



Western Power

Interconnection Works Agreement

Western Power Corporation

ABN 38 362 983 875

[Insert Customer]

ABN [insert]

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INTERCONNECTION WORKS AGREEMENT

DATE

PARTIES

Western Power Corporation ABN 38 362 983 875, a statutory body corporate established by section 4 of the *Electricity Corporation Act 1994* of 365 Wellington Street, Perth, Western Australia (**Western Power**)

[Insert] (**Customer**)

RECITALS

- A. The Customer proposes to develop the Customer's Facility and to make it suitable for connection to the Network for the purpose of transferring electricity between it and the Network (or vice versa).
- B. In order to connect the Customer's Facility to the Network, and to transfer electricity between the Customer's Facility and the Network when the two are connected (or vice versa), the Works must be completed.
- C. The Parties enter into this Agreement to set out the terms on which Western Power will perform some or all of the Works or Early Undertakings.

OPERATIVE PROVISIONS

1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement, unless the contrary intention is apparent:

Access Contract means an agreement (whether contained in one or more documents) between Western Power and the Customer under which (among other things) the Customer's Facility is to be connected to the Network and the Customer has the right to transfer electricity to or from the Network, as varied or replaced from time to time.

Agreed Works Program means the program set out in Schedule 8 setting out (among other things) the key activities and dates for performance of the Works and of the Customer's Deliverables, as amended or updated in accordance with this Agreement.

Agreement means this Agreement including its schedules (as the same are amended or updated from time to time).

Assumed Conditions means the conditions, facts or circumstances affecting:

- (a) the Site; and
- (b) the Works; and
- (c) Western Power's performance of the Works,

which were assumed by Western Power, acting reasonably, in determining the following as at the date of execution of this Agreement:

- (a) the Works Price; and
- (b) the basis on which the Works Price is to be calculated under this Agreement; and
- (c) the Agreed Works Program,

and include those conditions, facts or circumstances set out in Schedule 6.

Business Day means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.

Capital Contribution means a contribution made or to be made by the Customer in respect of Western Power Connection Works or Western Power Shared Works:

- (a) in accordance with Western Power policies or methodology; and
- (b) where the Works relate to the Covered Network consistent with Regulatory Provisions,

as specified in or determined for the purposes of Schedule 9.

Claim means any legal proceeding, claim, action, fine, penalty, judgment, liability or demand arising under any statute or in equity or at common law, made by a person.

Commencement Date means:

- (a) in respect of each Party's obligations in connection with the Early Undertakings, the date of execution of this Agreement; and
- (b) in all other cases, the date on which the last of the Conditions Precedent is satisfied, as recorded in Schedule 1.

Condition Precedent means each of the conditions precedent specified in Schedule 1 under the name or names of the Party or Parties for whose benefit the Condition Precedent is intended.

Confidential Information means the terms of this Agreement and all information which is received by one Party from the other Party under this Agreement, but excludes information which is or becomes part of the public domain or which is lawfully obtained by a Party from external sources.

Covered Network means that part of the Network where pricing is subject to control or regulation under a Regulatory Provision.

Customer Connection Works is defined in the definition Works.

Customer's Deliverables means those items, matters or things specified or described in Schedule 4; and where Schedule 4 is blank there are no Customer's Deliverables.

Customer's Facility means the generation and/or load facility being developed by the Customer, as described in Part 1 Schedule 3. **Customer's Personnel** means officers, employees, agents, consultants, representatives and independent contractors of the Customer.

Customer's Premises means those premises owned or occupied by the Customer, to which Western Power will require access for the purpose of the Works, particulars of which are specified in Part 2 of Schedule 3.

Date of Practical Completion in respect the Works or the relative Separable Portion of the Works (as the case may be) is defined in clause 16.

Default means any failure by a Party to comply with a material obligation under this Agreement.

Financial Default means a Default in payment of moneys due under this Agreement that is not the subject of a bona fide dispute. **Non-Financial Default** means a Default other than a Financial Default.

Defaulting Party means a Party in Default.

Design Documentation means all design documentation including specifications, drawings, calculations and other technical information required for the completion of the Customer Connection Works in accordance with this Agreement.

Direct Damage suffered by a person means damage or loss suffered by the person which is not Indirect Damage.

Due Date for Practical Completion means the date by which Western Power is required to achieve Practical Completion for the whole of the Works or for the relative Separable Portion of the Works (as the case may be) (as such date is extended as a result of each Excusable Delay) as set out in Schedule 13. Where this Agreement contains a reference to the Due Date for Practical Completion of the relevant Works, that term will be read to include the Due Date for Practical Completion of each Separable Portion of the Works.

Early Undertakings means works or services as specified or described in Schedule 5, including any portion of such works and services; and if no works or services are so specified or described, this Agreement does not provide for Early Undertakings.

EIA means the *Electricity Industry Act 2004*.

ENAC 2004 means the *Electricity Networks Access Code 2004*.

Event Beyond a Person's Control means:

- (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or
- (b) any insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or
- (c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the Commencement Date; or
- (d) any act or omission of government, any Government Agency or any fire brigade; or
- (e) any inability or delay in obtaining any Government Approvals; or
- (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or

- (g) any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice; or
- (h) any act or omission of any person with facilities and equipment connected to the Network which frustrates a person's ability to perform its obligations under this Agreement; or
- (i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or
- (j) any other fact, circumstance, omission, thing or event beyond a person's control,

but does not include any inability (for any reason whatsoever) to pay or make payment.

Excusable Delay is defined in clause 10.1.

Expert means an expert appointed under clause 32.

Final Date means the date specified as the "*Final Date*" in Part 2 of Schedule 2 or such other date as agreed in writing by the parties to be the Final Date.

Final Due Date for Practical Completion means the last Due Date for Practical Completion of Works specified in Schedule 13.

Force Majeure Event means an Event Beyond a Person's Control which a person acting in accordance with Good Electricity Industry Practice but constrained by and having regard to prudent business principles regarding expenditure would not be able to prevent or overcome.

GST and **GST Law** are defined in clause 23.1.

Good Electricity Industry Practice has the same meaning as "*good electricity industry practice*" as defined in section 1.3 of the ENAC 2004.

Government Agency means any local, State or Federal Governmental agency, body, department, instrumentality, or authority, including any Minister or member of Executive Government.

Government Approvals means approvals, permits, licences, consents, authorisations and agreements from or with Government Agencies.

Indirect Damage suffered by a person means:

- (a) any consequential loss, consequential damage or special damages however caused or suffered by the person including any:
 - (i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or
 - (ii) loss due to business interruption; or
 - (iii) punitive or exemplary damages,whether or not the consequential loss or damage or special damage was foreseeable; or
- (b) in respect of contractual damages, damages which would fall within the second limb of the rule in *Hadley v Baxendale* (1854) 9 Exch. 341; or

- (c) any liability of the person to any other person (except a Party), or any claim, demand, action or proceeding brought against the person by any other person (except a Party), and the costs and expenses connected with the claim.

Insurance means any insurance required by clause 27 and Schedule 11.

Land Access Rights means easements or other legal rights acceptable to Western Power over or in respect of land, granted (as applicable) to Western Power or the Customer and necessary to enable Western Power to carry out and install and, in the case of Western Power Works, own and operate the Western Power Works, and in each such case to enter upon the land for that purpose.

Legal Requirements means present or future obligations arising under:

- (a) legislation, regulations, by-laws, codes, ordinances; or
- (b) the orders and requirements of any Government Agency; or
- (c) the terms and conditions of applicable Government Approvals.

Maximum Liability Amount means the amount specified as the "*Maximum Liability Amount*" in Part 2 of Schedule 2.

Network means "*network infrastructure facilities*" as defined in the EIA which together are operated by Western Power; and where the context permits includes any part (including the Covered Network) or parts of those network infrastructure facilities.

Party means a party to this Agreement.

Personal Injury includes personal injury, death or disease.

Personnel means the Customer's Personnel or Western Power's Personnel, as the case may be.

Practical Completion in respect of each type of Works is defined in clause 16 (with respect to Western Power Works and the Customer Connection Works or any Separable Portion thereof). Where this Agreement contains a reference to the Practical Completion of the relevant Works, that term will be read to include the Practical Completion of each Separable Portion of the Works.

Practical Completion Certificate in respect of each type of Works is defined in clause 16 (with respect to Western Power Works and the Customer Connection Works or any Separable Portion thereof).

Prescribed Dispute means a dispute in connection with this Agreement that:

- (a) must be regulated or resolved in accordance with procedures in Regulatory Provisions; or
- (b) despite this Agreement, can be regulated or resolved in accordance with procedures in Regulatory Provisions where a Party wishes to use, and in fact chooses to use, those procedures.

Prescribed Interest Rate means three annual percentage points above the prevailing Reserve Bank of Australia business indicator lending rate.

Regulatory Provision means a provision in the following Western Australian acts, regulations or orders:

- (a) the EIA;
- (b) the ENAC 2004;
- (c) the Electricity Corporation Act 1994;
- (d) the Electricity Transmission Regulations 1996;
- (e) the Electricity Distribution Regulations 1997; and
- (f) the Electricity Referee and Dispute Resolution Regulations 1997,

subject to clause 1.2(a) for so long as and to the extent that the provision:

- (g) modifies or supplements a clause in this Agreement; or
- (h) overrides or replaces a clause in this Agreement; or
- (i) provides a new or a different right or obligation with respect to this Agreement; or
- (j) regulates or controls or sets or prescribes, prices, standards methodology or other requirements with respect to:
 - (i) the Early Undertakings or the Work; or
 - (ii) the computation of the Works Price (including Capital Contributions) or the price for the Early Undertakings; or
 - (iii) the Network (or any part thereof); or
- (k) provides a procedure that must be followed with respect to disputes; or
- (l) specifies a duty or standard of conduct or obligation that must be met or discharged.

Separable Portion has the meaning given in Schedule 7.

Site means each place to which Western Power requires access for the purpose of performing the Works.

System Operator for the Network means the person or persons who:

- (m) operate and control the system operation control centre; or
- (n) where there is no system operation control centre – is responsible for the control of the Network through monitoring, switching and dispatch; or
- (o) where the system operation control centre and another party are both responsible for the control of the Network through monitoring, switching and dispatch – perform either (m) or (n).

Technical Code means a published technical code or published set of technical rules (howsoever described) required by any one or more Regulatory Provisions, to the extent and for so long as the code or rules apply to this Agreement or the Early Undertakings or the Works.

Tender Process means the tender process outlined in Schedule 12 and if Schedule 12 is blank, there is no tender process that applies to this Agreement.

Tendered Works has the meaning given in Schedule 12 and if Schedule 12 is blank, there are no Tendered Works.

Termination Payment, subject to clause 30.2, means a payment to be made by the Customer on termination of this Agreement, determined or calculated, and payable, in accordance with the Part of Schedule 10 that relates to that termination.

Total Costs is defined in clause 30.2.

Variation means:

- (a) a variation requested by the Customer in respect of the Works or the Agreed Works Program; or
- (b) any material variation in conditions, facts or circumstances between the Assumed Conditions and the actual conditions, facts or circumstances encountered by Western Power or Western Power's Personnel in respect of the Works.

Western Power's Notice is defined in clause 16.3.

Western Power's Personnel means officers, employees, agents, consultants, representatives and independent contractors of Western Power.

Works means, as the context requires, one or more of the following types of works or services, including any portion of one or more of the following types of works or services:

- (a) Western Power connection works or services (**Western Power Connection Works**) as specified or described in Part 1 of Schedule 7;

{Note: Western Power owns, builds, and operates the Western Power Connection Works.}
- (b) Western Power shared works or services (**Western Power Shared Works**) as specified or described in Part 2 of Schedule 7;

{Note: Western Power owns, builds, and operates the Western Power Shared Works.}
- (c) Customer connection works or services (**Customer Connection Works**) as specified or described in Part 3 of Schedule 7;

{Note: Customer owns and operates the Customer Connection Works and (where Part 3 of Schedule 7 is completed) Western Power builds it. Customer Connection Works are required to complete the connection to the Network. If Western Power does not build the Customer Connection Works under this Agreement, certain of those works or services may be Customer's Deliverables under this Agreement.}
- (d) and where Part 3 of Schedule 7 is blank Customer Connection Works are not to be performed by Western Power under this Agreement and in that case, the Customer Connection Works do not form part of the Works.

Works Price means, as the context requires, the price of all of the Works or of any type or types of Works or of any portion of any of the Works:

- (a) as determined in or calculated under, and payable at the time or dates prescribed by Schedule 9 or elsewhere in this Agreement; and
- (b) as adjusted from time to time in accordance with Schedule 9 or any provision of this Agreement,

and includes a Capital Contribution (as adjusted from time to time).

Western Power Connection Works is defined in the definition Works.

Western Power Works means Western Power Connection Works and Western Power Shared Works, or either of them.

Western Power Shared Works is defined in the definition Works.

1.2 Interpretation

In this Agreement, unless the contrary intention is expressed:

- (a) a reference to a statute, rule, ordinance or other law, includes regulations, codes and other instruments under it and consolidations, amendments, re-enactments or replacements (whether in substantially the same or a different form) of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (d) the words termination of this Agreement (and variations or derivatives such as terminating this Agreement) mean terminating the obligations of the Parties under this Agreement and the words termination date means the date on which those obligations terminate;
- (e) the word costs includes costs, losses, expenses, taxes, and duties of all descriptions, and further includes a reduction in net anticipated returns, and additional costs has a like meaning;
- (f) the words include and including mean "include, without limitation" and "including, without limitation";
- (g) the word tax includes any present or future tax, levy, duty, charge, impost or withholding of any type or description;
- (h) a reference to a person includes a reference to the person's administrators, successors, substitutes (including but not limited to, persons taking by novation) and assigns;
- (i) headings and "Notes" are inserted for convenience and do not affect the interpretation of this Agreement;
- (j) unless a provision expressly specifies or expressly requires with respect to any conduct, act, matter or thing or otherwise, good faith (whether described or formulated as a duty or legal or equitable incident or otherwise) does not apply to this Agreement; and
- (k) (without limiting the application of any law) each Party holds the benefit of indemnities granted under this Agreement for themselves and on trust for the person or classes of persons described in those indemnities.

1.3 No right to transfer electricity

For the avoidance of doubt, nothing in this Agreement gives the Customer a right to transfer electricity.

1.4 No affect on Access Contract

Nothing done under this Agreement in any way affects:

- (a) the rights and obligations of the Parties under the Access Contract; or
- (b) without limiting paragraph (a), the indemnities or limits of liability provided by any Party under the Access Contract;

except as described in the Access Contract.

1.5 Types of costs and additional costs

Without limiting the possible types, "costs" and "additional costs" may include costs associated with or arising out of:

- (a) labour or additional labour;
- (b) materials or additional materials;
- (c) management or administration time or overheads;
- (d) utilisation or additional utilisation of plant or equipment;
- (e) price changes;
- (f) funding or borrowing for the purposes of the Works;
- (g) demobilising and remobilising at the Site; or
- (h) a change in Legal Requirements.

1.6 Regulatory Provisions affect this document

This document and the Parties' rights and obligations under it can be affected by a Regulatory Provision in one or more of the ways described in paragraphs (g)-(l) of the definition "Regulatory Provision".

1.7 Agreement is consistent

- (a) The Parties confirm their understanding as at the date of this Agreement that this Agreement is complete, consistent and unambiguous in its terms.
- (b) A Party may not subsequently allege that there is an inconsistency within this Agreement in circumstances where a provision in the body of the Agreement or in a schedule:
 - (i) regulates a matter or aspect not expressly dealt with elsewhere, or not expressly dealt with in such detail elsewhere, and the manner in which the provision applies can be seen as reasonable in the context of the Parties' bargain;
 - (ii) specifies that it prevails over other provisions relevant to the potential inconsistency;
 - (iii) is in apparent conflict with another provision, and it is manifestly obvious which provision prevails.

- (c) Any inconsistency within provisions relating to the scope or extent of the Work, or to the payment for the Work, is to be resolved by Western Power acting reasonably, and such inconsistency shall be deemed not to be a dispute for the purpose of this Agreement and clause 32 shall not apply to it.

2. Works

The Parties acknowledge that the Works Price and the Agreed Works Program have been determined based (among other things) on the Assumed Conditions.

3. Representatives

3.1 Each Party to appoint Representative

Each Party will appoint a person to act as its representative for the purposes of this Agreement, as specified in Part 1 of Schedule 2. A Party may from time to time change its representative specified in Part 1 of Schedule 2, and shall provide reasonable notice to the other Party of such changes.

3.2 Role of Representative

A Party's representative will be responsible for giving and receiving all notices and communications under this Agreement to or from the other Party.

3.3 Party attributed to matters within knowledge of Representative

All matters within the knowledge of a Party's representative will be deemed within the knowledge of that Party.

3.4 Orders, directions and instructions

Without limiting Western Power's statutory powers, no orders, directions and instructions will be binding on either Party unless given by or to its representative.

4. Conditions Precedent

4.1 Conditions Precedent

- (a) Western Power's obligation to carry out and complete the Works and the Customer's obligation to pay the Works Price are subject to the Conditions Precedent.
- (b) Western Power's obligation to carry out and complete the Early Undertakings and the Customer's obligation to pay for the Early Undertakings are not subject to the Conditions Precedent.

4.2 Final date for satisfying Conditions Precedent

If the Conditions Precedent have not been satisfied by the Final Date, then for so long as they remain unsatisfied, either Party may terminate this Agreement by notice to the other Party specifying the termination date.

4.3 Notification as to progress

A Party responsible for doing any act or thing in pursuance of a Condition Precedent must:

- (a) keep the other Party informed of its progress in satisfying the Condition Precedent;
- (b) use reasonable endeavours to procure satisfaction of the Condition Precedent as soon as reasonably practicable;
- (c) promptly notify the other Party as soon as the Condition Precedent has been satisfied; and
- (d) promptly notify the other Party if it becomes aware that the Condition Precedent cannot, or is unlikely to be, satisfied by the Final Date.

4.4 Waiver of Conditions Precedent

The Party for whose benefit a Condition Precedent is included may agree in writing to waive that Condition Precedent.

5. Early Undertakings

5.1 Performance of Early Undertakings

- (a) Western Power will carry out and complete the Early Undertakings in accordance with Schedule 5.
- (b) All of the terms of this Agreement shall come into force in respect of the performance of the Early Undertakings on the Commencement Date.
- (c) Western Power must:
 - (i) carry out the Early Undertakings with due expedition and in accordance with all requirements of this Agreement;
 - (ii) immediately cease carrying out the Early Undertakings, if so directed by notice in writing by the Customer.

5.2 Classification of Early Undertakings as potential Works types

Among the other matters to be specified in Schedule 5 will be a break down of the Early Undertakings into types of works and services consistent with applicable Works types, as if the Early Undertakings were to be performed as Works.

5.3 Payment for Early Undertakings

The Customer will pay Western Power for the Early Undertakings on the basis determined in or computed in accordance with Schedule 5 and on the payment dates specified or provided for in that schedule or as provided elsewhere in this Agreement.

5.4 Conversion of Early Undertakings to Works

Where all of the Conditions Precedent are satisfied:

- (a) all completed Early Undertakings shall be deemed Works; and
- (b) all payments made or due in respect of the Early Undertakings shall be deemed payments made or due on account of the Works Price;

- (c) however, unless the Parties agree, there shall be no adjustment to the Agreed Works Program with respect to dates for the performance or completion of Works by reason of the Early Undertakings having been completed or nearly completed by the time that the Conditions Precedent are satisfied.

5.5 Conditions of Early Undertakings

The Parties will comply with other undertakings or guarantees and indemnities with respect to the Early Undertakings as set out in Schedule 5.

6. Government Approvals

6.1 Applications for Government Approvals

As soon as practicable and consistent with the Agreed Works Program:

- (a) Western Power will apply for all Government Approvals necessary to perform the Works that are not Customer's Deliverables or completed Early Undertakings; and
- (b) the Customer will apply for all Government Approvals that are Customer's Deliverables.

6.2 Use of reasonable endeavours to obtain Government Approvals

The applicable Party will use reasonable endeavours to obtain the necessary Government Approvals as soon as reasonably practicable.

6.3 Notification as to progress

Each Party will use reasonable endeavours to:

- (a) keep the other Party informed of its progress in obtaining the necessary Government Approvals;
- (b) promptly notify the other Party as soon as the necessary Government Approvals have been obtained;
- (c) promptly notify the other Party of any delay in obtaining a necessary Government Approval, or if it becomes apparent that a necessary Government Approval will not be given, or will only be given on terms which are different to the Assumed Conditions.

7. Land Access Rights and other interests in Land

7.1 Applications for Land Access Rights

As soon as practicable and consistent with the Agreed Works Program:

- (a) Western Power will apply for all Land Access Rights that are not completed Early Undertakings or Customer's Deliverables necessary for Western Power to perform the Works; and
- (b) the Customer will apply for all Land Access Rights that are Customer's Deliverables.

7.2 Use of reasonable endeavours to obtain Land Access Rights

The applicable Party will use reasonable endeavours to obtain the necessary Land Access Rights as soon as reasonably practicable.

7.3 Notification as to progress

Each Party will use reasonable endeavours to:

- (a) keep the other Party informed of its progress in obtaining the necessary Land Access Rights;
- (b) promptly notify the other Party as soon as the necessary Land Access Rights have been obtained;
- (c) promptly notify the other Party of any delay in obtaining the necessary Land Access Rights, or if it becomes apparent that the necessary Land Access Rights will not be given, or will only be given on terms which are different to the Assumed Conditions.

7.4 Licence to enter Customer's Premises

Without limiting the Customer's other obligations in this Agreement:

- (a) the Customer grants, or will procure the grant of, a licence to Western Power and Western Power's Personnel to enter and depart from the Customer's Premises and the Customer's Facility for the purpose of carrying out the Works and for the performance of all acts, inspections and functions related to the Works and for such purposes to bring upon the Customer's Premises all necessary vehicles and equipment provided that Western Power and Western Power's Personnel must:
 - (i) give the Customer at least 5 Business Days' prior notice of requiring such access; and
 - (ii) at all times while on the Customer's Premises or the Customer's Facility comply with the Customer's reasonable requirements and directions in relation to health, safety, compliance with Legal Requirements and minimising interference with other operations being conducted at the Customer's Premises or Customer's Facilities;
- (b) the Customer will facilitate such access by, and interests or rights for, Western Power and Western Power's Personnel; and
- (c) (without limiting clause 34.5) the Customer agrees to execute such documents and do all such things or acts reasonably required by Western Power for the purposes of the Customer's undertakings in this clause.

7.5 Co-operation of the Parties

- (a) The Customer will liaise with Western Power to:
 - (i) provide advice and assistance; and
 - (ii) coordinate its own activities with those of Western Power,to ensure the safety of all personnel while on the Site.
- (b) Each Party must fully and actively co-operate with the other Party (acting reasonably) in order to ensure the safety of all personnel at the Site.
- (c) As soon as reasonably practicable (having regard to the nature of the relevant utility, its location and the likely impact), Western Power must inform the Customer if, during the

execution of the Works, any existing utility at the Customer's Premises, of whatever nature, is or will be interfered with or interrupted by the execution of the Works.

8. Works and Customer's Deliverables

8.1 Western Power to carry out Works

Western Power will carry out and complete the Works in accordance with this Agreement.

8.2 Description of the Works

(a) The Works comprise generally:

- (i) the design, supply, construction, management, supervising, procurement, installation and commissioning and other activities and services; and
- (ii) the labour, materials, plant and equipment,

described or specified in any one or more Parts in Schedule 7.

(b) For the avoidance of doubt, the Works do not include the Customer's Deliverables.

8.3 Performance of Customer's Deliverables

The Customer will perform or procure the Customer's Deliverables in accordance with this Agreement and the Agreed Works Program.

8.4 Tender Process

The Parties must comply with the tender procedures set out in Schedule 12 in the performance of the Tendered Works (if any).

9. Agreed Works Program

9.1 Agreed Works Program

(a) The Agreed Works Program sets out:

- (i) the key dates and activities for performance of the Works, including the Due Date for Practical Completion of the Works or of each Separable Portion of the Works; and
- (ii) the dates for performance of the Customer's Deliverables.

(b) The Customer and Western Power may at any time agree to vary the Agreed Works Program.

9.2 Western Power to achieve Practical Completion by the Due Date for Practical Completion

Subject to Excusable Delays, Western Power will achieve Practical Completion of the Works or of each Separable Portion of the Works by no later than the applicable Due Date for Practical Completion.

9.3 Western Power to keep Customer informed of expected dates

Western Power will keep the Customer informed, by means of monthly reports (in the form or substantially the form of Schedule 12), of the progress of the Works to the Agreed Works Program, and of the anticipated date by which Western Power will achieve Practical Completion of the Works or of each Separable Portion of the Works.

9.4 Progress meetings

- (a) Western Power and the Customer must attend progress meetings after the Commencement Date:
 - (i) on a regular basis as agreed by the Parties; and
 - (ii) at such other times as Western Power or the Customer reasonably requires; and
 - (iii) at a place and time convenient to both Western Power and the Customer.
- (b) The Party requiring any such meeting referred to in clause 9.4(a) (or otherwise Western Power) must:
 - (i) convene and chair all such meetings; and
 - (ii) give the other Party minutes of each meeting within 5 Business Days of the meeting.
- (c) The purpose of the progress meetings referred to in clause 9.4(a) includes the review of the status and progress of the Works and to discuss in good faith the Agreed Works Program, any updates to it and any proposed Variations under clause 11.

10. Extension of time resulting from Excusable Delay

10.1 Excusable Delay

Each of the following events is an Excusable Delay, to the extent that it affects the critical path of the Agreed Works Program such that it results or will result in Western Power not meeting the Due Date for Practical Completion for all or any part of the Works:

- (a) a Variation; and
- (b) a direction by the Customer to stop, suspend, or modify the method of performance of the Works under this Agreement; and
- (c) a direction by the Customer to stop or suspend the Early Undertakings under clause 5.1(c); and
- (d) no person having entered into an Access Contract in respect of the ; and
- (e) a delay in obtaining the necessary Government Approvals or Land Access Rights; and
- (f) a Force Majeure Event affecting Western Power or the Customer; and
- (g) a default or delay by the Customer or any of the Customer's Personnel; and
- (h) a direction from the System Operator; and
- (i) any other matter referred to in this Agreement that provides for an extension of time,

but excluding any event or delay to the extent caused or contributed to by any negligent act or omission of Western Power (or any Western Power's Personnel) or Western Power's breach of an obligation under this Agreement.

10.2 Notification

- (a) If a Party becomes aware of any event or circumstance which is or is likely to give rise to an Excusable Delay, that Party must notify the other Party.
- (b) Subject to clauses 10.2(c) and 10.2(d), if Western Power wishes to claim an extension of time for performance of the Works under clause 10.3(a) by reason of an Excusable Delay it shall as soon as reasonably practicable, but in any event no later than 10 Business Days from the date of becoming aware of the Excusable Delay, lodge with the Customer a written claim for extension of time setting out full particulars of:
 - (i) the nature of the Excusable Delay; and
 - (ii) the basis of Western Power's opinion that such matter will delay Practical Completion of the Works; and
 - (iii) the extension of time claimed by Western Power on account of such matter; and
 - (iv) a revised Agreed Works Program; and
 - (v) any claim for additional costs under clause 14.1.
- (c) If:
 - (i) an Excusable Delay has a continuing effect; or
 - (ii) Western Power is unable to determine whether or to what extent the Excusable Delay will delay Practical Completion of the Works,such that it is not practicable for Western Power to notify the Customer in accordance with clause 10.2(b), then Western Power must as soon as reasonably practicable, but in any event no later than 10 Business Days from the date of becoming aware of the Excusable Delay, submit to the Customer a notice setting out:
 - (iii) the reasons why it is not practicable for Western Power to notify the Customer under clause 10.2(b); and
 - (iv) the interim written particulars of the Excusable Delay, including details of the likely consequences to any Due Date for Practical Completion and likely claim for additional costs.
- (d) When Western Power determines the actual delay to Practical Completion of the Works, Western Power must as soon as reasonably practicable but in any event within 20 Business Days of that determination, lodge with the Customer a written claim for extension of time complying with in all respects with clause 10.2(b).

10.3 Extension of time for Excusable Delay

If an Excusable Delay occurs:

- (a) Subject to the Customer receiving a claim under and within the time period specified in clause 10.2(b) and any notices required under and within the time periods specified in clauses 10.2(c) and 10.2(d), the Customer must grant Western Power a reasonable extension of the Due Date for Practical Completion of the Works or the relevant Separable Portion of the Works.
- (b) What is a reasonable extension of time will be determined having regard to:
 - (i) the effect of the Excusable Delay on the ability of Western Power to achieve Practical Completion of the Works; and
 - (ii) the extent to which Western Power has taken, and is taking, all reasonable steps to minimise the effects of the Excusable Delay on the progress of the Works, and the extent to which the Customer has facilitated, and is facilitating, the taking of such steps; and
 - (iii) other relevant circumstances.
- (c) Western Power must use reasonable endeavours to minimise the extent to which the Excusable Delay affects the progress of the Works, and the Customer will facilitate those endeavours.

10.4 Disputes

Any dispute as to whether an Excusable Delay has occurred, or as to what is a reasonable extension of time for an Excusable Delay, will be referred to an Expert for determination under clause 32.3.

11. Variations

11.1 Notification of Variation

If a Party becomes aware of any event or circumstance which is or is likely to become a Variation that Party must notify the other Party (and where the Variation also arises in connection with an Excusable Delay, such notification may be given in the notice required by clause 10.2.)

11.2 Notification of Variation

At any time during the progress of the Works, the Customer may propose a Variation by notice in writing to Western Power.

11.3 Variations to be agreed before Western Power will proceed

Western Power will not be required to accept or undertake a Variation unless and until:

- (a) the scope of the Variation and the effect of the Variation on any Due Date for Practical Completion (if any) has been agreed in writing between the Parties; and
- (b) the price of the Variation has been agreed in writing between the Parties; and
- (c) all approvals required for the Variation have been obtained.

11.4 Disputes

Any dispute with respect to a Variation (other than a dispute as to what is a reasonable extension of time for the Variation that is already being dealt with as a dispute under clause 10.4) will be referred to an Expert for determination under clause 32.3.

12. Suspension

- (a) The Customer may, by written notice, direct Western Power to suspend the performance of all or any of its obligations under this Agreement.
- (b) A written notice provided under clause 12(a) must specify:
 - (i) which of Western Power's obligations are to be suspended; and
 - (ii) the effective date of the suspension; and
 - (iii) the reasons for the suspension.
- (c) Subject to clauses 14 and 30, Western Power must, upon receipt of the notice under clause 12(a), suspend the performance of the obligations specified in the notice until directed by the Customer in writing to resume performing those obligations.

13. Force Majeure

13.1 Notification

If there is a Force Majeure Event, the affected Party will as soon as reasonably practicable notify the other Party of:

- (a) the occurrence of the Force Majeure Event; and
- (b) the details of the circumstances giving rise to the Force Majeure Event; and
- (c) the anticipated effect of the Force Majeure Event on the affected Party's ability to perform its obligations; and
- (d) the steps that the affected Party intends to take to overcome or reduce the Force Majeure Event and its effects.

13.2 Mitigation

The affected Party will take all reasonable steps to overcome or reduce the Force Majeure Event and its effects provided that neither Party is required by reason of this clause to settle or resolve any strike, lockout or labour dispute on terms that it considers to be unreasonable.

14. Additional Costs

14.1 Additional costs resulting from Excusable Delay

If an Excusable Delay occurs and Western Power is entitled to an extension of time in respect of that Excusable Delay in accordance with clause 10.3 or if Western Power agrees to accelerate the Works in order to meet the Due Date for Practical Completion notwithstanding that Western Power is entitled to an extension of time, the Works Price must be adjusted to include any additional costs reasonably incurred by Western Power as a direct result of the Excusable Delay (including any reasonable costs of demobilising from, or mobilising to, the Site).

14.2 Additional costs resulting from change in Legal Requirements

- (a) If after the date of this Agreement:

- (i) there is a change in Legal Requirements (including without limitation the introduction of any new tax or the increase in the rate of any tax);
- (ii) that change:
 - (A) affects the manner in which Western Power performs the Works; or
 - (B) increases the cost of the Works; or
 - (C) (without limiting the generality of paragraph (B)) reduces the net return to Western Power because of how the Works Price is expressed (for example, as a GST inclusive price),

and

- (iii) Western Power notifies the Customer of that change as soon as reasonably practicable, but in any event no later than 20 Business Days from the date the change occurs,

then the Works Price must be adjusted to the extent of the additional costs or compensate for the reduced net return incurred or received by Western Power (as the case may be) as a result of the change in Legal Requirements.

- (b) Nothing in paragraph (a) limits clause 23.

14.3 Verification of additional costs

- (a) Where circumstances occur which, under this Agreement, entitle Western Power to claim compensation for additional costs from the Customer, then:
 - (i) Western Power must use reasonable endeavours to minimise such additional costs; and
 - (ii) Western Power must provide to the Customer upon request a reasonable level of supporting documents for any claim in respect of additional costs.
- (b) For the avoidance of doubt, this clause does not apply to the price agreed by the Parties for a Variation under clause 11.3(b).

14.4 Disputes

Any dispute as to additional costs will be referred to an Expert for determination under clause 32.3.

15. Standard of Works

15.1 Fitness for Purpose

Western Power warrants that the Works will be fit for the purposes expressly specified in this Agreement.

15.2 Design Documentation

- (a) Prior to Western Power commencing the Customer Connection Works, Western Power must:
 - (i) give two copies of the Design Documentation to the Customer; and

- (ii) allow the Customer 5 Business Days to review the Design Documentation and to provide comments on the Design Documentation to Western Power; and
- (iii) if the Customer gives Western Power a written notice, within the time allowed for its review, stating that the Design Documentation does not comply with the material requirements of this Agreement:
 - (A) amend the Design Documentation so that it complies with this Agreement; and
 - (B) promptly submit the amended Design Documentation to the Customer for its review; and
 - (C) allow 5 Business Days for the Customer to review and comment on the amended Design Documentation.
- (b) The Customer must not require Western Power to resubmit the Design Documentation under clause 15.2(a) where the Customer's comments only relate to minor errors, omissions or defects in the Design Documentation.
- (c) Nothing in clause 15.2(a) affects:
 - (i) Western's Power's responsibility for designing the Works in accordance with this Agreement; and
 - (ii) Western Power's warranty under clause 15.1.
- (d) The Agreed Works Program must allow sufficient time for approval of the Design Documentation contemplated by this clause 15.2.

15.3 Execution of Works

Western Power will execute the Works:

- (a) using materials, workmanship and equipment suitable for its intended purpose and complying with the Technical Code; and
- (b) in accordance with Good Electricity Industry Practice; and
- (c) with due diligence and efficiency; and
- (d) in compliance with all applicable Legal Requirements.

16. Practical Completion

16.1 Practical Completion of Western Power Works

Practical Completion of the Western Power Connection Works, the Western Power Shared Works or the Separable Portion thereof is deemed to have occurred (**Practical Completion**) on the date that the performance of the relevant Western Power Works is complete in accordance with this Agreement except for minor omissions and minor defects which will not prevent the use of the relevant Western Power Works (**Date of Practical Completion**).

16.2 Practical Completion Certificate

On the Date of Practical Completion of the relevant Western Power Works, Western Power will prepare and sign a certificate (**Practical Completion Certificate**) stating that Practical Completion of the relevant Western Power Works has occurred and stating the Date of Practical Completion for the relevant Western Power Works.

16.3 Practical Completion of Customer Connection Works

Western Power shall notify (**Western Power's Notice**) the Customer when Western Power is satisfied that the Customer Connection Works or the Separable Portion thereof is complete in accordance with this Agreement except for minor omissions and minor defects which will not prevent the use of the relevant Customer Connection Works (**Practical Completion**).

16.4 Customer's right to inspect

The Customer shall inspect the relevant Customer Connection Works no later than the second Business Day following the Business Day on which the Customer receives Western Power's Notice. If the Customer is satisfied (acting reasonably) that Practical Completion has been achieved in respect of the relevant Customer Connection Works, the Customer will confirm this by a certificate dated the inspection date (**Practical Completion Certificate**) signed by Western Power and the Customer stating (among other things) that Practical Completion of the relevant Customer Connection Works occurred on the date the relevant Customer Connection Works were inspected by the Customer (**Date of Practical Completion**).

16.5 Outstanding items

Each Practical Completion Certificate will include a punch list of any outstanding items requiring rectification. Western Power will rectify the punch list items within a reasonable period following the issue of each Practical Completion Certificate.

16.6 Defects in Customer Connection Works

- (a) Western Power's obligations in this clause 16.6 apply only to Latent Defects notified by the Customer to Western Power under paragraph (b) in the 12 month period commencing on the Date of Practical Completion of the relevant Customer Connection Works.
- (b) The Customer must immediately notify Western Power of any Latent Defect that the Customer discovers.
- (c) Where paragraph (b) applies, Western Power:
 - (i) must at its own cost repair, modify or replace the deficient Customer Connection Works; and
 - (ii) must undertake the corrective work described in paragraph (i) at a time convenient to the Customer and Western Power; and
 - (iii) is deemed to vest title to any replacement materials in the Customer on completion of the corrective work.
- (d) For the avoidance of doubt:
 - (i) Western Power's liability under this clause 16.6 is subject to clause 24.2; and

(ii) nothing in this clause 16.6 limits the Customer's liability under clause 21.

(e) For the purpose of this clause 16.6:

Latent Defect means a deficiency in materials, workmanship or design not discovered by the Customer on inspection of the Customer Connection Works as described in clause 16.4 and that causes a failure of or defect in the Customer Connection Works not due to normal wear and tear.

17. Warranties

17.1 Western Power's Warranties

Western Power represents and warrants to the Customer that each of the statements set out in clauses 17.1(a) and 17.1(b) (each as a separate representation and warranty) is true, complete and accurate as at the date of execution of this Agreement.

- (a) The execution, delivery and performance by Western Power of this Agreement:
- (i) has been duly authorised by all necessary action on the part of Western Power;
 - (ii) does not contravene or constitute a default under:
 - (A) any provision of any applicable law; or
 - (B) the constitution of Western Power; or
 - (C) any agreement, judgment, injunction, order, decree or other instrument binding upon Western Power.
- (b) This Agreement constitutes a valid and binding obligation of Western Power enforceable against it in accordance with its terms.

17.2 Customer's Warranty as to Customer's Facility

The Customer warrants that the Customer's Facility:

- (a) complies with the Technical Code or will be built in accordance with the Technical Code, unless the Access Contract provides otherwise; and
- (b) has been or will be built in accordance with Good Electricity Industry Practice; and
- (c) complies with or will be built to comply with all applicable Legal Requirements.

17.3 Inspection

No inspection by Western Power of the Customer's Facility:

- (a) releases the Customer from any obligation or warranty under this Agreement; or
- (b) without limiting paragraph (a), amounts to an approval or certification or other acceptance of compliance to a standard or law or other requirement.

17.4 Customer's Other Warranties

The Customer represents and warrants to Western Power that each of the statements set out in clauses 17.4(a) and 17.4(b) (each as a separate representation and warranty) is true, complete and accurate as at the date of execution of this Agreement.

- (a) The execution, delivery and performance by the Customer of this Agreement:
 - (i) has been duly authorised by all necessary action on the part of the Customer;
 - (ii) does not contravene or constitute a default under:
 - (A) any provision of any applicable law; or
 - (B) the constitution of the Customer; or
 - (C) any agreement, judgment, injunction, order, decree or other instrument binding upon the Customer.
- (b) This Agreement constitutes a valid and binding obligation of the Customer enforceable against it in accordance with its terms.

18. Intellectual Property

18.1 Retention of property rights

Any intellectual property of Western Power evidenced by or incorporated in the Customer Connection Works or any documentation (including the Design Documentation and "as built" drawings) provided by Western Power relating to Customer Connection Works shall remain the property of Western Power, but shall be subject to clause 18.2.

18.2 Grant of Licence

Western Power, insofar as it is legally entitled to do so and conditional on payment of the Works Price in full, agrees to grant to the Customer and the Customer's Personnel a royalty-free irrevocable licence, for the purposes specified below, to use the intellectual property referred to in clause 18.1. The specified purposes are:

- (a) examining the Customer Connection Works and monitoring the construction of the Customer Connection Works; and
- (b) operating, maintaining and repairing the Customer Connection Works, in each case whether the applicable work or service is done by the Customer or through any contractor; and
- (c) modifying and upgrading (but not replicating) the Customer Connection Works, in each case whether the modification and upgrading work is done by the Customer or through any contractor; and
- (d) evaluating or reporting on the operations of the Customer Connection Works; and
- (e) any other purpose associated with the use of the Customer Connection Works from time to time approved of in writing by Western Power (which approval shall not be unreasonably withheld).

18.3 Grant of sublicence

The Customer may assign or sublicense the licence granted under clause 18.2 to any person who may hereafter hold any interest in the Customer Connection Works, subject to the Customer procuring from the assignee or sublicensee an acknowledgment in a form satisfactory to Western Power (acting reasonably) to the terms of the licence and its obligation to adhere to those terms.

19. Ownership and risk

19.1 Ownership and risk of Western Power Works

The Western Power Connection Works and the Western Power Shared Works will at all times be held at the risk of and remain the property of Western Power. The Customer will not acquire any proprietary or other interest in any Western Power Works by reason of this Agreement.

19.2 Ownership and risk of Customer Connection Works

The Customer Connection Works will remain in the possession of and at the risk of Western Power for all purposes of construction up until the Date of Practical Completion of those Works. Title to the Customer Connection Works will pass to the Customer on the Date of Practical Completion for those Works.

20. Liquidated Damages

20.1 Liquidated Damages

Subject to clause 20.5, liquidated damages will be payable in respect of the Works if Western Power fails to achieve Practical Completion on or prior to the Due Date for Practical Completion of the Works in accordance with Schedule 13.

20.2 Cap on liquidated damages for Western Power Works

- (a) Notwithstanding any other provision of this Agreement to the contrary, the maximum aggregate liquidated damages payable in respect of Western Power's failure to achieve Practical Completion on or prior to the relevant Due Date for Practical Completion of the Works for all or any part (including any Separable Portion) of the Western Power Works is the Western Power Works LD Cap.
- (b) The **Western Power Works LD Cap** is the lesser of:
 - (i) \$500,000; and
 - (ii) 5% of that portion of the Works Price, less the GST component of that portion of the Works Price, that is attributable to the Western Power Works as at the Due Date for Practical Completion; and
 - (iii) the actual amount of the damage suffered by the Customer as a result of the delay with respect to Practical Completion of the relevant Works.

20.3 Not a penalty

Where liquidated damages are payable by Western Power under this Agreement, they:

- (a) represent a genuine estimate of the damage suffered by the Customer as a result of the delay with respect to Practical Completion of the applicable Works; and
- (b) are not a penalty.

20.4 Sole liability of Western Power

Liquidated damages payable by Western Power to the Customer under this Agreement is the sole and exclusive liability of Western Power under this Agreement for any failure to achieve Practical Completion of any Works by the Due Date for Practical Completion of such Works.

20.5 Customer to supply information of actual loss

The Customer will provide Western Power a reasonable level of supporting documents in respect of the actual amount of damage incurred by the Customer as a result of the delay with respect to Practical Completion of the applicable Works for the purposes of clause 20.1. Liquidated Damages will only be paid where, and to the extent, that the Customer suffers, and produces evidence of, actual loss.

21. Works Price

21.1 Payment of the Works Price

Upon receipt of a tax invoice from Western Power, the Customer will pay Western Power the Works Price and any other amount payable under this Agreement on the basis determined in or computed in accordance with Schedule 9 and at the times specified in that schedule or as provided elsewhere in this Agreement.

21.2 Variations to Works Price

The Works Price will be adjusted to take account of such additions or variations to the Works Price as are permitted under the terms of this Agreement.

21.3 Payment not acceptance

A payment for or acceptance, or use or occupancy of any part of the Works by the Customer prior to Practical Completion will not be deemed a representation that the Customer has inspected or accepted the Works.

22. Invoicing and payment

22.1 Invoices

As and when Western Power becomes entitled to payment for the Works or the Early Undertakings in accordance with Schedule 5 or Schedule 9 or Schedule 10 or any provision of this Agreement, Western Power may submit a tax invoice (as defined for the purposes of the GST Law) to the Customer for the amount payable.

22.2 Payment of invoice

The Customer will pay each tax invoice on the date or within the period specified in Schedule 2 and in the manner specified in the tax invoice.

22.3 Interest on late payments

If any amount payable under this Agreement is not paid by the due date, such amount will accrue interest, calculated daily at the Prescribed Interest Rate between the due date for payment and the date on which payment is actually made. Accrued interest is payable on demand.

23. GST

23.1 GST Definitions

In this clause 23:

- (a) **GST** means the same as in the GST Law.
- (b) **GST Law** means the same as "GST Law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (c) **Recipient**, in relation to a supply, means the entity to which the supply was made.
- (d) **Supplier**, in relation to a supply, means the entity making the supply.
- (e) Words defined in the GST Law have the same meaning in this Agreement unless specifically defined in this Agreement.

23.2 Acknowledgments

The Parties acknowledge that:

- (a) this Agreement may represent or record different supplies by Western Power, namely:
 - (i) the supply of works and services to the Customer (including the Customer Connection Works); and/or
 - (ii) the supply of Western Power's agreement to undertake works and services with respect to the Network to enable the Customer to connect the Customer's Facility to the Network and to have access to the Network (including the Western Power Connection Works and Western Power Shared Works); and
- (b) Early Undertakings may constitute supplies in the nature of either or both of those supplies described in paragraph (a), as determined in accordance with clause 5.2 and Schedule 5.

23.3 Preparation of invoices

All of Western Power's tax invoices and adjustment notes with respect to the 2 types of supplies described in paragraph 23.2 are to be prepared:

- (a) to reflect the different taxable supplies and allocations of GST (as reasonably determined by Western Power) in respect of those taxable supplies; and
- (b) the other particulars required by the GST Law.

23.4 How amounts are stated

All charges and amounts payable by one Party to another under this Agreement are to be stated as being:

- (a) "inclusive of GST"; or
- (b) "before GST" and with the actual amount of GST payable in respect of the taxable supply also recorded.

23.5 General GST provisions

- (a) Subject to clauses 23.2, 23.3 and 23.4, for each taxable supply under or in connection with this Agreement:
 - (i) The Supplier will be entitled to charge the Recipient for any GST payable by the Supplier in respect of the taxable supply.
 - (ii) The Recipient must pay to the Supplier the amount of the GST:
 - (A) in the case of the supply described in clause 23.2(a)(ii), in full and at the same time as the first payment in respect of that supply becomes payable under this Agreement by the Customer in respect of (1) Early Undertakings in the nature of Western Power Works and in respect of (2) the Western Power Works; and
 - (B) in all other cases, at the same time as the relevant payment applicable to the supply becomes payable under this Agreement (and, if applicable, on a progressive or periodic basis of supply).
 - (iii) The Supplier must provide a tax invoice (or an adjustment note) to the Recipient in respect of the taxable supply, and will include in the tax invoice (or adjustment note) the particulars required by the GST Law.
 - (iv) If for any reason the actual GST liability of the Supplier differs from the GST paid by the Recipient, the Supplier will promptly create an appropriate adjustment note, and the Recipient will pay to the Supplier any amount underpaid, and the Supplier will refund to the Recipient any amount overpaid.

23.6 Change in GST rate

Without limiting any other provision of this Agreement, if the rate of GST changes and a liability on a Supplier to attribute a particular amount of GST in accordance with the GST Law has yet to occur:

- (a) the Recipient's liability to pay that amount of GST to the Supplier shall be increased or decreased by an amount corresponding to the change; and
- (b) all future instalments or payments of the Works Price or the price for the Early Undertakings (or any outstanding balance thereof) and other GST inclusive costs or amounts or actual amounts of GST stated to be applicable to such costs or amounts, shall be correspondingly adjusted to reflect that change; and
- (c) the Recipient shall be liable to pay the Supplier the payments, costs or amounts adjusted to reflect the change in GST.

24. Exclusion of Indirect Damage and limitation of liability

24.1 Exclusion of Indirect Damage

- (a) Subject to clause 24.1(b) and any other clause or schedule of or to this Agreement (including clause 20 and Schedule 10) which permits the recovery of a class of Indirect Damage, no Party will in any circumstances be liable to the other Party for Indirect Damage, however arising.
- (b) Except as specified in clauses 24.2 or 25, the Customer must indemnify Western Power and Western Power's Personnel:
 - (i) against all Claims for Indirect Damage or Direct Damage suffered or incurred by any Customer Person howsoever arising under, out of or in connection with:
 - (A) this Agreement; or
 - (B) any act, omission, matter or thing done or omitted to be done by any person under or because of or in connection with this Agreement; or
 - (C) Western Power's presence at the Site,and
 - (ii) without limiting the generality of sub-paragraph (b)(i) above, against all liability (including liability in respect of Indirect Damage and Direct Damage) which Western Power or Western Power's Personnel may incur to any third party by reason of:
 - (A) negligence of the Customer; or
 - (B) default of the Customer under this Agreement; or
 - (C) Customer's breach of any duty owed by the Customer (whether at common law, equity, under statute or otherwise).
- (c) For the purpose of a Claim referred to in paragraph 24.1(b), **Customer Person** means a person:
 - (i) to or with whom the Customer has:
 - (A) an association, including through ownership, whether direct or indirect, or contract; or
 - (B) a relationship; or
 - (C) a duty, including a duty of care (arising in tort or otherwise) or arising out of an obligation of trust; or
 - (D) any direct or indirect obligation,and
 - (ii) whose Claim depends at least in part on or would not have arisen but for:
 - (A) that association, relationship, duty or obligation; or

- (B) anything done or omitted in connection with that association, relationship, duty or obligation.

24.2 Liability for third party property damage

- (a) Subject to clauses 24.2(b) and 24.2(c), Western Power will be liable for, and must indemnify the Customer against, any liability that the Customer may incur to any third party (including any Customer Person), for any physical damage to property to the extent that such liability arises from a breach of this Agreement by Western Power or the negligence of Western Power in performing the Works under this Agreement.
- (b) Western Power is not liable for and will not indemnify the Customer under clause 24.2(a) for any liability falling within paragraph (a) or (b) of the definition of Indirect Damage.
- (c) For the avoidance of doubt, Western Power's indemnity under clause 24.2(a) is subject to the liability cap set out in clause 24.3.

24.3 Limitation of Liability

The aggregate liability of a Party to the other Party by reason of any act or omission in connection with this Agreement by it or any of its Personnel or anyone else for whose acts or omissions it is vicariously or otherwise liable, whether in contract, tort or otherwise, shall not in any event exceed the Maximum Liability Amount, except:

- (a) if and to the extent that a Party is fraudulent in respect of its obligations under this Agreement; and
- (b) that the indemnities and liabilities described in clauses 25 and 24.1(b) are not counted for the purposes of the Maximum Liability Amount.

24.4 Certain exceptions

For the avoidance of doubt:

- (a) liquidated damages and other liabilities count for the purposes of the Maximum Liability Amount;
- (b) a Party is not entitled to be indemnified in respect of its fraudulent acts;
- (c) a Party is not entitled to be indemnified where and to the extent a Regulatory Provision specifies otherwise and does not allow for the contracting out of that Regulatory Provision; and
- (d) nothing in this Agreement limits any indemnity or defence available to a Party under, or implied in this Agreement by, a Regulatory Provision.

24.5 Insurances are primary

The Insurances effected by either Party under clause 27 shall be primary to any contractual indemnity under this Agreement where the indemnity and Insurance both apply to and cover the relevant Claim.

24.6 Recoveries under Insurance

To the extent that a Party recovers against any insurer under an Insurance policy effected by either Party for a Claim in connection with this Agreement in respect of which the other Party is, or may be liable, for any reason (including negligence), the amount as recovered shall, for the purposes of clause 24.2, be deemed to have been paid by the liable Party.

25. Personal injury

25.1 Personal injury to Western Power's Personnel or Customer's Personnel

- (a) Western Power will be solely responsible for and must indemnify the Customer in respect of any Personal Injury Claim made by any of Western Power's Personnel, arising out of or in connection with performance of the Early Undertakings or the Works.
- (b) The Customer will be solely responsible for and must indemnify Western Power in respect of any Personal Injury Claim made by any of the Customer's Personnel, arising out of or in connection with performance of the Early Undertakings or the Works.

25.2 Personal Injury to others

For any Personal Injury Claim which is not covered by clause 25.1, the liability for any such Claim will be determined by law.

26. Provisions applicable to indemnities

Subject to applicable law (including the Regulatory Provisions) the following provisions will apply to each indemnity provided for, under or implied into this Agreement:

- (a) Each indemnity is separate and distinct and will survive the expiry or any termination (for cause or otherwise) of this Agreement.
- (b) No indemnity is waived by any provision of this Agreement with regard to Insurance or by approval of any Insurance policy.
- (c) Each indemnity will be deemed to extend to and be for the benefit of the Personnel of the indemnified Party, subject to the express terms of the indemnity, and where it does so extend, clause 1.2(k) applies.
- (d) If any Claim is made or instituted against a Party in respect of which that Party ("**Indemnified Party**") may seek to claim indemnity under this Contract against the other Party ("**Indemnifying Party**"), the following procedure applies:
 - (i) the Indemnified Party must give notice of the Claim to the Indemnifying Party as soon as reasonably practicable; and
 - (ii) 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 applies in respect of any 'apology' (as defined in Section 5AF of that Act) given by the Indemnified Party); and

- (iii) 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
- (iv) 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 26(d)(iii).
- (e) Each Party claiming the benefit of an indemnity must take (and must use its reasonable endeavours to procure that its indemnified Personnel take) all reasonable steps available to it (or them, as applicable) to minimise their loss or damage suffered.

27. Insurances

27.1 Western Power's Insurance obligation

Western Power must obtain and maintain for the period commencing from the Commencement Date and ending 12 months after Practical Completion of all of the Works insurance covering those matters, and on the terms and basis, specified in Schedule 11 for the amounts specified in that schedule.

27.2 Customer's Insurance obligation

The Customer must obtain and maintain for the period commencing from the Commencement Date and ending 12 months after Practical Completion of all of the Works insurance covering those matters, and on the terms and basis, specified in Schedule 11 for the amounts specified in that schedule.

27.3 Names of insured

Where applicable, both Parties must use all reasonable endeavours to procure principals' indemnity extension to the policies mentioned in this clause.

27.4 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 as an insured party as if there was a separate policy of insurance for each of them but not so as to increase the limit of liability.

27.5 Notice of cancellation

Both Parties must notify the other Party immediately on being advised by its insurer of cancellation or non-renewal of any of insurance policies in Schedule 11.

27.6 Evidence of Insurance

Prior to the Commencement Date, both Parties must produce evidence of each policy of insurance (which may be in the form of a certificate of currency) in the terms required by Schedule 11.

27.7 Further obligation

Neither Party must 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.

28. Default

28.1 Default Notice

If a Default occurs, the non-Defaulting Party may give the Defaulting Party a notice (**Default Notice**) describing in reasonable detail the Default that has occurred and requiring the Default to be remedied.

28.2 Termination or suspension for Financial Default

- (a) If a Financial Default occurs, and if the Defaulting Party fails to remedy the Default within 14 days after receipt of a Default Notice, then the non-Defaulting Party may give a second notice to the Defaulting Party of its intention to terminate this Agreement or suspend its obligations under this Agreement if the Default is not remedied.
- (b) If the Defaulting Party fails to remedy the default within 7 days after the second notice, then the non-Defaulting Party may by further notice to the Defaulting Party either terminate this Agreement on the termination date specified in that notice or suspend its obligations under this Agreement until such time as the Default has been remedied.

28.3 Termination or suspension for Non-Financial Default

- (a) If either Party commits a Non-Financial Default then upon the non-Defaulting Party giving a Default Notice, the Defaulting Party will proceed diligently to remedy the Default within a specified cure period.
- (b) For the purposes of paragraph (a), a specified cure period is a period which:
 - (i) is reasonably necessary to enable a reasonable and competent person, proceeding diligently, to remedy a Default, having regard to the nature of the Default, the extent of the work or expenditure required to remedy the Default and the effect of the Default on the non-Defaulting Party;
 - (ii) in no case shall exceed 28 days from the date of the relevant Default Notice.
- (c) In the case of an emergency such as a situation giving rise to health, safety or environmental risks, or property or equipment damage, the non-Defaulting Party may require an immediate remedy to the Default.
- (d) Despite paragraph (b), the specified cure period will end immediately the Defaulting Party ceases to be diligently pursuing a remedy of the Default to the standard required by Good Electricity Industry Practice.
- (e) If the Defaulting Party fails to remedy the Default within the specified cure period, then the non-Defaulting Party may by further notice to the Defaulting Party either terminate this Agreement on the termination date specified in that notice or suspend its obligations under this Agreement until such time as the Default has been remedied.

29. Termination for Customer's convenience

- (a) The Customer may at any time terminate this Agreement by giving Western Power at least 20 Business Days' prior written notice.
- (b) Western Power must, on receipt of the notice of termination:

- (i) not place any further new orders or enter into any further new sub-contracts for the Works; and
- (ii) do only such work as is specified in the notice of termination.

30. Termination of Agreement

30.1 When this Agreement terminates

Termination of this Agreement occurs in the following circumstances:

- (a) When a Force Majeure Event occurs and results in the affected Party not being able to perform a material obligation under this Agreement for a continuous period exceeding 6 months, and, thereafter, either Party terminates this Agreement upon giving the other Party at least 30 days written notice specifying the termination date;
- (b) When either Party terminates this Agreement pursuant to clause 4.2;
- (c) When the Customer terminates this Agreement pursuant to clause 29;
- (d) When the Non-Defaulting Party terminates this Agreement pursuant to clause 28;
- (e) When:
 - (i) the Customer suspends the Works, or a substantial portion of the Works, for a period of at least 2 months; and
 - (ii) at any time after the expiry of the 2 month period, Western Power gives notice to the Customer that this Agreement will terminate unless the Customer unconditionally instructs Western Power to recommence the Works by the date specified in the notice; and
 - (iii) the Customer does not give the required unconditional instruction to Western Power to recommence the Works within 5 Business Days of receiving the notice in clause 30.1(e)(ii).

30.2 Termination Payment

On termination of this Agreement under clauses 30.1(a), 30.1(b), 30.1(c) or 30.1(e):

- (a) Within 10 Business Days of termination, Western Power will provide to the Customer:
 - (i) a reasonable level of supporting documents in respect of an amount necessary to pay, compensate or reimburse Western Power for all costs incurred by Western Power under or in respect of this Agreement (including by performing Early Undertakings or the Works) (**Total Costs**); and
 - (ii) as far as reasonably practicable or required, a breakdown as to costs between the different Works or types of Early Undertakings.
- (b) Within 15 Business Days of termination, the Customer must pay to Western Power:

- (i) Total Costs up to the termination date but only to the extent that Western Power has not then received payments under this Agreement on account of the Works Price or the Early Undertakings, or costs, that are at least equal to the Total Costs; and
- (ii) any other applicable Termination Payment specified in Schedule 10.

30.3 Total Costs with respect to Western Power Works

For the avoidance of doubt, Western Power's right on termination of this Agreement to recover an amount on account of Total Costs with respect to the Western Power Works is not limited to (nor is the right to recover to be calculated by reference to) the amount equal to the Capital Contributions that would have been payable in respect of the Western Power Works should they have been completed and this Agreement not have been terminated.

30.4 Payment of Termination Payment

Any payment made by the Customer under clause 30.2(b)(i) shall, so far as it extends, be deemed a payment of or on account of the Termination Payment.

30.5 Preserving Rights

Termination of this Agreement is without prejudice to:

- (a) the rights and obligations of the Parties under this Agreement arising prior to the date this Agreement is terminated or arising out of matters or circumstances occurring prior to that date;
- (b) except as otherwise provided in the Agreement, any rights or remedies which may be available to a non-Defaulting party under this Agreement or at law or in equity.

31. Confidentiality

31.1 Use and confidentiality of Confidential information

- (a) A Party may use Confidential Information solely for the purposes of this Agreement or as described in clause 31.2, and not for any other purpose.
- (b) Except as otherwise permitted under this Agreement, a Party must treat Confidential Information in its possession as strictly confidential, and must not disclose Confidential Information to third parties without the prior written consent of the disclosing Party. A Party must take all reasonable measures to safeguard Confidential Information from unauthorised disclosure.
- (c) A Party must limit disclosure of Confidential Information to those of its employees who have a need to know for the purpose of carrying out their duties, and must take all reasonable precautions to ensure that its employees maintain the confidentiality of the Confidential Information.

31.2 Permitted disclosures

- (a) A Party will be entitled to make such disclosures as are reasonably necessary for the proper implementation of this Agreement.
- (b) A Party will be entitled to make such disclosures:

- (i) as are required by Legal Requirements; or
 - (ii) to any Government Agency in connection with applications for Government Approvals in relation to this Agreement.
- (c) A Party will be entitled to make such disclosures as are required by the rules of any Stock Exchange having jurisdiction over such Party or its ultimate holding company.
- (d) A Party will be entitled to disclose Confidential Information to any financier or prospective financier, any professional adviser, contractor or consultant, any tenderer or prospective tenderer under clause 8.4 or any assignee or prospective assignee, whose legitimate interests reasonably require disclosure and who have first agreed in writing with the Party to be bound by the confidentiality obligations of the Party.
- (e) The Party must promptly give notice to and consult with the other Party about any permitted disclosure and use all reasonable endeavours to minimise any such disclosure.

32. Disputes

32.1 Prescribed Disputes

Any Prescribed Dispute between Western Power and the Customer shall be dealt with in accordance with the applicable Regulatory Provisions.

32.2 Other Disputes

Any dispute that is not a Prescribed Dispute must be dealt with as follows:

- (a) If the Parties agree or a provision of this Agreement so specifies, the dispute will be referred to an expert (**Expert**) for determination.
- (b) Otherwise, either Party may commence court proceedings in relation to the dispute.

32.3 Expert procedure

- (a) Where the Parties have agreed to refer a dispute to an Expert, then the following provisions will apply.
 - (b) The Expert to be appointed will be as agreed between the parties.
 - (c) If the Parties cannot so agree an Expert within 14 days after receipt of the notice of dispute, the Expert to be appointed will be determined as follows:
 - (i) Based on the nature of the matter in dispute, the Parties must in good faith agree which of the following bodies is best qualified to nominate the Expert:
 - (A) Institution of Engineers, Australia; or
 - (B) another industry or professional body,
- provided that in the absence of agreement between the Parties the Engineers Australia shall nominate an Expert.

- (ii) The Parties must as soon as practicable request the President or most senior officer of the nominating body (or of the most local division of that body) to nominate the Expert.
- (d) The Expert will be required to have appropriate technical, commercial and practical experience and expertise in the area of dispute. Any person nominated to act as an Expert will be required to fully disclose any interest or duty prior to that person's appointment. If that person has or may have any interest or duty which conflicts with his appointment as Expert, that person must not be appointed.
- (e) The Expert will determine the procedures for the conduct of the process to resolve the dispute. The Expert must provide each Party with a fair opportunity to make submissions in relation to the matter in dispute. The Expert will have the power:
 - (i) to inform himself or herself independently as to facts and if necessary technical matters to which the dispute relates;
 - (ii) to receive written submissions and sworn and unsworn written statements and to photocopy documents and to act upon the same;
 - (iii) to consult with such other professionally qualified persons as he or she in his or her absolute discretion thinks fit;
 - (iv) to take such reasonable measures as he or she thinks fit to expedite the completion of the dispute resolution.
- (f) It will be a term of the Expert's appointment that he or she will be required to make a determination of the dispute within 2 months of his or her appointment or such other period as the Parties may agree.
- (g) The Expert will be required to deliver a written determination which sets out the reasons for the determination and the findings of fact on which the determination is based.
- (h) The Expert will act as an expert and not an arbitrator. The findings of the Expert will be final and binding on the Parties except in the case of fraud or manifest error.
- (i) The costs of the Expert must be borne equally by the Parties unless the Expert finds that either of the Parties has acted unreasonably in relation to the dispute in which case the Expert may determine that the Party which acted unreasonably shall bear a greater share of the costs.

32.4 Referral to Expert does not affect the obligations of the Parties

The referral of any matter to an Expert does not in any manner relieve either Party from performing its obligations under this Agreement pending the determination of the dispute.

33. Assignment or transfer

33.1 Assignment or transfer by Customer

If the Customer assigns or transfers its rights or obligations under an Access Contract then, the Customer must assign or transfer its rights and obligations under this Agreement to the same assignee or transferee unless Western Power requires otherwise.

33.2 Assignment or transfer by Western Power

Western Power is entitled to assign or transfer its rights or obligations under this Agreement in favour of any person who may own or operate all or any part of the Network.

33.3 Deed of Covenant

No assignment or transfer by either Party will be effective until the intending assignee or transferee has entered into a deed of covenant with the other Party, acknowledging that Party's rights under this Agreement and undertaking to observe and perform all the obligations of the transferring Party under this Agreement. Such deed of covenant will be prepared by Western Power in such reasonable form as Western Power requires.

33.4 Security interest created by Customer

- (a) Subject to paragraph (b), the Customer is entitled to create a mortgage, charge or other security interest over the Customer's rights and interests under this Agreement to secure the financing or refinancing of the Customer's Facility.
- (b) The person that is to hold the benefit of a security interest described in paragraph (a) must first enter into a written agreement with Western Power, prepared by Western Power in such reasonable form as Western Power requires, agreeing that the security holder's rights under the security interest are consistent with and subject to the rights of Western Power under this Agreement.

34. General

34.1 Costs and stamp duty

The Customer will be liable for Western Power's reasonable costs for the preparation and execution of this Agreement and shall pay all stamp duties (if any) that are assessed on this Agreement.

34.2 Waiver

A provision of this Agreement may only be waived by a Party by notice in writing to the other Party signed by an authorised signatory of each Party, and not otherwise.

34.3 Entire Agreement

Subject to applicable law, this Agreement (including any Regulatory Provision implied into this Agreement by operation of law) constitutes the entire agreement between the Parties as to the Early Undertakings and the Works and supersedes all previous agreements, arrangements or understandings.

34.4 Governing law

- (a) This Agreement is governed by the laws in force in Western Australia.
- (b) 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 Agreement.

34.5 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 Agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

34.6 Notices

- (a) A notice or other communication (Notice) under this Agreement must be in writing (which includes any electronic form capable of being reduced to paper writing by being printed).
- (b) A Notice may be given in any of the following ways:
 - (i) delivered by hand to the addressee, in which case the Notice is deemed given upon delivery;
 - (ii) sent by postage prepaid mail, in which case the Notice is deemed given on the earlier of 2 Business Days following the Business Day on which the Notice is sent and the Business Day on which the Notice is actually delivered to that address as evidenced by Australia Post documentation;
 - (iii) sent by facsimile to the facsimile number of the addressee, in which case the Notice is deemed given on the day it is sent if sent prior to 4.00 pm on a Business Day and otherwise on the next Business Day at the place of receipt; and
 - (iv) (where the protocol referred to in paragraph (f) has been developed and agreed) sent by email in which case the provisions of the protocol apply.
- (c) Each Party's address and facsimile number for Notice purposes is set out in Part 1 of Schedule 2. A Party may change its address or facsimile number by giving Notice of that change to the other Party.
- (d) A Notice must be marked for the attention of the addressee's Representative.
- (e) Where this Agreement expressly so provides, and in those cases or categories of cases where the Parties agree in writing, Notices of a day-to-day operational nature or notices given in an operational emergency may be given orally and confirmed in writing within 7 days (for notices of a day to day operational nature) and within 24 hours (for notices given in an operational emergency).
- (f) The Parties agree to develop and agree a protocol for the transmission and receipt of Notices by electronic mail.

SCHEDULE 1 CONDITIONS PRECEDENT

Part 1 For the benefit of Western Power

(a) [Condition Precedent]

(i) [Date satisfied]

Part 2 For the benefit of the Customer

(a) [Condition Precedent]

(i) [Date satisfied]

{Note: Conditions Precedent are referred to in clause 4.}

SCHEDULE 2 REPRESENTATIVES AND DEFINED TERMS

Part 1 Representatives

(a) Customer's Representative

Name: []

Position: []

Address: []

Phone / Fax: []

(b) Western Power's Representative

Name: Phil Southwell

Position: Manager, Strategy and Regulation, Networks Business Unit

Address: 132 Murray Street, Perth, WA 6000

Phone / Fax: 08 9326 4724 / 08 9326 6550

{Note: Customer's representative and Western Power's representative are referred to in clause 3.1}

Part 2 Defined Terms

Final Date means []

Maximum Liability Amount means []

{Note: The above terms are definitions in clause 1.1.}

Part 3 Payment of invoices

- (i) The Customer will pay each tax invoice on or prior to the 28th day of each calendar month, provided the tax invoice was received on or prior to the 3rd Business Day of that calendar month.
- (ii) Any tax invoice received by the Customer after the 3rd Business Day of a calendar month must be paid on or prior to the 28th day of the following calendar month.

SCHEDULE 3 CUSTOMER'S FACILITY AND CUSTOMER'S PREMISES

Part 1 Customer's Facility

[Single line diagrams, maps, plans etc.]

Part 2 Customer's Premises

[Address and cadastral information].

{Note: Customer's Facility and Customer's Premises are referred to in clause 17.2 and elsewhere.}

SCHEDULE 4 CUSTOMER'S DELIVERABLES

Part 1 Customer's Deliverables

- (a) The Customer is to provide a certificate or certificates (in a form approved by Western Power):
 - (i) with respect to the items warranted by the Customer in clause 17.2, to the effect that:
 - (A) the Customer has disclosed all material conditions, facts or circumstances relating to:
 - (I) the Customer's Facility;
 - (II) the Site, including as to its use or designation;
 - (III) the Works, including the Government Approvals and the Land Access Rights; and
 - (B) the Customer is not aware of any matter, fact or thing with respect to the Customer, the Customer's Facility or the Site, that has not been disclosed in writing to Western Power that could be material in determining the Works Price or agreeing the Agreed Works Program;
- before Commencement Date.
- (b) *[Government Approvals and Land Access Rights]*
- (c) *[Amenities and other specified items]*
- (d) *[Customer Connection works or services where Part 3 of Schedule 7 is not completed (see the note to the definition Customer Connection Works).]*
- (e) *[others as required]*

Part 2 Western Power Shared Works

- (a) *[others as required]*

Part 3 Customer Connection Works

- (a) *[others as required]*

{Note: Where this schedule is not completed there are no Customer's Deliverables (see definition of Customer's Deliverables in clause 1.1). Customer's Deliverables are referred to in clause 8.3 and others.}

SCHEDULE 5 EARLY UNDERTAKINGS

Part 1 Early Undertakings by categories of Works (clause 5.2)

- (a) Western Power Connection Works
- (i) *Western Power may apply for Government Approvals and Land Access Rights before the Conditions Precedent are all satisfied;*
- (b) Western Power Shared Works
- (c) Customer Connection Works

Part 2 Payment Provisions

- (a) Early Undertakings in the nature of Western Power Connection Works

Date	Payment Amount	GST (subject to clause 23)	Total (subject to clause 23)

- (b) Early Undertakings in the nature of Western Power Shared Works

Date	Payment Amount	GST (subject to clause 23)	Total (subject to clause 23)

- (c) Early Undertakings in the nature of Customer Connection Works

Date	Payment Amount	GST (subject to clause 23)	Total (subject to clause 23)

{Note: Clause 4.5 – additional undertakings as guarantees may be required, and must be incorporated, by notice, on or before the date on which the Conditions Precedent are satisfied.}

{Note: Where this schedule is not completed there are no Early Undertakings (see definition of Early Undertakings in clause 1.1)}

SCHEDULE 6 ASSUMED CONDITIONS

- (a) *[The Scope of Works is consistent with the requirements of the Customer's Facility in respect of the Works]*
- (b) *[The proposed location, line route, configuration, scope, quality, quantities, capacities, methods of performance and technical requirements in respect of the Works]*
- (c) *[There are no latent conditions on or about the Site including the sub-soil and other geographical, geological and environmental conditions likely to affect Western Power's performance of the Works other than those specified in site survey report]*
- (d) *[Terms on which Government Approvals and the Land Access Rights are granted]*
- (e) *[That there are no native title claims and no aboriginal heritage issues over the Site]*
- (f) *[There are no environmental issues at the Site]*
- (g) *[Customer will deliver the Customer's Deliverables in accordance with the Agreement;]*
- (h) *[The Agreed Works Program]*
- (i) *[That the Customer will not direct WPC to cease carrying out the Early Undertakings under clause 4.1(c)(ii).]*
- (j) *The pricing and the detailed scope of all Works in this Agreement have been based on established Western Power standards, processes, tendering / contract terms and conditions, systems and the use of Western Power preferred contractors. Any changes to these made by the Customer may incur additional costs, and potentially cause project delays. If the Customer makes such changes, then Western Power reserves the right to adjust both the pricing and timing of the Works.*
- (k) *No allowance has been made for any Customer pre-qualification of contractors (if required) for the execution of the Works. If pre-qualifications are required, the Customer will make available a representative to assist Western Power's contractors to achieve the pre-qualification status.*
- (l) *All pricing for the Customer Connection Works has been based on the line route defined by the Customer on []. Actual prices will be determined as part of any non-discriminatory competitive tender process Western Power undertakes using its standard form tender documents and procedures and in accordance with the Agreed Works Program to select one or more independent contractors to construct or perform the Works.*
- (m) *Pricing and timing of the Works has been based on Western Power receiving any requested information, access to Site and the Customer's Premises and approvals from the Customer within reasonable timeframes.*
- (n) *Western Power cannot guarantee that it will receive offers from any or all of its preferred tenderers.*
- (o) *Pricing and timing of the Works has been based on reasonable interaction with the Customer. If additional interaction is required, including but not limited to explanations, justifications, proving established Western Power methods, presentation of different options etc., then these may be grounds for variations, both in pricing and time.*

- (p) *Western Power cannot guarantee that there will be no variations claimed by external contractors on contracts it has let. The Customer must approve as a Variation to the Works Price reasonable claims for variations to sub-contract prices.*
- (q) *The Works have been priced on the work being performed in a continuous manner, in accordance with the project schedule forming part of the Agreed Works Program.*
- (r) *The Works have been priced on the basis of standard Western Power working patterns.*
- (s) *Any costs to relocate other services and facilities (ie. pipelines) are not included in the price.*
- (t) *Without having performed a geotechnical survey of the KDP Site, it is assumed that standard Western Power foundations will be suitable.*
- (u) *Availability of suitable outages is dependant on Western Power System Operations.*
- (v) *[Supplier (A)] will deliver [product (B)] [by time (C)].*
- (w) *[Other Assumed Conditions that will impact on the timing of the Works, for example if a particular work or service can only be performed in a particular month or period of the year.]*

{Note also the relationship with Assumptions.}

SCHEDULE 7 WORKS

Part A: DEFINITION

In this Agreement, “**Separable Portion**” means the *[insert description of each separable portion]* more particularly described in Parts B and C of this Schedule 7.

Part B: WESTERN POWER WORKS

Item 1: Western Power Connection Works

Western Power Connection Works comprise of the following Separable Portions:

- (a) *[Insert name & scope of work]*
- (b) *[Insert name & scope of work].*

Item 2: Western Power Shared Works

Western Power Shared Works comprise of the following Separable Portions:

- (c) *[Insert name & scope of work]*
- (d) *[Insert name & scope of work].*

Part C: CUSTOMER CONNECTION WORKS

Customer Connection Works comprise of the following Separable Portions:

- (e) *[Insert name & scope of work]*
- (f) *[Insert name & scope of work].*

[Optional: Commissioning]

- (a) The Customer is responsible for commissioning the Customer's Facility.
- (b) Western Power is responsible to the Customer for commissioning those portions of the Works that will allow the Customer's Facility to be connected to the Network in order to enable the Customer to transfer electricity to and from the Network (**WPC Commissioning**).
- (c) Not less than 1 month prior to commencing WPC Commissioning, Western Power must provide the Customer with a draft commissioning plan (**Commissioning Plan**) dealing with:
 - (i) the commissioning and handover of the Customer Connection Works; and
 - (ii) the co-ordination of WPC Commissioning with the commissioning of the Customer's Facility.

- (d) Within [5] Business Days of receiving the draft Commissioning Plan, the Customer must provide its comments on the draft Commissioning Plan.
- (e) Western Power must in good faith consider, address or incorporate any comments of the Customer in the Commissioning Plan if it considers necessary (acting reasonably) to coordinate and facilitate the WPC Commissioning with the commissioning of the Customer's Facility.
- (f) Prior to commencing WPC Commissioning, Western Power must provide the Customer with one electronic and one printed copy of the final form of the Commissioning Plan.
- (g) Western Power must carry out commissioning of the Works having regard to the final form of the Commissioning Plan.

SCHEDULE 8 AGREED WORKS PROGRAM

{Note: Include all Customer Deliverables in the project schedule for the Agreed Works Program.}

SCHEDULE 9 WORKS PRICE

Part 1 Western Power Connection Works

(a) Pricing Methodology

The Works Price for the Western Power Connection Works is a fixed upfront Capital Contribution. The Capital Contribution has been broken into three payments to represent the three main parts of the Works. The Customer must pay each payment before Western Power will commence the associated part of the Works.

(b) Original Specification of Works Price for Western Power Connection Works

Payment	Milestone/Date	Payment Amount	GST	Total
1. Design and procurement	Payable within 5 Business Days of Commencement Date	\$	\$	\$
2. Construction	Payable 12 months after Payment 1	\$	-	\$
3. Commissioning	Payable 12 months after Payment 2	\$	-	\$
Totals		0	0	0

(c) Where the Works Price for Western Power Connection Works is adjusted

{Note: The definition of Works Price envisages that the schedule may prescribe a mechanism for adjustment. The Agreement provides various instances (eg Variation) where the Works Price may also be adjusted. There may be cross linkage.}

Part 2 Western Power Shared Works

(a) Pricing Methodology

The Works Price for Western Power Shared Works is a fixed upfront Capital Contribution. The Capital Contribution has been broken into three payments to represent the three main parts of the Works. The Customer must pay each payment before Western Power will commence the associated part of the Works.

(b) Original Specification of Works Price for Western Power Shared Works

Payment	Milestone/Date	Payment Amount	GST	Total
1. Design and procurement	Payable within 5 Business Days of Commencement Date	\$	\$	\$
2. Construction	Payable 12 months after Payment 1	\$	-	\$
3. Commissioning	Payable 12 months after Payment 2	\$	-	\$
Totals		0	0	0

(c) Where the Works Price for Western Power Shared Works is adjusted

{Note: The definition of Works Price envisages that the schedule may prescribe a mechanism for adjustment. The Agreement provides various instances (eg Variation) where the Works Price may also be adjusted. There may be cross linkage.}

Part 3 Customer Connection Works

(a) Pricing Methodology

The pricing for the Customer Connection Works has been based on two portions:

- (i) a 'fixed fee' portion of [] plus [] GST = [] and,
- (ii) a 'cost + x% 'contract management fee' portion, with the value of 'x' determined according to the following table, depending on the contract value / material cost. The Customer will be presented with a copy of the supplier invoice in each case, supporting the amount charged in the applicable WPC invoice. In this calculation, where Western Power is placing the order as part of a larger contract (included as part of the Western Power Connection Works or Western Power Shared Works), then the contract management fee will be applied at the rate applicable to the total contract value for the Customer Connection Works portion of the contract. For example, if a \$4M contract needs to be placed for line works, including \$1M worth of Customer Connection Works and \$3M of Western Power Connection Works, then the contract management fee applied to the Customer Connection Works will be 4.5% of \$1M only.

Value of each contract	Western Power Contract Management Fee ('x')
Up to \$50,000	12.0%
Next \$50,000 - \$100,000	10.0%
Next \$100,000 - \$400,000	8.0%
Next \$400,000 - \$1,000,000	6.0%
Next \$1,000,000 - \$5,000,000	4.5%
Amount over \$5,000,000	3.5%

- (iii) The table below summarises the contracts that will need to be let by Western Power to 3rd parties for the project and the estimated values of these contracts. This is only for contracts that have not been fixed by Western Power at Commencement Date to the Customer. There may be additional contracts, further to this list. The Customer will be notified of any further contracts, and the impact on pricing, when they become apparent.

Contracts that will be let / Materials purchased	Estimated Contract Value (excluding WPC Contract Mgt Fee)	Western Power Contract MGT Fee ('x')	% Mark-up on contractor cost*	Total Estimated Price (including Western Power Contract Mgt Fee), excluding GST	Total Estimated Price (including Western Power Contract Mgt Fee), including GST

* Flat mark-ups have been used because these works will be part of larger contracts, combined with regulated works as explained in paragraph (ii). The Customer is getting the benefit of economies of scale.

- (iv) The 'Contract Management Fee' includes:

- (A) Cost of contract risk (Western Power is responsible for the contractors and their output).
- (B) Project management (reporting, ensuring contractor targets are met, dealing with issues, etc)
- (C) Contract management (checking management plans, safety audits, payments, insurance – 'administering the contract')
- (D) Stakeholder relationship management (both contractors and the Customer)
- (E) Cost of Defects Liability

- (b) Original Specification of Works Price for Customer Connection Works [(estimate only)]

Milestone	Date	Payment Amount	GST	Total
Placement of plant orders				
Design and Procurement				
Construction				

<i>Practical Completion</i>				
Totals		0	0	0

(c) Where the Works Price for Customer Connection Works is adjusted

{Note: The definition of Works Price envisages that the schedule may prescribe a mechanism for adjustment. The Agreement provides various instances (eg Variation) where the Works Price may also be adjusted. There may be cross linkage.}

SCHEDULE 10 TERMINATION PAYMENTS

Part 1 Western Power Works

If this Agreement is terminated prior to commencement or completion of the Western Power Works, then the Customer will pay to Western Power the relevant portion of the amount determined in accordance with clause 30.2.

Part 2 Customer Connection Works:

- (a) Termination under clause 30.1(a)
 - (i) If this Agreement is terminated prior to commencement or completion of the Customer Connection Works, then the Customer will pay to Western Power:
 - (A) the relevant portion of the amount determined in accordance with clause 30.2; and
 - (B) [30%] on total labour costs and [12%] on total costs of material incurred up to the termination date]; and
 - (C) [to be completed].
- (b) Termination under clause 30.1(b)
 - (i) If this Agreement is terminated prior to commencement or completion of the Customer Connection Works, then the Customer will pay to Western Power:
 - (A) the relevant portion of the amount determined in accordance with clause 30.2; and
 - (B) [30%] on total labour costs and [12%] on total costs of material incurred up to the termination date]; and
 - (C) [to be completed].
- (c) Termination under clause 30.1(d)
 - (i) If this Agreement is terminated prior to commencement or completion of the Customer Connection Works, then the Customer will pay to Western Power:
 - (A) the relevant portion of the amount determined in accordance with clause 30.2; and
 - (B) [30%] on total labour costs and [12%] on total costs of material incurred up to the termination date]; and
 - (C) [to be completed].
- (d) Termination under clause 30.1(e)
 - (i) If this Agreement is terminated prior to commencement or completion of the Customer Connection Works, then the Customer will pay to Western Power:
 - (A) the relevant portion of the amount determined in accordance with clause 30.2; and

- (B) [30%] on total labour costs and [12%] on total costs of material incurred up to the termination date]; and
- (C) [to be completed].

SCHEDULE 11 INSURANCES

Part 1 Western Power insurance - clause 27.1

- (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 [\$] per claim and unlimited in the aggregate of all claims made; and
 - (B) products liability insurance for a limit of not less than [\$] per claim and unlimited in the aggregate;covering Western Power's negligence in respect to any third party for death, bodily injury and loss or damage to property caused by the performance of the services or any work under this Agreement;
 - (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 or equipment insurance covering all loss or damage to the contractor's plant or equipment used in connection with the performance of the Works for its replacement value.

The policies shall be from a licensed and reputable insurer or insurers.

Part 2 Customer's insurance - clause 27.2

- (a) The Customer 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 [\$] per claim and unlimited in the aggregate of all claims made; and
 - (B) products liability insurance for a limit of not less than [\$] per claim and unlimited in the aggregate;covering the Customer's negligence in respect to any third party for death, bodily injury and loss or damage to property caused by the performance of the services or any work under this Agreement;
 - (ii) workers' compensation insurance for all persons employed by the Customer 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 or equipment insurance covering all loss or damage to the contractor's plant or equipment used in connection with the performance of the Works for its replacement value.

The policies shall be from a licensed and reputable insurer or insurers.

SCHEDULE 12 TENDER PROCESS

{Note: If the Tender Process is not applicable to this Agreement, delete this schedule and insert "Schedule 12 – Not Used".}

- (a) This Schedule 12 applies in respect of the Customer Connection Works which the Customer has requested Western Power to carry out as set out in Schedule 7 (**Customer Tendered Works**) and that portion of the Western Power Works which Western Power wishes to subcontract to third parties as set out in Schedule 7 (**Western Power Tendered Works**).
- (b) For the purposes of this Schedule 12, "**Tendered Works**" means the Customer Tendered Works or the Western Power Tendered Works, as is appropriate.
- (c) Western Power must conduct a competitive tender process (**Tender Process**) using its standard form tender documents and procedures and in accordance with the Agreed Works Program to select one or more contractors to construct the Tendered Works.
- (d) Western Power must invite tenders for the Tendered Works from contractors that Western Power considers have the technical and financial capability to carry out the relevant works and that Western Power would normally expect to tender for such works.
- (e) Western Power must make available to the Customer a copy of the final documentation relating to the Tender Process which it proposes to issue to the tenderers. The Customer must provide comments on the documentation and the Tender Process within 3 Business Days of receiving the documentation. If the Customer does not provide comments within that time, the Customer is deemed to have waived its right to provide any comments.
- (f) If the Customer provides comments on the tender documentation within the time frame specified in paragraph (d) above, then Western Power will (acting reasonably) take into account the Customer's recommendations as to:
 - (i) the Tender Process;
 - (ii) the documents relating to the Tender Process; and
 - (iii) the tenderers invited to tender for the construction of the Tendered Works.
- (g) Once Western Power receives the tenders for the Western Power Tendered Works in response to the Tender Process, Western Power must provide to the Customer a list of tenderers and Western Power's recommendation on the preferred tenderer based on the evaluation of tenders based on the price tendered, technical and financial competence of the tenderer and other considerations that Western Power would usually take into account in choosing contractors for works of these nature.
- (h) The Customer must within [3] Business Days of receiving the information in paragraph (e), provide a written recommendation to Western Power of the Customer's preferred tenderer to carry out the Tendered Works and Western Power will take into account the Customer's recommendation in awarding the contract for the Western Power Works.
- (i) The parties acknowledge and agree that Western Power in awarding a contract for the Western Power Tendered Works is not obliged to award the contract to the lowest price tenderer or to any tenderer who has lodged a tender.

- (j) A requirement to take into account the recommendation of a party (**Recommending Party**) does not render the other party liable to the Recommending Party in any way for not following the recommendation of the Recommending Party.
- (k) Once the tenders are received for the Customer Tendered Works in response to the Tender Process, Western Power must provide to the Customer a list of tenderers and Western Power's recommendation on the preferred tenderer based on the evaluation of tenders on the price tendered, technical and financial competence of the tenderer and other considerations that Western Power would usually take into account in tenders of these nature.
- (l) The Customer must within [3] Business Days of receiving the information in paragraph (e), provide a written notice to Western Power of the Customer's preferred tenderer and upon receipt of that notice, Western Power will, as soon as is reasonably practicable, award the contract for the Customer Tendered Works to the tenderer chosen by the Customer.

Schedule 13 Due Dates for Practical Completion & Liquidated Damages

(1) Description of of Works (or Separable Portion of the Works)	(2) Due Date for Practical Completion	(3) Liquidated Damages Amount (See Schedule 13(a))	(4) Maximum liquidated damages payable (See Schedule 13(a))
[Insert description]	[Insert date]	[\$[insert] per day	[xx Works LD Cap Amount]

Table 1: Liquidated damages amounts and due dates of practical completion

(a) Quantum and basis of liquidated damages

- (i) Subject to clauses 20.2 and 20.5, in respect of each of the Works described in Table 1, Western Power agrees to pay the Customer liquidated damages at the rate of the Liquidated Damages Amount set out in column 3 of Table 1 per day in respect of each day after the Due Date for Practical Completion of the relevant Works until but excluding the Date of Practical Completion of those Works up to a maximum of the amount set out in column 4 of Table 1.
- (ii) The amounts referred to in columns 3 and 4 of Table 1 are all GST inclusive amounts.

(b) Cap on liquidated damages

- (i) The [xx **Works LD Cap Amount**] is the lesser of:
 - (I) \$[insert]; and
 - (II) the actual amount of the damage suffered by the Customer as a result of the delay with respect to Practical Completion of the relevant Works.

SCHEDULE 14 PROJECT STATUS REPORT

PROJECT STATUS REPORT

UP TO:		DMS #
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(Month/year)

Project Title:	<u>[PROJECT TITLE]</u>		
Project Status Summary:	<input type="checkbox"/> On Schedule	<input type="checkbox"/> Ahead	<input type="checkbox"/> Behind
Dates:	Original Date:	Revised Date:	Ahead / Behind: (weeks/months)
Summary:			
Critical Activities:			
Problems, Resolutions, Corrective Actions By Whom & When:			
Actions Planned:			
Comments:			

Prepared by: _____ **Date:** _____

[Project Manager]

{Note: Required by clause 9.3.}

EXECUTED as an agreement.

The **COMMON SEAL** of **Western Power Corporation**, was affixed in the presence of:

Director

Executive Officer

Name

Name

The **COMMON SEAL** of **[Customer]**, was affixed in the presence of:

Signature of Authorised Person

Signature of Authorised Person

Name

Name