

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

This document summarises Western Power's response to Synergy's concerns around certain provisions of the MAOC.

Western Power notes that the MOAC has been drafted to comply with the Access Code requirements and contemplates large scale and high-risk options and accordingly, some contractual obligations may appear onerous for smaller low risk options as they reflect the position that would best ensure that the safety, integrity and reliability of the network is maintained.

As Synergy have noted, obligations with respect to maintenance, modification and testing may not be workable or appropriate for certain alternative options and Western Power will take a collaborative approach to the procurement process with providers of alternative options and negotiate in good faith regarding the terms of the contract.

Western Power has made changes to address 17 of the 27 issues raised. The Table below summarises Western Power's response.

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
1	1.3 (Safety and integrity of Network) and related provisions	<ul style="list-style-type: none">Unreasonable - particularly for options that do not actually have material network impactsInsufficient detail - It is not clear what the reference to "normal operating practices" in clause 1.3(d) means. <p>The contract needs to address what safety related mechanisms are required where the alternative option does not have the potential to materially impact the network.</p>	<p>This clause provides a definition of "safety and integrity of the Network". WP does not consider that a further definition of normal operating practices is necessary and that a plain English interpretation can be applied.</p> <p>Most alternative options will be connected to or have an impact on the network in some way and accordingly, WP must make provisions for contingencies so it can continue to ensure the integrity and reliability of its transmission and distribution system.</p> <p>WP understands that some alternative options will not have a material impact on the network and appropriate amendments will be considered on a case by case basis with regard to the nature of the alternative option, the size of the company and the risks associated with the proposal.</p> <p>WP Changes – We has inserted a note to make this clear.</p>

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
2	Various provisions – e.g., 3(b), 3(c)(iii), 3(c)(iv), 7.1, 8.1(b), 8.3(b), 8.4(b), 8.4(d), 8.3(e)(ii), etc	<p>Numerous provisions throughout the proposed MAOC: (i) allow the network operator to request information/documents from the Service Provider and (ii) require the Service Provider to undertake certain actions, including tests.</p> <p>There is no requirement for the network operator to apply a reasonable test when requesting the information/documents, nor when requiring the Service Provider perform the activities.</p>	WP Changes - WP has inserted amendments with respect to acting reasonably where appropriate.
3	Various provisions dealing with commercial details – e.g., clause 3(d), Schedule 2 (Contract Details), Schedule 3 (Facility Details), Schedule 4 (Works Schedule), Schedule 5 (Services Schedule), Schedule 6 (Fee Schedule)	The proposed MAOC is a model document – that is, it will not contain the full, specific commercial details. However, the proposed MAOC in its current form lacks details around matters such as what the service might entail, what the specific service requirements for a particular category of option might be, and what the performance requirements might be. Some of these terms – e.g., "Performance Requirements" – are defined by reference to the Schedules.	<p>WP considers that it will be difficult to include such details at this juncture as these are details that will be specific to the type of alternative option.</p> <p>As WP contracts with more alternative option providers, it will develop a better understanding of what details may be relevant to specific categories of alternative options and can provide explanatory notes in this regard.</p> <p>However, at this stage, providing such information beyond the headings already within the model schedules would be a premature and speculative exercise.</p>
4	4. 4 (Services) Section	<p>It is not clear from the proposed MAOC what the scope of the Services will be, and how this will be expressed in the MAOC. Schedule 5 is limited in detail. For example, there is no explanation of what the "Service Details" would include, what the "Specific Service Requirements" are, and what the "Performance Requirements" are.</p> <p>There should at least be an explanation of how</p>	As per comment above.

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		the Services will be scoped and detailed in the MAOC. For example, this may be included in Schedule 5 (the Services Schedule).	
5	4.2 (Facility)	<p>It is not clear why, in circumstances where the Service Provider owns the Facility and Equipment, why the network operator requires the level of detail specified in respect of the proposed modifications to the Equipment.</p> <p>The proposed MAOC be updated to require the Service Provider to provide notice of the material modification to the Equipment, without the detailed level of information required (particularly in clause 4.2(e), which currently requires a "comprehensive and detailed explanation of" differences between any planned and actual modification). Thought should be given to whether it is reasonable to include much of clause 4.2 in the context of DER, contractual or a technology-based solution.</p>	<p>As the network operator, WP needs to understand what non-network services are operating within its transmission and distribution system, particularly where they are connected to the network (for example, certain micro grids and alternative generation solutions).</p> <p>Details are only requested where there is a <i>material</i> modification to the Equipment.</p> <p>WP considers that it is reasonable to request a detailed level of information if there are modifications that would materially change its understanding of how the Equipment functions and its potential to impact the operation of the transmission and distribution system.</p>
6	4.4 (Information)	<p>This provision, as currently drafted, is broad and far-reaching. It allows the network operator to request whatever information it might reasonably require from the Service Provider from time to time in relation to the Facility, the Services or the discharge of the Service Provider's obligations under the Contract.</p> <p>Delete proposed clause 4.4.</p>	WP does not consider that this clause is broad as it is limited by the requirement of WP having to "reasonably require" the information. A subjective test can be applied to any such requests pursuant to this section.
7	4.5 (Metering)	If the network operator can use metering data relating to the Facility (during and after the term	WP Changes - WP agrees and has proposed

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		<p>of the Contract), assuming that the Service Provider is the owner of the metering data, then this metering data needs to be dealt with in accordance with the confidentiality provisions in the Electricity Industry (Metering) Code 2012 (WA).</p> <p>MAOC Clause 4.5 should require the use of metering data consistent with the confidentiality provisions in the Electricity Industry (Metering) Code 2012 (WA).</p>	amended drafting.
8	5.1 (Overall Availability)	<p>The MAOC should set out how the liquidated damages are calculated. For example, how is the "LD Rate: (referred to in Schedule 2) determined?</p> <p>Clarity is required on how is the Required Availability Level calculated/measured? For example, is it expressed as a percentage (perhaps determined by the number of days the Facility is available divided by the number of days in the contract period)? Synergy suggests that the least, this is described – whether by way of explanatory notes or otherwise – in the MAOC.</p>	<p>The MAOC contemplates that the calculation of LD be set out in Schedule 2 if applicable. Clarification will be made that it is a pre-estimate of loss and consideration.</p> <p>It will not be feasible to include in this version of the MAOC sample calculations for LD Rate and Required Availability Level.</p> <p>WP Changes - We has inserted a note to make it clear that LD will only be used where appropriate and is not intended to be the sole mechanism for dealing with required availability levels not being available.</p>
9	5.2 (Scheduled Maintenance)	<p>The ability for the network operator to have input into the Scheduled Maintenance Plan is excessive. Further, it is not clear how the provision would apply in a DER context.</p>	<p>WP has certain operational considerations and an obligation to maintain the integrity and reliability of the transmission and distribution system.</p> <p>WP does not consider it excessive to have input into maintenance plans so that it can ensure the Facility does not have a material adverse impact on the safety and integrity of the network due to</p>

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
			the scheduling of planned maintenance. WP Changes - WP accepts that maintenance obligations may not be relevant for certain alternative options and has inserted a note to make this clear.
10	5.3 (Notification of Unavailability)	The proposed MAOC should be clear on when permitted periods of unavailability are – e.g. because of an action due to the network operator /AEMO, or because of planned maintenance. Liquidated damages should not be payable during permitted periods of unavailability.	WP Changes - WP has drafted amendments to clarify permitted periods of unavailability as per Synergy's submission.
11	5.4 (Deemed unavailability)	The commencement date for unavailability as per clause 5.4(a)(i) could be unreasonable, depending on the alternative option service and context. For example, how it would work in a DER or technology-based solution. There should be provision to "split the difference" with the network operator – ie where it unknown when the service was last available, it could be the midway point between the last test and when the service was found to be unavailable.	WP Changes - WP has inserted a note to clarify that for certain alternative option services such as technology-based solutions, it will consider a different method for calculating the date of unavailability.
12	6 (Market Requirements)	Synergy suggests that clause 6(b) is updated to refer to consistency with the Market Rules, rather than the requirements of the MAOC.	WP Changes – WP agrees and has included an amendment.
13	7 (Access and protection of property)	Clause 7.1 requires the Service Provider to provide the network operator with unfettered access to the Facility at times the network operator may	WP Changes - WP agrees and has included an amendment.

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		<p>require.</p> <p>The proposed MAOC be amended to require the Service Provider to provide reasonable/sufficient access to the network operator.</p>	
14	8 (Inspection and Testing)	<p>The Testing requirements in the MAOC need to be proportionate to the actual Services which are being provided under the Contract. Synergy suggests that, with Services such as DER solutions or a load shifting solutions, the Testing requirements are not appropriate.</p> <p>Synergy suggests that clause 8.4(c) require the network operator representatives to not cause any loss or damage to the Facility or Equipment and not interfere with the operation of the Service Provider's business.</p>	<p>WP Changes - WP has inserted a note to clarify that Testing requirements may not apply for certain alternative options such as load shifting solutions.</p> <p>As to 8.4(c), WP does not consider it necessary to insert this as its Representatives are required not to interfere with the conduct of the Test and would only be present as witnesses.</p> <p>It would be implied that WP's representatives would not cause any loss or damage or interfere with the operations and WP does not consider it necessary to have this be part of the contract.</p>
15	9 (Fees)	<p>The fee provisions will be pivotal in-service providers deciding to provide services or not – but there is very little detail to perform any analysis of whether providing a service under the MAOC will be a profitable exercise.</p> <p>At a minimum, the MAOC should reference the principles in the network operator's Alternative Options Strategy for the development of payment levels (see section 6A.5(f) of the ENAC).</p> <p>Clause 9.2 should be updated to allow the Service Provider to request the network operator to provide it with information/details on how the</p>	<p>The Fee Schedule is intended to be the mechanism by which these details are provided in terms of the calculation of fees and the reduction to reflect unavailability.</p> <p>This will vary depending on the type of option. WP will add in the principles in the AOS for developing payment levels as an explanatory note.</p> <p>WP Changes - WP agrees and has inserted dispute resolution processes in line with its approved ETAC and model SLA.</p>

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		<p>network operator has calculated the Fees.</p> <p>Additionally, if the network operator requests information from the Service Provider to allow it to calculate the Fees, Synergy suggests that the provision should be limited to information that the network operator reasonably requests and that it reasonably requires to calculate the Fees.</p> <p>Synergy also submits that if the Service Provider disputes the amount of Fees that the network operator has determined, the Service Provider should not be required to issue an invoice for the amount the network operator specifies – instead, the Service Provider should be required to issue an invoice for the amount the Service Provider considers is the correct amount, and the balance can be referred for dispute resolution. Synergy submits that this position is reasonable, and better complies with section 6A.7(b) of the ENAC. It is also in line with the provisions of the ERA approved ETAC and the Model Service Level Agreement regarding the payment of disputed portions of invoices.</p>	
16	10 (Change in Rules)	<p>As the Service Provider is providing the Services to the network operator, Synergy suggests that clause 10 specifically call out what changes may materially impact the Service Provider – including the costs of providing the services, to trigger the parties negotiating amendments to the MAOC.</p> <p>That is because the reference to "materially impacts" may not necessarily cover, for example,</p>	WP considers that the definition of “which materially impacts upon either Party’s ability to perform its obligations under this Contract” is broad enough to cover an increase in the Service Provider’s cost of providing the Services.

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		an increase in the Service Provider's costs of providing the Services.	
17	11 (Liability of Western Power)	<p>Synergy suggests that as a minimum, the network operator's liability should extend to include acts of fraud and wilful misconduct (in addition to gross negligence and breach of Contract).</p> <p>Additionally, the exclusion for consequential loss should not apply for fraud. Other liability (for example damage to service provider equipment due to the network operator fault/failure – may need to be considered depending on the service. In that regard, a series of options may be a better approach opposed to a one size fits all.</p> <p>Synergy suggests that the MAOC be clear that the network operator 's common law duty of care to persons in the vicinity of its electricity distribution system (which should include the Service Provider) is not excluded.</p>	<p>WP Changes - WP has amended the clause to exclude fraud and wilful misconduct.</p> <p>The clauses limit the SP's ability to make claims with respect to gross negligence, wilful misconduct and fraud. Any breach of a common law duty is not excluded by this.</p>
18	12 (Liability of Service Provider)	<p>To represent a reasonable position under the MAOC, Synergy suggests:</p> <ul style="list-style-type: none"> • If the current broad ranging liability provisions are to be maintained, then at the least, the Service Provider's liability should be capped. • Liability for Third Party Claims should be limited to a breach of the MAOC, tortious act or omission by the Service Provider or breach of any Law. • The Service Provider's liability for Third Party Claims be reduced proportionality to the extent 	<p>WP Changes - WP has amended the clause to reduce liability for any of its negligent acts or omissions.</p> <p>WP can consider the capping of liability on a case by case basis and has inserted a note to clarify this.</p>

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		<p>the network operator 's negligent act or omission, breach of contract or breach of its common law duty of care contributed to the loss.</p> <ul style="list-style-type: none"> • A similar provision to clause 11.2(b) be included the MAOC in respect of the Service Provider – i.e. the Service Provider is not liable to the network operator on any basis whatsoever for any Consequential Loss. 	
19	13 (Insurance)	<p>Given the varying scope of the Services which may be provided under the MAOC, Synergy is not sure that the insurance provisions are appropriate for application across all services that may be supplied.</p> <p>They appear to be most relevant to larger scale facilities only. The reference to \$100,000 in clause 13.8 may not be appropriate where the Services being provided are larger scale (and not, for example, smaller DER facilities).</p>	<p>The Insurance policies required will be determined on a case by case basis as it is contemplated that they will be set out in the Schedule.</p> <p>WP Changes - WP has inserted a note to clarify this.</p>
20	14 (Security)	<p>A service provider should only be required to provide security where it is reasonable for security to be provided, and any security amount should be reasonable in light of the Services to be provided under the contract.</p>	<p>Security is only contemplated in the MOAC if the Contract Details indicate so. WP considers that the provisions around the Purpose of Security make this clear.</p> <p>WP does not consider any amendments are required.</p>
21	15 (Record keeping)	<p>Record keeping obligations should be limited to maintaining the records that the Service Provider considers, acting in accordance with Good Electricity Industry Practice, it is required to</p>	<p>WP considers that what it has outlined provides thorough guidance on the types of information required to adhere to Good Electricity Practice and demonstrate compliance with the MAOC.</p>

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		<p>maintain to demonstrate compliance with the Contract and that it is able to provide the Services.</p> <p>The network operator's ability to inspect and audit the Service Provider's records should be subject to confidentiality provisions</p>	<p>WP notes that these may be too onerous for certain alternative solutions and has inserted a note to clarify that these will be amended as required.</p> <p>WP Changes - WP accepts the comments regarding confidentiality and has inserted amendments accordingly.</p>
22	18 (Force Majeure)	<p>The definition of "Force Majeure Event" contains an exclusion for a COVID-19 event (at paragraph (I) of the definition). Synergy submits that the exclusion (which itself contains an exclusion to the exclusion) is unclear. Does the COVID-19 event qualify as a Force Majeure Event where the party is aware that the impact of the COVID-19 event will be beyond the reasonable control of the party? The current drafting in paragraph (I) is ambiguous.</p> <p>Synergy suggests the more reasonable position is to delete paragraph (I) from the definition of Force Majeure Event</p>	<p>WP does not consider that this definition with respect to COVID-19 is unclear and notes that it now forms a standard part of its contracts.</p>
23	19 (Disconnection)	<p>Clause 19.1 allows the network operator to disconnect the Facility from the Network if the Facility fails to comply with the requirements of the Contract and due to the failure there is a material risk to the safety and integrity of the Network and the Service Provider fails to remedy the failure. However, Synergy suggests that – depending on the Service being provided – disconnecting the Facility from the Network is not an appropriate or proportionate action in all</p>	<p>WP Changes - WP has inserted a note to clarify that alternatives to disconnection may be utilised depending on the service being provided i.e. curtailment.</p>

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		<p>circumstances – instead, curtailment may be appropriate. For example, it may not be appropriate to disconnect a DER solution, but instead curtail the solution.</p> <p>Synergy suggests that measures other than disconnection are included in the MAOC (as per the ERA approved ETAC), proportionate to the Service being provided.</p> <p>Synergy suggests that the circumstances referred to in clauses 19.5(b) and 19.5(c) be deleted.</p>	
24	20 (Default and termination)	The default provision be updated in line with the default and termination provision in the ERA approved ETAC	WP Changes - WP has amended this to align with the ERA approved ETAC.
25	21 (Cure of Service Provider breaches by Western Power)	Synergy suggests clause 21 is deleted or the liability the network operator causes to the Service Provider or its equipment is addressed.	<p>WP does not consider this clause to be unreasonable.</p> <p>There may be material impacts on the network which would force WP to attempt to remedy any breaches in good faith to maintain system integrity.</p> <p>The SP is not required to reimburse WP where there is negligence or wilful misconduct on WP's behalf.</p>
26	22 (Termination for convenience)	Synergy suggests that the termination for convenience provision is removed from the MAOC. Alternatively, if it is retained, then Synergy suggests that the termination right be mutual. In any event, Synergy suggests that there should be a termination payment payable to the Service	WP notes that there is already a provision for a payment of a termination payment to the Service Provider.

Model Alternative Options Contract (MAOC) – Summary of WP amendments – 3 Dec 2021

#	MAOC Clause/s	Synergy Issues/Recommendation	WP Response
		Provider if the network operator terminates the Contract.	
27	Synergy feedback provided on 1 Dec in response to WP's proposed MAOC revisions.	<p>Synergy notes that its “main issue relates to the contract being drafted from the perspective that an alternative option facility will always have a material impact on WP’s network operation. Synergy considers this will not be the case for many alternative option services. We recognise and appreciate WP has sought to address our concerns by the inclusion of various explanatory notes but consider these need to be a bit more explicit. Consistent with our view:</p> <ul style="list-style-type: none"> • We have stated on the front page that the explanatory notes explain how the MAOC will be amended to reasonably reflect the network risk profile of different types of alternative options. • Amended the notes on key issues to make specific and direct statements about what contract matters will change and how. • Made drafting amendments in the liability and disconnection provisions as these are key to reasonability. • Highlighted those matters where Synergy's original submissions have yet to be addressed in the MAOC. <p>Note Synergy mark ups were provided on the revised MAOC on 1 Dec 2021</p>	WP has reviewed the further mark ups provided by Synergy and has not proposed any further changes.