29.1 and 29.2 a Dispute\* is not resolved, then either Party\* may commence an action to resolve the Dispute\* through litigation and other court processes.

**29.5 Obligations must be performed**

A Party\* must continue to perform its obligations under this Contract\* despite the existence of a Dispute\*, unless otherwise agreed.

**30. Set off****30.1 Party\* may set off payment**

A Party\* ("**First Party\***") may set off any amount due for payment by it to the other Party\* under this Contract\* against any amount which is due for payment by the other Party\* to the First Party\* under this Contract\*.

**30.2 No other set off permitted**

Except as permitted in clause 30.1, no set off is permitted by either Party\* in connection with this Contract\*, whether under this Contract\* or otherwise.

**31. Assignment\* by User\*****31.1 User\* may make Bare Transfer\***

Subject to clause 31.2, the User\* may make a Bare Transfer\* of its Access Rights\* under the Transfer and Relocation Policy\* without Western Power\*'s prior consent.

**31.2 User\* must notify Western Power\* of Bare Transfer\* details**

If the User\* makes a Bare Transfer\*, the User\* must notify Western Power\* of:

- (a) the identity of the assignee; and
  - (b) the nature of the Assigned\* Access Rights\*,
- before the assignee may commence using the Assigned\* Access Rights\*.

### **31.3 Assignment\* other than Bare Transfer\***

For an Assignment\* other than a Bare Transfer\*, the User\* may Assign\* its Access Rights\* subject to compliance with the Transfer and Relocation Policy\*.

## **32. Corporate restructuring of Western Power\***

### **32.1 If Western Power\* is restructured**

If Western Power\* is restructured under government policy:

- (a) by Law\*; or
- (b) through other means, including the:
  - (i) use of subsidiary or associated companies; or
  - (ii) transfer of assets, rights and liabilities,

then the rights and obligations of Western Power\* under this Contract\* are assigned to and assumed by the appropriate legal entity pursuant to the restructure.

### **32.2 User\*'s consent not required**

A restructure, transfer or assignment under clause 32.1 does not require the User\*'s approval or consent.

## **33. Confidentiality**

### **33.1 Confidential information\***

This Contract\* and information exchanged between the Parties\* under this Contract\* or during the negotiations preceding this Contract\* is confidential to them if:

- (a) the information disclosed contains a notification by the disclosing Party\* that the information is confidential; or
- (b) the circumstances in which the information was disclosed or the nature of the information disclosed may reasonably be considered as being confidential; or
- (c) the information constitutes trade secrets; or
- (d) the information has a commercial value to a Party\* which would be destroyed or diminished by the publication of the information; or
- (e) the information relates to the business, professional, commercial or financial affairs of a Party\* and the value to the Party\* would be destroyed or diminished by the publication of the information; or
- (f) the information is about or relating to a Controller\*.

**33.2 When information is not confidential**

Clause 33.1 does not apply to information which, without breach of this Contract\* or other breach of confidence:

- (a) is or becomes generally and publicly available; or
- (b) is lawfully obtained by a Party\* from a person other than a Party\* or a Related Body Corporate\* of a Party\* where such person is entitled to disclose the Confidential Information\*; or
- (c) is, at the date of this Contract\*, lawfully in the Possession\* of the recipient of the Confidential Information\* through sources other than the Party\* which supplied the information.

**33.3 Prohibited disclosure**

Subject to clause 33.4, an Information Recipient\* must not disclose or allow to be disclosed any Confidential Information\* to a Third Party Recipient\*.

**33.4 Permitted disclosure**

- (a) An Information Recipient\* may disclose or allow to be disclosed any Confidential Information\* to a Third Party Recipient\* in the following circumstances:
  - (i) with written consent of the Information Provider\*; or
  - (ii) to employees, a Related Body Corporate\* or legal advisers, auditors or other consultants of the Party\* requiring information for the purposes of this Contract\* or for the purposes of providing professional advice in relation to this Contract\*; or
  - (iii) to a bona fide proposed assignee of a Party\* to this Contract\* or registered shareholder of 20 percent or more of the voting shares in a Party\*; or
  - (iv) if required by Law\* or by an authority (including the Independent Market Operator\*) which has jurisdiction over a Party\* or any of its Related Bodies Corporate\* or by the rules of a stock exchange which has jurisdiction over a Party\* or any of its Related Bodies Corporate\*; or
  - (v) if required for the purposes of prosecuting or defending a Dispute\* or if otherwise required in connection with legal proceedings related to this Contract\*.
- (b) Nothing in clause 33.4 limits Western Power\*'s obligations to comply with Chapter 13 of the Code\*.

**33.5 Third party disclosure**

An Information Recipient\* disclosing information under clause 33.4 must:

- (a) use all reasonable endeavours to ensure that a Third Party Recipient\* does not disclose the Confidential Information\* except in the circumstances permitted by clause 33.4; and
- (b) notify the Third Party Recipient\* that it has a duty of confidence to the Information Provider\* in respect of the Confidential Information\*; and
- (c) except to the extent that the Third Party Recipient\* is under an existing enforceable legal obligation to maintain the confidence of the Confidential Information\* as contemplated in clause 33.5(b), procure a written confidentiality undertaking from the Third Party Recipient\* consistent with clauses 33.1 to 33.10.

**33.6 No unauthorised copying**

Subject to any obligation under any Law\* to do so, a Party\* must not copy any document containing the other Party\*'s Confidential Information\* except as necessary to perform this Contract\*.

**33.7 Secure storage**

A Party\* must ensure that proper and secure storage is provided for the Confidential Information\* while in its Possession\*, provided that if a Party\* is a corporation it may retain any such documents or parts of documents that form part of board papers (or other formal approval processes) of such corporation and which are required to be retained by that corporation under usual corporate governance requirements.

**33.8 Return of materials**

Subject to any obligation under any Law\* relating to records retention and subject to prudent recording-keeping procedures (including, in contemplation of potential legal action), a Party\* must return all documents containing the other Party\*'s Confidential Information\*, including all copies, to the other Party\* on termination or expiration of this Contract\*, or, upon request by the other Party\*, destroy all such documents.

**33.9 Remedies**

Each Party\* acknowledges and agrees that any breach or threatened breach of clauses 33.1 to 33.10 may cause a Party\* immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, each Party\* has the right, in addition to any other remedies available at Law\*, to seek injunctive relief or compel specific performances of these clauses 33.1 to 33.10 in respect of any such breach or threatened breach.

**33.10 Survival of obligations**

- (a) Clauses 33.1 to 33.10 survive the termination of this Contract\* and remain enforceable for a period of 7 years from the date of such termination.
- (b) Any person who ceases to be a Party\* to this Contract\* continues to be bound by these clauses 33.1 to 33.10.

**34. Ring Fencing**

If Western Power\* is an Integrated Provider\*, then a court or tribunal, in considering whether:

- (a) representations made by Workers\* of the Other Business\* can or ought be attributed to the Network Business\*, or vice versa; or
- (b) a notice or other information given to a Worker\* of the Other Business\* has been communicated, or should be deemed to have been communicated, to the Network Business\*, or vice versa; or
- (c) a Contract\* entered into by the Other Business\* does or ought express or imply an intention to vary this Contract\*, or vice versa,

must have fair and reasonable regard to:

- (d) the fact that Western Power\* comprises a Network Business\* and an Other Business\* and the distribution of personnel and responsibilities between those businesses; and

- (e) the intent and purpose of Western Power\*'s obligations under Chapter 13 of the Code\* and anything done or not done by Western Power\* in connection with those obligations.

## **35. Notices**

### **35.1 Requirements for Communications\***

Except as provided in clause 35.2, or where given under the electronic communications protocol in Schedule 7, a Communication\* must be:

- (a) in writing (which includes any Electronic\* form capable of being reduced to paper writing by being printed); and
- (b) delivered or sent to the address of the addressee as specified in Schedule 6 by one or more of the following means:
  - (i) by hand delivery; or
  - (ii) by ordinary letter post (airmail if posted to or from a place outside Australia); or
  - (iii) by way of a courier service for hand delivery; or
  - (iv) by facsimile transmission to the facsimile number of the addressee; or
  - (v) Electronically\* to the email address of the addressee.

### **35.2 Operational and urgent Communication\***

Where this Contract\* expressly provides:

- (a) and where the Parties\* agree in writing, Communications\* of a day to day operational nature; or
- (b) Communications\* given in an operational Emergency\*,

may be given orally and confirmed in writing, under the electronic communications protocol in Schedule 7, within 5 Business Days\*.

### **35.3 Communication\* takes effect**

Subject to clause 35.4, a Communication\* takes effect from the later of:

- (a) the time it is received; and
- (b) any later time specified in the Communication\*.

### **35.4 Deemed receipt**

For the purposes of this Contract\*:

- (a) a Communication\* delivered by hand to the address of a Party\* (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries):
  - (i) appears to be; and
  - (ii) represents himself or herself as,

a representative of the Party\* to whom the Communication\* is addressed;

- (b) a Communication\* which is posted is deemed to be received by the Party\* to whom the Communication\* is addressed:
  - (i) where the Communication\* is sent from outside the country of the address to which it is sent –10 Business Days\* after the day of posting; and
  - (ii) otherwise – three Business Days\* after the day of posting;
- (c) a Communication\* sent by facsimile transmission which is transmitted:
  - (i) on or before 3 pm on a Business Day\* is deemed to have been received by the Party\* on that Business Day\*; and
  - (ii) after 3 pm on a Business Day\*, or on a day which is not a Business Day\*, is deemed to have been received by the Party\* on the first Business Day\* following the date of transmission,

provided that the sender of the Communication\* is able to produce a transmission report generated by the sender's facsimile machine (or other facsimile transmission device), showing successful uninterrupted facsimile transmission of all pages of the relevant Communication\* to the facsimile number of the addressee;

- (d) A Communication\* sent Electronically\*, other than under the electronic communications protocol in Schedule 7, is deemed to have been received by the Party\* under the Electricity Industry Metering Code 2005 Communication Rules; and
- (e) a Communication\* sent under the electronic communications protocol in Schedule 7 is deemed to be received by the party as specified in the electronic communications protocol in Schedule 7.

### **36. Change of address**

A Party\* may at any time, by notice given to the other Party\* to this Contract\*, designate a different email or postal address or facsimile number for the purpose of these clauses 35.1 to 36.

### **37. Miscellaneous**

#### **37.1 Compliance**

Each Party\* to this Contract\* must comply with all applicable Laws\*.

#### **37.2 Variation**

- (a) Subject to clause 37.2(b), a purported agreement between Western Power\* and the User\* to revoke, substitute or amend any provision of this Contract\* has no effect unless it is in writing.
- (b) Clause 37.2 does not prevent the User\* and Western Power\* from agreeing by non-written means under clause 35.2 to revoke, substitute or amend any provision of this Contract\* in an Emergency\* provided that the non-written revocation, substitution or amendment applies only while the effects of the Emergency\* subsist.



**37.3 No third party benefit**

This Contract\* does not confer any right or benefit on a person other than the User\* and Western Power\*, despite the person being named or identified, or belonging to a class of persons named or identified, in this Contract\*.

**37.4 Stamp duty**

The User\* is liable for and must pay all stamp duties that are assessed on this Contract\*. If it is dutiable, the User\* must produce this Contract\* to the Office of State Revenue for assessment.

**37.5 Costs**

Each Party\* must pay its own costs, charges, expenses, disbursements or fees in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- (b) the performance of any action by that Party\* in compliance with any liability arising, under this Contract\*, or any agreement or document executed or effected under this Contract\*, unless this Contract\* provides otherwise.

**37.6 Waiver**

A provision of this Contract\* may only be waived by a Party\* giving written notice signed by a duly authorised representative to the other Party\*.

**37.7 Entire agreement**

This Contract\* constitutes the entire agreement between the Parties\* as to its subject matter and, to the extent permitted by Law\*, supersedes all previous agreements, arrangements, representations or understandings.

**37.8 Severance**

If the whole or any part of this Contract\* is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Contract\* has full force and effect and the validity or enforceability of the provision in any other jurisdiction is not affected. This clause 37.8 has no effect if the severance alters the basic nature of this Contract\* or is contrary to public policy.

**37.9 Counterpart execution**

- (a) This Contract\* may be signed in any number of counterparts and all such signed counterparts, taken together, shall be deemed to constitute one and the same instrument even though all Parties\* may not have signed each separate counterpart.
- (b) Where it has been signed in counterparts, the date of this Contract\* shall be taken to be the day on which the last of the Parties\* to give such notice gives notice in writing or by fax or electronic mail to the other Parties\* that it has signed a counterpart, such notice being accompanied by a copy, or a printable Electronic\* image, of the whole of that counterpart.

**37.10 Further assurance**

Each Party\* agrees, at its own expense, on the request of another Party\*, to do everything reasonably necessary to give effect to this Contract\* and the transactions contemplated by it, including, but not limited to, the execution of documents.

**37.11 Authorised officers**

- (a) Notice, approval, consent or other Communication\* given under this Contract\* may be given by an Authorised Officer\* of a Party\* specified in Schedule 6 to an Authorised Officer\* of another Party\* specified in Schedule 6.
- (b) A Party\* may at any time, by notice given to the other Party\*, add or replace an Authorised Officer\* for the purposes of clause 37.11.

**37.12 Merger**

The warranties, undertakings and indemnities in this Contract\* do not merge on termination of this Contract\*.

**37.13 Remedies**

The rights, powers and remedies provided in this Contract\* are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Contract\*.

**37.14 Governing Law\***

- (a) This Contract\* and the transactions contemplated by this Contract\* are governed by the Law\* in force in Western Australia.
- (b) Without limiting clause 37.14, each Party\* irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and the Courts of appeal from them for the purpose of determining any Dispute\* concerning this Contract\* or the transactions contemplated by this Contract\*.

**EXECUTION CLAUSE:**

Executed as an agreement:

**EXECUTED** for and on behalf of **ELECTRICITY NETWORKS CORPORATION**  
**ABN 18 540 492 861** in accordance with  
paragraph 135(4) of the Electricity Corporations Act 2005 (WA) and an authority dated 31/08/2007:

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Signature of a Authorised Officer

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Position title

\_\_\_\_\_  
Position title

**EXECUTED** by **[NAME OF PARTY & ABN/ACN/ARBN]** in accordance with section  
127(1) of the Corporations Act 2001 (C'th):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Directory/Company Secretary

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

**EXECUTED** by [NAME OF PARTY &  
**ABN/ACN/ARBN**] in accordance with section  
127(1) of the Corporations Act 2001 (C'th):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Directory/Company Secretary

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Full name

## SCHEDULE 1 - DICTIONARY

Unless the context otherwise requires, the defined terms in column 1 below have the respective meanings in column 2:

<u>Column 1</u>	<u>Column 2</u>
Access Arrangement*	means the current 'access arrangement' (as defined in the Code*) approved in respect of the Network* under the Code*.
Access Contract*	has the meaning given to 'access contract' in the Code*.
Access Offer*	has the meaning given to 'access offer' in the Applications and Queuing Policy*.
Access Rights*	means all or part of the User*'s rights under this Contract* to obtain a Covered Service*.
Accounting Period*	means one calendar month.
Act*	means the <i>Electricity Industry Act 2004 (WA)</i> .
Affected Obligation*	has the meaning given to it in clause 22.1.
Affected Person*	has the meaning given to it in clause 22.1.
Affected Service*	has the meaning given to it in clause 7.3(a).
Affected Service Period*	has the meaning given to it in clause 7.3(a).
Application*	means an application made under the Applications and Queuing Policy*.
Applications and Queuing Policy*	means the 'applications and queuing policy' (as defined in the Code*) in the Access Arrangement*.
Assign*	includes assign or Novate*.
Assignment*	includes an assignment or Novation*.
Attachment Point*	has the meaning given to 'attachment point' in the Applications and Queuing Policy*.
Augmentation*	in relation to the Network*, means an increase in the capability of the Network* to provide Covered Services*, including by the development, construction, acquisition or commissioning of new Network Assets*.
Authorised Officer*	means the authorised officer of a party as specified in Schedule 6 to whom any Communication* may be given.
Authority*	means the Economic Regulation Authority established by the <i>Economic Regulation Authority Act 2003(WA)</i> .
Bare Transfer*	means an Assignment* under which the User* Assigns* the whole or a part of its access rights under this Contract* to an assignee, but under which there is no Novation*, with the result that the User*'s obligations under this Contract*, and all other terms of this Contract*, remain in full force and effect after the Assignment*, whether or not the assignee becomes bound to the User* or any other party to fulfil those obligations.
Business Day*	means a day that is not a Saturday, Sunday or public holiday throughout

	Western Australia.
Capacity*	with regards to a Connection Point*, means the maximum rate at which the Network* can transfer electricity at the Connection Point* in accordance with Good Electricity Industry Practice*.
CEO Meeting*	has the meaning given to it in clause 29.2.
Charge*	for a Service* for an Accounting Period*, means the amount that is payable by the User* to Western Power* for the Service*, calculated by applying the Tariff* for the Service*, during the Accounting Period*.
Claim*	means any claim, demand, action or proceeding made or instituted against a Party*.
CMD*	means Contract Maximum Demand.
Code*	means the <u>Electricity Networks Access Code 2004</u> .
Code Objective*	has the meaning given to 'Code objective' in section 2.1 of the Code*.
Commencement Date*	means the date of execution of this Contract* by the last signing Party*, or the first date on which all of the Conditions Precedent* are satisfied or waived, whichever is later.
Communication*	means a notice, approval, consent or other communication given or made under this Contract*.
Conditions Precedent*	means the conditions precedent specified in Schedule 2.
Confidential Information*	means information which is confidential under clause 33.1.
Connect*	has the meaning given to 'connect' in the Code*.
Connection Assets*	has the meaning given to it 'connection assets' in the Code*.
Connection Contract*	means, at the option of Western Power*: <ul style="list-style-type: none"> <li>(a) a contract containing provisions materially equivalent to those in this Contract*; or</li> <li>(b) some other agreement in writing to be bound by provisions materially equivalent to such terms and conditions of this Contract* satisfactory to Western Power*,</li> </ul> but omitting clauses 3 to 9 of this Contract*.
Connection Point*	means a point on the Network* identified, or to be identified, as an Exit Point* or Entry Point* in Schedule 3.
Consume*	has the meaning given to 'consume' in the Code*.
Consumer*	has the meaning given to 'consumer' in the Code*.
Consumption*	for a Connection Point*, means the amount of electricity Consumed* at the Connection Point*, and is measured in Watt-hours.
Contract*	means this agreement between Western Power and the User*.
Contracted Capacity*	for a Connection Point*, means the maximum rate at which the User* is permitted to transfer electricity to or from the Network* at the Connection

Point\*, being either:

- (a) the rate specified in Part 1 of Schedule 3 from time to time; or
- (b) if no rate is specified in Part 1 of Schedule 3, the maximum rate of electricity permitted to be transferred under the Eligibility Criteria\* for the Reference Service\* for that Connection Point\*; or
- (c) if no rate is specified in Part 1 of Schedule 3 or in the Eligibility Criteria\* for the Reference Service\* for that Connection Point\*, the maximum rate of electricity permitted to be transferred through the Connection Assets\* under the Technical Rules\*,

and is measured in Watts or Volt-Amps.

Contribution*	means any contribution made under the Contributions Policy*.
Contributions Policy*	means the contributions policy' (as defined in the Code*) contained in the Access Arrangement*.
Controller*	means, in respect of a Connection Point*, a person, including a Customer*, who owns, operates, controls or otherwise is responsible for the operation of the Facilities and Equipment* at the Connection Point*, and includes the Controller*'s Workers* and Visitors*.
Corporations Act*	means the <u>Corporations Act 2001</u> of the Commonwealth.
Covered Service*	has the meaning given to 'covered service' in the Code*.
CPI*, or Consumer Price Index*	means the Consumer* Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer* Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as Western Power* acting reasonably and in good faith may determine, and in all cases the CPI* figure is to be adjusted to correct for any effects of a change in the rate of GST*.
CPI-Adjusted*	has the meaning given to it in clause 1.3.
Curtail*	means curtailing or interrupting the whole or part of a Service*.
Curtailment*	includes a whole or partial curtailment or whole or partial interruption of a Service*.
Customer*	has the meaning given to 'customer' in the Act*.
Customer Transfer Code*	means the <u>Electricity Industry Customer Transfer Code 2004</u> , made under section 39(2a) of the Act* in respect of the matter referred to in section 39(2)(b) of the Act*, and includes all rules, policies or other subordinate documents developed under the Customer Transfer Code*.
De-energise*	in respect of a Connection Point*, means to operate, modify or remove switching or other equipment to prevent the transfer of electricity through the Connection Point*.
Default*	in relation to a Party*, has the meaning given to it in clause 27.1.
Direct Damage*	suffered by a person means loss or damage suffered by the person which

	is not Indirect Damage*.
Disconnect*	in respect of a Connection Point*, means physically detach Network Assets* from assets owned by another person at the Connection Point*.
Dispute*	means any dispute or difference concerning: <ul style="list-style-type: none"> <li>(a) construction of; or</li> <li>(b) anything contained in or arising out of; or</li> <li>(c) rights, obligations, duties or liabilities of a Party* under, this Contract*.</li> </ul>
DSOC*	means Declare Send Out Capacity.
Due Date*	means, for a Tax Invoice* issued under clause 8.1 or 8.2, the date 10 Business Days* after the Party* to whom it is addressed receives the Tax Invoice*.
Electronically*	in relation to a Communication*, means a communication of information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP or other widely accepted protocol for packet transfer.
Eligibility Criteria*	means, for a Reference Service*, the 'Eligibility Criteria' stipulated in Appendix 7 of the Access Arrangement* for that Reference Service*.
Emergency*	means any accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
End Date*	for a Connection Point*, means the date specified as such in Part 1 of Schedule 3 for the Connection Point*.
Entry Point*	has the meaning given to 'entry point' in the Applications and Queuing Policy*.
Entry Service*	means a Covered Service* provided by Western Power* at a Connection Point* under which the User* may transfer electricity into the Network* at the Connection Point*.
Equivalent Reference Service*	has the meaning given to it in clause 7.1(c)(i).
Exit Point*	has the meaning given to 'exit point' in the Applications and Queuing Policy*.
Exit Service*	means a Covered Service* provided by Western Power* at a Connection Point* under which the User* may transfer electricity out of the Network* at the Connection Point*.
Extension Period*	has the meaning given to it in clause 2.2(a).
Facilities and Equipment*	has the meaning given to 'facilities and equipment' in the Code*.
First Party*	has the meaning given to it in clause 30.1.
Force Majeure*	in respect of a Party*, means an event or circumstance beyond the Party*'s control, and which the Party*, acting as a Reasonable and Prudent



Person\*, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):

- (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or
- (b) any insurrection, revolution or civil disorder, terrorism, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or
- (c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the Commencement Date\*; or
- (d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade or any other authority other than a Party\* (including restraint, expropriation, prohibition, intervention, direction or embargo); or
- (e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority other than a Party\*; or
- (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or
- (g) any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice\*; or
- (h) any act or omission of any person (other than a Party\*) with Facilities and Equipment\* connected to the Network\* which prevents the Party\*'s ability to perform its obligations under this Contract\*; or
- (i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or
- (j) accidents, weather and acts of third parties (such as Generators\* or Consumers\*) that affect the quality, frequency and continuity of the supply of electricity.

Force Majeure Event*	means an event of Force Majeure*.
FM Period*	means the period of suspension of the Affected Obligation* pursuant to clause 22.1.
Generate*	has the meaning given to 'generate' in the Code*.
Generating Plant*	has the meaning given to it 'generating plant' in the Code*.
Generation*	for a Connection Point*, means the amount of electricity Generated* at the Connection Point*, and is measured in Watt-hours.

Generator*	has the meaning given to 'generator in the Code*.
Good Electricity Industry Practice*	has the meaning given to 'good electricity industry practice' in the Code*.
GST*	means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act* or otherwise.
GST Act*	means the <u><i>A New Tax System (Goods and Services Tax) Act 1999</i></u> of the Commonwealth.
Guest Party*	has the meaning given to it in clause 15.1.
Host Party*	has the meaning given to it in clause 15.1.
Indemnifier*	means the Indemnifier* specified in the Parties* section of this Contract* (if any).
Indemnified Party*	has the meaning given to it in clause 19.6.
Indemnifying Party*	has the meaning given to it in clause 19.6.
Independent Market Operator*	is the Independent Market Operator established under the Electricity Industry (Independent Market Operator) Regulations 2004, exercising functions under the Electricity Industry (Independent Market Operator) Regulations 2004, the Electricity Industry (Wholesale Electricity Market) Regulations 2004 and the Wholesale Electricity Market Rules made under the Electricity Industry (Wholesale Electricity Market) Regulations 2004.
Indirect Damage*	suffered by a person means any one or more of: <ul style="list-style-type: none"> <li>(a) any consequential loss, consequential damage or special damages however caused or suffered by the person, including any: <ul style="list-style-type: none"> <li>(i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or</li> <li>(ii) loss due to business interruption; or</li> <li>(iii) increased costs; or</li> <li>(iv) punitive or exemplary damages,</li> </ul> <p>whether or not the consequential loss or damage or special damage was foreseeable; or</p> </li> <li>(b) in respect of contractual damages, damages which would fall within the second limb of the rule in <i>Hadley v Baxendale</i> [1854] 9 Exch. 341; or</li> <li>(c) any liability of the person to any other person, or any Claim* brought against the person by any other person, and the costs and expenses connected with the Claim*.</li> </ul>
Information Provider*	in relation to Confidential Information*, means the party providing the information.

Information Recipient*	in relation to Confidential Information*, means the recipient of the information.
Insolvency Event*	in respect of a Party*, means any one or more of: <ul style="list-style-type: none"> <li>(a) any suspension or cessation to payment of all or a class of its debts by an insolvent within the meaning of section 95A of the Corporations Act; or</li> <li>(b) any execution or other process of any court or authority being issued against or levied upon any material part of that Party*'s property or assets; or</li> <li>(c) a petition or application being presented (and not being withdrawn within 10 Business Days*) or an order being made or a resolution being passed for the winding up or dissolution without winding up of that Party* otherwise than for the purpose of reconstruction or amalgamation under a scheme; or</li> <li>(d) a receiver or a receiver and manager of the undertaking or any material part thereof of that Party* being appointed; or</li> <li>(e) that Party* proposing to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; or</li> <li>(f) an administrator of that Party* being appointed or the board of directors of that Party* passing a resolution to the effect that is specified in section 436A(1) of the Corporations Act; or</li> <li>(g) that Party* failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand; or</li> <li>(h) a controller (as defined in the Corporations Act) being appointed in respect of that Party* or the whole or a material part of that Party*'s undertaking, property or assets; or</li> <li>(i) application being made to a court for an order in respect of that Party* under part 2F.1 of the Corporations Act; or</li> <li>(j) an event referred to in section 459C(2) of the Corporations Act occurring in respect of that Party*; or</li> <li>(k) anything analogous or having a substantially similar effect to any of the events specified above occurring under the Law* of any applicable jurisdiction.</li> </ul>
Integrated Provider*	has the meaning given to 'integrated provider' in the Code*.
Latest Termination Date*	has the meaning given to it in clause 2.2(b).
Law*	means written laws and statutory instruments as defined in the Code*, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Code of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.
Maintain*, and	includes (as necessary and as applicable) calibrate, test, verify, renew,

Maintenance*	replace, repair and update.
Market Rules*	means the 'market rules' referred to in section 123(1) of the Act*, and includes all rules, policies or other subordinate documents developed under the Market Rules*.
Meter*	has the meaning given to 'meter' in the Metering Code*.
Metering Code*	means the code made under Section 39(1) of the Act* in respect of a matter referred to in Section 39(2)(a) of the Act*, and includes any service level agreement, metering data agency agreement, communications rules, metrology procedure, mandatory link criteria and registration process developed under that code.
Metering Code Participant*	has the meaning specified in the Metering Code*.
Metering Database*	means the metering database operated by Western Power* under the Metering Code*.
Metering Equipment*	means a Meter* or Meters* and associated equipment complying with the Metering Code* used to measure and record electricity as transferred to or from the Network* at a Connection Point*, which may include the measurement of the rate of transfer and the quantity and quality of the transferred electricity.
Modified Service*	means a modified or restricted Service* as specified in Part 4 of Schedule 3.
Network*	has the same meaning given to 'Western Power Network' in the Code*.
Network Assets*	in relation to the Network*, means the apparatus, equipment, plant and buildings used to provide or in connection with providing Covered Services* on the Network*, which assets are either Connection Assets* or Shared Assets*.
Network Business*	has the same meaning given to 'network business' in the Code*.
NMI*, or National Market Identifier*	means the unique identifier assigned to the Connection Point*.
Nominated Person*	has the meaning given to it in clause 9(a).
Novate* and Novation*	<p>mean to substitute, with the consent of all Parties* to this Contract* and with effect on and from a date nominated as the effective date of the novation, an assignee for the User* as a party to this Contract*, with the result that:</p> <p>(a) all rights and obligations of the User* under this Contract* become rights and obligations of the assignee as if the assignee had been named in the Contract* in place of the User*; and</p> <p>(b) the User* is released from any obligations under this Contract* arising on or after the effective date of the novation, but remains</p>

liable for any default by it in the performance of those obligations prior to the effective date of the novation.

Other Business*	has the meaning given to 'other business' in the Code*.
Party*	means Western Power* or the User* .  {Note: If there is an Indemnifier*, refer to clause 1.1(h)(iv)}
Parties*	means Western Power* and the User*.  {Note: If there is an Indemnifier*, refer to clause 1.1(h)(iv)}
Payment Error*	means any underpayment or overpayment by a Party* of any amount in respect of a Tax Invoice*.
Permanent Reconfiguration*	means:  (a) a permanent physical change (including a change to the zone substation applicable to a Connection Point* and a change to the distance from the applicable zone substation to a Connection Point*); or  (b) a change to the pricing zone applicable to a Connection Point*.
Possession*	includes custody, control, and an immediate right to possession, custody, or control.
Prescribed Rate*	means, at any point in time, the interest rate (expressed as a rate per cent per annum) equal to the aggregate of 3 annual percentage points and the interest rate (expressed as a rate per cent per annum) then published by the Reserve Bank of Australia as the large business variable indicator lending rate.
Price List*	means the 'price list' (as defined in the Code*) specified in the Access Arrangement*.
Reasonable and Prudent Person*	means a person acting in good faith and, where applicable, in accordance with Good Electricity Industry Practice*.
Receipt Date*	has the meaning given to it in clause 29.1.
Reference Service*	means a 'reference service' (as defined in the Code*) specified in the Access Arrangement*.
Reference Service Point*	means a Connection Point* for which under this Contract* Western Power* provides, or is to provide, a Reference Service*.
Related Body Corporate*	has the meaning given to 'Related Body Corporate' in section 50 of the Corporations Act*.
Relocation*	has the meaning given to 'relocation' in the Transfer and Relocation Policy*.
Representatives' Meeting*	has the meaning given to it in clause 29.1.
Service*	means an Entry Service* or an Exit Service* to be provided under this Contract* in respect of a Connection Point* as specified in Part 1 of

	Schedule 3.
Shared Assets*	has the meaning given to 'shared assets' in the Code*.
Standing Charges*	has the meaning given to it in clause 7.3.
Start Date*	for a Connection Point*, means the date specified as such in Part 1 of Schedule 3 for the Connection Point*.
Supplementary Matters*	means the provisions incorporated in the Access Arrangement* under sections 5.27 and 5.28 of the Code*.
System Operator*	for the Network* means, unless the Technical Rules* provide otherwise, the person or persons who: <ul style="list-style-type: none"> <li>(c) operate and control the system operation control centre; or</li> <li>(d) where there is no system operation control centre — is responsible for the control of the Network* through monitoring, switching and dispatch; or</li> <li>(e) where the system operation control centre and another party are both responsible for the control of the Network* through monitoring, switching and dispatch — perform the tasks described in either or both of paragraphs (c) and (d).</li> </ul>
Tariff*	for a Service*, means the tariff specified in clause 7.1 for that Service*.
Tax Invoice*	has the meaning given to 'Tax Invoice' in the GST Act*.
Technical Rules*	means the technical rules applying from time to time to the Network* under Chapter 12 of the Code*, as modified in accordance with the Code*, including any derogations agreed to by Western Power* in writing and specified in Part 3 of Schedule 3.
Term*	means, from time to time, the term of this Contract* which commences on the Commencement Date* and ends on the date which is then the Termination Date*.
Termination Date*	means, subject to clause 2.2, the date specified in Part 1 of Schedule 2.
Third Party Recipient*	means any person to whom the Information Recipient* discloses Confidential Information*, or allows Confidential Information* to be disclosed.
Transfer and Relocation Policy*	means the transfer and relocation policy (as defined in the Code*) contained in the Access Arrangement*.
Undisputed Portion*	for the purposes of a Tax Invoice* issued under 8.2(b) has the meaning given to it in clause 8.2(d) and, in all other cases, means the portion of the amount set out in a Tax Invoice* that this not in Dispute*.
User*	has the meaning given to it in the Code*, and for the purposes of this Contract* is the User* stipulated in the 'Parties section' of this Contract.
User's Default*	means an event of Default* by the User*.
User's Premises*	means the land on which the User*'s Facilities and Equipment* are located.

Visitors*	means the customers, invitees, licensees and visitors of a Party* or a Controller*, as the case requires.
Western Power*	means the Electricity Networks Corporation established under section 4(1)(b) of the <u>Electricity Corporations Act 2005 (WA)</u> .
Western Power's Default*	means an event of Default* by Western Power*.
Workers*	means the directors, officers, servants, employees, agents and contractors of a Party* or a Controller*, as the case requires.
Works*	has the meaning given to it in the Contributions Policy*.
Year*	means calendar year.

## SCHEDULE 2 - ACCESS CONTRACT INFORMATION

### **Part 1**      **Term\***

Termination Date*:	

### **Part 2**      **Extension of Term\***

{Note: Referred to in clause 2.2.}

Extension Period*:	
Latest Termination Date*:	

### **Part 3**      **Conditions Precedent\***

{Note: Referred to in clause 2.3.}

<b>For the benefit of the User*</b>	1	[Description]
		[Date to be satisfied by]
<b>For the benefit of Western Power*</b>	1	[Description]
		[Date to be satisfied by]



## SCHEDULE 3 - DETAILS OF CONNECTION POINTS

### Part 1      Commercial Details

{Note: Western Power may store these details in the Metering Database\*, as described in clause 3.7}

<b>1</b>	<b>Connection Point* 1 Title</b>	
	<b>Address of Premises</b>	
	<b>Name and contact details of Controller*</b>	
	<b>NMI*</b>	
	<b>Service*</b>	
	<b>Start Date*</b>	
	<b>End Date*</b>	
	<b>CMD* (kW/ kVA) (if applicable)</b>	
	<b>DSOC* (kW/ kVA) (if applicable)</b>	
	<b>Size of Generator* (if applicable)</b>	
	<b>Make and model of Generator* (if applicable)</b>	
	<b>Substation (if applicable)</b>	
	<b>Substation distance (if applicable)</b>	

### Part 2      Technical Details

{Note: referred to in clause 13(a)}

#	Connection Point*	Description of Facilities and Equipment*
1		

{Note: attach plans, drawings and other documentation as necessary to fulfil the requirements of clause 13(a).}

### Part 3      Agreed exemptions from Technical Rules\*

{Note: referred to in clause 13(a)(ii) }

#	Connection Point*	Technical Rules Reference	Description of Technical Rules* requirement	Description of Derogation
1				

**Part 4      Connection Points\* for which Modified Service\* required**

{Note: referred to in clause 3.1(d)}

#	Connection Point*	Modified Service*	date /events or works to be completed
1			

**SCHEDULE 4 - WORKS AND CONTRIBUTIONS****{Note: Referred to in clause 26.}**

1	[Connection Point* Title / NMI*]	
	[Contribution provisions]	
2	[Connection Point* Title / NMI*]	
	[Contribution provisions]	

## SCHEDULE 5 - INSURANCES

{Note: Referred to in clause 21.}

### **Part 1 User\* insurances**

- (a) The User\* must effect and maintain, commencing from the Commencement Date\* the following policies of insurance:
- (i) public and products liability of:
    - (A) public liability insurance for a limit of not less than the maximum liability of the User\* under clause 19.5 per claim and unlimited in the aggregate of all claims made; and
    - (B) products liability insurance for a limit of not less than the maximum liability of the User\* under clause 19.5 per claim and in the aggregate, refreshed annually;

covering the User\*'s liability to Western Power\* or any third party for death, bodily injury and loss or damage to property caused by any act, omission or negligence in relation to this Contract\*;
  - (ii) workers' compensation insurance for all persons employed by the User\* including employer's liability at common law, with a limit of cover in respect of any one occurrence at least equal to \$50 million;
  - (iii) motor vehicle third party property insurance for all loss or damage to property caused by or attributable to the use of a motor vehicle in the performance of the services or any work under the Contract\*, for a limit of \$10 million per claim and unlimited in the aggregate of all claims made; and
  - (iv) contractors' plant and equipment insurance covering all loss or damage to the User\*'s plant or equipment used in connection with this Contract\* for its replacement value.
- (b) The policies of insurance under Schedule 5 Part 1 (a) must be with an insurer authorised under the Insurance Act 1973 (Cth) or the equivalent in the United States of America or the United Kingdom.

### **Part 2 Western Power\* insurances**

- (a) Western Power\* must effect and maintain, commencing from the Commencement Date\*, the following policies of insurance:
- (i) public and products liability of:
    - (A) public liability insurance for a limit of not less than the maximum liability of Western Power\* under clause 19.5 per claim and unlimited in the aggregate of all claims made; and
    - (B) products liability insurance for a limit of not less than the maximum liability of Western Power\* under clause 19.5 per claim and in the aggregate, refreshed annually;

covering Western Power\*'s liability to the User\* or any third party for death, bodily injury and loss or damage to property caused by any act, omission or negligence in relation to this Contract\*;

- (ii) workers' compensation insurance for all persons employed by Western Power\* including employer's liability at common law, with a limit of cover in respect of any one occurrence at least equal to \$50 million;
  - (iii) motor vehicle third party property insurance for all loss or damage to property caused by or attributable to the use of a motor vehicle in the performance of the services or any work under the Contract\*, for a limit of \$10 million per claim and unlimited in the aggregate of all claims made; and
  - (iv) contractors' plant and equipment insurance covering all loss or damage to Western Power\*'s plant or equipment used in connection with this Contract\* for its replacement value.
- (b) The policies of insurance under Schedule 5 Part 2 (a) must be with an insurer authorised under the Insurance Act 1973 (Cth) or the equivalent in the United States of America or the United Kingdom.

## SCHEDULE 6 - NOTICES

{Note: Referred to in clause 35.}

### **Part 1**    **User\***

<b>Subject</b>	<b>Information</b>
Address for service of notices/ place of business:	
Authorised Officers*:	
Email address:	
Facsimile number:	

### **Part 2**    **Western Power\***

<b>Subject</b>	<b>Information</b>
Address for service of notices/ place of business:	
Authorised Officers*:	
Email address:	
Facsimile number:	

## SCHEDULE 7 - ELECTRONIC COMMUNICATION\*S PROTOCOL

{Note: Referred to in clause 35.}

In this Schedule, unless the context otherwise requires, the defined terms in column 1 below have the respective meanings in column 2:

<u>Column 1</u>	<u>Column 2</u>
Addressee*	means the person to whose Email Address* an email* is sent.
Automated Response Message*	means an email* (" <b>Reply Email*</b> ") sent automatically upon receipt of an email* (" <b>Original Email*</b> "), where the Reply Email* is sent from an Addressee*'s Information System* to the Originator* of the Original Email*, acknowledging that the Original Email* has been received by the Addressee*'s Information System* and containing: <ol style="list-style-type: none"> <li>(i) the name of the Originator* of the Original Email*; and</li> <li>(ii) at least the time, date and subject title of the Original Email*; and</li> <li>(iii) the name of the Addressee* of the Original Email*; and</li> <li>(iv) the date and time the Original Email* was received by the Addressee*'s Information System* (which in the absence of evidence to the contrary is taken to be the creation date of the Reply Email*).</li> </ol>
Data*	includes the whole or part of a computer program within the meaning of the <u>Copyright Act 1968</u> of the Commonwealth.
email*	means a communication of Information* by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP protocol.
Email Address*	means the address nominated in Schedule 6, being an address which is a combination of a personal identifier and a machine/network identifier, which are together capable of being resolved by computer networks transmitting email* using the TCP/IP protocol, so that email* is transmitted to the person providing that email address.
Information*	means information in the form of Data*, text, images or sound.
Information System*	means a system for generating, sending, receiving, storing or otherwise processing emails*.
Originator*	means the person who sends an email* to an Addressee*.
Place of Business*	means a place of business nominated under Schedule 6 and in relation to a government, a government authority or a non-profit body, includes a place where any operations or activities are carried out by that government, authority or body.
Purported Originator*	means the person on the face of the email* who appears to be, or purports to be the Originator*, including by purported compliance with clause 4 of

this Schedule.

**1. Application to invoicing**

Where the Parties\* have agreed under clause 8.1(d), the procedure set out in this Schedule\* does not apply to invoicing under this Contract\*, and the alternative agreed procedure will apply in its place.

**2. Parties\* to establish email\* Addresses\***

- (a) Western Power\* and the User\* must:
- (i) from time to time, nominate a Place of Business\* and establish an Email Address\* to be used for the Communications\* under this Contract\*; and
  - (ii) use reasonable endeavours to ensure that the Information System\*, on which emails\* addressed to the Email Address\* are received, is operational:
    - (A) a 24 hours-a-day; and
    - (B) 7 days-a-week,
 to receive emails\* and send Automated Response Messages\* as required by this Contract\*; and
  - (iii) as soon as practicable notify the other Party\* of its Place of Business\* and Email Address\* and of any change in each of them; and
  - (iv) establish a mechanism to generate an Automated Response Message\* for each email\* (other than an Automated Response Message\*) received at the Email Address\*.

**3. Requirement for Automated Response Message\***

- (a) An email\* is neither given nor received under this Contract\* until the Originator\* receives the Addressee\*'s Automated Response Message\* for the email\*.
- (b) It is the Originator\*'s responsibility for each attempted email\* to verify that it receives an Automated Response Message\*, and if it does not receive an Automated Response Message\* arrange either for:
- (i) retransmission of the email\*; or
  - (ii) communication of the Information\* by an alternative medium (but this clause 3(b) does not limit the Addressee\*'s responsibilities under clause 4 of this Schedule).
- (c) If the Originator\* receives an Automated Response Message\* for an email\*, then (unless the Addressee\* proves otherwise) for the purposes of this Contract\* the:
- (i) Originator\* has sent; and
  - (ii) Addressee\* has received,
- the email\* at the date and time shown in the Automated Response Message\*.
- (d) It is the Addressee\*'s responsibility for each email\* for which the Addressee\*'s Information System\* generates an Automated Response Message\* to:
- (i) read the email\* and the Information\* it contains, and if applicable communicate it to the appropriate Worker\* within the Addressee\*'s organisation; and



- (ii) if necessary, notify the Originator\* of any difficulty in opening, reading, de-compressing or otherwise accessing (in a form reasonably readable) any Information\* contained in the email\*; and
- (iii) if it appears to the Addressee\* that the Addressee\* was not the intended or correct recipient of the Information\* in the email\*, communicate this fact to the Originator\*.

**4. Location**

Unless otherwise agreed between the Originator\* and the Addressee\* of an email\*, the email\* and the Information\* it contains is deemed to have been sent from the Originator\*'s Place of Business\* and received at the Addressee\*'s Place of Business\*.

**5. Attribution of emails\* and reliance**

Except to the extent that:

- (i) the Purported Originator\* of an email\* and the Addressee\* of the email\* agree otherwise; or
- (ii) the Purported Originator\* of an email\* proves otherwise,

the Addressee\* of an email\* in respect of which an Automated Response Message\* has been given may assume for all purposes under this Contract\* that the:

- (iii) Purported Originator\* of the email\* is the Originator\* of the email\*; and
- (iv) email\* was sent by, or with the knowledge and express authority of, the Purported Originator\*.

**6. Signatures**

For the purposes of this Contract\*, an email\* must identify the Originator\*.

**7. Information\* format**

An Originator\* must use reasonable endeavours, in selecting the data format for Information\* contained in an email\*, to adopt a consistent format over time to facilitate any automated processing of the Information\* by the Addressee\*.

## SCHEDULE 8 - FORM OF GUARANTEE

**DATE** [###]

### PARTIES

1. [### ACN ### a company registered in ### of ###] ("**Guarantor\***"); and
2. **Electricity Networks Corporation ABN 18 540 492 861**, a statutory body corporate established by paragraph 4(1)(b) of the *Electricity Corporations Act 2005 (WA)* of 363 Wellington Street, Perth, Western Australia ("**Western Power\***").

### RECITALS

- A. Western Power\* may in its discretion provide Services\* to [###] ("**User\***") under an Access Contract\* at the request of each of the User\* and the Guarantor\*.
- B. The Guarantor\* wishes to execute this Guarantee to secure payment of all amounts payable under the Access Contract\* to Western Power\*.
- C. Words appearing with an asterisk(\*) in this Guarantee are defined terms and have the respective meanings detailed in this Guarantee.

### OPERATIVE PROVISIONS

**(a) Guarantee**

The Guarantor\* unconditionally and irrevocably Guarantees as a continuing security to Western Power\* payment by the User\* of all moneys and liabilities due and/or payable from or by the User\* to Western Power\* under or in connection with the contract dated [###] ("**Access Contract\***") created between the User\* and Western Power\* ("**Secured Moneys\***"), including moneys and liabilities incurred or arising:

- (i) (**liability**): at any present or future time, whether actually or contingently;
- (ii) (**default**): as a result of any breach of or default under the Access Contract\*; and/or
- (iii) (**account**): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other duty, indemnity, damages or monetary judicial order.

**(b) Secured Moneys\***

- (i) **Demand payment**

The Guarantor\* must pay to Western Power\*, upon demand by Western Power\* at any present or future time, the amount of the Secured Moneys\* due from and payable by the User\* to Western Power\* at that time under, and in the manner and currency specified in, the Access Contract\*.

**(ii) Costs**

The Guarantor\* must at any present or future time indemnify Western Power\* upon demand for any cost, charge, expense, disbursement, fee, tax or stamp or other duty incurred by Western Power\* at any time in connection with the Access Contract\*, this Guarantee\* or the Secured Moneys\* relating to:

- (A) **(security agreements)**: preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;
- (B) **(security rights)**: any exercise or enforcement of any right or power conferred on Western Power\*;
- (C) **(credit increases)**: any extension of further, additional or increased credit or financial accommodation by Western Power\*, or agreement by Western Power\* to increase the amount secured; and/or
- (D) **(payments)**: the receipt or payment of any moneys, including moneys paid by Western Power\* by way of reimbursement to any third party.

**(iii) Set-Off exclusion**

The Guarantor\* must make any payment required under this Guarantee without set-off or other deduction, except for the deduction or withholding of any tax compelled by law.

**(c) Indemnity**

The Guarantor\* must as a separate and additional liability of the Guarantor\* as a principal debtor, and not as a surety, indemnify Western Power\* against, and pay to Western Power\* upon demand by Western Power\* an amount equal to, all Secured Moneys\* that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to Western Power\* by the Guarantor\* as a surety, despite any other provision of this Guarantee.

**(d) Guarantee protection**

This Guarantee, and the liability of the Guarantor\* under this Guarantee, is not affected at any time by:

- (i) **(waiver)**: the granting to any person by Western Power of any waiver;
- (ii) **(agreements)**: any agreement, deed or document created with, or action or omission performed, representation made or non-disclosure of any fact or information by, Western Power\* or any person;
- (iii) **(Secured Moneys\*)**: any increase or variation in the amount of the Secured Moneys\* occurring for any reason;

- (iv) **(document amendment)**: any amendment to or transfer, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;
- (v) **(enforcement decisions)**: any exercise or enforcement, or any failure or invalidity in, the exercise or enforcement by Western Power\* of any right or power conferred on Western Power\* under any agreement, deed or document or by law;
- (vi) **(invalidity)**: any actual or potential invalidity, unenforceability, illegality or irrecoverability of any agreement, deed or document or consent or any payment made or due to Western Power\* under any agreement for any reason;
- (vii) **(incapacity)**: any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or
- (viii) **(residual)**: any other breach, default, waiver or fact which, except for this provision, might legally operate:
  - (A) to release or discharge or have any prejudicial effect on; or
  - (B) in any manner to release or discharge the Guarantor\* from performance of, or limit or provide a defence to any legal action to enforce,

this Guarantee, or any liability of the Guarantor\* under or in connection with this Guarantee.

**(e) Termination**

The Guarantor\* is not entitled to terminate or limit this Guarantee, or any liability of the Guarantor\* under this Guarantee, until the Secured Moneys\* have been paid in full.

**(f) Governing Law**

This Guarantee is governed by and construed under the law of the State of Western Australia.

**(g) General**

**(i) Continuing Security**

This Guarantee is a continuing security and is not wholly or partially discharged by the payment at any time of any Secured Moneys\*, settlement of account or other fact and applies to the balance of the Secured Moneys\* at any time until a final termination of this Guarantee by Western Power\*.

**(ii) Further Assurance**

The Guarantor\* must upon request by Western Power\* at any time execute any document and perform any action necessary to give full effect to this Guarantee, whether prior or subsequent to performance of this Guarantee.

**(iii) Waivers**

Any failure or delay by Western Power\* to exercise any right or power under this Guarantee does not operate as a waiver and the single or partial exercise of any right or power by Western Power\* does not preclude any other or further exercise of that or any other right or power by Western Power\*.