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13 August 2009

Mr Lyndon Rowe
Chairman
Economic Regulation Authority
Level 6, Governor Stirling Tower
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Dear Lyndon

**PROPOSED ACCESS ARRANGEMENT REVISIONS
WESTERN POWER'S FIRST SUBMISSION ON ERA DRAFT DECISION**

I am pleased to provide the first of two submissions by Western Power on the Authority's Draft Decision.

The intention to provide the Authority with responses to a number of the less material required amendments by today, with a further submission to be made in early September, was advised in my letter dated 5 August 2009. I confirm Western Power's appreciation of the extension of time agreed to by the Authority – this will enable thorough consideration of the key matters in the decision and preparation of the most meaningful response from Western Power.

The attached CD contains:

- Western Power's submission and attachments; and
- A marked-up version of the current ETAC which reflects Western Power's responses to the related Required Amendments 2-21 inclusive.

I confirm these documents are suitable for publication.

Please anticipate a further comprehensive submission from Western Power on, or before, 10 September 2009.

Yours sincerely

**DOUG ABERLE
MANAGING DIRECTOR**



Western Power's first submission
to the Authority's Draft Decision
on the proposed revisions to the
access arrangement for the SWIN



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1. INTRODUCTION AND PURPOSE

Western Power submitted its proposed revisions to the access arrangement on 1 October 2008.

On 16 July 2009, the Authority published its Draft Decision which was not to approve Western Power's proposed revisions to the access arrangement. The Draft Decision explained the Authority's reasoning for each of its 46 Required Amendments to Western Power's proposals.

In circumstances where the service provider does not accept all of the Authority's Required Amendments in its Draft Decision, section 4.16 of the Code provides for the service provider to resubmit revised proposed revisions¹. However, given the unavoidable delays in the regulatory approval process thus far and the significant consequential financial uncertainties, Western Power is lodging a submission in response to the Draft Decision in accordance with section 4.15 of the Code, rather than resubmitting revised proposed revisions. The intention of this more limited response is to enable the Authority to fast-track the publication of its Final Decision and, ultimately, to approve the final access arrangement revisions before the end of this calendar year.

It is anticipated that Western Power will respond to the Authority's Final Decision by setting out its revised access arrangement to address the required amendments specified in that Final Decision.

To further assist the Authority in the timely release of its Final Decision, Western Power is lodging its submission in two parts. In this first part, Western Power's response relates to 32 of the Authority's 46 Required Amendments as shown in section 2 of this submission. These responses are supplemented where appropriate with attachments that set out further information to explain Western Power's response to the relevant Required Amendment. In each case, the attachment has regard to the relevant Code provisions and the reasoning presented by the Authority in its Draft Decision.

Western Power has also included a marked-up version of the Electricity Transfer Access Contract (ETAC), which it submitted for approval in October 2008. The document shows the revisions which Western Power proposes to make in order to address all of the Required Amendments in the Draft Decision that relate to the ETAC. The marked up version also includes two further amendments to Western Power's original proposed ETAC of October 2008. The explanations for these additional modifications are also provided as attachments to this submission.

Western Power anticipates that the Authority should be able to approve the ETAC as set out in the attachment to this submission.

Western Power will set out its response to the remaining 14 of the Authority's 46 Required Amendments in a further submission in early September 2009.

¹ Clause 4.16 applies in relation to an amended access arrangement revisions and the accompanying amended access arrangement information by virtue of sections 4.48 and 4.52 of the Code.

2. WESTERN POWER'S RESPONSES TO THE REQUIRED AMENDMENTS

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>1 The proposed access arrangement revisions should be amended such that one or more reference services provide for single connection points to function both as entry points and exit points. This revision will cater for the requirements for network services that arise where small-scale renewable energy systems connect to the network and where electricity consumers participate in the Renewable Energy Buyback Scheme.</p>	<p>Amendment accepted.</p> <p>Western Power has engaged a specialist consultant to assist in development of new or modified reference services(s). This is a material addition and will involve public consultation to allow all interested stakeholders to have input into the final design of the service(s) and associated tariff(s).</p> <p>Western Power is unable to provide further details at this time of how this required amendment will be addressed but a full and detailed proposal for new or modified reference services(s) will be set out in a late submission in early October 2009, for consideration by the Authority in its Final Decision.</p>	<p>N/A</p>	<p>Section 5.1</p>
<p>2 The proposed access arrangement revisions should be amended so that the requirement under clause 3.3, for a user to ensure compliance with eligibility criteria for a reference service, is subject to operation of the Applications and Queuing Policy regarding a change in the reference service applying to a connection point.</p>	<p>Amendment accepted.</p> <p>Western Power agrees that the requirement to comply with the eligibility criteria should be subject to Western Power meeting its obligations to change the reference service applicable to a connection point and electricity customer and that clause 3.3 should be subject to operation of the Applications and Queuing Policy which allows for the change of a reference service.</p> <p>Western Power's obligations in regard to a change of a reference service are contained in clause of the 3.2(b) ETAC. Accordingly, Western Power agrees that the user's obligations to comply with the eligibility criteria should be subject to Western Power complying with its obligations under clause 3.2(b).</p> <p>Western Power has added a new clause 3.3(b) as follows:</p> <p>"Where the User* has sought to change the Reference Service* in respect of a Connection Point* under clause 3.2(a), its obligation under clause 3.3(a) in relation to that Connection Point* is subject to compliance by Western Power* with clause 3.2(b)."</p>	<p>N/A</p>	<p>Sections 5.3; 5.4 and 5.5.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>3 The proposed access arrangement revisions should be amended so that the revised electricity transfer access contract includes a clause 3.6(d) requiring that "subject to the Customer Transfer Code, Western Power must not delete a connection point other than in accordance with a notice given by a user in accordance with clause 3.6".</p>	<p>Amendment accepted.</p> <p>Western Power accepts that a connection point should not be deleted from an ETAC except when requested by the User or when the connection point has been transferred in accordance with the Customer Transfer Code.</p> <p>Western Power has amended clause 3.6 of the ETAC by adding a new clause 3.6(d) as follows:</p> <p style="padding-left: 40px;">"Subject to the Customer Transfer Code*, Western Power* must not delete a Connection Point* other than in accordance with a notice given by a User* under clause 3.6."</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>4 The proposed access arrangement revisions should be amended so that the electricity transfer contract includes a new clause 3.6(e) requiring that, if Western Power wilfully or deliberately deletes a connection point in breach of clause 3.6(d), Western Power is liable to pay the user any indirect damage suffered by the user as a result of Western Power's action.</p>	<p>Amendment addressed.</p> <p>Western Power accepts that indirect loss can be claimed where it has wilfully or deliberately breached its obligation not to delete a connection point other than as allowed in clause 3.6, but submits that this should not be the case where the deletion was a result of an error of judgment, mistake, act or omission, whether negligent or not, which is made in good faith. In the absence of such exclusions, Western Power would be unreasonably exposed to potentially harsh and unreasonable consequences.</p> <p>The concept of good faith is one already known to the ETAC as it is part of the definition of 'Good Electricity Industry Practice', and is common-place in commercial contracts. Western Power believes that the concept is consistent with section 5.3 of the Access Code, and therefore should be accepted by the Authority.</p> <p>Western Power proposes new clause 3.6(e):</p> <p style="padding-left: 40px;">"If Western Power* commits a breach of clause 3.6(d) in circumstances that constitute Wilful Default* it is liable to the User* for any damage caused by, consequent upon or arising out of the Wilful Default*. In this case, the exclusion of Indirect Damage* in clause 19.3 does not apply."</p> <p>The following new definition is also proposed:</p> <p style="padding-left: 40px;">"If Western Power* commits a breach of clause 3.6(d) in circumstances that constitute Wilful Default* it is liable to the User* for any damage caused by, consequent upon or arising out of the Wilful Default*. In this case, the exclusion of Indirect Damage* in clause 19.3 does not apply."</p> <p style="padding-left: 40px;">"Wilful Default* means a deliberate and purposeful act or omission carried out with a calculated regard for the consequences of the act or omission but does not include any error of judgment, mistake, act or omission, whether negligent or not, which is made in good faith."</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>5 The proposed access arrangement revisions should be amended such that clause 3.7 of the electricity transfer access contract is clear on whether schedule 3 and, where relevant, the metering database, is to be updated only by Western Power, or by either Western Power or the user.</p>	<p>Amendment accepted.</p> <p>Western Power accepts the responsibility to update the information in the various databases.</p> <p>With respect to information stored in part 1 of schedule 3, Western Power will take responsibility to update the information, but it must be done with the agreement of the user. The information is part of the ETAC and, therefore, may be amended only in accordance with clause 37.2 of the ETAC.</p> <p>In relation to the metering database it is Western Power's obligation under the metering code to record and update it.</p> <p>Western Power has made several amendments to clause 3.7 in this regard.</p> <p>In addition to these amendments, Western Power proposes additional amendments to clause 3.7 and related clauses to facilitate current practice with users. These amendments seek to retain a level of flexibility with respect to the databases in which information is recorded so as to meet the different expectations and demands of users.</p>	<p>Attachment A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>6 The proposed access arrangement revisions should be amended such that clause 3.7 of the electricity transfer access contract requires Western Power to provide the user with such access to schedule 3 and the metering database as is reasonably required for the user to obtain information or to change relevant information.</p>	<p>Amendment accepted.</p> <p>Western Power accepts that the user should have reasonable access to 'connection point information'.</p> <p>Access to the Metering Code information (the Metering Database) will be via the Build Pack (developed under the <i>Electricity Industry Customer Transfer Code 2004 Communication Rules</i> and <i>Electricity Industry Metering Code 2004 Communication Rules</i>; which provides for access to Metering Code information. So as not to undermine the process set out in the Build Pack, the ETAC should be consistent with it.</p> <p>With respect to the information is stored within other of Western Power's databases, Western Power will, on request from the user, provide the user with the relevant most up-to-date information.</p> <p>Western Power has included new clauses 3.7(c) and (f), as follows:</p> <p>“(c) Upon request by the User* for information referred to in the Connection Point Database*, Western Power* will provide to the User* the most up-to-date version of that information”.</p> <p>“(f) Western Power* will provide the User* with access to the information in the Metering Database* in accordance with the Build Pack*”.</p>	Attachment A	See Required Amendment 2.

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>7</p> <p>The proposed access arrangement revisions should be amended so that the electricity transfer access contract indicates which records of connection point data will have precedence, to the extent of any inconsistency between schedule 3 of the electricity transfer access contract, the metering database and any connection point data contained in the price list.</p>	<p>Amendment accepted.</p> <p>Western Power accepts that a precedence clause should be added to the ETAC to deal with the precedence of information from various sources.</p> <p>Western Power has inserted new clause 3.7(k) which provides that the Metering Database takes the highest order of precedence followed by part 1 of schedule 3 of the ETAC and then other databases, except for where an inconsistency is created due to a permanent reconfigurations of the network in which case part 1 of schedule 3 will take the highest order of precedence. Part 1 of schedule 3 take precedence where an inconsistency is created due to a permanent reconfiguration of the network to ensure that the status quo with respect to a user's information and billing will be preserved between the parties until the next financial year.</p> <p>The price list has not been added to the list of documents in the precedents provision. Western Power submits that the information in the Price List will not be in conflict with part 1 of schedule 3, the metering database or other database that it maintains.</p> <p>Western Power proposes new clause 3.7(k), details of which are provided in Attachment A.</p>	<p>Attachment A</p>	<p>See Required Amendment 2.</p>
<p>8</p> <p>The proposed access arrangement revisions should be amended to delete clause 3.8 of the electricity transfer access contract or to amend clause 3.8 to make any reduction in a user's contracted capacity subject to agreement with the user.</p>	<p>Amendment accepted.</p> <p>Western Power maintains its view that it would be preferable to retain clause 3.8. Notwithstanding its long-standing views on this issue, Western Power accepts the Required Amendment and therefore has deleted clause 3.8 in the ETAC.</p>	<p>N/A</p>	<p>Sections 5.1(b); 5.3; 5.4 and 5.5.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>9 The proposed access arrangement revisions should be amended such that clause 6.1(a) of the electricity transfer access contract be made to provide for the user to nominate a controller as soon as reasonably practical after the commencement of the service.</p>	<p>Amendment accepted.</p> <p>Western Power has also inserted a requirement that the user advises Western Power of the controller's identity no later than 30 Business Days after the start date. While Western Power accepts that the user may not always have finalised the identity of the controller by the start date, it is reasonable (given the important role played by the controller) that the identity of controller be finalised and nominated within a reasonable time following the start date.</p> <p>Western Power has made the following amendment to clause 6.1(a):</p> <p style="padding-left: 40px;">"If the User* is not the Controller* of a Connection Point* then the User* must, by notice to Western Power* before the Start Date* of the relevant Services*, <u>or as soon as reasonably practicable thereafter (but in all cases no later than 30 Business Days* after the Start Date* of the relevant Services*)</u> nominate a person as the Controller* for a Connection Point*"</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>
<p>10 The proposed access arrangement revisions should be amended such that clause 6.1(e) of the electricity transfer access contract requires only that the user uses reasonable endeavours to procure that a controller enter into a connection contract with Western Power.</p>	<p>Amendment addressed.</p> <p>Western Power accepts the required amendment, subject to the Authority accepting Western Power's proposed approach to Required Amendment 11.</p> <p>Western Power notes that if the user remains liable to enforce the Technical Rules against its controller (see Required Amendment 11), the reasonable endeavours provision is appropriate. However, if this obligation is removed from the user, the power to compel a connection contract with the controller is essential to ensure that Western Power can continue to enforce the Technical Rules and ensure the safe operation of the network.</p> <p>Western Power has amended clause 6.1(e) of the ETAC as follows:</p> <p style="padding-left: 40px;">"If Western Power* requires, the User* must <u>use reasonable endeavours to</u> procure that the person nominated by the User* as a Controller* enters into a Connection Contract* with Western Power* in respect of the Connection Point*."</p>	<p>N/A</p>	<p>Sections 5.1(b); 5.3; 5.4 and 5.5.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>11 The proposed access arrangement revisions should be amended such that clause 6.2(a) of the electricity transfer access contract is made subject to a provision that the user is not required to commence, maintain or continue legal proceedings to procure compliance of a controller with obligations under the access contract unless Western Power provides an indemnity for all of the user's costs of and relating to such proceedings.</p>	<p>Amendment addressed.</p> <p>Western Power will provide an indemnity but the indemnity will be limited to legal proceedings involving circumstances that are outside of those contemplated by the scope of clause A3.36 of the model access contract. Under Western Power's proposal, where the circumstances align with or are similar to those contemplated by clause A3.36 of the model access contract no indemnity is provided.</p> <p>Western Power's proposed approach is in line with the provisions of the model access contract where no indemnity is given. The proposed approach therefore satisfies the requirements of section 5.3 of the Access Code.</p>	<p>Attachment B</p>	<p>Sections 5.1(b); 5.3; 5.4 and 5.5.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>12 The proposed access arrangement revisions should be amended such that clause 7.1 of the electricity transfer access contract includes a provision dealing with the determination of amounts payable by the user where there is a change in the charges payable under a reference tariff during a billing period. The provision must represent a reasonable balance between the interests of the user and Western Power.</p>	<p>Amendment accepted.</p> <p>Western Power sought to amend clause 7.1 by inserting a new clause 7.1(f) dealing with the calculation of the tariff and charges but did not make submissions in relation to the note in the price list on the issue of prorating consumption.</p> <p>Western Power considers that clauses 7.1 (a) and 7.2(a) is already clear on the issue but nevertheless will accept, so as to remove doubt, that the matters in the note in the price list should be dealt with in the ETAC.</p> <p>Western Power proposes to amend the ETAC by adding a new sentence to clause 7.2(a) as follows:</p> <p style="padding-left: 40px;">"For the avoidance of doubt, the tariffs specified in the Price List* apply to all consumption during the Pricing Year* applicable to the Price List*. Where consumption is metered with an accumulation meter and the meter reading interval causes some of the metered consumption to lie within the Pricing Year* applicable to the Price List* and the remainder within a Pricing Year* applicable to another Price List*, the consumption covered by the Price List* will be determined by prorating the metered consumption uniformly on a daily basis."</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>
<p>13 The proposed access arrangement revisions should be amended such that clause 10 of the electricity transfer access contract clearly applies only in respect of a contribution payable by the user.</p>	<p>Amendment accepted.</p> <p>Western Power proposes that clause 10 be amended to read:</p> <p style="padding-left: 40px;">"Without limiting the User*'s security obligations related to clause 26, the Nominated Person* must provide an irrevocable and unconditional bank guarantee (or equivalent financial instrument) in terms acceptable to Western Power* (acting as a Reasonable and Prudent Person*), guaranteeing the present value of any amount of any Contribution* <u>to be made by the User*</u> that remains unpaid or unprovided as calculated by Western Power* under the Contributions Policy*."</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>14 The proposed access arrangement revisions should be amended such that clause 12.1 of the electricity transfer access contract is consistent with clause 6.2 and limits the obligation of the user to ensure that any other person or person's equipment complies with the Technical Rules only to the extent:</p> <ul style="list-style-type: none"> • that is reasonably practical for the user; and • that Western Power provides an indemnity for all of the user's costs of and relating to proceedings against any other person for the purposes of ensuring compliance. 	<p>Amendment accepted.</p> <p>Western Power will delete the proposed amendment to clause 12.1. Clause 12.1 will be reinstated to be identical to clause A3.61 of the model access contract and is, therefore, consistent with section 5.3 of the Access Code.</p> <p>Western Power has deleted the following from clause 12.1:</p> <p style="padding-left: 40px;">", subject to any exemptions given to Western Power* or the User*, respectively, under Chapter 1 of the Technical Rules*. (For the avoidance of doubt, this includes a requirement on the User* to comply with the Technical Rules* with respect to any other person or person's equipment that will gain access, or Connect*, to the Network* through a Connection Point*)".</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>15 The proposed access arrangement revisions should be amended such that clause 12.2 of the electricity transfer access contract provides that an act or omission of the user that causes Western Power to incur extra costs for compliance with the Technical Rules only causes the user to be liable for those costs where:</p> <ul style="list-style-type: none"> • the act or omission of the user is in breach of the access contract; and • Western Power has not already recovered the costs from another party. 	<p>Amendment accepted.</p> <p>Western Power has amended clause 12.2(c) as follows:</p> <p style="padding-left: 40px;">"Notwithstanding clause 12.2(b), where an act or omission of the User* <u>in breach of this Contract*</u> causes Western Power* to incur extra costs in order to ensure Western Power* complies with the Technical Rules*, the User* shall bear Western Power*'s reasonable extra costs so incurred to the extent that such costs are not already <u>recovered from payable by the User* or any other person under any other arrangement, including the Contributions Policy*.</u>"</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>16 The proposed access arrangement revisions should be amended such that the calculation of liability under clause 19.5 of the electricity transfer access contract is limited to a cap on liabilities with the effect that the maximum liability of both the user and the indemnifier collectively to Western Power is limited to an amount of \$80 million in the aggregate, except that the liabilities described in clause 20 are not counted for the purpose of both the user's and the indemnifier's collective maximum liability.</p>	<p>Amendment accepted.</p> <p>Western Power also wishes to remove from the liability caps any claims for access charges. That is, access charges should not be included in the liability cap. This exclusion is consistent with normal commercial contracts of this kind and section 5.3 of the Access Code, and was always intended.</p> <p>Western Power proposes to amend clause 19.5 (a) and (b) so that they state as follows:</p> <p>(a) Subject to clause 19.5(c), the maximum liability of Western Power* to the User* and the Indemnifier* collectively under and in connection with this Contract* is limited to an amount of \$5 million in the aggregate and refreshed annually each 1 July, except that the liability described in clauses 7, 8 and 20 are is not counted for the purposes of Western Power*'s maximum liability under this Contract*.</p> <p>(b) Subject to clause 19.5, the maximum liability of both the User* and the Indemnifier* collectively to Western Power* under and in connection with this Contract* is limited to the lesser of:</p> <p>(i) <u>an amount of \$80 million in the aggregate, refreshed annually each 1 July; and</u></p> <p>(ii) <u>the sum of:</u></p> <p style="padding-left: 40px;">[the categories (A) to (E)],</p> <p>except that the liabilities described in clauses 7, 8 and 20 are is not counted for the purposes of both the User*'s and the Indemnifier*'s collective maximum liability under this Contract."</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>17 The proposed access arrangement revisions should be amended to delete clause 19.5(c) of the electricity transfer access contract.</p>	<p>Amendment addressed.</p> <p>The Authority accepted a submission that there should be no provision for inflation indexation under the ETAC because the liability amounts under the contract are sufficient and 'the relatively small increases in levels of liability would be inconsistent with the practices of insurance providers that typically issue insurance policies (for the relevant insurances) for amounts in multiples of \$1 million or \$5 million'.</p> <p>Western Power acknowledges the issue of relatively small increases. However, not indexing the maximum liability amounts will result in the amounts, over time, becoming inappropriate. This is particularly so with such long terms contracts. Some ETACs extend for 30 years or more, which makes indexation essential.</p> <p>To address the above issues, Western Power proposes the following amended clause 19.5(c):</p> <p style="padding-left: 40px;">"The maximum liability amounts applicable under clauses 19.5(a) and 19.5(b) shall be CPI Adjusted* annually each 1 July <u>subject to adjustment every five years from the Commencement Date*</u> as follows:</p> <p style="padding-left: 40px;">(i) <u>On the fifth anniversary of the Commencement Date* each maximum liability amount will CPI-Adjusted* for each year in the five year period after the Commencement Date*;</u></p> <p style="padding-left: 40px;">(ii) <u>Each maximum liability amount after the final adjustment will be rounded up to the nearest \$million; and</u></p> <p style="padding-left: 40px;">(iii) <u>The final CPI-Adjusted* maximum liability amounts will become the new maximum liability amounts from the date of the final adjustment."</u></p> <p>The intention is that the CPI adjustment will be based on the aggregated CPI increase since the last increase. That is, the CPI increase will be calculated for each of the past 5 years and then added together.</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>18 The proposed access arrangement revisions should be amended so that part 1(a)(i)A of schedule 5 of the electricity transfer access contract provides for the insurance requirement to be limited in the aggregate to \$50 million in each 12 months.</p>	<p>Amendment addressed.</p> <p>Western Power does not agree that 'unlimited in the aggregate' is not readily available for public and products liability (because it is accepted practice by Australian and London based insurance firms). However, Western Power accepts that it is reasonable that the insurance amounts should reflect \$50m <u>or</u> the maximum liability amounts under the ETAC, whichever is the higher. It would be inappropriate for the insured amount to be less than the maximum liability under the ETAC.</p> <p>Western Power submits it is not correct to state that a greater amount to that capped under clause 19.5 will never eventuate because personal injury claims under clause 20 are not capped (so, potentially, this liability could be uninsured). Western Power accepts that under the Access Code it needs to balance this risk with the interests of both Western Power and users.</p> <p>Western Power proposes the following clause to address the Required Amendment:</p> <p>Western Power proposes that part 1(a)(i)(A) of schedule 5 be amended to state:</p> <p style="padding-left: 40px;">"(a) The User* must effect and maintain, commencing from the Commencement Date* the following policies of insurance:</p> <p style="padding-left: 80px;">(i) public and products liability of:</p> <p style="padding-left: 120px;">(A) public liability insurance for a limit of not less than \$50 million or the maximum liability of the User* under clause 19.5 (<u>whichever is greater</u>) per claim and unlimited in the aggregate of all claims made in an <u>Insured Year*</u>; and"</p> <p>The following new definition will be added to the ETAC:</p> <p>"Insured Year* means the period between and including 1 July in a year and 30 June in the following year."</p>	<p>N/A</p>	<p>See Required Amendment 2.</p>

	Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
19	<p>The proposed access arrangement revisions should be amended so that the requirements for workers compensation, motor vehicle and third-party property insurance under part 1(a)(ii) and part 1(a)(iii) of the electricity transfer access contract apply only where these insurances are reasonably requested by Western Power.</p>	<p>Amendment addressed.</p> <p>The Authority accepted Synergies comment that the requirement for workers compensation, motor vehicle and third party property insurance under Part 1(a)(ii) and Part 1(a)(iii) is not applicable to retailers and hence these parts should be qualified by "if applicable".</p> <p>Western Power's view is that the requirement for workers' compensation insurance is consistent with the model standard access contract (see Schedule 8 of the model standard access contract) and so it is consistent with section 5.3 of the Access Code and the Code objective.</p> <p>Furthermore, Western Power requires motor vehicle insurance because users regularly drive their vehicles into Western Power premises in connection with the ETACs. For example, users may drive into Western Power's substations to disconnect their supply during maintenance. During these periods, there is a risk that the user's vehicles may damage Western Power's equipment. It is reasonable that the risk be insured.</p> <p>The above points should address the Authority's concerns in relation to the Required Amendment.</p>	N/A	See Required Amendment 2.
20	<p>The proposed access arrangement revisions should be amended so that clause 29.3(b) of the electricity transfer access contract requires that Western Power act reasonably in determining a location for a meeting for resolution of a dispute.</p>	<p>Amendment accepted.</p> <p>Western Power proposes to address the required amendment by amending clause 29.3(b) as follows:</p> <p style="padding-left: 40px;">"If the Parties* are unable to agree on a meeting place under clause 29.1 or 29.2 in the allocated time frame, the meeting will take place at a place determined by Western Power* (<u>acting as a Reasonable and Prudent Person*</u>)."</p>	N/A	See Required Amendment 2.

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
21	<p>Amendment accepted.</p> <p>Western Power notes that the Required Amendment is consistent with Western Power's intended approach. Western Power proposes to implement the Required Amendment by including an amended clause 33.1(f) as follows:</p> <p style="padding-left: 40px;">" the information is about or relating to a Controller* <u>or a person who is proposed to be a Controller*</u>."</p>	N/A	See Required Amendment 2.
22	This Required Amendment relates to the definition of service standard benchmarks. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.		
23	This Required Amendment relates to the definitions of SAIDI and SAIFI. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.		
24	This Required Amendment relates to service standard benchmarks for SAIDI and SAIFI for customers served by the 15 per cent of worst performing feeders. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.		
25	This Required Amendment relates to forecast of non-capital costs. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.		
26	This Required Amendment relates to the exclusion of certain capital expenditure from the capital base. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.		

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment																													
<p>27 The proposed access arrangement revisions should be amended to add the value of any revenues from disposal of assets in the first access arrangement period to the value of redundant assets applied in calculation of the capital base at the commencement of the second access arrangement period.</p>	<p>Amendment addressed.</p> <p>Western Power accepts this amendment with qualification.</p> <p>Paragraph 615 of the Draft Decision sets out the dollar amounts that the Authority requires Western Power to add to the value of redundant assets in the calculation of the capital base at the commencement of the second access arrangement period.</p> <p>Western Power has reviewed the dollar amounts set out in paragraph 615 and compared these amounts with the relevant audited regulatory financial statement (Revised Access Arrangement Information – Appendix 8).</p> <p style="text-align: center;">Table 1 - Revenue from disposal of redundant assets (\$M nominal)</p> <table border="1" data-bbox="696 762 1509 975"> <thead> <tr> <th rowspan="2"></th> <th colspan="2">Draft Decision</th> <th colspan="3">Regulatory Financial Statements</th> </tr> <tr> <th>2006/07</th> <th>2007/08</th> <th>2006/07</th> <th>2007/08</th> <th>2008/09 *</th> </tr> </thead> <tbody> <tr> <td>Transmission</td> <td>1.80</td> <td>0.31</td> <td>0.120</td> <td>1.800</td> <td>0.000</td> </tr> <tr> <td>Distribution</td> <td>0.00</td> <td>0.00</td> <td>0.191</td> <td>0.000</td> <td>0.000</td> </tr> <tr> <td>TOTAL</td> <td>1.80</td> <td>0.31</td> <td>0.311</td> <td>1.800</td> <td>0.000</td> </tr> </tbody> </table> <p>* 2008/09 – draft figures, subject to audit verification</p> <p>Western Power has found that the amounts set out in paragraph 615 do not reflect the relevant audited regulatory financial statements submitted by Western Power to the Authority. Western Power acceptance of this required amendment is subject to the Authority correcting this anomaly in their Final Decision.</p>		Draft Decision		Regulatory Financial Statements			2006/07	2007/08	2006/07	2007/08	2008/09 *	Transmission	1.80	0.31	0.120	1.800	0.000	Distribution	0.00	0.00	0.191	0.000	0.000	TOTAL	1.80	0.31	0.311	1.800	0.000	<p>N/A</p>	<p>Sections 6.61-6.63.</p>
	Draft Decision		Regulatory Financial Statements																													
	2006/07	2007/08	2006/07	2007/08	2008/09 *																											
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TOTAL	1.80	0.31	0.311	1.800	0.000																											
<p>28</p>	<p>This Required Amendment relates to forecast new facilities investment. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.</p>																															
<p>29</p>	<p>This Required Amendment relates to the value of the real pre-tax WACC. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.</p>																															

Required Amendment		Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
30	The target revenue should be revised to reflect an allowance for a cost of working capital calculated as a return on the opening value of a stock of working capital in each year of the second access arrangement period.	Amendment accepted. The calculation of the revenue requirement has been adjusted accordingly. The target revenue in the access arrangement has also been amended to reflect this change.	N/A	Section 6.4.
31	The proposed access arrangement revisions should be amended to determine the target revenue for reference services taking into account a forecast revenue from non-reference services at least equal to the forecast of non-capital costs attributed to provision of these services.	Amendment accepted. The calculation of the revenue requirement has been adjusted accordingly. Forecast revenue from non-reference services in the access arrangement has also been amended to reflect this change.	N/A	Sections 6.2 and 6.4
32	This Required Amendment relates to the deferral of revenue from the second to the third and subsequent access arrangement periods. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.			
33	This Required Amendment relates to the magnitude of side constraints. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.			
34	This Required Amendment relates to gain sharing mechanism. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.			
35	This Required Amendment relates to the service standard adjustment mechanism. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.			
36	This Required Amendment relates to the recovery of deferred revenue. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.			
37	This Required Amendment relates to the proposed D-factor scheme. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.			

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>38 The proposed access arrangement revisions should be amended to resolve inconsistencies between clause 10 of the applications and queuing policy and clauses 3.4 and 3.5 of the electricity transfer access contract in relation to changes to covered services, including increases or decreases in contracted capacity at a connection point.</p>	<p>Amendment accepted.</p> <p>Western Power will revise clauses 3.4 and 3.5 of the ETAC to ensure there are no inconsistencies with Clause 10.2 or 10.3 of the AQP. The revisions will ensure the processes for increasing or decreasing contracted capacity are only represented in full within the AQP. All equivalent clauses in the ETAC will refer Users to the process in the AQP.</p> <p>Further details are contained in the Attachment.</p>	Attachment C	Sections 5.7 to 5.11
<p>39 The proposed access arrangement revisions should be amended such that clause 11.2 of the applications and queuing policy is amended to indicate that nothing in clause 11.2 provides Western Power with a derogation of obligations to energise connection points within the timeframes specified under clause 8.2 of the Code of Conduct for the Supply of Electricity to Small Use Customers or regulations 7 and 8 the Electricity Industry (Obligation to Connect) Regulations 2005.</p>	<p>Amendment accepted.</p> <p>Western Power will revise clause 11.2(e) of the AQP, and include a new clause 11.2(g).</p> <p>The revision will ensure the timeframes for determining whether Western Power accepts the application under 11.2(e) will not derogate Western Power's obligations to "re-energise a connection point within the timeframes specified in clause 8.2 of the Code of Conduct for the Supply of Electricity to Small Use Customers 2004 or regulations 7 and 8 of the Electricity Industry (Obligations to Connect) Regulations 2005".</p> <p>Further details are contained in the Attachment.</p>	Attachment D	Sections 5.7 to 5.11
<p>40 The proposed access arrangement revisions should be amended such that the proposed change to clause 24.17(a) of the applications and queuing policy is deleted and the obligation is maintained for Western Power to provide queue information in the initial response to an application.</p>	<p>Amendment addressed.</p> <p>Western Power will revise clause 24.17(a) to maintain the obligation to provide queuing information as part of the initial response, "to the extent Western Power is reasonably able to do so, but in any case as part of the preliminary assessment under clause 19.3 with respect to an application".</p> <p>Further details are provided in the attachment.</p>	Attachment E	Sections 5.7 to 5.11

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>41 The proposed access arrangement revisions should be amended such that the contributions policy includes an obligation on Western Power to provide an applicant or user with details of the calculation of any contribution to be required from the applicant or user including:</p> <ul style="list-style-type: none"> • where the contribution is in respect of new facilities investment, details of assessment of the new facilities investment against the requirements of the new facilities investment test and details of the calculation of the amount that does not meet the new facilities investment test; • where the contribution is made in respect of non-capital costs related to alternative options, details of assessment of the non-capital costs against the alternative options test and details of the calculation of the amount that does not satisfy the alternative options test; • details of assumptions and calculations applied in the apportionment of any forecast cost of works between the user or applicant and other users or applicants or Western Power under clause 5.4 of the contributions policy; and • details of the calculation of a headworks contribution under clause 6 of the contributions policy. 	<p>Amendment accepted.</p> <p>Western Power will insert a new clause 10 in the proposed contributions policy that satisfies this required amendment.</p> <p>The proposed new clause is set out below.</p> <p>Obligation for Western Power to provide information</p> <p>Upon request from an <i>applicant</i>, and in respect of a <i>contribution for works</i>, Western Power will provide the <i>applicant</i> with the following information.</p> <p>(a) where the <i>contribution</i> is in respect of new facilities investment, details of assessment of the <i>new facilities investment</i> against the requirements of the <i>new facilities investment test</i> and details of the calculation of the amount that does not meet the <i>new facilities investment test</i>;</p> <p>(b) where the <i>contribution</i> is made in respect of <i>non-capital costs</i> related to <i>alternative options</i>, details of assessment of the <i>non-capital costs</i> against the <i>alternative options test</i> and details of the calculation of the amount that does not satisfy the <i>alternative options test</i>;</p> <p>(c) details of assumptions and calculations applied in the apportionment of any forecast cost of <i>works</i> between the <i>user</i> or <i>applicant</i> and other <i>users</i> or <i>applicants</i> or Western Power under clause 5.4 of this <i>contributions policy</i>; and</p> <p>(d) details of the calculation of a <i>headworks</i> contribution under clause 6 of this <i>contributions policy</i>.</p> <p>Note. A consequence of this required amendment is that the definitions for “new facilities investment, and “new facilities investment test” will be the same as provided in the Code.</p>	<p>N/A</p>	<p>Sections 5.12 to 5.17D; 6.52; and Appendix 8.</p>

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
42 The proposed access arrangement revisions should be amended to include definitions of "rural zone" and "mixed zone" as these terms are used in the proposed contributions policy to define a class of user who must make a payment under the headworks scheme.	<p>Amendment accepted.</p> <p>Clause 6.1(b) of the proposed contributions policy states that the headworks scheme applies to "the class of user who makes a connection application in relation to the distribution system within a relevant area". "Relevant area" is defined in the proposed contributions policy to include the "rural zone and mixed zone" which are also defined terms, by reference to the definitions in section 4.3 of the price list information.</p> <p>This reference is incorrect and should in fact refer to the definitions in section 5.3 of the price list information. The proposed contributions policy will be amended accordingly.</p>	N/A	Sections 5.12 to 5.17D
43	This Required Amendment relates to the contributions policy. Western Power will lodge a response to this Required Amendment in its second submission, which will be provided to the Authority by 10 September 2009.		
44	<p>Amendment accepted.</p> <p>Western Power will delete proposed clause 22(c)(iii).</p>	N/A	Sections 5.12 to 5.17D

Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
<p>45 The proposed access arrangement revisions should be amended such that the contributions policy only allows for contributions in respect of non-capital costs incurred in the implementation of an alternative option where:</p> <ul style="list-style-type: none"> • the alternative option is being implemented in response to a connection application; and • the costs are costs that would be incurred by a service provider efficiently minimising costs; and • Western Power is able to clearly demonstrate that the costs were not included, and could not reasonably have been included, in forecasts of non-capital costs taken into account in setting the price control; and • the conditions of section 6.41(b) of the Access Code are not satisfied. 	<p>Amendment addressed.</p> <p>Western Power accepts the intention of this required amendment. However Western Power believes that the required amendment, first two and fourth dot points, are already addressed in the proposed contributions policy.</p> <p>The third dot point will be added to the proposed contributions policy as a revised clause 2(c)(iii), as follows.</p> <p style="padding-left: 40px;">“in the case of non-capital <i>works</i> including <i>alternative options</i>, where the costs of the <i>works</i> were not included, and could not reasonably have been included, in forecasts of non-capital costs taken into account in setting the price control,”</p> <p>The first dot point is already included within the scope of clause 2(a) and 2(c) because “alternative options” is included in the definition of works. Under definitions, the term “works” includes alternative options.</p> <p>The second dot point is adequately addressed by clause 3 of the proposed contributions policy.</p> <p>The fourth dot point is addressed by clause 2(c)(ii) which states “in the case of works related to alternative options, where the non-capital costs associated with such works do not satisfy the alternative options test”. The “alternative options test” is defined in the Code in section 6.41.</p>	<p>N/A</p>	<p>Sections 5.12 to 5.17D</p>

	Required Amendment	Western Power's response	Cross reference to attachment	Code provisions relevant to the Required Amendment
46	The proposed access arrangement revisions should be amended to delete the expanded requirements for security proposed under clause 1.3 of the contributions policy.	<p>Amendment addressed.</p> <p>For the purposes of this response it has been assumed that the required amendment refers to clause 4.3 (not 1.3) of the proposed contributions policy.</p> <p>Western Power does not accept this required amendment in full but will revise clause 4.3, as shown in the attachment. The attachment also provides an explanation of the reasons for the provisions which Western Power is proposing to address the substance of Required Amendment 46. Clauses 4.3(a) and 4.3(b) have been amended to reflect the existing policy with two minor revisions. The proposed clause 4.3(c) has been replaced with 2 new clauses that provide for different requirements for projects where the works are less than \$15M in value and for where the cost of the works exceed \$15M.</p>	Attachment F	Sections 5.12 to 5.17D

3. DETAILED SUPPORTING INFORMATION

In accordance with the information presented in the table in section 2 of this submission, the table below lists Attachments A to F to this submission and provides a brief summary of the relevant Required Amendments to which each Attachment relates. As noted in section 1 of this submission, the purpose of these Attachments A to F is to provide further detailed supporting information where necessary to substantiate the approach adopted by Western Power in addressing the relevant Required Amendment.

Also as noted in section 1, Attachment I contains a copy of the ETAC which Western Power submitted for approval in October 2008, marked up to show the further revisions which Western Power proposes to address all the Required Amendments that relate to the ETAC. Attachment I also incorporates two further amendments to the original proposed ETAC which were not the subject of Required Amendments. Western Power's reasoning for these further amendments is set out in Attachments G and H.

Western Power anticipates that the Authority should be able to approve the ETAC as set out in Attachment I.

Attachment	Required Amendment or matter addressed
<p style="text-align: center;">A</p>	<p>Western Power's detailed response to Required Amendments 5, 6 and 7</p> <p>These three Required Amendments address matters relating to the obligations of Western Power and users (as appropriate) to maintain, update and provide access to the metering data base.</p>
<p style="text-align: center;">B</p>	<p>Western Power's detailed response to Required Amendment 11</p> <p>This Required Amendment relates to the provision of an indemnity by Western Power in circumstances where the user enters into legal proceedings to procure compliance of a controller under the ETAC.</p>
<p style="text-align: center;">C</p>	<p>Western Power's detailed response to Required Amendment 38</p> <p>This Required Amendment addresses inconsistencies between clause 10 of the applications and queuing policy and clauses 3.4 and 3.5 of the electricity transfer access contract in relation to changes to covered services, including increases or decreases in contracted capacity at a connection point.</p>
<p style="text-align: center;">D</p>	<p>Western Power's detailed response to Required Amendment 39</p> <p>This Required Amendment relates to Western Power's obligations to energise connection points within the timeframes specified under the Code of Conduct for the Supply of Electricity to Small Use Customers, and the Electricity Industry (Obligation to Connect) Regulations 2005.</p>
<p style="text-align: center;">E</p>	<p>Western Power's detailed response to Required Amendment 40</p> <p>This Required Amendment relates to Western Power's obligation to provide queue information in its initial response to an application to connect.</p>

Attachment	Required Amendment or matter addressed
F	<p>Western Power's detailed response to Required Amendment 46</p> <p>This Required Amendment requires deletion of the expanded requirements for security proposed under clause 1.3 of the contributions policy.</p>
G	<p>Western Power's proposed changes to clause 9 of the ETAC</p> <p>The proposed amendments do not address any matters raised in the Authority's Required Amendments. The proposed changes relate to the requirement of a user to provide a parent company guarantee, and the credit ratings that apply to a user.</p>
H	<p>Western Power's proposed addition of a "Change in Control" clause</p> <p>Western Power seeks to insert a "change in control" provision into the ETAC. The proposed provision will apply when there is a change in control of the user. It is noted that the Draft Decision does not specify a Required Amendment in relation to the change which Western Power is now proposing.</p>
I	<p>Revision-marked ETAC</p> <p>This Attachment contains a copy of the ETAC which Western Power submitted for approval in October 2008, marked up to show the further revisions which Western Power is now submitting for the Authority's approval.</p>

ATTACHMENT A

Western Power's detailed response to Required Amendments 5, 6 and 7

1. Introduction

Western Power's access arrangement revisions sought to amend clause 3.7 relating to connection point data to add new clauses 3.7(c) to (e) as set out at paragraph 134 of the Draft Decision.

Required Amendment 5 states:

"The proposed access arrangement revisions should be amended such that clause 3.7 of the electricity transfer access contract is clear on whether schedule 3 and, where applicable, the metering database, is to be updated only by Western Power or either by Western Power or the user."

Required Amendment 6 states:

"The proposed access arrangement revisions should be amended such that clause 3.7 of the electricity transfer access contract requires Western Power to provide the user with such access to schedule 3 and the metering database as is reasonably required for the user to obtain information or to change relevant information."

Required Amendment 7 states:

"The proposed access arrangement revisions should be amended so that the electricity transfer access contract indicates which records of connection point data will have precedence, to the extent of any inconsistency between schedule 3 of the electricity access contract, the metering database and any connection point data contained in the price list."

2. Western Power's proposed approach for addressing the Required Amendments 5, 6 and 7

The Authority's reasoning for Required Amendments 5, 6 and 7 were set out in paragraphs 138 to 139 (RA5), 135, 136 and 140 (RA6), and 137, 138, 139 and 142 (RA7) of the Draft.

Western Power accepts that clarification is needed in relation to who is required to update the relevant database and the user's access to the information in the relevant database. Western Power also accepts that a precedence clause should be added to the ETAC to deal with the precedence of information.

2.1 Required Amendment 5

Western Power will update the information in the various databases

The information in part 1 of schedule 3 forms part of the ETAC and, therefore, may be amended only in accordance with clause 37.2 of the ETAC. The parties will in negotiating the ETAC together agree and record this information. Western Power will then be responsible for updating the information in accordance with clause 37.2.

In relation to the metering database it is Western Power's obligation under the metering code to record and update it.

Western Power has made several amendments to clause 3.7 in this regard.

2.2 Required Amendment 6

Access to the Metering Code information (the Metering Database) will be via the Build Pack (developed under the *Electricity Industry Customer Transfer Code 2004 Communication Rules* (made under Part 5 of the Customer Transfer Code) and/or the *Electricity Industry Metering Code 2004 Communication Rules* (made under Part 6 of the Metering Code). This document has been prepared with stakeholder consultation for the purpose of providing Metering Code information to Metering Code Participants and so Western Power submits that it is appropriate that the ETAC is consistent with it.

With respect to the information stored within other of Western Power's databases, Western Power will, on request from the user, provide the user with the relevant up-to-date information.

Western Power proposes new clauses 3.7(c) and (f).

2.3 Required Amendment 7

Western Power agrees that a precedence provision should be included into the ETAC to expressly outline, where there is inconsistency in connection point information, which information take precedence.

Western Power proposed to include a new clause which provides that the Metering Database takes the highest order of precedence followed by part 1 of schedule 3 of the ETAC and then other databases. The only exception to this will be where an inconsistency is created due to a permanent reconfiguration of the network. In that situation, part 1 of schedule 3 will take the highest order of precedence. This will ensure that the status quo with respect to a user's information and billing will be preserved between the parties until the next financial year.

The price list has not been added to the list of documents in the precedents provision as Western Power does not consider the information in it can be in conflict with part 1 of schedule 3, the metering database or other database that it maintains.

Western Power proposes new clause 3.7(k).

2.4 General

Western Power proposes additional amendments to clause 3.7 and related clauses to better facilitate current practice with users. There is flexibility in the current practice in that different users have different expectations and demands with respect to the database/s used for recording information under the ETAC.

In general terms, the typical practice is:

- Users that are only generators use Schedule 3 in addition to the metering database.
- Users that are retailers or 'gentailers' (retailers and generators) do not generally use Schedule 3 due to the number of connection points. Instead, these users typically, by agreement with Western Power, rely on the Metering Database or another databases maintained by Western Power.
- DSOC and CMD are not presently stored in the Metering Database. That information is stored in other databases maintained by Western Power. Also, Western Power outlines the current DSOC or CMD (as applicable) on each invoice sent to a user.

Given that generators typically have only a few connection points under an ETAC, it is reasonably manageable to keep Schedule 3 updated. However, retailers can have thousands of connection points and, because they can change frequently (for contestable customers), it is much more difficult to keep Schedule 3 up to date. For this reason, retailers and 'gentailers' typically rely on other database and not schedule 3.

Western Power wishes to retain current levels of flexibility in the storage and updating of the required information. Western Power submits that it is consistent with section 5.3 of the Access Code and the Code Objective to not 'hard wire' the practice for all users (based largely on the submissions to the ERA by one user) but to allow the practice to be flexible to allow the interests and needs of all uses to be met.

The amendments proposed by Western Power are intended to accommodate that flexibility.

3. Western Power's Proposed Approach for Addressing the Required Amendment

Western Power proposes clause 3.7 (with related amendments in other parts of the ETAC) be amended to read as follows:

3.7 Amendment to Connection Point* data

- (a) Unless the Parties* otherwise agree, Western Power must record the information referred to in Part 1 of Schedule 3, with respect to each Connection Point*, in the Connection Point Database*.
- (b) Subject to clauses 3.7(g) and 3.7(h), Western Power* must update the information contained in a Connection Point Database* following any variation made under this clause 3.

- (c) Upon request by the User* for information referred to in the Connection Point Database*, Western Power* will provide to the User* the most up-to-date version of that information.
- (d) The Parties* acknowledge that if the User* is a Metering Code Participant*, for each Connection Point* Western Power* must also record and update the relevant information required under Part 1 of Schedule 3 in the Metering Database* in accordance with the provisions of the Metering Code*.
- (e) Nothing in this Contract* restricts or prohibits Western Power* from maintaining and updating the Metering Database* in accordance with the Metering Code*.
- (f) Western Power* will provide the User* with access to the information in the Metering Database* in accordance with the Build Pack*.
- (g) Subject to clause 3.7(h), where Western Power causes a Permanent Reconfiguration* of the Network* which results in the information contained in the Contract Database* having to be updated:
 - (i) Western Power* is not required to update the information contained in the Connection Point Database* before the next 1 July following the Permanent Reconfiguration* of the Network*;
and
 - (ii) Western Power* must update the information contained in the Connection Point Database* before the next 21 July following the Permanent Reconfiguration* of the Network*.
- (h) Where a Permanent Reconfiguration* of the Network* occurs as a result of, or arising from, a notice or application by the User* under clauses 3.4, 3.5 or 3.6 which results in the information contained in the Contract Database* having to be updated:
 - (i) clause 3.7(g) does not apply;
 - (ii) Western Power* must update the information contained in the Connection Point Database* as soon as reasonably practicable after the Permanent Reconfiguration* of the Network*; and
 - (iii) where the information to be updated is contained in Part 1 of Schedule 3, then the information must be updated in accordance with clause 37.2.
- (i) The Parties* must notify each other of any errors discovered in the Connection Point Database* as soon as reasonably practicable after becoming aware of the error.
- (j) Western Power* must amend any error in the Connection Point Database* as soon as reasonably practicable after becoming aware of the error, provided that if Western Power* becomes aware of an error otherwise than by notice from the User* under clause 3.7(i), no amendment shall be made until Western Power* has given notice to the User* of the error.

- (k) Where under this Contract* Western Power* has recorded information in more than one of Part 1 of Schedule 3, the Metering Database* and any other database maintained by Western Power for the purposes of this Contract* and there is an inconsistency or conflict between the information in the databases in which the information is recorded, then the following order of precedence applies, from highest to lowest:
- (i) where the circumstances in clauses 3.7(g) or 3.7(h) apply:
 - (A) Part 1 of Schedule 3;
 - (B) any other database;
 - (C) the Metering Database*; and
 - (ii) in all other circumstances:
 - (A) the Metering Database*;
 - (B) Part 1 of Schedule 3;
 - (C) any other database.

The following incidental definitions are also inserted:

- Build Pack*** means the 'Build Pack' developed under the Electricity Industry Customer Transfer Code 2004 Communication Rules (made under Part 5 of the Customer Transfer Code*) and/or the Electricity Industry Metering Code 2004 Communication Rules (made under Part 6 of the Metering Code*), as applicable in the circumstances.
- Connection Point Database*** means:
- (a) Part 1 of Schedule 3; or
 - (b) another database or databases containing information relating to this Contract* and maintained by Western Power* as agreed between the Parties*, which for the avoidance of doubt can include the Metering Database* if the User* is not a Metering Code Participant* and this is agreed by the User* and Western Power*,
- as applicable.
- Contract Database*** means the Connection Point Database* or, if the Metering Database* is not included within the Connection Point Database* and clause 3.7(k)(ii) applies, then it means the Metering Database*.

Amendments that flow from the changes to clause 3.7 are proposed for the following clauses:

- o 7.1(f);
- o 6.1(c); and

- the definitions of 'Connection Point*', 'Contracted Capacity*', 'Start Date*', 'End Date*' and 'Services*'.

ATTACHMENT B

Western Power's detailed response to Required Amendment 11

1. Introduction

Clause 6.2(a) of the approved ETAC requires the user to procure the compliance of a controller with terms of the ETAC. Western Power's access arrangement revisions did not seek any amendment to this clause.

Required Amendment 11 states:

"The proposed access arrangement revisions should be amended such that clause 6.2(a) of the electricity access contract is made subject to a provision that the user is not required to commence, maintain or continue legal proceedings to procure compliance of a controller with obligations under the access contract unless Western Power provides an indemnity for all of the user's costs of and incidental to such proceedings."

2. Western Power's proposed approach for addressing the Required Amendment 11

Paragraphs 179 to 181 of the Draft Decision set out the Authority's reasoning in relation to this Required Amendment.

The Authority considered that it is unreasonable for the user to be required to procure compliance of a controller, effectively on Western Power's behalf. The Authority expressed the view that Western Power has the effective ability, by its rights to curtail supply, to require a controller to enter into a contract with Western Power where the facilities and level of energy transfer may disrupt the network.

The Authority observed that clause 6.2(a) of the ETAC applies to all connection points and not just those over certain thresholds of capacity as applies under clause A3.36 of the model access contract. Secondly, the Authority noted that clause 6.2(a) requires the user to procure compliance with a greater range of matters than clause A3.38 of the model access contract.

In response to the Required Amendment, Western Power will provide an indemnity but the indemnity will be limited to legal proceedings involving circumstances that are outside of those contemplated by the scope of clause A3.36 of the model access contract. Under this proposal, where the circumstances align with or are similar to those contemplated by clause A3.36 of the model access contract no indemnity is provided.

Western Power considers that it has addressed the matters set out in paragraphs 179 to 181 of the Draft Decision. Western Power's proposed approach is in line with the provisions of the model access contract where no indemnity is given. The proposed approach therefore satisfies the requirements of section 5.3 of the Access Code.

Western Power believes that it is reasonable that the right to indemnify for enforcement should not affect or restrict the exercise of any other rights under the Contract (see also Western Power's detailed response to Required Amendment 10).

3. Western Power's Proposed Approach for Addressing the Required Amendment

Western Power proposes to amend clause 6.2 as follows:

- (a) in paragraph (a):
 - (i) add the words 'Subject to clause 6.2(f)'; and
 - (ii) add a new sub-paragraph '(ix) clause 35 (Notices)'; and
- (b) add the following new paragraphs:
 - "(f) Unless clause 6.2(g) applies, the User* is required to commence, maintain or continue legal proceedings to procure compliance of the Controller* with the obligations set out in this Contract*, to the extent that such compliance is reasonably necessary for the Parties* to satisfy their obligations under this Contract*.
 - (g) Where:
 - (i) the proceedings referred to in clause 6.2(f) do not relate to clauses 6.2(i), (ii), (iv), (v) or (ix); and
 - (ii) the obligations in issue do not relate to an Exit Point* specified in a Connection Point Database*; or
 - (iii) the obligations in issue do not relate to an Entry Point* where Generating Plant* with installed capacity exceeding 30 kVA is connected at the Entry Point*,the User* is not required to comply with clause 6.2(f) unless Western Power* provides an indemnity to the User* for the User*'s costs of and incidental to the proceedings.
 - (h) Nothing in this clause:
 - (i) limits the User*'s obligations under this clause; or
 - (ii) derogates from Western Power*'s other rights under this Contract* including its rights under clause 6.2(d), or requires Western Power* to pay any compensation to the User* for exercising any of those rights."

ATTACHMENT C

Western Power's detailed response to Required Amendment 38

1. Introduction

Western Power accepts Required Amendment 38, which states:

Required Amendment 38

The proposed access arrangement revisions should be amended to resolve inconsistencies between clause 10 of the applications and queuing policy and clauses 3.4 and 3.5 of the electricity transfer access contract in relation to changes to covered services, including increases or decreases in contracted capacity at a connection point.

Section 2 below sets out Western Power's comments on Required Amendment 38. Section 3 presents the amended provisions that Western Power proposes in order to give effect to the Required Amendment.

2. Western Power's comments on Required Amendment 38

Clause 2.6 of the Electricity Networks Access Code (the 'Code') ensures the terms of the Applications and Queuing Policy ('AQP') prevail in light of an inconsistency between the AQP and the Electricity Transfer Access Contract ('ETAC'). Clause 2.6 of the Code states:

- "2.6 Nothing in this Code or an *access arrangement* prevails over or modifies the provisions of any contract for *services* provided by means of a *network*, except for:
- (a) if an *access arrangement* is in effect for the *network* — the *applications and queuing policy*; and
 - (b) the *ringfencing objectives*, to the extent that they apply to the *network*, and any *ringfencing rules* in effect for the *network*; and
 - (c) any provisions of the *technical rules* which by this Code are expressed to prevail over such a contract; and
 - (d) subject to section 10.32(a), an *award* by the *arbitrator*."

To reduce the risk of inconsistencies between the AQP and the ETAC, the ETAC will not reproduce processes that are already clearly laid out in the AQP.

2.1 Process for an Increase to Contracted Capacity

The Electricity Industry Customer Transfer Code 2004 does not contain provisions for increasing contracted capacity at a connection point. Likewise, an application for an increase in contracted capacity cannot be made under the Contract as this will lead to the circular argument pointing back to the AQP.

In light of the above, and clause 2.6 of the Code, an application made under clause 10.2 of the AQP is the only acceptable method for requesting an increase to contracted capacity.

To remove any inconsistency, clause 3.4 of the ETAC for an increase in contracted capacity, will make reference to an application for an increase in contracted capacity under the AQP.

2.2 Notification Process for an Increase or Decrease to Contracted Capacity

The notification process for a decrease in contracted capacity under Clause 10.2 of the AQP has been inconsistently reproduced in clause 3.5 of the ETAC, as described by the submissions in the Draft Decision.

Clause 3.4 of the ETAC remains silent on a notification process for an increase in contracted capacity.

In light of the above, and clause 2.6 of the Code, the process for an increase or decrease of contracted capacity, and the required notification between parties are the processes and associated notification requirements outlined by Clause 10.2 of the AQP.

To remove any inconsistency, clause 3.4 of the ETAC for an increase in contracted capacity and clause 3.5 for a decrease in contracted capacity, will make reference to the process for an increase or decrease in contracted capacity under the AQP.

2.3 Limitations on Multiple Contracted Capacity Changes in a 12 Month Period

Limitations on multiple variances to contracted capacity within a 12 month period under clause 10.3 of the AQP have been inconsistently reproduced for a decrease in contracted capacity in clause 3.5 of the ETAC. The ETAC remains silent on multiple variances to an increase in contracted capacity.

This inconsistency includes an incomplete replication of the 'decrease of contracted capacity' conditions from clause 10.3 of the AQP to clause 3.5 of the ETAC. Clause 3.5 (c) (i) (F) of the ETAC "*as part of a Relocation**" was excluded from the AQP interpretation of the clause.

In light of the above, and clause 2.6 of the Code, the limitations to multiple changes to the covered services at a connection point are as represented under Clause 10.3 of the AQP.

To remove any inconsistency, clause 3.5 for a decrease in contracted capacity, will only make reference to the process for a decrease in contracted capacity under the AQP.

Clause 10.3 of the AQP will be amended to include the provision that changes to covered services made as a result of a Relocation will be excluded from the restrictions on multiple changes in a rolling twelve month period.

3. Western Power's proposed drafting to give effect to Required Amendment 38

3.1 Process for an Increase to Contracted Capacity & Notification Process for an Increase or Decrease to Contracted Capacity

Western Power will revise clauses 3.4 and 3.5 of the ETAC to ensure there are no inconsistencies with Clause 10.2 or 10.3 of the AQP.

The revisions will ensure the processes for increasing or decreasing contracted capacity are only represented in full within the AQP. All equivalent clauses in the ETAC will refer Users to the process in the AQP.

Clause 3.4 of the ETAC previously dealt with increases in contracted capacity or addition of a connection point by referring Users to the AQP, the Customer Transfer Code or the Contract. This clause will now refer Users to the AQP for processes relating to an increase or decrease in contracted capacity, removing the unnecessary reference to the Customer Transfer Code or the Contract.

Clause 3.5 of the ETAC which previously outlined the process for a decrease in contracted capacity will now refer Users to the AQP or Customer Transfer Code as appropriate for an addition of a connection point to the Contract.

The revised clauses 3.4 and 3.5 of the ETAC are included below:

3.4 Increase or decrease of Contracted Capacity*

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

3.5 Addition of a Connection Point*

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

3.2 Limitations on Multiple Contracted Capacity Changes in a 12 Month Period

The following changes will be made to the AQP to address the inconsistencies between the ETAC and the AQP regarding limitations on multiple variances to contracted capacity.

The definition of relocation is added to the AQP as follows:

“**relocation**” has the meaning given to it in the *Code*.”

Clause 10.3 (c) (vi) is added to include relocations as a valid reason for multiple changes to contracted capacity in a rolling twelve month period, and “increase” is added to clause 10.3 (c) (iv) such that increases or decreases to contracted capacity are provided for, see additions below:

10.3 More than 1 change or modification within 12 months

If Western Power receives:

- (a) more than 1 *application* or notice under clause 10.1; or
- (b) more than 1 *application* or notice under clause 10.2,

seeking to change the *covered service*, including to decrease or increase the contracted capacity, with respect to a single *connection point* in any rolling period of 12 months, then in relation to each additional *application* or notice Western Power:

- (c) may, subject to this clause 10, accept the change of *covered service*, where Western Power is satisfied, as a *reasonable and prudent person*, that the new *covered service* will be sufficient to meet the actual requirements of the *applicant*, and that it is required by reason of one or more of the following circumstances:
 - (i) a change in the actual *consumption* or *generation* by the *applicant* in respect of that *connection point* over the 12 month period prior to the *applicant* giving notice under clause 10.1(a) or 10.2(a) (as applicable), as recorded by the *metering equipment*; or
 - (ii) a change in the nature of the business or operation conducted at the connection point; or
 - (iii) a shutdown of the business or operation conducted at the connection point (including a shutdown for maintenance purposes) for longer than 1 continuous month; or
 - (iv) a rapid increase or decline in the business at the connection point; or
 - (v) a decrease in the number of capacity credits (as defined in the Market Rules) allocated to any generating plant at the connection point under the Market Rules; or
 - (vi) as part of a *relocation* or; or

(vii) some other special circumstance,

and

(d) is entitled to refuse the change in *covered service* where Western Power is satisfied, as a *reasonable and prudent person*, that the change is sought by reason of the seasonal nature of the business or operation at the *connection point*.

ATTACHMENT D

Western Power's detailed response to Required Amendment 39

1. Introduction

Western Power accepts Required Amendment 39, which states:

Required Amendment 39

The proposed access arrangement revisions should be amended such that clause 11.2 of the applications and queuing policy is amended to indicate that nothing in clause 11.2 provides Western Power with a derogation of obligations to energise connection points within the timeframes specified under clause 8.2 of the Code of Conduct for the Supply of Electricity to Small Use Customers or regulations 7 and 8 the Electricity Industry (Obligation to Connect) Regulations 2005.

Section 2 below sets out Western Power's comments on Required Amendment 38. Section 3 presents the amended provisions that Western Power proposes in order to give effect to the Required Amendment.

2. Western Power's comments on Required Amendment 39

2.1 Code of Conduct for the Supply of Electricity to Small Use Customers

Part 8 of the *Electricity Industry Act 2004* Code of Conduct (For the Supply of Electricity to Small Use Customers) is reproduced below:

"8.1 Reconnection by retailer*

[Note: This clause 8.1 may be varied in a non-standard contract.]

- (1) If a **retailer** has arranged for disconnection of a **customer's supply address** due to—
 - (a) failure to pay a bill, and the **customer** has paid or agreed to accept an offer of an instalment plan, or other payment arrangement;
 - (b) the **customer** denying access to the **meter**, and the **customer** has subsequently provided access to the **meter**; or
 - (c) illegal use of electricity, and the **customer** has remedied that breach, and has paid, or made an arrangement to pay, for the electricity so obtained, the **retailer** must arrange for reconnection of the **customer's supply address**, subject to—
 - (i) the **customer** making a request for reconnection; and
 - (ii) the **customer**—
 - A. paying the **retailer's** reasonable charge for reconnection, if any; or

- B. accepting an offer of an instalment plan for the **retailer's** reasonable charges for reconnection, if any.
- (2) For the purposes of subclause (1), a **retailer** must forward the request for reconnection to the relevant **distributor**—
- (a) that same **business day**, if the request is received before 3pm on a **business day**; or
- (b) no later than the next **business day**, if the request is received—
- (i) after 3pm on a **business day**, or
- (ii) on a Saturday, Sunday or public holiday in Western Australia.

8.2 Reconnection by distributor

- (1) If a **distributor** has disconnected a **customer's supply address** on request by the **customer's retailer**, and the **retailer** has subsequently requested the **distributor** to reconnect the **customer's supply address**, the **distributor** must reconnect the **customer's supply address**.
- (2) For the purposes of subclause (1), a **distributor** must reconnect the **customer's supply address**—
- (a) for **supply addresses** located within the **metropolitan area**—
- (i) within 1 **business day** of receipt of the request, if the request is received prior to 3pm on a **business day**; and
- (ii) within 2 **business days** of receipt of the request, if the request is received after 3pm on a **business day** or on a Saturday, Sunday or public holiday in Western Australia;
- (b) for **supply addresses** located within the **regional area**—
- (i) within 5 **business days** of receipt of the request, if the request is received prior to 3pm on a **business day**; and
- (ii) within 6 **business days** of receipt of the request, if the request is received after 3pm on a **business day**, or on a Saturday, Sunday or public holiday in Western Australia.
- (3) Subclause (2) does not apply in the event of an **emergency**.”

Part 8.2 contains provisions for *re-energisation timeframes* within the metro and regional areas to distribution connected customers. These are the timeframes to carry out the re-energisation.

Clause 11.2 (e) of the AQP applies to transmission and distribution connected customers, and requires Western Power to *determine* within 5 business days whether it *can accept an application* for re-energisation.

There is the potential for inconsistency between the provisions in Part 8.2 of the Code of Conduct and clause 11.2 (e) of the AQP for distribution customers, if Western Power does not determine whether it can accept an application for re-energisation beyond the timeframe in which it is obliged to carry out the work.

2.2 Electricity Industry (Obligation to Connect) Regulations 2005

Regulations 7 and 8 under Part 4 of the *Electricity Industry (Obligations to Connect) Regulations 2005* are reproduced below:

“7. Obligation to energise premises

- (1) If —
 - (a) premises are attached to a distribution system but are not energised;
 - (b) a retailer applies to the distributor for the premises to be energised; and
 - (c) a requirement, if any, that the distributor imposes under subregulation (2) has been satisfied,the distributor must energise the premises.
- (2) Before the end of the time limit fixed by regulation 8 for the energisation of premises, the distributor may impose a requirement that a contract be entered into with the distributor for the transportation of the electricity to be supplied through the connection.

8. Time for complying with obligation

- (1) If a distributor is obliged under regulation 7(1) to energise premises, it is required to do so before the time limit imposed by subregulation (2).
- (2) The time limit under this subregulation is —
 - (a) if the premises are within the metropolitan area —
 - (i) the end of the first business day after the day on which the application under regulation 7(1) is received if it is received before 3 p.m. on a business day;
 - (ii) the end of the second business day after the day on which the application under regulation 7(1) is received if it is received on a business day, but not before 3 p.m., or on a day that is not a business day;
 - (b) if the premises are not within the metropolitan area —
 - (i) the end of the fifth business day after the day on which the application under regulation 7(1) is received if it is received before 3 p.m. on a business day;
 - (ii) the end of the sixth business day after the day on which the application under regulation 7(1) is received if it is received on a business day, but not before 3 p.m., or on a day that is not a business day,or any later time to which the customer agrees in writing.
- (3) If, during any of the time that this regulation gives the distributor for energising the premises, any written law prevents the distributor from doing so, subregulation (2) applies as if the application under regulation 7(1) were received when the written law ceases to prevent the distributor from energising the premises.”

Regulation 8 contains provisions for energisation timeframes within the metro and regional areas to distribution connected customers. These are the timeframes to carry out the re-energisation.

Clause 11.2 (e) of the AQP applies to transmission and distribution connected customers, and requires Western Power to *determine* within 5 business days whether it *can accept an application* for re-energisation.

There is the potential for inconsistency between Regulation 8 of the Obligations to Connect Regulations and clause 11.2 (e) of the AQP for distribution customers, if Western Power does not determine whether it can accept an application for re-energisation beyond the timeframe in which it is obliged to carry out the work.

3. Western Power's proposed drafting to give effect to Required Amendment 39

Western Power will revise clause 11.2 (e) of the AQP, and include a new clause 11.2 (g).

The revision will ensure the timeframes for determining whether Western Power accepts the application under 11.2 (e) will not derogate Western Power's obligations to "re-energise a connection point within the timeframes specified in clause 8.2 of the Code of Conduct for the Supply of Electricity to Small Use Customers 2004 or regulations 7 and 8 of the Electricity Industry (Obligations to Connect) Regulations 2005".

The revised clauses 11.2 (e) and (g) of the AQP are repeated below.

11.2 Re-energisation

- (a) An applicant who seeks to re-energise an existing de-energised connection point must submit an electricity transfer application on the application form that is applicable for the type of facilities and equipment connected or to be connected at the connection point.
- (b) If the applicant does not have an electricity transfer access contract, then the lodgement fee for a new access contract applies to the application, plus costs associated with the re-energisation under the Metering Code.
- (c) If the de-energised connection point is not on the applicant's electricity transfer access contract, then the lodgement fee for a new connection point applies to the application, plus costs associated with the re-energisation under the Metering Code.
- (d) If the de-energised connection point is on the applicant's electricity transfer access contract, then only the costs associated with the re-energisation under the Metering Code apply to the application.
- (e) Subject to clause 11.2(g), Western Power must determine, as a *reasonable and prudent person*, within 5 *business days* whether it will accept the request for *re-energising*.
- (f) If Western Power determines that it cannot accept the request for *re-energising* under clause 11.2(e), then:
 - (i) Western Power must notify the *applicant* that it must submit, or procure that its *controller* submits, a *connection application*; and
 - (ii) the *priority* of such *connection application* shall be determined:

- (A) if a *complete connection application* is received by Western Power within 20 business days of the notice sent to the *applicant* under clause 11.2(f)(i), from the date Western Power received the *electricity transfer application* under clause 11.2(a); and
 - (B) otherwise, from the date Western Power received the *complete connection application*.
- (g) Nothing in clause 11.2 derogates from the obligations of Western Power to *re-energise a connection point* within the timeframes specified in clause 8.2 of the *Code of Conduct for the Supply of Electricity to Small Use Customers 2004* or regulations 7 and 8 of the *Electricity Industry (Obligations to Connect) Regulations 2005*.

ATTACHMENT E

Western Power's detailed response to Required Amendment 40

1. Introduction

Western Power proposes to address the matters raised by the Authority in proposing Required Amendment 40, which states:

Required Amendment 40

The proposed access arrangement revisions should be amended such that the proposed change to clause 24.17(a) of the applications and queuing policy is deleted and the obligation is maintained for Western Power to provide queue information in the initial response to an application.

Section 2 sets out Western Power's comments on Required Amendment 40. Section 3 then sets out Western Power's proposed approach for addressing this Required Amendment.

2. Western Power's comments on Required Amendment 40

The Authority's discussion of the matters relevant to Required Amendment 40 is set out in paragraphs 1137 to 1139 of the Draft Decision. In particular, in paragraph 1139, the Authority expressed concern that a delay in providing information to the applicant on the queuing status of an application does not adequately accommodate the interests of the applicant, for whom the information may be of substantial commercial significance, and is therefore inconsistent with section 5.7 of the Access Code.

Western Power notes, however, that the Authority has accepted the proposed revisions to clause 19.1 of the AQP to relax the content requirements of the initial response, including the requirement for a preliminary assessment to form part of the initial response (see paragraphs 1127 to 1129 of the Draft Decision).

The proposed revisions to clause 24.17 (a) of the AQP relaxed the requirement to provide applicants with information on their queuing status at the time of an initial response to their connection application. The relaxed requirements sought to provide applicants with queuing status information at the time that a preliminary assessment was available.

This change is intended to allow sufficient time to enable Western Power to determine whether there is a competing connection application (recognising that such a determination may require system studies to be completed). The change accommodates Western Power's interests by not imposing an unreasonable obligation on it, and the applicant's interests by ensuring the applicant is not given premature and, therefore, potentially misleading information.

Competing applications may be determined through prior knowledge of the state of the network and comparison of the locations and proposed connection points of active connection applications.

Clause 24.16 of the AQP, '*For Provision of information about position in queue*' specifically requires Western Power to notify applicants as to *each* competing application and a description of the circumstances which caused them to be competing. For congested parts of the network, or complex connection arrangements, complete and accurate determination of competing applicants may be undefined until such time as system studies have been completed to determine the relative use of assets and nature of overloads or required augmentations for each application. The timeframes within which an initial response is to be provided under the AQP do not allow for detailed system studies to take place (these are in the region of 2-4 months depending on the nature of the connecting plant and network state).

3. Western Power's proposed approach for addressing Required Amendment 40

Western Power will revise clause 24.17 (a) to maintain the obligation to provide queuing information as part of the initial response, "to the extent Western Power is reasonably able to do so, but in any case as part of the preliminary assessment under clause 19.3 with respect to an application".

This will ensure that queuing status will be provided with an initial response to an application where Western Power is able to make an assessment as to competing applications prior to undertaking detailed system studies. Where Western Power cannot reasonably determine in the initial response timeframe the extent to which applicants are competing with each other, and the nature in which they are competing, Western Power will seek to provide the queuing status information with a preliminary assessment.

The revised clause 24.17 (a) of the AQP is repeated below.

24.17 When Western Power is to provide *queue* information

Western Power must provide the information in clause 24.16:

- (a) as part of the *initial response* to an *application* to the extent Western Power is reasonably able to do so, but in any case as part of the preliminary assessment under clause 19.3 with respect to an *application*; and
- (b) at any time after a reasonable request by the *applicant* for updated information; and
- (c) as soon as practicable after a material change in the information previously notified under this clause 24.17, including when information of the kind referred to in clause 24.16(d) which was previously withheld on the ground that Western Power was prevented from doing so by clause 6.2 is no longer entitled to be withheld on that ground.

ATTACHMENT F

Western Power's detailed response to Required Amendment 46

1. Introduction

Western Power proposes to address the matters raised by the Authority in proposing Required Amendment 46, which states:

Required Amendment 46

The proposed access arrangement revisions should be amended to delete the expanded requirements for security proposed under clause 1.3 [sic] of the contributions policy.

Section 2 sets out Western Power's comments on Required Amendment 46. In light of this discussion, Section 3 presents Western Power's suggested approach for addressing this Required Amendment.

2. Western Power's comments on Required Amendment 46

In its Draft Decision, the Authority made the following observations on Western Power's proposed amendments regarding security deposits (in paragraphs 1207-1210):

"Western Power has proposed new provisions in the contributions policy relating to the ability of Western Power to require security from an applicant in respect of the amount of revenue from charges for services to be provided to the applicant that were forecast in planning an augmentation and that were taken into account in calculating the amount of a contribution.

Under clause 4.3 of the current capital contributions policy, Western Power is able to require security in respect of forecast revenue from the applicant where the forecast costs with respect to the connection application are greater than \$50,000. Western Power is able to require the security to be maintained for an initial period of 12 months and a maximum period of 24 months. After this period, the amount of any contribution may be reassessed.

Western Power has proposed changes to clause 4.3 to distinguish between circumstances where the forecast costs in respect of a connection application are between \$50,000 and \$1 million, and greater than \$1 million, and to allow Western Power to extend the periods for which security is to be maintained:

- where the forecast costs are greater than \$50,000 and less than \$1 million, security may be required for an initial period of 24 months and a maximum period of 36 months, or other such periods as reasonably determined by Western Power acting as a reasonable and prudent operator; and
- where the forecast costs are equal to or greater than \$1 million, Western Power may require the applicant to provide security on terms acceptable to Western Power acting as a reasonable and prudent person.

Western Power has not provided information on the reasons for the proposed changes to the requirements for security.”

Alinta Sales’ submission to the Authority commented that Western Power’s potentially open-ended requirement for security has the potential to impose material and unquantifiable costs on applicants, creating barriers to entry to the electricity market and reducing competition in the electricity market.

The Authority concluded in paragraphs 1215 and 1216:

“... the function of security against the forecast of revenue from the charges to be paid by the applicant is to motivate the applicant to make a reasonable forecast, as the applicant may otherwise have an incentive to overstate a forecast of its use of network services and so reduce the contribution payable.

In the absence of any justifying information from Western Power, the Authority considers that the existing requirements for security under the current capital contributions policy are likely to be sufficient to fulfil this function. The Authority considers that expanded requirements for security may impose a significant additional cost on applicants for connection to the network without any commensurate benefit in efficiency of investment.”

In response to the Draft Decision, Western Power concurs that the primary intent of clause 4.3 is to provide an incentive for the applicant to accurately estimate their required electricity demand, which has two particular outcomes that are consistent with the Code Objective.

- it provides for efficient investment in the network in that there should be no over design of any works required to meet the covered service sought by the applicant, and
- it ensures that the incremental cost of the new connection is funded by the applicant.

It should also be recognised that security requirements are a normal part of any business negotiation and it is important to both parties that there be some flexibility to provide for differing circumstances.

In response to the Draft Decision Western Power proposes to modify clauses 4.3 (a) and (b) as follows:

- The flexibility Western Power had originally sought will be removed.
- An upper limit of \$500,000 has been inserted as the requirements for projects where the works are in excess of this value are proposed to be different.
- The time requirement for the security has been extended to 18 months. This is simply a practical measure because the assessment of the customer’s actual load carried out under clause 4.3(b)(i) is done based on the first 12 months following the commencement of the associated entry or exit service and cancellation of the security prior to that assessment taking place is not appropriate.

These clauses are applicable to all but a small number of transactions because the majority of project forecast costs for works are less than the upper limit of costs for works of \$500,000.

In addition to the above, a new clause 4.3(c) relates to projects where the cost of the required works is greater than \$500,000 but less than \$15M. The primary difference from the existing approved provision is that the period over which the security can be required has been extended to be up to 36 months. This increase in time is to allow for some additional flexibility in the negotiation and is not designed to impose any additional burden on the customer.

Most negotiations in this category of cost of works will be for transmission connections. It is considered necessary to hold security for a period of up to three years in order to establish that the customer's use of network services are in line with forecasts. It would not be unusual for there to be a significant period of time from when the connection is initially made, which may be to facilitate commissioning, to the time in which the customer's electricity load reaches the normal operating level. Having regard to this consideration, Western Power is of the view that a 3 year period is appropriate, however it is also noted that the period may be extended to provide the applicant with the opportunity to demonstrate their compliance with the load forecast should that extension of time be required. The clause also requires Western Power to negotiate as a reasonable person.

A new clause 4.3(d) provides for projects where the cost of the required works is greater than \$15M. This clause does allow for full flexibility in the negotiation of the period for the security. Applicants who fall into this category of cost of works are sophisticated and knowledgeable and will negotiate the full range of terms and conditions, including financial terms and conditions, to suit the particular circumstances of their project.

3. Western Power's proposed approach for addressing Required Amendment 46

The proposed revised clause 4.3 (which addresses Required Amendment 46) is as follows.

- 4.3 *Applicant must provide security for new revenue*
- (a) Where the *forecast costs* with respect to a *connection application* are greater than \$50,000, but less than \$500,000, Western Power may require the *applicant* to procure before the commencement of the *works*, and maintain for a period of 18 months after the commencement of the associated *exit service* or *entry service*, an unconditional, irrevocable bank guarantee, or equivalent financial instrument, in terms acceptable to Western Power (acting as a *reasonable and prudent person*), guaranteeing the portion of *new revenue* that was used to calculate the *contribution* and is expected to come from providing an *exit service* or *entry service* using the *works*.
 - (b) Where an *applicant* has provided security under clause 4.3(a), then after 12 months, Western Power may:

- (I) redetermine the *contribution* under this *contributions policy*, and recover from, or rebate to, the *applicant* any difference from the amount of the original *contribution*; or
 - (II) require the *applicant* to maintain the bank guarantee or equivalent financial instrument for a further 12 months before redetermining the *contribution* in accordance with clause 4.3(a)(I).
- (c) Where the *forecast costs* with respect to a *connection application* are equal to or greater than \$500,000 but less than \$15,000,000, Western Power may require the *applicant* to procure before the commencement of the *works*, and maintain for a period of up to 36 months after the commencement of the associated *exit service* or *entry service*, an unconditional, irrevocable bank guarantee, or equivalent financial instrument, in terms acceptable to Western Power (acting as a *reasonable and prudent person*), guaranteeing the portion of *new revenue* that was used to calculate the *contribution* and is expected to come from providing an *exit service* or *entry service* using the *works*. Western Power (acting as a reasonable and prudent person) may require the *applicant* to maintain the bank guarantee or equivalent financial instrument for a period greater than 36 months where the forecast use of network services has not been achieved.
- (d) Where the forecast costs with respect to a connection application are equal to or greater than \$15,000,000, Western Power may require the *applicant* to procure before the commencement of the *works*, an unconditional, irrevocable bank guarantee, or equivalent financial instrument, in terms acceptable to Western Power (acting as a *reasonable and prudent person*), guaranteeing the portion of *new revenue* that was used to calculate the *contribution* and is expected to come from providing an *exit service* or *entry service* using the *works*.

ATTACHMENT G

Western Power's proposed changes to clause 9 of the ETAC

1. Introduction and overview

Western Power seeks to make amendments to Clause 9 of the ETAC. The proposed amendments relate to the requirement of a user to provide a parent company guarantee, and the credit ratings that apply to a user.

By clause 9(a) of the ETAC Western Power can require the user or the indemnifier to provide certain specified security in relation to charges payable under the ETAC. One of the security options available to a user or an indemnifier is to provide security by way of a parent company guarantee. Western Power seeks to omit this option.

By clause 9(b) of the ETAC if the user or the indemnifier has an unqualified credit rating of at least:

- (a) BBB from Standard and Poor's Australia Pty Ltd; or
- (b) Baa from Moody's Investor Service Pty Ltd,

and provides evidence to this effect to Western Power, then Western Power is not entitled to determine under clause 9(a) that the user or the indemnifier is to provide the security specified in clause 9(a).

Western Power seeks to Increase the credit ratings in Clause 9(b) from 'BBB' (Standard and Poor's) and 'Baa' (Moody's Investor Services) to 'A' (Standard and Poor's) and 'A' (Moody's Investor Services).

2. Western Power's reasons for the proposed amendments

Western Power considers it is reasonable for the option of providing a parent company guarantee as acceptable security (presently provided by clause 9(a)(iii) of the ETAC) to be removed because under the present provisions, Western Power faces several potential risks which it is unable to manage or mitigate, including the following:

- (a) the ranking of company guarantees relating to the guarantor's existing debt and charges on assets may dilute the effective security provided to Western Power;
- (b) companies may alter their structure and transfer assets to avoid liabilities, thus diluting the effective security provided to Western Power; and
- (c) where the company or assets are not under Australian jurisdiction there may be minimal or no effective security provided to Western Power.

Western Power also has concerns in relation to the potential delays and costs that would be incurred in any legal proceedings to enforce the parent company guarantee.

In relation to the proposed change in ratings that are presently set out in clause 9(b) of the ETAC, it is noted that BBB and Baa rated companies are the lowest investment grade credit risks. Western Power proposes to align the ETAC with its preference for guarantees from banks with a credit rating of at least A.

3. Western Power's Proposed Amendments to the ETAC

Western Power proposes to:

- (a) delete clause 9(a)(iii);
- (b) substitute 'A' for 'BBB' in Clause 9(b)(i); and
- (c) substitute 'A' for 'Baa' in Clause 9(b)(ii).

ATTACHMENT H: Addition of “Change in Control” clause

1. Introduction

Western Power seeks to insert a “change in control” provision into the ETAC. The proposed provision will apply when there is a proposed change in control of the user.

The Draft Decision does not specify a Required Amendment in relation to the change which Western Power is now proposing.

2. Western Power’s reasons for the proposed amendment

Western Power did not include a change in control provision in the ETAC that was lodged with its access arrangement revisions submission in October 2008.

However, Western Power has recently experienced, and expects to face again, circumstances in which a user has effectively, without Western Power's consent, transferred its interests in the ETAC by way of a 100% sale of shares in the user to another company.

The assignment clause in the ETAC (clause 31) provides, among other things, that the user cannot make an assignment unless it is in accordance with the Transfer and Relocation Policy. That Policy, among other things, requires the consent of Western Power to the assignment (except for a ‘Bare Transfer’). These provisions are in accordance with clauses A3.103 to A3.106 of the model access contract.

Importantly, the transfer of a controlling interest in a company is not an assignment. There is no limitation in the ETAC on the user, where the user is a company (which it invariably is), from transferring shares (and therefore effective ownership) without the consent of Western Power. Following such a transfer of controlling interest, Western Power could effectively end up contracting with an entity about whom it knows little or nothing and whose financial and technical capabilities are unknown.

In view of these considerations, Western Power seeks to include provisions in the ETAC that would require the proposed new owner/user under a change of control to satisfy requirements similar to those set out in the Transfer and Relocation Policy for an assignment.

The model standard access contract provides for control of the assignment of a user’s interests under the contract (see A3.103 to A3.106). The clause which Western Power proposes to include in the ETAC is consistent with this principles set out in the model standard access contract, and the approved clauses in the ETAC applying to assignment. Western Power submits that the proposed clause is also consistent with section 5.3 of the Access Code and the Code Objective.

3. Western Power's Proposed Amendment

Western Power proposes the addition of the following new clause:

31.4 Change in Control*

- (a) The User* agrees that a Change in Control* of the User* must not occur without Western Power*'s prior written consent.
- (b) Western Power*'s consent under paragraph (a) of this clause shall not be unreasonably withheld or delayed where the User* can satisfy Western Power* (acting as a Reasonable and Prudent Person*) that the person or corporation proposing to take Control* of the User* is financially and technically capable of performing the User*'s obligations under this Contract*.
- (c) Paragraph (a) of this clause does not apply to a User* which is a Listed Corporation*.

- The following new definitions are also proposed to be included in the ETAC::

Change in Control*	means the acquisition by any person or corporation, either alone or together with any Associate* of a person or corporation, of Control* of the User*.
Control*	of a company or trust by a person means the person holds or owns the majority of the issued shares of: <ul style="list-style-type: none">(a) the company or the trustee company of the trust; or(b) the ultimate holding company of the company or trustee company of the trust.
Listed Corporation*	has the meaning ascribed to it in the Corporations Act.

Electricity Transfer Access Contract

BETWEEN:

Electricity Networks Corporation
ABN 18 540 492 861

~ and ~

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

~ and ~

[Name of Indemnifier]¹
[ABN/ACN/ARBN]

**General Counsel & Company Secretary
Legal & Governance**

363 Wellington Street
PERTH WA 6000

T: (08) 9326 4651 | F: (08) 9325 5620

¹ Delete if no Indemnifier

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

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PARTIES

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

- and -

[] of [] (User*)

- and -

[] of [] (Indemnifier*)

INTRODUCTION

1. Background

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

2. Defined terms

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

OPERATIVE PROVISIONS

1. Interpretation

1.1 Interpretation

In this Contract*:

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

¹ Delete this paragraph if there is no Indemnifier*.

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

1.2 Interpretation Act applies

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

1.3 CPI* adjustment

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

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

where:

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

“C” is the current amount being adjusted; and

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

“CPI_o” is the value of CPI* applicable at the previous adjustment date.

2. Duration

2.1 Commencement and Term*

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

2.2 Option to extend Term*

- (a) Subject to clause 2.2(b), the User* may, by notice to Western Power* given no later than 6 months prior to the expiration of the Term* as at the time the notice is given, elect to extend the Term* by such period as is specified in Part 3Part 3Part 2 of Schedule 2 as the “Extension Period*”, in which event the Termination Date* shall be the last day of the Extension Period*.
- (b) The Term* shall not in any event be extended such that the Termination Date* is later than the date specified in Part 3Part 3Part 2 of Schedule 2 as the “**Latest Termination Date***”, except by mutual agreement between the Parties*.

2.3 Conditions Precedent*

- (a) The formation of this Contract*, other than this clause 2.3 and clauses 29.1 to 29.5 {disputes}, 31.1 to 31.3 {assignment}, 33.1 to 33.10 {confidentiality}, 35 {notices} and 37.14 {governing law} is subject to and conditional upon each of the Conditions Precedent* being satisfied on or before the date specified in Part 4Part 4Part 3 of Schedule 2 or:
 - (i) where a Condition Precedent* is not specified to be for the benefit of a particular Party*, that Condition Precedent* being waived by agreement between all Parties*; and
 - (ii) where a Condition Precedent* is specified to be for the benefit of a particular Party*, that Condition Precedent* being waived by that Party*,
 on or before the respective date specified in Part 4Part 4Part 3 of Schedule 2.
- (b) Where a Condition Precedent* is not specified to be for the benefit of a particular Party*, each of the Parties* must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent*.
- (c) Where a Condition Precedent* is specified to be for the benefit of a particular Party*, that Party* must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent* and the other Party* shall not, by wilful act or omission, prevent its fulfilment.
- (d) A Party* must promptly notify the other Parties* if it:
 - (i) discovers that any of the Conditions Precedent* are not satisfied by the date specified in Part 4Part 4Part 3 of Schedule 2; or

- (ii) discovers that any of the Conditions Precedent* have become incapable of being satisfied by the date specified in ~~Part 4~~~~Part 3~~ of Schedule 2; or
 - (iii) waives any right to continue to treat any of the Conditions Precedent* as conditions precedent to the formation of this Contract*.
- (e) If a Condition Precedent* is not satisfied or waived by the date specified in ~~Part 4~~~~Part 3~~ of Schedule 2 (or such longer period as the Parties* may in writing agree) then, if the Party* who seeks to terminate this Contract* has complied with clause 2.3(b) or 2.3(c), as the case requires, that Party* may, without prejudice to any other right or remedy it may have, terminate this Contract* by giving written notice to the other Party*.

ELECTRICITY TRANSFER PROVISIONS

3. Services

3.1 Provision and use of Services*

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

3.2 User* may select Services*

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

3.3 Eligibility Criteria*

- (a) The User* must in relation to each Reference Service Point*, comply with the Eligibility Criteria* applicable to the Reference Service* provided, or to be provided, at the Reference Service Point*.
- (b) Where the User* has sought to change the Reference Service* in respect of a Connection Point* under clause 3.2(a), its obligation under clause 3.3(a) in relation to that Connection Point* is subject to compliance by Western Power* with clause 3.2(b).

3.4 Increase or decrease of Contracted Capacity* ~~or addition of Connection Point*~~

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

3.5 Addition of a Connection Point*

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

3.5 Decrease of Contracted Capacity*

- (a) ~~The User* may give notice to Western Power* seeking to reduce the Contracted Capacity* of a Service* at a Connection Point* under this Contract*.~~

- ~~(b) If Western Power* receives a notice from the User* under clause 3.5(a), then, subject to clause 3.5(c), it must notify the User* within 10 Business Days* that it accepts the reduction in Contracted Capacity*, and the date that the reduction takes effect.~~
- ~~(c) If Western Power* receives more than one notice seeking to reduce Contracted Capacity* with respect to a single Connection Point* in any rolling period of 12 months, then in relation to each additional notice Western Power*:~~
- ~~(i) may notify the User* that it accepts the reduction in Contracted Capacity* and the date that the reduction takes effect, where Western Power* is satisfied, as a Reasonable and Prudent Person*, that the reduced Contracted Capacity* will be sufficient to meet the actual requirements of the User* and that the reduction in Contracted Capacity* is required by reason of one or more of the following circumstances:~~
- ~~(A) a reduction in the actual Consumption* or Generation* by the User* in the respect of that Connection Point* over the 12 month period prior to the User* giving notice under clause 3.5(a), as recorded by the Metering Equipment*; or~~
- ~~(B) a change in the nature of the business or operation conducted at the Connection Point*; or~~
- ~~(C) a shutdown of the business or operation conducted at the Connection Point* (including a shutdown for maintenance purposes) for longer than one continuous month; or~~
- ~~(D) a rapid increase or decline in the business at the Connection Point*; or~~
- ~~(E) a decrease in the number of capacity credits (as defined in the Market Rules*) allocated to any Generating Plant* at the Connection Point* under the Market Rules*; or~~
- ~~(F) as part of a Relocation*; or~~
- ~~(G) some other special circumstance;~~
- ~~and~~
- ~~(ii) is entitled to refuse the reduction in Contracted Capacity* where Western Power* is satisfied, as a Reasonable and Prudent Person*, that the reduction is sought by reason of the seasonal nature of the business or operation at the Connection Point*.~~

3.6 Deletion of a Connection Point*

- (a) The User* may give notice to Western Power* seeking to delete a Connection Point* from this Contract*.
- (b) If the User* seeks to permanently Disconnect* any Facilities and Equipment* at a Connection Point*, then the notice under clause 3.6(a) must be given to Western Power*:
- (i) for Generating Plant* at a Connection Point*, at least 6 months before the planned Disconnection*; and
- (ii) for Consuming* plant at a Connection Point*, at least one month before the planned Disconnection*.
- (c) If Western Power* receives a notice from the User* under clause 3.6(a), then it must notify the User* that it accepts the deletion, and the date that the deletion takes effect, if:
- (i) Western Power* has successfully processed a Customer* transfer request in relation to the Connection Point* under the Customer Transfer Code*; or

- (ii) the Connection Point* has been added to another Access Contract* by some other means; or
- (iii) Western Power* has De-energised* the Connection Point* under this Contract* or a Law*; or
- (iv) the Facilities and Equipment* in respect of the Connection Point* have been permanently Disconnected* from the Connection Point*,
otherwise Western Power* may notify the User* that it rejects the deletion.

(d) Subject to the Customer Transfer Code*, Western Power* must not delete a Connection Point* other than in accordance with a notice given by a User* under clause 3.6.

(e) If Western Power* commits a breach of clause 3.6(d) in circumstances that constitute Wilful Default* it is liable to the User* for any damage caused by, consequent upon or arising out of the Wilful Default*. In this case, the exclusion of Indirect Damage* in clause 19.3 does not apply.

3.7 Amendment to ~~Schedule 3~~ Connection Point* data

(a) Unless the Parties* otherwise agree, Western Power must record the information referred to in Part 1 of Schedule 3, with respect to each Connection Point*, in the Connection Point Database*.

~~(a)(b)~~ Subject to clauses ~~3.7(b)~~ 3.7(g) and 3.7(~~hd~~)(h), ~~the Parties*~~ Western Power* must update the information contained in a Connection Point Database* Schedule 3 following any variation made under this clause 3.;

~~(b) If the User* is a Metering Code Participant*, then the User* and Western Power* agree that Western Power* will, subject to clause 3.7, in accordance with the provisions of the Metering Code* record and update in the Metering Database* the information in Part 1 of Schedule 3, and will provide the User* with secure access to this information. For the purposes of this Contract*, a reference to Part 1 of Schedule 3 or the information contained within it shall be read as a reference to the information recorded in the Metering Database*.~~

~~(c) Western Power* will record and update the CMD* and DSOC* information in Part 1 of Schedule 3 within a database maintained by Western Power* and provide the User* with reasonable access to the information upon request by the User*.~~

(c) Upon request by the User* for information referred to in the Connection Point Database*, Western Power* will provide to the User* the most up-to-date version of that information.

(d) The Parties* acknowledge that if the User* is a Metering Code Participant*, for each Connection Point* Western Power* must also record and update the relevant information required under Part 1 of Schedule 3 in the Metering Database* in accordance with the provisions of the Metering Code*.

(e) Nothing in this Contract* restricts or prohibits Western Power* from maintaining and updating the Metering Database* in accordance with the Metering Code*.

(f) Western Power* will provide the User* with access to the information in the Metering Database* in accordance with the Build Pack*.

~~(d)(g)~~ Subject to clause 3.7 ~~(e)(h)~~, where Western Power causes a Permanent Reconfiguration* of the Network* which results in the ~~information contained in the Contract Database* Schedule 3~~ having to be updated:

- (i) Western Power* is not required to update the information contained in ~~Schedule 3 the Connection Point Database*~~ before the next 1 July following the Permanent Reconfiguration* of the Network*; and
- (ii) Western Power* must update the information contained in ~~Schedule 3 the Connection Point Database*~~ before the next 21 July following the Permanent Reconfiguration* of the Network*.

~~(e)(h)~~ Where a Permanent Reconfiguration* of the Network* occurs as a result of, or arising from, a notice or application by the User* under clauses 3.4, 3.5 or 3.6 which results in the information contained in ~~Schedule 3 the Contract Database*~~ having to be updated:

- (i) clause ~~3.7.3.7(g)(d)~~ does not apply; ~~and~~
- (ii) ~~Western Power each Party*~~ must update the information contained in ~~Schedule 3 the Connection Point Database*~~ as soon as reasonably practicable after the Permanent Reconfiguration* of the Network*; ~~and~~

~~(iii) where the information to be updated is contained in Part 1 of Schedule 3, then the information must be updated in accordance with clause 37.2.~~

~~(i) The Parties* must notify each other of any errors discovered in the Connection Point Database* as soon as reasonably practicable after becoming aware of the error~~

~~(j) Western Power* must amend any error in the Connection Point Database* as soon as reasonably practicable after becoming aware of the error, provided that if Western Power* becomes aware of an error otherwise than by notice from the User* under clause 3.7(i), no amendment shall be made until Western Power* has given notice to the User* of the error.~~

~~(k) Where under this Contract* Western Power* has recorded information in more than one of Part 1 of Schedule 3, the Metering Database* and any other database maintained by Western Power for the purposes of this Contract* and there is an inconsistency or conflict between the information in the databases in which the information is recorded, then the following order of precedence applies, from highest to lowest:~~

~~(i) where the circumstances in clauses 3.7(g) or 3.7(h) apply:~~

- ~~(A) Part 1 of Schedule 3;~~
- ~~(B) any other database;~~
- ~~(C) the Metering Database*; and~~

~~(ii) in all other circumstances:~~

- ~~(A) the Metering Database*;~~
- ~~(B) Part 1 of Schedule 3;~~
- ~~(C) any other database.~~

~~3.8 Contracted Capacity* not utilised~~

~~(a) Subject to clauses 3.8(c), where, in relation to Contracted Capacity* at a Connection Point*:~~

~~(i) the Contracted Capacity is not being used by the User*;~~

~~(ii) it is unlikely, in the opinion of Western Power* as a Reasonable and Prudent Person* that the unused Contracted Capacity* will be used by the User* to satisfy the User*'s actual or forecast requirements; and~~

~~(iii) the unused Contracted Capacity* is the subject of an Application* from a person who is not the User*;~~

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

~~(b) If the User* fails within the period specified in the notice to:~~

~~(i) use the Contracted Capacity*; or~~

~~(ii) demonstrate to the satisfaction of Western Power* as a Reasonable and Prudent Person* that the unused Contracted Capacity* will be used to satisfy the User*'s actual or forecast requirements;~~

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

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

4. The User* must provide forecast information

4.1 Western Power* may request information

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

4.2 When Western Power* may request information

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

4.3 User* must comply with request

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

5. Title to electricity

5.1 Transfer into the Network*

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

5.2 Transfer out of the Network*

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

6. Controllers

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

- (a) If the User* is not the Controller* of a Connection Point* then the User* must, by notice to Western Power* before the Start Date* of the relevant Services*, or as soon as reasonably practicable thereafter (but in all cases no later than 30 Business Days* after the Start Date* of the relevant Services*), nominate a person as the Controller* for a Connection Point* where:
- (i) the Generating Plant* with installed capacity exceeding 30 kVA is connected at the Connection Point*; or
 - (ii) the Connection Assets* for the Connection Point* are operated at 66 kV or greater; or
 - (iii) the rating of the largest motor connected at the Connection Point* is greater than 0.4% of the three phase short circuit fault level at the Attachment Point*.
- (b) The User* may, from time to time, by notice to Western Power*, change the person the User* nominates as the Controller* of a Connection Point*.
- (c) The Parties* must amend the Connection Point Database*Schedule 3- following any variation made under this clause 6.1.
- (d) Western Power*, acting as a Reasonable and Prudent Person*, may at any time on reasonable technical or commercial grounds object to a person nominated by the User* as a Controller* under clause 6.1, in which case the User* must either:
- (i) Dispute* Western Power*'s objection; or
 - (ii) nominate a different person as a Controller*.
- (e) If Western Power* requires, the User* must use reasonable endeavours to procure that the person nominated by the User* as a Controller* enters into a Connection Contract* with Western Power* in respect of the Connection Point*.

6.2 Where the User* is not the Controller*

- (a) Subject to clause 6.2(f), if the User* is not the Controller* of a Connection Point*, and the Controller* of that Connection Point* has not entered into a Connection Contract* with Western Power* in respect of the Connection Point*, then the User* must ensure that the Controller* of that Connection Point* complies, and will continue to comply, with the obligations set out in this Contract*, to the extent that such compliance is reasonably necessary for the Parties* to satisfy their obligations under this Contract*, including, but not limited to:
- (i) clause 11 (Good Electricity Industry Practice*); and
 - (ii) clause 12 (Technical Rules*); and
 - (iii) clause 13 (Technical characteristics of Facilities and Equipment*); and
 - (iv) clause 14 (Cooperation); and
 - (v) clause 15 (Access to premises); and
 - (vi) clause 16 (Directions from System Operator*); and
 - (vii) clause 17 (Removal of equipment); ~~and~~
 - (viii) clause 25 (Curtailment*); and

(ix) clause 35 (Notices):-

- (b) If the User* is not the Controller* of a Connection Point*, and the Controller* of that Connection Point* has not entered into a Connection Contract* with Western Power* in respect of the Connection Point*, then the User* must ensure that any Contract* entered into between the User* and a Controller* relating to Services* under this Contract* contains a provision that neither the User* nor Western Power* is in any circumstances liable for Indirect Damage* suffered by the Controller*, however arising, excluding any damage caused by, consequent upon or arising out of fraud.
- (c) On reasonable request from Western Power*, the User* must (unless the Controller* has already entered into a Connection Contract* with Western Power*) provide evidence to Western Power*'s satisfaction as a Reasonable and Prudent Person* that the User* is complying, and will continue to comply, with clause 6.2(a).
- (d) If the User* does not satisfy Western Power* under clause 6.2(c), Western Power* may refuse to commence the Services* or may Curtail* the provision of Services* in respect of the relevant Connection Point* unless and until:
- (i) the Controller* has entered into a Connection Contract* with Western Power* in respect of the Connection Point*; or
 - (ii) the User* satisfies Western Power* under clause 6.2(c).
- (e) For the avoidance of doubt, if the User* is in breach of clause 6.2(a), then the User* is liable for, and must indemnify Western Power* pursuant to clause 19.2 against any Direct Damage* caused by, consequent upon or arising out of the acts and omissions, negligent or otherwise, of the Controller* to the extent that the acts or omissions, negligent or otherwise, of the Controller* are attributable to that breach, unless the Controller* has entered into a Connection Contract* with Western Power*.

(f) Unless clause 6.2(g) applies, the User* is required to commence, maintain or continue legal proceedings to procure compliance of the Controller* with the obligations set out in this Contract*, to the extent that such compliance is reasonably necessary for the Parties* to satisfy their obligations under this Contract*.

(g) Where:

(i) the proceedings referred to in clause 6.2(f) do not relate to clauses 6.2(i), (ii), (iv), (v) or (ix); and

(ii) either:

(A) the obligations in issue do not relate to an Exit Point* specified in the Contract Database*; or

(B) the obligations in issue do not relate to an Entry Point* where Generating Plant* with installed capacity exceeding 30 kVA is connected at the Entry Point*.

the User* is not required to comply with clause 6.2(f) unless Western Power* provides an indemnity to the User* for the User*'s costs of and incidental to the proceedings.

(h) Nothing in this clause:

(i) limits the User*'s obligations under this clause; or

(ii) derogates from Western Power*'s other rights under this Contract* including its rights under clause 6.2(d), or requires Western Power* to pay any compensation to the User* for exercising any of those rights.

6.3 Western Power* may enter into Access Contracts*

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

6.4 Liability and Force Majeure* not limited

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

7. Tariff* and Charges*

7.1 Tariff*

(a) The tariff payable under this Contract* for a Service* is the tariff, or tariffs, as applicable, specified in the Price List* from time to time for the Service*. For the avoidance of doubt, the tariffs specified in the Price List* apply to all consumption during the Pricing Year* applicable to the Price List*. Where consumption is metered with an accumulation meter and the meter reading interval causes some of the metered consumption to lie within the Pricing Year* applicable to the Price List* and the remainder within a Pricing Year* applicable to another Price List*, the consumption covered by the Price List* will be determined by prorating the metered consumption uniformly on a daily basis.

(b) If:

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

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

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

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

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

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

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

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

7.2 Charges*

The User* must pay to Western Power*:

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

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

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

then, for that part of the Affected Service Period* in which the User*'s Facilities and Equipment* in respect of the Affected Service* were not or would not have been subject to a scheduled or unscheduled outage by which the User*'s Facilities and Equipment* were De-energised*, the User* is relieved of its obligation under clause 7.2 and instead must pay 10% of the "**Standing Charges***" (as defined in clause 7.3(b)) for the Affected Service* during that part of the Affected Service Period*.
- (b) Under this clause 7.3, Standing Charges* means:
 - (i) those Charges* or components of a Charge* which apply to a Service* regardless of the actual Generation* or Consumption* by the User* in respect of that Service*, as recorded by the Metering Equipment*; and
 - (ii) is not those components of a Charge* which are determined by reference to the actual Generation* or Consumption* by the User* in the respect of that Service*, as recorded by the Metering Equipment*.

8. Invoicing and payment

8.1 Western Power* invoices

- (a) Subject to clause 8.1(d), Western Power* must, within 14 Business Days* after the end of an Accounting Period*, issue to the User* a Tax Invoice* for the Accounting Period* showing:

- (i) all amounts payable by the User* to Western Power* under this Contract* for the Accounting Period*; and
 - (ii) all outstanding amounts as at the end of the Accounting Period* and interest payable on those amounts; and
 - (iii) GST* payable on those amounts under clause 8.8.
- (b) A Tax Invoice* issued by Western Power* under clause 8.1(a) or 8.1(d) may include other amounts payable by the User* to Western Power* with regards to the Service* under this Contract* or at Law*.
- (c) At the same time as issuing a Tax Invoice* under this clause 8.1, Western Power* must provide to the User*, in electronic form, the metering information used to calculate the Charges* shown on the Tax Invoice* in sufficient detail to enable the User* to understand how Western Power* calculated the Charges*.
- (d) Notwithstanding clause 8.1(a), the Parties* may, by mutual agreement, implement a different system of invoicing to that stipulated in clause 8.1(a) including, for example, issuing two or more Tax Invoices* per Accounting Period*, and separate invoicing for different classes or groups of consumers, Connection Points* or Services*.

8.2 User* invoices

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

8.3 Payment of invoices

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

8.4 Disputed* invoices

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

8.5 Charge* errors

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

8.6 Under and over payments

- (a) Subject to clause 8.6(e), if a Party* detects a Payment Error* by a Party* of any amount within 18 calendar months after the Payment Error*:
 - (i) the Party* must as soon as reasonably practicable give notice to the other Parties* of the Payment Error*; and
 - (ii) an adjusting payment must be made by the appropriate Party* within 10 Business Days* of the notice.
- (b) Except where clause 8.6(c) applies, the adjusting payment must, without prejudice to the Party*'s other rights, include interest calculated daily at the Prescribed Rate* from the date of the Payment Error* until the date of the adjusting payment.
- (c) An adjusting payment by a Party* will not attract interest under clause 8.6(b) if it is made in relation to an underpayment and the underpayment was the result of an error by the other Party*.
- (d) Subject to clause 8.6(e), a Party* is not entitled to an adjusting payment for a Payment Error* notified to the other Parties* after the expiry of 18 calendar months after the Payment Error*.
- (e) Notwithstanding clauses 8.6(a) and 8.6(d), where:

- (i) Payment Errors* have occurred as a result of an error in the data used to calculate the Charges*; and
 - (ii) the Payment Errors* occurred in one or more Accounting Periods*,
- the Party* who was underpaid or who made an overpayment (as applicable) is entitled to an adjusting payment only for the Payment Errors* that occurred in the Accounting Periods* that were within the 12 month period preceding the date that the Payment Errors* were notified by one Party* to the other.

8.7 Interest on overdue payment

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

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

8.8 GST*

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

9. Security for Charges*

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

- (i) pay a cash deposit equal to the Charges* for two months' services; or
- (ii) provide an irrevocable and unconditional bank guarantee or equivalent financial instrument in terms acceptable to Western Power* (acting as a Reasonable and Prudent Person*), guaranteeing or otherwise securing the Charges* for two months' services;~~;~~

~~(iii) if Western Power* is satisfied, as a Reasonable and Prudent Person*, that the User*'s parent company's financial and technical resources are such that the User*'s parent company would be able to meet the User*'s obligations under this Contract* (including because the User*'s parent company meets at least one of the credit ratings given in clauses 9(b)(i) and 9(b)(ii)), procure from the User*'s parent company a guarantee substantially in the form set out in Schedule 8.~~

(b) If the User* or the Indemnifier* has an unqualified credit rating of at least:

- (i) BBB-A from Standard and Poor's Australia Pty Ltd; or
- (ii) ABaa from Moody's Investor Service Pty Ltd,

and provides evidence to this effect to Western Power*, then Western Power* is not entitled to determine under clause 9(a) that the User*'s financial resources are such that there would be a material risk that the User* will be unable to meet its obligations under this Contract*.

10. Security for Contribution*

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

TECHNICAL COMPLIANCE PROVISIONS

11. Good Electricity Industry Practice*

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

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

11.2 User* must comply with Good Electricity Industry Practice*

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

12. Technical Rules***12.1 Western Power* and the User* must comply**

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

12.2 User* to bear costs

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

12.3 Actions of third parties

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

13. Technical characteristics of Facilities and Equipment*

- (a) The Parties* must record:
 - (i) in Part 2 of Schedule 3 any technical information that the User* was required to provide to Western Power* under the Applications and Queuing Policy*; and

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

14. Cooperation

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

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

15. Access to premises

15.1 Parties* must allow reasonable rights of entry

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

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

15.2 Entry made at risk of Guest Party*

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

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

15.3 Guest Party* obligations

A Guest Party* must:

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

15.4 Third person's premises

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

16. Directions from System Operator***16.1 Western Power* and the User* must comply**

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

17. Removal of equipment

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

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

COMMON PROVISIONS**18. Representations and warranties****18.1 The User*'s representations and warranties**

- (a) The User* represents and warrants to Western Power* that:

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

18.2 Western Power*'s representations and warranties

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

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

18.3 Indemnifier*'s representations and warranties

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

19. Liability and indemnity

19.1 No several liability

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

19.2 Liability for Direct Damage*

Subject to the terms of this Contract*:

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

19.3 Exclusion of Indirect Damage*

- (a) Subject to clause 19.3(b):
 - (i) either or both of the User* or the Indemnifier* is not in any circumstances liable to Western Power* for any Indirect Damage* suffered by Western Power*, however arising; and
 - (ii) Western Power* is not in any circumstances liable to either or both of the User* or the Indemnifier* for any Indirect Damage* suffered by the User*, however arising.

- (b) Where this Contract* states that “the exclusion of Indirect Damage* in clause 19.3 does not apply”, or words to a similar effect, in relation to a matter, then:
- (i) the exclusion of Indirect Damage* in clause 19.3 does not apply in relation to that matter; and
 - (ii) the Parties*’ liability in relation to the matter is to be determined by Law*, and to avoid doubt the definition of Indirect Damage* in this Contract* is to be disregarded for the purposes of that determination.

19.4 Fraud

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

19.5 Limitation of liability

- (a) Subject to clause 19.5(c), the maximum liability of Western Power* to the User* and the Indemnifier* collectively under and in connection with this Contract* is limited to an amount of \$5 million in the aggregate and refreshed annually each 1 July, except that the liability described in clauses 7, 8 and 20 are not counted for the purposes of Western Power*’s maximum liability under this Contract*.
- (b) Subject to clause 19.5(c), the maximum liability of both the User* and the Indemnifier* collectively to Western Power* under and in connection with this Contract* is limited to the lesser sum of:
- (i) an amount of \$80 million in the aggregate, refreshed annually each 1 July; and
 - (ii) the sum of:
 - (A) for each Connection Point* at which Generation Plant* (other than wind or solar powered generation) is connected at a voltage of 66 kV and above - \$22 million in the aggregate, refreshed annually each 1 July; and
 - (B) for each Connection Point* at which wind or solar powered Generation Plant* is connected at a voltage of 66 kV or above - \$11 million in the aggregate, refreshed annually each 1 July; and
 - (C) for each Connection Point* at which Generation Plant* is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July; and
 - (D) for each Connection Point* at which Consuming* plant is connected at a voltage of 66 kV and above - \$6 million in the aggregate, refreshed annually each 1 July; and
 - (E) for every 100 Connection Points* at which Consuming* plant is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July,

except that the liabilities described in clauses 7, 8 and 20 are not counted for the purposes of both the User*'s and the Indemnifier*'s collective maximum liability under this Contract*.

- (c) The maximum liability amounts applicable under clauses 19.5(a) and 19.5(b) shall be ~~CPI* Adjusted* annually each 1 July~~ subject to adjustment every five years from the Commencement Date* as follows:

(i) On the fifth anniversary of the Commencement Date* each maximum liability amount will CPI-Adjusted* for each year in the five year period after the Commencement Date*;

(ii) Each maximum liability amount after the final adjustment will be rounded up to the nearest \$million; and

(iii) The final CPI-Adjusted* maximum liability amounts will become the new maximum liability amounts from the date of the final adjustment.

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

19.6 Procedure for party seeking to rely on indemnity

If any Claim* is made or instituted against:

- (a) either or both of the User* or the Indemnifier* in respect of which either or both of the User* or the Indemnifier* ("**Indemnified Party***") may seek to claim indemnity under this Contract* against Western Power* ("**Indemnifying Party***"); or
- (b) Western Power* in respect of which Western Power* ("**Indemnified Party***") may seek to claim indemnity under this Contract* against either or both of the User* or the Indemnifier* ("**Indemnifying Party***"),

the following procedure applies:

- (c) the Indemnified Party* must give notice of the Claim* to the Indemnifying Party* as soon as reasonably practicable; and
- (d) the Indemnified Party* must not admit, compromise, settle or pay any Claim* or take any other steps which may in any way prejudice the defence or challenge of the Claim* without the prior written consent of the Indemnifying Party* (which must not be unreasonably withheld) except as may be reasonably required in order to defend any judgment against the Indemnified Party* (to avoid doubt, Part 1E of the Civil Liability Act 2002(WA) applies in respect of any 'apology' (as defined in Section 5AF of that Act) given by the Indemnified Party*); and
- (e) the Indemnified Party* must permit the Indemnifying Party* to take, at the Indemnifying Party*'s expense, any reasonable action in the name of the Indemnified Party* to defend or otherwise settle the claim as the Indemnifying Party* may reasonably require; and

- (f) the Indemnified Party* must ensure that the Indemnifying Party* and its representatives are given reasonable access to any of the documents, records, staff, premises and advisers of the Indemnified Party* as may be reasonably required by the Indemnifying Party* in relation to any action taken or proposed to be taken by the Indemnifying Party* under clause 19.6(e).

19.7 Obligation to pay and right to indemnities survives termination

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

19.8 Apportionment of liability

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

19.9 Mitigation of losses

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

19.10 Recoveries under insurance

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

20. Personal injury

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

21. Insurances

21.1 The User*'s insurances

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

21.2 Western Power*'s insurances

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

21.3 Names of insured

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

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

for their respective rights and interests.

21.4 Cross liability

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

21.5 Notice of cancellation

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

21.6 Further obligation

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

22. Force Majeure***22.1 Affected Person*'s obligations are suspended**

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

22.2 When Services* are Curtailed*

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

22.3 Affected Person*'s obligations

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

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

22.4 In case of breach

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

22.5 Failure to minimise delays

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

22.6 Settlement of a labour dispute

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

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

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

24. User* does not acquire interest in Network*

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

25. Curtailment*

25.1 Western Power* may Curtail* Services*

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

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

25.2 Extent of Curtailment*

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

25.3 Notification of Curtailment*

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

25.4 User* must comply with Curtailment*

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

25.5 Contract* does not limit other powers and rights

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

26. Payments and recoveries under the Contributions Policy*

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

27. Default*

27.1 Default*

A Party* is in "Default*" if:

- (a) that Party* defaults in the due and punctual payment, at the time and in the manner required for payment by this Contract*, of any amount payable under this Contract*; or
- (b) that Party* defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of Law* in this Contract*; or
- (c) an Insolvency Event* occurs in respect of that Party*; or
- (d) that Party* materially breaches any representation or warranty given to the other Party* under this Contract*.

27.2 Default* by the User*

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

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

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

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

27.3 Western Power*'s rights not affected

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

27.4 Default* by Western Power*

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

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

27.5 User*'s rights not affected

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

28. Termination**28.1 Termination**

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

- (ii) Western Power* must pay any unpaid amount owed to the User* pursuant to this Contract*.

28.2 Rights of Parties* not affected

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

29. Disputes

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

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

29.2 Party* may require CEO Meeting*

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

29.3 Method of Meetings

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

29.4 Party* may commence court proceedings

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

29.5 Obligations must be performed

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

30. Set off

30.1 Party* may set off payment

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

30.2 No other set off permitted

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

31. Assignment* and Change in Control* by User*

31.1 User* may make Bare Transfer*

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

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

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

- (a) the identity of the assignee; and
- (b) the nature of the Assigned* Access Rights*,

before the assignee may commence using the Assigned* Access Rights*.

31.3 Assignment* other than Bare Transfer*

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

31.4 Change in Control*

- (a) The User* agrees that a Change in Control* of the User* must not occur without Western Power*'s prior written consent.
- (b) Western Power*'s consent under paragraph (a) of this clause shall not be unreasonably withheld or delayed where the User* can satisfy Western Power* (acting as a Reasonable and Prudent Person*) that the person or corporation proposing to take Control* of the User* is financially and technically capable of performing the User*'s obligations under this Contract*.
- (c) Paragraph (a) of this clause does not apply to a User* which is a Listed Corporation*.

32. Corporate restructuring of Western Power*

32.1 If Western Power* is restructured

If Western Power* is restructured under government policy:

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

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

32.2 User*'s consent not required

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

33. Confidentiality

33.1 Confidential information*

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

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

33.2 When information is not confidential

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

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

33.3 Prohibited disclosure

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

33.4 Permitted disclosure

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

33.5 Third party disclosure

An Information Recipient* disclosing information under clause 33.4 must:

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

33.6 No unauthorised copying

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

33.7 Secure storage

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

33.8 Return of materials

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

33.9 Remedies

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

33.10 Survival of obligations

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

34. Ring Fencing

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

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

must have fair and reasonable regard to:

- (d) the fact that Western Power* comprises a Network Business* and an Other Business* and the distribution of personnel and responsibilities between those businesses; and
- (e) the intent and purpose of Western Power*'s obligations under Chapter 13 of the Code* and anything done or not done by Western Power* in connection with those obligations.

35. Notices**35.1 Requirements for Communications***

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

- (a) in writing (which includes any Electronic* form capable of being reduced to paper writing by being printed); and

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

35.2 Operational and urgent Communication*

Where this Contract* expressly provides:

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

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

35.3 Communication* takes effect

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

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

35.4 Deemed receipt

For the purposes of this Contract*:

- (a) a Communication* delivered by hand to the address of a Party* (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries):
 - (i) appears to be; and
 - (ii) represents himself or herself as,
a representative of the Party* to whom the Communication* is addressed;
- (b) a Communication* which is posted is deemed to be received by the Party* to whom the Communication* is addressed:
 - (i) where the Communication* is sent from outside the country of the address to which it is sent – 10 Business Days* after the day of posting; and
 - (ii) otherwise – three Business Days* after the day of posting;
- (c) a Communication* sent by facsimile transmission which is transmitted:
 - (i) on or before 3 pm on a Business Day* is deemed to have been received by the Party* on that Business Day*; and

- (ii) after 3 pm on a Business Day*, or on a day which is not a Business Day*, is deemed to have been received by the Party* on the first Business Day* following the date of transmission,

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

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

36. Change of address

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

37. Miscellaneous

37.1 Compliance

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

37.2 Variation

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

37.3 No third party benefit

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

37.4 Stamp duty

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

37.5 Costs

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

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

37.6 Waiver

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

37.7 Entire agreement

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

37.8 Severance

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

37.9 Counterpart execution

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

37.10 Further assurance

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

37.11 Authorised officers

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

37.12 Merger

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

37.13 Remedies

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

37.14 Governing Law*

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

EXECUTION CLAUSE:

Executed as an agreement:

EXECUTED for and on behalf of **ELECTRICITY NETWORKS CORPORATION**
ABN 18 540 492 861 in accordance with
 paragraph 135(4) of the *Electricity Corporations Act 2005 (WA)* and an authority dated 24/04/2009:

 Signature of Authorised Officer

 Signature of a Authorised Officer

 Full name

 Full name

 Position title

 Position title

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

Signature of Director

Signature of Directory/Company Secretary

Full name

Full name

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

Signature of Director

Signature of Directory/Company Secretary

Full name

Full name

SCHEDULE 1 - DICTIONARY

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

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

<u>Build Pack*</u>	<u>means the 'Build Pack' developed under the <i>Electricity Industry Customer Transfer Code 2004 Communication Rules (made under Part 5 of the Customer Transfer Code*) and/or the Electricity Industry Metering Code 2004 Communication Rules (made under Part 6 of the Metering Code*)</i>, as applicable in the circumstances.</u>
Business Day*	means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.
Capacity*	with regards to a Connection Point*, means the maximum rate at which the Network* can transfer electricity at the Connection Point* in accordance with Good Electricity Industry Practice*.
CEO Meeting*	has the meaning given to it in clause 29.2.
Change in Control*	means the acquisition by any person or corporation, either alone or together with any Associate* of a person or corporation, of Control* of the User*.
Charge*	for a Service* for an Accounting Period*, means the amount that is payable by the User* to Western Power* for the Service*, calculated by applying the Tariff* for the Service*, during the Accounting Period*.
Claim*	means any claim, demand, action or proceeding made or instituted against a Party*.
CMD*	means Contract Maximum Demand.
Code*	means the <u><i>Electricity Networks Access Code 2004</i></u> .
Code Objective*	has the meaning given to 'Code objective' in section 2.1 of the Code*.
Commencement Date*	means the date of execution of this Contract* by the last signing Party*, or the first date on which all of the Conditions Precedent* are satisfied or waived, whichever is later.
Communication*	means a notice, approval, consent or other communication given or made under this Contract*.
Conditions Precedent*	means the conditions precedent specified in Schedule 2.
Confidential Information*	means information which is confidential under clause 33.1.
Connect*	has the meaning given to 'connect' in the Code*.
Connection Assets*	has the meaning given to it 'connection assets' in the Code*.
Connection Contract*	means, at the option of Western Power*: <ul style="list-style-type: none"> (a) a contract containing provisions materially equivalent to those in this Contract*; or (b) some other agreement in writing to be bound by provisions materially equivalent to such terms and conditions of this Contract* satisfactory to Western Power*, but omitting clauses 3 to 9 of this Contract*.
Connection Point*	means a point on the Network* identified, or to be identified, as an Exit

<p><u>Connection Point Database*</u></p>	<p>Point* or Entry Point* in <u>Schedule 3, the Contract Database*</u>.</p> <p><u>means:</u></p> <p>(a) <u>Part 1 of Schedule 3; or</u></p> <p>(b) <u>another database or databases containing information relating to this Contract* and maintained by Western Power* as agreed between the Parties*, which for the avoidance of doubt can include the Metering Database* if the User* is not a Metering Code Participant* and this is agreed by the User* and Western Power*,</u></p> <p><u>as applicable.</u></p>
<p>Consume*</p>	<p>has the meaning given to 'consume' in the Code*.</p>
<p>Consumer*</p>	<p>has the meaning given to 'consumer' in the Code*.</p>
<p>Consumption*</p>	<p>for a Connection Point*, means the amount of electricity Consumed* at the Connection Point*, and is measured in Watt-hours.</p>
<p>Contract*</p>	<p>means this agreement between Western Power and the User*.</p>
<p><u>Contract Database*</u></p>	<p><u>means the Connection Point Database* or, if the Metering Database* is not included within the Connection Point Database* and clause 3.7(k)(ii) applies, then it means the Metering Database*.</u></p>
<p>Contracted Capacity*</p>	<p>for a Connection Point*, means the maximum rate at which the User* is permitted to transfer electricity to or from the Network* at the Connection Point*, being either:</p> <p>(a) the rate specified in <u>Part 1 of Schedule 3, the Connection Point Database*</u> from time to time; or</p> <p>(b) if no rate is specified in <u>the Connection Point Database* Part 1 of Schedule 3</u>, the maximum rate of electricity permitted to be transferred under the Eligibility Criteria* for the Reference Service* for that Connection Point*; or</p> <p>(c) if no rate is specified in <u>the Connection Point Database* Part 1 of Schedule 3</u> or in the Eligibility Criteria* for the Reference Service* for that Connection Point*, the maximum rate of electricity permitted to be transferred through the Connection Assets* under the Technical Rules*,</p> <p>and is measured in Watts or Volt-Amps.</p>
<p>Contribution*</p>	<p>means any contribution made under the Contributions Policy*.</p>
<p>Contributions Policy*</p>	<p>means the contributions policy' (as defined in the Code*) contained in the Access Arrangement*.</p>
<p><u>Control*</u></p>	<p><u>of a company or trust by a person means the person holds or owns the majority of the issued shares of:</u></p> <p>(a) <u>the company or the trustee company of the trust; or</u></p> <p>(b) <u>the ultimate holding company of the company or trustee company of the trust.</u></p>

Controller*	means, in respect of a Connection Point*, a person, including a Customer*, who owns, operates, controls or otherwise is responsible for the operation of the Facilities and Equipment* at the Connection Point*, and includes the Controller*'s Workers* and Visitors*.
Corporations Act*	means the <u>Corporations Act 2001</u> of the Commonwealth.
Covered Service*	has the meaning given to 'covered service' in the Code*.
CPI*, or Consumer Price Index*,	means the Consumer* Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer* Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as Western Power* acting reasonably and in good faith may determine, and in all cases the CPI* figure is to be adjusted to correct for any effects of a change in the rate of GST*.
CPI-Adjusted*	has the meaning given to it in clause 1.3.
Curtail*	means curtailing or interrupting the whole or part of a Service*.
Curtailment*	includes a whole or partial curtailment or whole or partial interruption of a Service*.
Customer*	has the meaning given to 'customer' in the Act*.
Customer Transfer Code*	means the <u>Electricity Industry Customer Transfer Code 2004</u> , made under section 39(2a) of the Act* in respect of the matter referred to in section 39(2)(b) of the Act*, and includes all rules, policies or other subordinate documents developed under the Customer Transfer Code*.
De-energise*	in respect of a Connection Point*, means to operate, modify or remove switching or other equipment to prevent the transfer of electricity through the Connection Point*.
Default*	in relation to a Party*, has the meaning given to it in clause 27.1.
Direct Damage*	suffered by a person means loss or damage suffered by the person which is not Indirect Damage*.
Disconnect*	in respect of a Connection Point*, means physically detach Network Assets* from assets owned by another person at the Connection Point*.
Dispute*	means any dispute or difference concerning: <ul style="list-style-type: none"> (a) construction of; or (b) anything contained in or arising out of; or (c) rights, obligations, duties or liabilities of a Party* under, this Contract*.
DSOC*	means Declared Send Out Capacity.
Due Date*	means, for a Tax Invoice* issued under clause 8.1 or 8.2, the date 10 Business Days* after the Party* to whom it is addressed receives the Tax Invoice*.

Electronically*	in relation to a Communication*, means a communication of information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP or other widely accepted protocol for packet transfer.
Eligibility Criteria*	means, for a Reference Service*, the 'Eligibility Criteria' stipulated in Appendix 7 of the Access Arrangement* for that Reference Service*.
Emergency*	means any accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
End Date*	for a Connection Point*, means the date specified as such in the Connection Point Database* Part 1 of Schedule 3 for the Connection Point*.
Entry Point*	has the meaning given to 'entry point' in the Applications and Queuing Policy*.
Entry Service*	means a Covered Service* provided by Western Power* at a Connection Point* under which the User* may transfer electricity into the Network* at the Connection Point*.
Equivalent Reference Service*	has the meaning given to it in clause 7.1(c)(i).
Exit Point*	has the meaning given to 'exit point' in the Applications and Queuing Policy*.
Exit Service*	means a Covered Service* provided by Western Power* at a Connection Point* under which the User* may transfer electricity out of the Network* at the Connection Point*.
Extension Period*	has the meaning given to it in clause 2.2(a).
Facilities and Equipment*	has the meaning given to 'facilities and equipment' in the Code*.
First Party*	has the meaning given to it in clause 30.1.
Force Majeure*	<p>in respect of a Party*, means an event or circumstance beyond the Party*'s control, and which the Party*, acting as a Reasonable and Prudent Person*, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):</p> <ol style="list-style-type: none"> (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or (b) any insurrection, revolution or civil disorder, terrorism, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or (c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the Commencement Date*; or (d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade or any other authority other than a Party* (including

restraint, expropriation, prohibition, intervention, direction or embargo); or

- (e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority other than a Party*; or
- (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or
- (g) any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice*; or
- (h) any act or omission of any person (other than a Party*) with Facilities and Equipment* connected to the Network* which prevents the Party*'s ability to perform its obligations under this Contract*; or
- (i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or
- (j) accidents, weather and acts of third parties (such as Generators* or Consumers*) that affect the quality, frequency and continuity of the supply of electricity.

Force Majeure Event*	means an event of Force Majeure*.
FM Period*	means the period of suspension of the Affected Obligation* pursuant to clause 22.1.
Generate*	has the meaning given to 'generate' in the Code*.
Generating Plant*	has the meaning given to it 'generating plant' in the Code*.
Generation*	for a Connection Point*, means the amount of electricity Generated* at the Connection Point*, and is measured in Watt-hours.
Generator*	has the meaning given to 'generator in the Code*.
Good Electricity Industry Practice*	has the meaning given to 'good electricity industry practice' in the Code*.
GST*	means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act* or otherwise.
GST Act*	means the <u><i>A New Tax System (Goods and Services Tax) Act 1999</i></u> of the Commonwealth.
Guest Party*	has the meaning given to it in clause 15.1.
Host Party*	has the meaning given to it in clause 15.1.
Indemnifier*	means the Indemnifier* specified in the Parties* section of this Contract* (if any).
Indemnified Party*	has the meaning given to it in clause 19.6.

Indemnifying Party*	has the meaning given to it in clause 19.6.
Independent Market Operator*	is the Independent Market Operator established under the Electricity Industry (Independent Market Operator) Regulations 2004, exercising functions under the Electricity Industry (Independent Market Operator) Regulations 2004, the Electricity Industry (Wholesale Electricity Market) Regulations 2004 and the Wholesale Electricity Market Rules made under the Electricity Industry (Wholesale Electricity Market) Regulations 2004.
Indirect Damage*	<p>suffered by a person means any one or more of:</p> <ul style="list-style-type: none"> (a) any consequential loss, consequential damage or special damages however caused or suffered by the person, including any: <ul style="list-style-type: none"> (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) increased costs; or (iv) punitive or exemplary damages, <p>whether or not the consequential loss or damage or special damage was foreseeable; or</p> (b) in respect of contractual damages, damages which would fall within the second limb of the rule in <i>Hadley v Baxendale</i> [1854] 9 Exch. 341; or (c) any liability of the person to any other person, or any Claim* brought against the person by any other person, and the costs and expenses connected with the Claim*.
Information Provider*	in relation to Confidential Information*, means the party providing the information.
Information Recipient*	in relation to Confidential Information*, means the recipient of the information.
Insolvency Event*	<p>in respect of a Party*, means any one or more of:</p> <ul style="list-style-type: none"> (a) any suspension or cessation to payment of all or a class of its debts by an insolvent within the meaning of section 95A of the Corporations Act; or (b) any execution or other process of any court or authority being issued against or levied upon any material part of that Party*'s property or assets; or (c) a petition or application being presented (and not being withdrawn within 10 Business Days*) or an order being made or a resolution being passed for the winding up or dissolution without winding up of that Party* otherwise than for the purpose of reconstruction or amalgamation under a scheme; or (d) a receiver or a receiver and manager of the undertaking or any

material part thereof of that Party* being appointed; or

- (e) that Party* proposing to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; or
- (f) an administrator of that Party* being appointed or the board of directors of that Party* passing a resolution to the effect that is specified in section 436A(1) of the Corporations Act; or
- (g) that Party* failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand; or
- (h) a controller (as defined in the Corporations Act) being appointed in respect of that Party* or the whole or a material part of that Party*'s undertaking, property or assets; or
- (i) application being made to a court for an order in respect of that Party* under part 2F.1 of the Corporations Act; or
- (j) an event referred to in section 459C(2) of the Corporations Act occurring in respect of that Party*; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above occurring under the Law* of any applicable jurisdiction.

Insured Year*

means the period between and including 1 July in a Year* and 30 June in the following Year*.

Integrated Provider*

has the meaning given to 'integrated provider' in the Code*.

Latest Termination Date*

has the meaning given to it in clause 2.2(b).

Law*

means written laws and statutory instruments as defined in the Code*, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Code of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.

Listed Corporation*

has the meaning ascribed to it in the Corporations Act.

Maintain*, and
Maintenance*

includes (as necessary and as applicable) calibrate, test, verify, renew, replace, repair and update.

Market Rules*

means the 'market rules' referred to in section 123(1) of the Act*, and includes all rules, policies or other subordinate documents developed under the Market Rules*.

Meter*

has the meaning given to 'meter' in the Metering Code*.

Metering Code*

means the code made under Section 39(1) of the Act* in respect of a matter referred to in Section 39(2)(a) of the Act*, and includes any service level agreement, metering data agency agreement, communications rules, metrology procedure, mandatory link criteria and registration process developed under that code.

Metering Code

has the meaning specified in the Metering Code*.

Participant*	
Metering Database*	means the metering database operated by Western Power* under the Metering Code*.
Metering Equipment*	means a Meter* or Meters* and associated equipment complying with the Metering Code* used to measure and record electricity as transferred to or from the Network* at a Connection Point*, which may include the measurement of the rate of transfer and the quantity and quality of the transferred electricity.
Modified Service*	means a modified or restricted Service* as specified in Part 4 of Schedule 3.
Network*	has the same meaning given to 'Western Power Network' in the Code*.
Network Assets*	in relation to the Network*, means the apparatus, equipment, plant and buildings used to provide or in connection with providing Covered Services* on the Network*, which assets are either Connection Assets* or Shared Assets*.
Network Business*	has the same meaning given to 'network business' in the Code*.
NMI*, or National Market Identifier*	means the unique identifier assigned to the Connection Point*.
Nominated Person*	has the meaning given to it in clause 9(a).
Novate* and Novation*	mean to substitute, with the consent of all Parties* to this Contract* and with effect on and from a date nominated as the effective date of the novation, an assignee for the User* as a party to this Contract*, with the result that: <ul style="list-style-type: none"> (a) all rights and obligations of the User* under this Contract* become rights and obligations of the assignee as if the assignee had been named in the Contract* in place of the User*; and (b) the User* is released from any obligations under this Contract* arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.
Other Business*	has the meaning given to 'other business' in the Code*.
Party*	means Western Power* or the User* . {Note: If there is an Indemnifier*, refer to clause 1.1(h)(iv)}
Parties*	means Western Power* and the User*. {Note: If there is an Indemnifier*, refer to clause 1.1(h)(iv)}
Payment Error*	means any underpayment or overpayment by a Party* of any amount in respect of a Tax Invoice*.

Permanent Reconfiguration*	means: (a) a permanent physical change (including a change to the zone substation applicable to a Connection Point* and a change to the distance from the applicable zone substation to a Connection Point*); or (b) a change to the pricing zone applicable to a Connection Point*.
Possession*	includes custody, control, and an immediate right to possession, custody, or control.
Prescribed Rate*	means, at any point in time, the interest rate (expressed as a rate per cent per annum) equal to the aggregate of 3 annual percentage points and the interest rate (expressed as a rate per cent per annum) then published by the Reserve Bank of Australia as the large business variable indicator lending rate.
Price List*	means the 'price list' (as defined in the Code*) specified in the Access Arrangement*.
<u>Pricing Year*</u>	<u>has the meaning given to 'pricing year' in the Code*.</u>
Reasonable and Prudent Person*	means a person acting in good faith and, where applicable, in accordance with Good Electricity Industry Practice*.
Receipt Date*	has the meaning given to it in clause 29.1.
Reference Service*	means a 'reference service' (as defined in the Code*) specified in the Access Arrangement*.
Reference Service Point*	means a Connection Point* for which under this Contract* Western Power* provides, or is to provide, a Reference Service*.
Related Body Corporate*	has the meaning given to 'Related Body Corporate' in section 50 of the Corporations Act*.
Relocation*	has the meaning given to 'relocation' in the Transfer and Relocation Policy*.
Representatives' Meeting*	has the meaning given to it in clause 29.1.
Service*	means an Entry Service* or an Exit Service* to be provided under this Contract* in respect of a Connection Point* as specified in <u>the Contract Database* Part 1 of Schedule 3.</u>
Shared Assets*	has the meaning given to 'shared assets' in the Code*.
Standing Charges*	has the meaning given to it in clause 7.3.
Start Date*	for a Connection Point*, means the date specified as such in <u>the Connection Point Database* Part 1 of Schedule 3</u> for the Connection Point*.
Supplementary Matters*	means the provisions incorporated in the Access Arrangement* under sections 5.27 and 5.28 of the Code*.
System Operator*	for the Network* means, unless the Technical Rules* provide otherwise,

the person or persons who:

- (c) operate and control the system operation control centre; or
- (d) where there is no system operation control centre — is responsible for the control of the Network* through monitoring, switching and dispatch; or
- (e) where the system operation control centre and another party are both responsible for the control of the Network* through monitoring, switching and dispatch — perform the tasks described in either or both of paragraphs (c) and (d).

Tariff*	for a Service*, means the tariff specified in clause 7.1 for that Service*.
Tax Invoice*	has the meaning given to 'Tax Invoice' in the GST Act*.
Technical Rules*	means the technical rules applying from time to time to the Network* under Chapter 12 of the Code*, as modified in accordance with the Code*, including any derogations agreed to by Western Power* in writing and specified in Part 3 of Schedule 3.
Term*	means, from time to time, the term of this Contract* which commences on the Commencement Date* and ends on the date which is then the Termination Date*.
Termination Date*	means, subject to clause 2.2, the date specified in Part 2Part 2Part 1 of Schedule 2.
Third Party Recipient*	means any person to whom the Information Recipient* discloses Confidential Information*, or allows Confidential Information* to be disclosed.
Transfer and Relocation Policy*	means the transfer and relocation policy (as defined in the Code*) contained in the Access Arrangement*.
Undisputed Portion*	for the purposes of a Tax Invoice* issued under 8.2(b) has the meaning given to it in clause 8.2(d) and, in all other cases, means the portion of the amount set out in a Tax Invoice* that this not in Dispute*.
User*	has the meaning given to it in the Code*, and for the purposes of this Contract* is the User* stipulated in the 'Parties section' of this Contract.
User's Default*	means an event of Default* by the User*.
User's Premises*	means the land on which the User*'s Facilities and Equipment* are located.
Visitors*	means the customers, invitees, licensees and visitors of a Party* or a Controller*, as the case requires.
Western Power*	means the Electricity Networks Corporation established under section 4(1)(b) of the <i>Electricity Corporations Act 2005 (WA)</i> .
Western Power's Default*	means an event of Default* by Western Power*.
<u>Wilful Default*</u>	<u>means a deliberate and purposeful act or omission carried out with a calculated regard for the consequences of the act or omission but does not include any error of judgment, mistake, act or omission, whether</u>

negligent or not, which is made in good faith.

Workers*

means the directors, officers, servants, employees, agents and contractors of a Party* or a Controller*, as the case requires.

Works*

has the meaning given to it in the Contributions Policy*.

Year*

means calendar year.

SCHEDULE 2 - ACCESS CONTRACT INFORMATION

Part 1 Part 2 **Term***

Termination Date*:	

Part 2 Part 3 **Extension of Term***

{Note: Referred to in clause 2.2.}

Extension Period*:	
Latest Termination Date*:	

Part 3 Part 4 **Conditions Precedent***

{Note: Referred to in clause 2.3.}

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

SCHEDULE 3 - DETAILS OF CONNECTION POINTS

Part 1 Commercial Details

{Note:

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

(b) Western Power will store these details in the Metering Database* where the User* is a Metering Code Participant*. ~~may store these details in the Metering Database*, as described in clause 3.7}~~

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

Part 2 Technical Details

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

#	Connection Point*	Description of Facilities and Equipment*
1		

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

Part 3 Agreed exemptions from Technical Rules*

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

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

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

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

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

SCHEDULE 4 - WORKS AND CONTRIBUTIONS

{Note: Referred to in clause 26.}

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

SCHEDULE 5 - INSURANCES

{Note: Referred to in clause 21.}

Part 1 User* insurances

- (a) The User* must effect and maintain, commencing from the Commencement Date* the following policies of insurance:
- (i) public and products liability of:
 - (A) public liability insurance for a limit of not less than \$50 million or the maximum liability of the User* under clause 19.5 (~~whichever is greater~~)~~per claim and unlimited~~ in the aggregate of all claims made in an Insured Year*; and
 - (B) products liability insurance for a limit of not less than the maximum liability of the User* under clause 19.5 per claim and in the aggregate, refreshed annually;

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

Part 2 Western Power* insurances

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

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

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

SCHEDULE 6 - NOTICES

{Note: Referred to in clause 35.}

Part 1 User*

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

Part 2 Western Power*

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

SCHEDULE 7 - ELECTRONIC COMMUNICATION*S PROTOCOL

{Note: Referred to in clause 35.}

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

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

this Schedule.

1. Application to invoicing

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

2. Parties* to establish email* Addresses*

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

3. Requirement for Automated Response Message*

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

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

4. Location

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

5. Attribution of emails* and reliance

Except to the extent that:

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

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

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

6. Signatures

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

7. Information* format

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

~~SCHEDULE 8 – FORM OF GUARANTEE~~~~DATE [###]~~~~PARTIES~~~~1. [### ACN ### A COMPANY REGISTERED IN ### OF ###] (“GUARANTOR*”); AND~~~~2. ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861, A STATUTORY BODY CORPORATE ESTABLISHED BY PARAGRAPH 4(1)(B) OF THE *ELECTRICITY CORPORATIONS ACT 2005 (WA)* OF 363 WELLINGTON STREET, PERTH, WESTERN AUSTRALIA (“WESTERN POWER*”).~~~~RECITALS~~~~A. WESTERN POWER* MAY IN ITS DISCRETION PROVIDE SERVICES* TO [###] (“USER*”) UNDER AN ACCESS CONTRACT* AT THE REQUEST OF EACH OF THE USER* AND THE GUARANTOR*.~~~~B. THE GUARANTOR* WISHES TO EXECUTE THIS GUARANTEE TO SECURE PAYMENT OF ALL AMOUNTS PAYABLE UNDER THE ACCESS CONTRACT* TO WESTERN POWER*.~~~~C. WORDS APPEARING WITH AN ASTERISK(*) IN THIS GUARANTEE ARE DEFINED TERMS AND HAVE THE RESPECTIVE MEANINGS DETAILED IN THIS GUARANTEE.~~~~OPERATIVE PROVISIONS~~~~(a) GUARANTEE~~~~THE GUARANTOR* UNCONDITIONALLY AND IRREVOCABLY GUARANTEES AS A CONTINUING SECURITY TO WESTERN POWER* PAYMENT BY THE USER* OF ALL MONEYS~~

~~AND LIABILITIES DUE AND/OR PAYABLE FROM OR BY THE USER* TO WESTERN POWER* UNDER OR IN CONNECTION WITH THE CONTRACT DATED [###] (“ACCESS CONTRACT*”) CREATED BETWEEN THE USER* AND WESTERN POWER* (“SECURED MONEYS*”), INCLUDING MONEYS AND LIABILITIES INCURRED OR ARISING:~~

~~(i)(LIABILITY): AT ANY PRESENT OR FUTURE TIME, WHETHER ACTUALLY OR CONTINGENTLY;~~

~~(ii)(DEFAULT): AS A RESULT OF ANY BREACH OF OR DEFAULT UNDER THE ACCESS CONTRACT*; AND/OR~~

~~(iii)(ACCOUNT): BY WAY OF PRINCIPAL, INTEREST, COST, CHARGE, EXPENSE, DISBURSEMENT, FEE, TAX, STAMP OR OTHER DUTY, INDEMNITY, DAMAGES OR MONETARY JUDICIAL ORDER.~~

~~(b) SECURED MONEYS*~~

~~(i) DEMAND PAYMENT~~

~~THE GUARANTOR* MUST PAY TO WESTERN POWER*, UPON DEMAND BY WESTERN POWER* AT ANY PRESENT OR FUTURE TIME, THE AMOUNT OF THE SECURED MONEYS* DUE FROM AND PAYABLE BY THE USER* TO WESTERN POWER* AT THAT TIME UNDER, AND IN THE MANNER AND CURRENCY SPECIFIED IN, THE ACCESS CONTRACT*.~~

~~(ii) COSTS~~

~~THE GUARANTOR* MUST AT ANY PRESENT OR FUTURE TIME INDEMNIFY WESTERN POWER* UPON DEMAND FOR ANY COST, CHARGE, EXPENSE, DISBURSEMENT, FEE, TAX OR STAMP OR OTHER DUTY INCURRED BY WESTERN POWER* AT ANY TIME IN CONNECTION WITH THE ACCESS CONTRACT*, THIS GUARANTEE* OR THE SECURED MONEYS* RELATING TO:~~

~~(A)(SECURITY AGREEMENTS): PREPARATION, NEGOTIATION, EXECUTION OR PERFORMANCE, OR ANY TERMINATION, AMENDMENT, CONSENT, CLAIM, DEMAND OR WAIVER;~~

~~(B)(SECURITY RIGHTS): ANY EXERCISE OR ENFORCEMENT OF ANY RIGHT OR POWER CONFERRED ON WESTERN POWER*;~~

~~(C)(CREDIT INCREASES): ANY EXTENSION OF FURTHER, ADDITIONAL OR INCREASED CREDIT OR FINANCIAL ACCOMMODATION BY WESTERN POWER*, OR AGREEMENT BY WESTERN POWER* TO INCREASE THE AMOUNT SECURED; AND/OR~~

~~(D)(PAYMENTS): THE RECEIPT OR PAYMENT OF ANY MONEYS, INCLUDING MONEYS PAID BY WESTERN POWER* BY WAY OF REIMBURSEMENT TO ANY THIRD PARTY.~~

~~(iii) SET-OFF EXCLUSION~~

~~THE GUARANTOR* MUST MAKE ANY PAYMENT REQUIRED UNDER THIS GUARANTEE WITHOUT SET-OFF OR OTHER DEDUCTION, EXCEPT FOR THE DEDUCTION OR WITHHOLDING OF ANY TAX COMPELLED BY LAW.~~

~~(e) INDEMNITY~~

~~THE GUARANTOR* MUST AS A SEPARATE AND ADDITIONAL LIABILITY OF THE GUARANTOR* AS A PRINCIPAL DEBTOR, AND NOT AS A SURETY, INDEMNIFY WESTERN POWER* AGAINST, AND PAY TO WESTERN POWER* UPON DEMAND BY WESTERN POWER* AN AMOUNT EQUAL TO, ALL SECURED MONEYS* THAT ARE OR MAY BECOME INVALID, UNENFORCEABLE, ILLEGAL OR IRRECOVERABLE FOR ANY REASON OR UNDER ANY CIRCUMSTANCES AS A LIABILITY TO WESTERN POWER* BY THE GUARANTOR* AS A SURETY, DESPITE ANY OTHER PROVISION OF THIS GUARANTEE.~~

~~(d) GUARANTEE PROTECTION~~

~~THIS GUARANTEE, AND THE LIABILITY OF THE GUARANTOR* UNDER THIS GUARANTEE, IS NOT AFFECTED AT ANY TIME BY:~~

~~(i)(WAIVER): THE GRANTING TO ANY PERSON BY WESTERN POWER OF ANY WAIVER;~~

~~(ii)(AGREEMENTS): ANY AGREEMENT, DEED OR DOCUMENT CREATED WITH, OR ACTION OR OMISSION PERFORMED, REPRESENTATION MADE OR NON-DISCLOSURE OF ANY FACT OR INFORMATION BY, WESTERN POWER* OR ANY PERSON;~~

~~(iii)(SECURED MONEYS*): ANY INCREASE OR VARIATION IN THE AMOUNT OF THE SECURED MONEYS* OCCURRING FOR ANY REASON;~~

~~(iv)(DOCUMENT AMENDMENT): ANY AMENDMENT TO OR TRANSFER, RELEASE OR TERMINATION OF ANY AGREEMENT, DEED OR DOCUMENT OR ANY RIGHT, POWER OR LIABILITY OF ANY PERSON UNDER ANY AGREEMENT, WHETHER FOR OR WITHOUT CONSIDERATION;~~

~~(v)(ENFORCEMENT DECISIONS): ANY EXERCISE OR ENFORCEMENT, OR ANY FAILURE OR INVALIDITY IN, THE EXERCISE OR ENFORCEMENT BY WESTERN POWER* OF ANY RIGHT OR POWER CONFERRED ON WESTERN POWER* UNDER ANY AGREEMENT, DEED OR DOCUMENT OR BY LAW;~~

~~(vi)(INVALIDITY): ANY ACTUAL OR POTENTIAL INVALIDITY, UNENFORCEABILITY, ILLEGALITY OR IRRECOVERABILITY OF ANY AGREEMENT, DEED OR DOCUMENT OR CONSENT OR ANY PAYMENT MADE OR DUE TO WESTERN POWER* UNDER ANY AGREEMENT FOR ANY REASON;~~

~~(vii)(INCAPACITY): ANY INCAPACITY OR ABSENCE OF POWER OR AUTHORISATION OF, OR OTHER FACT RELATING TO, ANY PERSON IN CONNECTION WITH THE EXECUTION OF ANY AGREEMENT, DEED OR DOCUMENT OR OTHERWISE, INCLUDING ANY CHANGE IN THE CONSTITUTION OR MEMBERSHIP OF ANY PERSON; OR~~

~~(viii)(RESIDUAL): ANY OTHER BREACH, DEFAULT, WAIVER OR FACT WHICH, EXCEPT FOR THIS PROVISION, MIGHT LEGALLY OPERATE:~~

~~(A) TO RELEASE OR DISCHARGE OR HAVE ANY PREJUDICIAL EFFECT ON; OR~~

~~(B) IN ANY MANNER TO RELEASE OR DISCHARGE THE GUARANTOR* FROM PERFORMANCE OF, OR LIMIT OR PROVIDE A DEFENCE TO ANY LEGAL ACTION TO ENFORCE,~~

~~THIS GUARANTEE, OR ANY LIABILITY OF THE GUARANTOR* UNDER OR IN CONNECTION WITH THIS GUARANTEE.~~

~~(e) TERMINATION~~

~~THE GUARANTOR* IS NOT ENTITLED TO TERMINATE OR LIMIT THIS GUARANTEE, OR ANY LIABILITY OF THE GUARANTOR* UNDER THIS GUARANTEE, UNTIL THE SECURED MONEYS* HAVE BEEN PAID IN FULL.~~

~~(f) GOVERNING LAW~~

~~THIS GUARANTEE IS GOVERNED BY AND CONSTRUED UNDER THE LAW OF THE STATE OF WESTERN AUSTRALIA.~~

~~(g) GENERAL~~

~~(i) CONTINUING SECURITY~~

~~THIS GUARANTEE IS A CONTINUING SECURITY AND IS NOT WHOLLY OR PARTIALLY DISCHARGED BY THE PAYMENT AT ANY TIME OF ANY SECURED MONEYS*, SETTLEMENT OF ACCOUNT OR OTHER FACT AND APPLIES TO THE BALANCE OF THE SECURED MONEYS* AT ANY TIME UNTIL A FINAL TERMINATION OF THIS GUARANTEE BY WESTERN POWER*.~~

~~(ii) FURTHER ASSURANCE~~

~~THE GUARANTOR* MUST UPON REQUEST BY WESTERN POWER* AT ANY TIME EXECUTE ANY DOCUMENT AND PERFORM ANY ACTION NECESSARY TO GIVE FULL EFFECT TO THIS GUARANTEE, WHETHER PRIOR OR SUBSEQUENT TO PERFORMANCE OF THIS GUARANTEE.~~

~~(iii) WAIVERS~~

~~ANY FAILURE OR DELAY BY WESTERN POWER* TO EXERCISE ANY RIGHT OR POWER UNDER THIS GUARANTEE DOES NOT OPERATE AS A WAIVER AND THE SINGLE OR PARTIAL EXERCISE OF ANY RIGHT OR POWER BY WESTERN POWER* DOES NOT PRECLUDE ANY OTHER OR FURTHER EXERCISE OF THAT OR ANY OTHER RIGHT OR POWER BY WESTERN POWER*.~~