

# Appendix A

## ETAC Electricity Transfer Access Contract

Amended proposed access arrangement

28 February 2019

**Approved by the Economic Regulation Authority**

**28 February 2019**

**(as amended by corrigenda of 10 May 2019)**

# 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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<sup>1</sup> Delete if no Indemnifier

{Note: This contract has been prepared in accordance with the requirements of the Electricity Networks Access Code 2004}

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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>

## 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
  - (v) “**day**” means a calendar day; and
  - (vi) “**person**” includes a public body, company, or association or body of persons, corporate or unincorporated; and

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

- (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 photocopy or (subject to the Electronic Communications 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 the 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 <sub>n</sub>) most recently ended prior to the current adjustment date; and

“**CPI<sub>c</sub>**” is the value of CPI applicable for the calendar quarter occurring 12 months before the calendar quarter referred to in the definition of **CPI<sub>n</sub>**.

## 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 or Bidirectional Service for that Connection Point; and
  - (ii) transfer electricity into the Network at a Connection Point unless it has an Entry Service or Bidirectional 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) Western Power provides the Services under this Contract to the User and does not provide any such Services to the Indemnifier. Western Power's sole liability in connection with the provision of the Services (including any failure of, or defect in provision of the Services) is to the User and Western Power has no liability of any nature to the Indemnifier in connection with the provision of the Services.

### 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

- (a) Subject to clause 3.3(b), 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.
- (b) The User is not in breach of clause 3.3(a) to the extent the User is unable to comply with its obligation under clause 3.3(a) as a result of a breach by Western Power of clause 3.2(b).

### 3.4 Increase or decrease of Contracted Capacity

- (a) The User may not increase or decrease the Contracted Capacity at an existing Connection Point to this Contract, unless the User makes an application to Western Power and Western Power approves that application under the Applications and Queuing Policy.
- (b) If the User makes an application to Western Power under clause 3.4, then Western Power must process the application under the Applications and Queuing Policy.



### **3.5 Addition of a Connection Point**

- (a) The User may not add an additional Connection Point to this Contract unless the User makes an application to Western Power, and Western Power approves that application, under:
  - (i) the Applications and Queuing Policy; or
  - (ii) the Customer Transfer Code,as applicable.
- (b) If the User makes an application to Western Power under clause 3.5, then Western Power must process the application under:
  - (i) the Applications and Queuing Policy; or
  - (ii) the Customer Transfer Code,as applicable.

### **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 where:
  - (i) a transfer request has been made in relation to the Customer for that Connection Point under the Customer Transfer Code; or
  - (ii) the Connection Point will be added to another Access Contract by some other means to that stipulated in clause 3.6(a)(i); or
  - (iii) the Facilities and Equipment in respect of the Connection Point will be permanently Disconnected from the Connection Point.
- (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, excluding Generating Plant up to and including 30 kVA which is being used to offset load, at a Connection Point, at least 6 months before the planned Disconnection; and
  - (ii) for Consuming plant and Generating Plant up to and including 30 kVA which is being used to offset load, at a Connection Point, at least one month before the planned Disconnection.
- (c) Clause 3.6(b) does not limit, and applies in addition to, the requirement the User and Western Power comply with their obligations (including timeframe service standards) specified in the model service level agreement under the Metering Code (to the extent that model service level agreement applies to the User and Western Power) in respect of any supply abolishment service required to give effect to a permanent Disconnection of Facilities and Equipment.
- (d) Subject to clause 3.6(e), 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) the Facilities and Equipment in respect of the Connection Point have been permanently Disconnected from the Connection Point,

as soon as reasonably practicable, otherwise Western Power may notify the User as soon as reasonably practicable that it rejects the deletion.

- (e) Clause 3.6(d) does not limit the requirement the User and Western Power comply, in respect of any supply abolishment service required to give effect to a permanent Disconnection, with their obligations (including timeframe service standards) specified in the model service level agreement under the Metering Code (to the extent that model service level agreement applies to the User and Western Power).
- (f) Subject to the Customer Transfer Code, Western Power must not delete a Connection Point other than in accordance with a notice given by a User under clause 3.6.
- (g) If Western Power commits a breach of clause 3.6(f) in circumstances that constitute Wilful Default it is liable to the User for any damage caused by, consequent upon or arising out of the Wilful Default. In this case, the exclusion of Indirect Damage in clause 19.3 does not apply.

### **3.7 Amendment to Connection Point data**

- (a) Unless the Parties otherwise agree, Western Power must, as soon as reasonably practicable, record the information referred to in Part 1 of Schedule 3, with respect to each Connection Point, in the Connection Point Database.
- (b) Subject to clauses 3.7(g) and 3.7(h), Western Power must, as soon as reasonably practicable, update the information contained in a Connection Point Database following any variation made under this clause 3.
- (c) Upon request by the User for information referred to in the Connection Point Database, Western Power will, as soon as reasonably practicable, provide to the User the most up-to-date version of that information.
- (d) The Parties acknowledge that if the User is a Metering Code Participant, for each Connection Point Western Power must also record and update the relevant information required under Part 1 of Schedule 3 in the Metering Database in accordance with the provisions of the Metering Code and, to the extent that a timeframe is not specified in the Metering Code or a service level agreement in force between the User and Western Power, Western Power must do so as soon as is reasonably practicable.
- (e) Nothing in this Contract restricts or prohibits Western Power from maintaining and updating the Metering Database in accordance with the Metering Code.
- (f) Western Power will provide the User with access to the information in the Metering Database in accordance with the Build Pack.
- (g) Subject to clause 3.7(h), where Western Power causes a Permanent Reconfiguration of the Network which results in the information contained in the Contract Database having to be updated:
  - (i) Western Power is not required to update the information contained in the Connection Point Database before the next 1 July following the Permanent Reconfiguration of the Network; and
  - (ii) Western Power must update the information contained in the Connection Point Database before the next 21 July following the Permanent Reconfiguration of the Network.
- (h) Where a Permanent Reconfiguration of the Network occurs as a result of, or arising from, a notice or application by the User under clauses 3.4, 3.5 or 3.6 which results in the information contained in the Contract Database having to be updated:

- (i) clause 3.7(g) does not apply;
  - (ii) Western Power must update the information contained in the Connection Point Database as soon as reasonably practicable after the Permanent Reconfiguration of the Network; and
  - (iii) where the information to be updated is contained in Part 1 of Schedule 3, then the information must be updated in accordance with clause 37.2.
- (i) The Parties must notify each other of any errors discovered in the Connection Point Database as soon as reasonably practicable after becoming aware of the error.
  - (j) Western Power must amend any error in the Connection Point Database as soon as reasonably practicable after becoming aware of the error, provided that if Western Power becomes aware of an error otherwise than by notice from the User under clause 3.7(i), no amendment shall be made until Western Power has given notice to the User of the error.
  - (k) Where under this Contract Western Power has recorded information in more than one of Part 1 of Schedule 3, the Metering Database and any other database maintained by Western Power for the purposes of this Contract and there is an inconsistency or conflict between the information in the databases in which the information is recorded, then the following order of precedence applies, from highest to lowest:
    - (i) where the circumstances in clauses 3.7(g) or 3.7(h) apply:
      - (A) Part 1 of Schedule 3;
      - (B) any other database;
      - (C) the Metering Database; and
    - (ii) in all other circumstances:
      - (A) the Metering Database;
      - (B) Part 1 of Schedule 3;
      - (C) any other database.
  - (l) Western Power must notify the User as soon as reasonably practicable upon becoming aware that a Connection Point has reverted to the User as a default supplier retailer (being a retailer of the type contemplated in section 59 of the Act).

#### **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, or as soon as reasonably practicable thereafter (but in all cases no later than 30 Business Days after the Start Date of the relevant Services), nominate a person as the Controller for a Connection Point where:
  - (i) 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 the Connection Point Database 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 use reasonable endeavours to 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.
- (f) If the User requests Western Power to do so, Western Power must use reasonable endeavours and act in good faith to enter into a Connection Contract with a Controller (validly nominated by the User under clause 6.1(a)) in respect of the Connection Point.

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

- (a) Subject to clause 6.2(f), 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); and
  - (ix) clause 35 (Notices).
- (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 it enters into a contract with the Controller obliging the Controller to comply with the obligations set out in this Contract (to the extent set out in clause 6.2(a)) and that such contract entered into between the User and a Controller relating to Services under this Contract contains a provision:
- (i) 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; and
  - (ii) under which the Controller covenants in favour of Western Power (which covenant is expressed to be enforceable by Western Power in accordance with section 11 of the *Property Law Act 1969 (WA)*) that it will not bring a claim against Western Power for such Indirect Damage and will not bring a claim which will result in Western Power's aggregate liability to the Controller and the User, under or in connection with this Contract or the Services provided under or in connection with this Contract, exceeding the monetary cap on Western Power's liability in clause 19.5(a).

The exclusion of Indirect Damage in clause 19.3 does not apply to a failure by the User to ensure that its contract with the Controller contains the covenant referred to in paragraph (ii) above.

- (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.

- (f) Subject to clause 6.2(g), the User is required to commence, maintain or continue legal proceedings to procure compliance of the Controller 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.
- (g) For a Connection Point other than as referred to in clause 6.1, the User is not required to comply with clause 6.2(f) unless Western Power provides an indemnity to the User for all of the User's costs of and incidental to the proceedings.
- (h) Nothing in clause 6.2(f) or clause 6.2(g):
  - (i) limits the User's obligations under the remainder of this clause 6.2; or
  - (ii) derogates from Western Power's other rights under this Contract including its rights under clause 6.2(d), or requires Western Power to pay any compensation to the User for exercising any of those rights.

### 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. For the avoidance of doubt, the tariffs specified in the Price List apply to all consumption during the Pricing Year applicable to the Price List. Where consumption is metered with an accumulation meter and the meter reading interval causes some of the metered consumption to lie within the Pricing Year applicable to the Price List and the remainder within a Pricing Year applicable to another Price List, the consumption covered by the Price List will be determined by prorating the metered consumption uniformly on a daily basis.
- (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 the Contract Database (as updated from time to time in accordance with this Contract); and
  - (ii) where information contained in the Contract Database 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.
- (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 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 five 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.
- (f) Where a Payment Error is an error as a result of which the amount set out in a Tax Invoice is less than what it would have been had the error not been made, the Payment Error will be taken to have occurred on the Due Date of the Tax Invoice.
- (g) Where a Payment Error is an error as a result of which the amount set out in a Tax Invoice is more than what it would have been had the error not been made, the Payment Error will be taken to have occurred on the date the User has paid the total amount of the Tax Invoice in full.

### **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:
  - (i) Western Power may require the User to within 15 Business Days nominate which of the User or the Indemnifier ("**Nominated Person**") is to provide security; and
  - (ii) within 15 Business Days of the User's nomination under clause 9(a)(i), the Nominated Person, at the User's election, must either:
    - (A) pay to Western Power a cash deposit equal to the Charges for two months' Services; or
    - (B) 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
    - (C) 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.
- (c) If any security held by Western Power under clause 9(a)(ii)(A) or 9(a)(ii)(B) at any time is not equal to the Charges for two months' Services, then the Nominated Person must, within 15 Business Days of a written request by Western Power to the User:
  - (i) if the security is a cash deposit under clause 9(a)(ii)(A), provide Western Power with an additional cash payment to increase the security so that it is equal to the Charges for two months' Services; or
  - (ii) if the security is a guarantee under clause 9(a)(ii)(B), replace the guarantee with another guarantee (that is in accordance with clause 9(a)(ii)(B)) in an amount that is equal to the Charges for two months' Services.

- (d) If any security held by Western Power under clause 9(a)(ii)(A) or 9(a)(ii)(B) is called upon by Western Power or if that security ceases to be enforceable for any reason (including due to expiry of the security) then within 15 Business Days the Nominated Person must provide replacement security to Western Power complying with the requirements of clause 9(a)(ii).
- (e) Where a guarantee has been provided to Western Power by the User's parent company but Western Power ceases to be satisfied, as a Reasonable and Prudent Person, that the criteria in clause 9(a)(ii)(C) are met then by notice to the User Western Power may require the provision of a new form of security complying with the requirements of clause 9(a)(ii)(A) or 9(a)(ii)(B) which security must be provided within 15 Business Days of service of Western Power's notice.
- (f) Upon the termination of this Contract and receipt by Western Power of all amounts due by the User to it under this Contract Western Power will return to the User any security provided under this clause 9 which is still held by Western Power. Where the security provided to Western Power was a cash deposit, then Western Power will return to the User the unutilised balance of the cash deposit and interest accrued on the deposit less any charges (including fees and charges associated with maintaining the interest bearing account) and taxes attributable to the maintenance of the interest bearing account in which the cash deposit was kept.
- (g) Western Power may call upon a cash deposit or bank guarantee (or equivalent financial instrument) provided to it under this clause 9 if an amount due by the User to Western Power under this Contract is not paid by the due date for payment of that amount or, where this Contract does not specify a due date for payment, is not paid within 10 Business Days of Western Power issuing a notice to the User requiring payment of the amount.
- (h) In this clause 9, a reference to the Charges for two months Services means Western Power's reasonable estimate of the Charges which will be incurred by the User for the Services provided under this Contract in the next two calendar month period from the end of the next Accounting Period (that is, from the end of the Accounting Period which expires after the Accounting Period in which the User is notified of the current level of security it is required to provide).
- (i) Where security is provided to Western Power in the form of a cash deposit, then Western Power shall deposit the amount in an interest bearing account maintained with a financial institution, selected consistently with Western Power's policies, or with the Western Australian Treasury Corporation or other government body. Any interest which accrues on the cash deposit shall form part of the security however where, as at the end of a month, the aggregate amount of cash deposit held by Western Power (including interest and after deducting any fees, charges and taxes associated with maintaining the interest bearing account) exceeds the Charges for two months' Services Western Power will, within a reasonable time, pay the excess amount held (above the Charges for two months' Services) to the Customer's nominated bank account.
- (j) Where Western Power is required, under this Contract, to return the whole of a security held as a cash deposit then it will, within a reasonable time, return to the User the unutilised balance of the cash deposit and interest accrued less any charges (including fees and charges associated with maintaining the interest bearing account) and taxes attributable to the maintenance of the interest bearing account.
- (k) Nothing in this Contract is to be taken as imposing any obligation on Western Power to maximise or obtain any return on cash deposit amounts held by Western Power as security.

## **10. Security for Contribution**

Without limiting the User's security obligations related to clause 26, where Western Power has determined in accordance with the Contributions Policy that the User is required to 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 to be made by the User that remains unpaid or unprovided as calculated by Western Power under the Contributions Policy, the Nominated Person must provide to Western Power the requested bank guarantee (or equivalent financial instrument).

# **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.

### **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 in breach of this Contract 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 recovered from the User or any other person under any other arrangement, including 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.
- (f) If Western Power recovers costs referred to in clause 12.2(c) from another party in circumstances where the User has already paid them to Western Power, Western Power must refund those costs without interest to the User.

### **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) where such modification requires an Application under the Applications and Queuing Policy:
    - (A) the User makes such an Application; and
    - (B) 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;
  - (ii) where such modification does not require an Application under the Applications and Queuing Policy and relates to a Generating Plant owned by a person other than a Small Customer:
    - (A) the User notifies Western Power of the modifications to the Generating Plant in writing at least 45 days prior to the modifications being made; and
    - (B) the modified Generating Plant does not adversely impact the safety or security of the Network.
- (d) For the purposes of clause 13(c)(ii) a modification is material only if:
  - (i) it involves expenditure of more than \$100,000; or
  - (ii) the modification is one which, consistently with Good Electricity Industry Practice, requires review by a duly qualified engineer before being made.
- (e) Notwithstanding clause 13(d), the replacement of like for like parts within a Generating Plant or the replacement of parts in the ordinary course of maintenance and repair is not a material modification for the purposes of clause 13(c)(ii).

- (f) If Western Power does not notify the User within 45 days of receipt of notice under clause 13(c)(ii) that the modification may adversely impact the safety or security of the Network the User may proceed to make the modification. However nothing in this clause derogates from the User's responsibility to ensure the Generating Plant complies with the requirements of this Contract including the obligations to comply with the Technical Rules .

## **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 provided that the User will not be taken to be in breach of this warranty because of a failure by the User to comply with the Applications and Queuing Policy or the Code which is the direct result of a breach by Western Power of the Applications and Queuing Policy or the Code; 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(a) 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 Competition and Consumer Act 2010 of the Commonwealth or the Fair Trading Act 2010 (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 provided that Western Power will not be taken to be in breach of this warranty because of a failure by Western Power to comply with the Applications and Queuing Policy or the Code which is the direct result of a breach by the User of the Applications and Queuing Policy or the Code; 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 18.2(a) 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 Competition and Consumer Act 2010 of the Commonwealth or the Fair Trading Act 2010 (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 clauses 7, 8 and 20 are 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 lesser of:
  - (i) an amount of \$80 million in the aggregate, refreshed annually each 1 July; and
  - (ii) 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 clauses 7, 8 and 20 are not counted for the purposes of both the User's and the Indemnifier's collective maximum liability under this Contract.

- (c) The monetary caps on liability in this clause 19.5 will be CPI-Adjusted every three years from the Commencement Date provided that for the purposes of such CPI adjustment the following formula will be used:

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

where:

"N" is the new liability cap amount being calculated; and

“C” is the current liability cap amount being adjusted; and

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

“CPI<sub>c</sub>” is the value of CPI applicable for the calendar quarter occurring 36 months before the calendar quarter referred to in the definition of CPI<sub>n</sub>.

- (d) At the end of each three-year period from the Commencement Date, if there has been a Material Change affecting the liability of a Party under this Contract, then the Parties must negotiate in good faith to reset the monetary caps on liability in this clause 19.5. If the Parties are unable to agree on re-setting the monetary caps on liability, the matter shall be determined by an expert nominated by the Parties or, failing agreement, nominated by the Chairperson of the Institute of Arbitrators (Western Australian Chapter) or their nominee and the determination of the expert shall be final and binding upon the Parties.

#### **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 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.
- (c) For the purposes of the application of the indemnity given by the Indemnifier under clause 19.2(b):
  - (i) clause 19.8(a) may apply to reduce the User's liability to Western Power and, consequently, the amount of liability for which the Indemnifier must indemnify Western Power;
  - (ii) except as provided in clause 19.8(c)(i), clause 19.8(a) does not apply to reduce the Indemnifier's indemnification obligation.

### **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.

### **19.11 Intermediary Indemnity**

Where:

- (a) the User is the Intermediary (as defined in the Market Rules) of a person and in so far as they are registered as a Rule Participant (as defined in the Market Rules) and to the extent they perform the functions of an Intermediary; and
- (b) that person is not party to this Contract,

then the User must indemnify and keep indemnified Western Power against any costs, expenses, losses or damages suffered or incurred by Western Power due to Claims made by that person against Western Power:

- (c) which Claims are in connection with the provision of the Services (including any failure of, or defect in provision of, the Services); or
- (d) which Claims relate to a matter for which Western Power's liability to that person would have been limited or excluded had that person been party to this Contract (jointly with the User).

## **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 list Western Power as an additional insured.

#### **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 the 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, 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.

A notice under clause 22.3(a) must be given as soon as reasonably practicable and in any event within 5 Business Days of a Party becoming aware an event is or is likely to be a Force Majeure Event.

#### **22.4 In case of breach**

An Affected Person is not obliged to incur any 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 Points 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 fifth 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 Points 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 20th 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 (acting as a Reasonable and Prudent Person).

### **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 written 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 or a person who is proposed to be 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) The User may disclose or allow to be disclosed a copy of this Contract to a Controller with whom the User will enter, or has entered into, a contract as required by clause 6.
- (c) 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 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 priority post (airmail if posted to or from a place outside Australia); or
  - (iii) by way of a courier service for hand delivery; or
  - (iv) 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 five 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 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
- (d) 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 for the purpose of these clauses 35.1 to 35.4.

### **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 Duty**

The User is liable for and must pay any duty that is assessed on this Contract under the Duties Act 2008 (WA). 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**

- (a) Subject to clause 37.13(b), 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.
- (b) A Party may only terminate this Contract in circumstances permitted by express provisions of this Contract. Any rights to terminate this Contract at common law are excluded.

**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 on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ by:

**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)*:

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

\_\_\_\_\_  
Signature of 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<sup>th</sup>)*:

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

\_\_\_\_\_  
Signature of Director/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<sup>th</sup>):

.....  
Signature of Director

.....  
Signature of Director/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.
Bidirectional Point	has the meaning given to 'bidirectional point' in the Applications and Queuing Policy.

Bidirectional Service	means a Covered Service provided by Western Power at a Connection Point under which the User may transfer electricity into and out of the Network at the Connection Point.
Build Pack	means the 'Build Pack' developed under the <u>Electricity Industry Customer Transfer Code 2004 Communication Rules</u> (made under Part 5 of the Customer Transfer Code) and/or the <u>Electricity Industry Metering Code 2004 Communication Rules</u> (made under Part 6 of the Metering Code), as applicable in the circumstances.
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 '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 or Bidirectional Point in the Contract Database.

Connection Point Database	<p>means:</p> <p>(a) Part 1 of Schedule 3; or</p> <p>(b) another database or databases containing information relating to this Contract and maintained by Western Power as agreed between the Parties, which for the avoidance of doubt can include the Metering Database if the User is not a Metering Code Participant and this is agreed by the User and Western Power,</p> <p>as applicable.</p>
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.
Contract Database	means the Connection Point Database or, if the Metering Database is not included within the Connection Point Database and clause 3.7(k)(ii) applies, then it means the Metering Database.
Contracted Capacity	<p>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:</p> <p>(a) the rate specified in the Connection Point Database from time to time; or</p> <p>(b) if no rate is specified in the Connection Point Database, the maximum rate of electricity permitted to be transferred under the Eligibility Criteria for the Reference Service for that Connection Point; or</p> <p>(c) if no rate is specified in the Connection Point Database 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,</p> <p>and is measured in Watts or Volt-Amps.</p>
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 and includes a Bidirectional Service.

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.
Curtailement	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 <i>Electricity Industry Customer Transfer Code 2016</i> , 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 Declared 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 E 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 the Connection Point Database 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	<p>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):</p> <ul style="list-style-type: none"> <li>(a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or</li> <li>(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</li> <li>(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</li> <li>(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</li> <li>(e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority; or</li> <li>(f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or</li> <li>(g) any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice; or</li> <li>(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</li> <li>(i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or</li> <li>(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.</li> </ul>
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 '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>A New Tax System (Goods and Services Tax) Act 1999</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 <u>Electricity Industry (Independent Market Operator) Regulations 2004</u> , exercising functions under the <u>Electricity Industry (Independent Market Operator) Regulations 2004</u> , the <u>Electricity Industry (Wholesale Electricity Market) Regulations 2004</u> and the Wholesale Electricity Market Rules made under the <u>Electricity Industry (Wholesale Electricity Market) Regulations 2004</u> .
Indirect Damage	<p>suffered by a person means any one or more of:</p> <ul style="list-style-type: none"> <li>(a) any consequential loss, consequential damage or special damages however caused or suffered by the person, including: <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, whether or not the consequential loss or damage or special damage was foreseeable; or</li> </ul> </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	<p>in respect of a Party, means any one or more of:</p> <ul style="list-style-type: none"> <li>(a) the Party is 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 solvent 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) an 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>
Insured Year	means the period between and including 1 July in a Year and 30 June in the following Year.
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, Codes 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 Maintenance	includes (as necessary and as applicable) calibrate, test, verify, renew, 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.
Material Change	any change external to a Party, including any change to the regulatory environment or market structure of the Western Australian electricity market, which materially alters or could reasonably be expected to materially alter the risk of a Party under this Contract, the nature of any Claim that can be made under this Contract or both.
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 given to 'Code Participant' 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.
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)(i).
Novate and Novation	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: <ul style="list-style-type: none"> <li>(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</li> <li>(b) the User is released from any obligations under this Contract arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.</li> </ul>
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: (a) any underpayment or overpayment by a Party of any amount in respect of a Tax Invoice; or (b) any error in a Tax Invoice (including the omission of amounts from that Tax Invoice, the inclusion of incorrect amounts in that Tax Invoice, calculation errors in the preparation of a Tax invoice or a Tax Invoice being prepared on the basis of data which is later established to have been inaccurate).
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.
Pricing Year	has the meaning given to 'pricing year' in the Code.
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 a service to be provided under this Contract in respect of a Connection Point as specified in the Contract Database.
Shared Assets	has the meaning given to 'shared assets' in the Code.

Small Customer	means a customer (as defined in the <i>Electricity Industry Act 2004 (WA)</i> ) consuming not more than 160 MWh of electricity per annum.
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 the Connection Point Database 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>(a) operate and control the system operation control centre; or</li> <li>(b) where there is no system operation control centre — is responsible for the control of the Network through monitoring, switching and dispatch; or</li> <li>(c) 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 (a) and (b).</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 is 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 <i>Electricity Corporations Act 2005 (WA)</i> .

Western Power's Default	means an event of Default by Western Power.
Wilful Default	means a deliberate and purposeful act or omission carried out with: <ul style="list-style-type: none"> <li>(a) a calculated regard for the consequences of the act or omission; or</li> <li>(b) a reckless or wilful disregard for the consequences of the act or omission,</li> </ul> but does not include any error of judgment, mistake, act or omission, whether negligent or not, which is made in good faith.
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:	
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**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:

(a) If in accordance with clause 3.7 the Parties agree to not have these details stored in this Part then state in each row in the right hand column below where the respective details are to be stored; and

(b) Western Power will store these details in the Metering Database where the User is a Metering Code Participant.}

<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				

## 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 \$50 million or the maximum liability of the User under clause 19.5 (whichever is greater) in the aggregate of all claims made in an Insured Year; 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) when reasonably requested by Western Power, 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) when reasonably requested by Western Power, 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 Works 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

Subject	Information
Address for service of notices/ place of business:	
Authorised Officers:	
Email address:	

### Part 2 Western Power

Subject	Information
Address for service of notices/ place of business:	
Authorised Officers:	
Email address:	

## SCHEDULE 7 - ELECTRONIC COMMUNICATIONS 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: <ul 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></ul>
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.

### 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.