

# Alternative Options Contract

Between

Electricity Networks Corporation ABN 18 540 492 861

and

[Name of Service Provider] ABN [XXXXXXXXXX]

**This is a Model Alternative Option Service Contract pursuant to section 6A.7 of the Electricity Networks Access Code 2004 and is subject to approval by the Economic Regulation Authority.**



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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 [ ] (**Service Provider**)

## Introduction

### Background

The Service Provider has agreed to provide, and Western Power has agreed to acquire, the Services on, and subject to, the terms of this Contract.

## Operative Provisions

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### 1 Interpretation provisions

#### 1.1 Interpretation

In this Contract:

- (a) a reference to:
  - (i) the singular includes the plural and the plural includes the singular,
  - (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,
  - (iii) this Contract or any other instrument includes any variation or replacement of it,
  - (iv) “under” includes “by”, “by virtue of”, “pursuant to” and “in accordance with”,
  - (v) “day” means a calendar day,
  - (vi) “person” includes a public body, company, or association or body of persons, corporate or unincorporated,
  - (vii) a person includes a reference to that person's personal representatives, executors, administrators, successors and permitted assignees, and

- (viii) any monetary amount means that amount in Australian dollars;
- (b) a word of any gender includes the corresponding words of the other gender;
- (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;
- (d) “copy” includes a photocopy or (subject to the Electronic Communications Protocol in 0) an electronic copy;
- (e) “including” and similar expressions are not words of limitation;
- (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) a reference to
  - (i) this Contract includes any Schedule to this Contract,
  - (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.

## 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 Safety and integrity of Network

A reference in this Contract to the “safety and integrity of the Network” is a reference to the Network being able to operate:

- (a) in accordance with all applicable Laws;
- (b) in a manner so as to meet the total demand for consumption of electricity from the Network;
- (c) safely, so that it does not threaten the safety of persons or property; and
- (d) in accordance with its normal operating practices.

### Explanatory Note

Western Power understands that some alternative options will not have a material impact on the Network and appropriate amendments to any clauses referencing the safety and integrity of the Network will be considered on a case by case basis.

## 1.4 CPI adjustment

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

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

where:

“N” is the new amount being calculated; and

“C” is the current amount being adjusted; and

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

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

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## 2 Term and Conditions Precedent

### 2.1 Commencement and Term

- (a) The following clauses of this Contract commence on the Execution Date: clause 1, 2.2, 11, 24, 25, 26, 27, 28, 29, 30 and 31.
- (b) The remaining clauses of this Contract commence on the satisfaction or waiver of the Conditions Precedent in accordance with clause 2.2. If there are no Conditions Precedent then the remaining clauses of the Contract also commence on the Execution Date.
- (c) Subject to clause 2.1(d), this Contract ends on the Termination Date (unless terminated earlier in accordance with its terms).
- (d) If the Contract Details provide for an Extension Period then, by notice to the Service Provider not less than two months before the then current Termination Date, Western Power may elect to extend the Term by the Extension Period. If Western Power makes such an election, the Termination Date will be the last day of the Extension Period.

#### Explanatory Note

This clause 2.1(d) provides for a single Extension Period. Western Power notes that minor amendments would be required to this clause if multiple Extension Periods are contemplated and agreed to by the parties.

### 2.2 Conditions Precedent

- (a) The commencement of this Contract, other than the clauses referred to in clause 2.1(a), is subject to, and conditional upon, each of the Conditions Precedent being satisfied on or before the date specified in 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 on or before the date specified in Schedule 2;
    - (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 date specified in Schedule 2.
  - (b) The Party specified in Schedule 2 as being responsible for satisfying a Condition Precedent must use all reasonable endeavours to satisfy the Condition Precedent by the date specified in Schedule 2.
  - (c) 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 Schedule 2;
    - (ii) discovers that any of the Conditions Precedent have become incapable of being satisfied by the date specified in Schedule 2; or
    - (iii) waives any right to continue to treat any of the Conditions Precedent as conditions precedent to the commencement of this Contract.
  - (d) If a Condition Precedent is not satisfied or waived by the date specified in Schedule 2 (or such longer period as the Parties may agree in writing) then, if the Party who seeks to terminate this Contract has complied with clause 2.2(b), 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.
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### **3 Services commencement**

- (a) If the Works Schedule provides that Works must be completed before the Services may commence, the Service Provider must complete the Works in accordance with that Schedule and by the date specified in that Schedule.
- (b) Without limiting clause 3(a), the Service Provider must undertake such tests in accordance with the Works Schedule as may be necessary to evidence, to Western Power's satisfaction, that the Works have been completed in accordance with the requirements of the Works Schedule.
- (c) The Service Provider must ensure that no later than the Service Commencement Date:
  - (i) the Facility is completed such that it is able to provide the Services safely and in accordance with this Contract;
  - (ii) the Facility has successfully completed any tests set out in the Services Schedule to demonstrate that it has been completed and able to provide the Services;

- (iii) reasonable access to the Facility has been provided to Western Power, at times acceptable to Western Power, to enable Western Power to carry out any inspections set out in the Services Schedule; and
  - (iv) the Service Provider has provided to Western Power any documents or information reasonably required by the Services Schedule.
- (d) If the requirements set out in clause 3(c) are not satisfied on or before:
- (i) the Services Commencement Date, the Service Provider must pay Western Power liquidated damages at the LD Rate for each day from the Services Commencement Date until the date on which those requirements are satisfied;
  - (ii) the Sunset Date, then Western Power may, by notice to the Service Provider at any time prior to those requirements being satisfied (if ever), terminate this Contract with immediate effect or with effect from such later date nominated in the notice (as determined by Western Power).
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## **4 Services**

### **4.1 Obligation to provide and standards**

- (a) As from the later of the Service Commencement Date and the Service Readiness Date, the Service Provider must provide the Services to Western Power.
- (b) The Services must be provided in accordance with:
  - (i) the Services Schedule (including, without limitation, any Performance Requirements specified in the Services Schedule);
  - (ii) the Operating Protocol; and
  - (iii) all applicable Laws.
- (c) The Service Provider must ensure that:
  - (i) the Services are provided in accordance with Good Electricity Industry Practice;
  - (ii) the Personnel have all the necessary skills, training and expertise to provide the Services in accordance with the requirements of this Contract;
  - (iii) it provides all necessary labour, tools, equipment, plant and materials as required to properly provide the Services in accordance with the requirements of this Contract; and
  - (iv) it holds all Approvals required to provide the Services and to otherwise discharge its obligations under this Contract.

- (d) If the Service Provider engages Subcontractors to assist with the provision of the Services, the Service Provider must ensure they are reputable and competent subcontractors with all necessary expertise and resources to discharge the obligations subcontracted to them. No such subcontracting relieves the Service Provider from any of its obligations under this Contract.
- (e) The Service Provider is liable to Western Power for the acts and omissions of the Personnel as if they were acts or omissions of the Service Provider.
- (f) Except for any information, equipment or assistance that is expressly required by a provision of this Contract to be provided by Western Power to the Service Provider, the Service Provider is solely responsible for obtaining all Approvals and providing all resources (whether equipment, goods, Personnel, intellectual property or otherwise) that are required to enable the Service Provider to provide the Services and discharge its obligations under this Contract.
- (g) The Service Provider represents and warrants that:
  - (i) it has entered into this Contract by relying entirely upon its own independent appraisal and assessment of all relevant matters;
  - (ii) it is able to discharge all of its obligations under this Contract; and
  - (iii) it has not relied upon any representations or information made, or provided by, Western Power in determining whether it will enter into this Contract and in determining whether it will be able to comply with its obligations under this Contract.

## **4.2 Facility**

- (a) The Service Provider must ensure that the Facility:
  - (i) is maintained in accordance with Good Electricity Industry Practice;
  - (ii) complies with all applicable Laws; and
  - (iii) complies with the requirements of O.
- (b) Without limiting clause 4.2(a), the Service Provider must ensure that the Equipment comprising the Facility is serviced and maintained in accordance with the instructions and recommendations of the manufacturer of that Equipment.
- (c) The Service Provider must notify Western Power at least 30 days prior to making any material modification to the Equipment comprising the Facility. Such notice must outline:
  - (i) the Equipment to be modified;
  - (ii) how it will be modified; and

- (iii) whether that modification will in any way impact the manner in which the Services will be provided.
- (d) If a modification must be made urgently as a result of Unscheduled Maintenance or to preserve the safety or operational integrity of the Facility or the safety and integrity of the Network, and it is not possible to provide 30 days' notice as contemplated by clause 4.2(c), then the Service Provider must provide the maximum notice period that is practicable in the circumstances.
- (e) Once a modification has been made, the Service Provider must provide a notice to Western Power confirming that the modification complies with the notice served under clause 4.2(c) or, if the actual modification differs in any way from that previously notified to Western Power, setting out a comprehensive and detailed explanation of those differences.
- (f) The Service Provider must, within a reasonable period of time following a request from Western Power to do so, provide Western Power with any additional information that Western Power may request in respect of a proposed modification or actual modification to the Equipment.
- (g) The Service Provider must not make any modification to the Equipment which may adversely affect the ability of the Facility to provide the Services in accordance with this Contract or the safety and integrity of the Network.

#### **4.3 No-exclusivity**

The Service Provider is not an exclusive provider of services to Western Power and Western Power may procure, at its absolute discretion, services equivalent or similar to the Services from such other persons as Western Power elects.

#### **4.4 Information**

The Service Provider must, within a reasonable period of time following a request from Western Power to do so, provide Western Power with whatever information Western Power might reasonably require from the Service Provider from time to time in relation to the Facility, the Services or the discharge of the Service Provider's obligations under this Contract.

#### **4.5 Metering**

The Service Provider agrees that, for the purposes of the *Electricity Industry (Metering) Code 2012* and all other Laws, Western Power may, for the term of this Contract and for such time thereafter as required for the purposes set out below, use metering data relating to the Facility:

- (a) to determine if Western Power will request provision of the Services;
- (b) to determine if the Services are being, or have been, provided in accordance with this Contract; and
- (c) to otherwise exercise Western Power's rights under this Contract;

subject to any applicable confidentiality provisions of the Electricity Industry (Metering) Code 2012

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## 5 Availability

### 5.1 Overall Availability

- (a) The Service Provider must ensure that the Facility has the Required Availability Level for each Year or for such other period as may be specified in the Services Schedule.
- (b) Without limiting Western Power's other remedies under this Contract, should the Services Schedule provide that liquidated damages are payable if the Availability is less than the Required Availability Level, then such liquidated damages are payable in accordance with the terms of that Services Schedule unless the Unavailability is a direct result of periods of Scheduled Maintenance or actions taken by Western Power or AEMO.

#### **Explanatory Note**

Western Power notes that liquidated damages will only be utilised in the Contract if appropriate having regard to the type of service. Other mechanisms for dealing with required availability levels being unavailable will be considered if appropriate (for example, a refund mechanism for demand side management type options).

### 5.2 Scheduled Maintenance

- (a) Subject to clause 5.1 and the remaining requirements of this clause 5.2, the Service Provider may undertake Scheduled Maintenance of the Facility in accordance with a Scheduled Maintenance Plan.
- (b) At the time specified in the Services Schedule, the Service Provider must provide Western Power with the Service Provider's proposed Scheduled Maintenance Plan for the forthcoming Year (or such other period specified in the Services Schedule).
- (c) Western Power will review the Scheduled Maintenance Plan and may, within [XXX] of receipt of the Scheduled Maintenance Plan:
  - (i) acting reasonably, require such changes to it as Western Power deems necessary to ensure that the Facility is not Unavailable due to Scheduled Maintenance during a period which will, or is likely to, have a material adverse impact upon the safety and integrity of the Network; and
  - (ii) otherwise request changes to the Scheduled Maintenance Plan.
- (d) The Service Provider:
  - (i) must make changes to a Scheduled Maintenance Plan as required by Western Power under clause 5.2(c)(i) unless making such changes would

cause the Service Provider to breach an applicable Law or a binding requirement that the Service Provider has received notice of from AEMO; and

- (ii) must not unreasonably withhold its consent to a change requested by Western Power under clause 5.2(c)(ii).
- (e) Within [XXX] of receipt of a notice from Western Power under clause 5.2(c), the Service Provider must provide Western Power with the final form of its Scheduled Maintenance Plan for the relevant Year (or other period specified in the Services Schedule). To the extent the Service Provider has not made a change referred to in clause 5.2(d), the Scheduled Maintenance Plan must be accompanied by a reasonably detailed notice explaining why the change has not been made.
- (f) Once provided to Western Power under clause 5.2(e), the Scheduled Maintenance Plan for a Year (or such other period specified in the Services Schedule) may only be amended by the Service Provider:
  - (i) if required by AEMO in writing; or
  - (ii) with the written consent of Western Power (which consent is not to be unreasonably withheld but, to avoid doubt, may be withheld if such an amendment will, or is likely to, have a material adverse impact upon the safety and integrity of the Network).
- (g) The Service Provider must notify Western Power as soon as possible, and in any event within 2 Business Days, if it is required to amend the Scheduled Maintenance Plan due to a requirement of AEMO under clause 5.2(f)(i). Such notice must contain full details of the requirement. Upon revising the Scheduled Maintenance Plan in accordance with that requirement, the Service Provider must provide a copy of it to Western Power.
- (h) The Service Provider must notify Western Power:
  - (i) of the commencement date and time, as well as expected duration, of any Scheduled Maintenance which will result in the Facility being Unavailable, which notification must be made no later than [XXX] prior to the commencement of such Scheduled Maintenance; and
  - (ii) as soon as possible, after the completion of that Scheduled Maintenance.

**Explanatory Note**

Western Power notes that some or all of the obligations relating to maintenance may not be relevant for certain alternative options. Contracts for such services will be appropriately amended.

**5.3 Notification of Unavailability**

- (a) The Service Provider must notify Western Power if the Facility:

- (i) becomes, or may be, Unavailable (including at any time within the following 2 Business Days);
  - (ii) is likely to become Unavailable for a period commencing more than [XXX];  
or
  - (iii) was Unavailable in respect of a period not already the subject of a notice under this clause 5.2(h)(ii).
- (b) Notice under clause 5.3(a)(i) must be:
- (i) given by telephone within the time required by the Services Schedule, which notice must include the Service Provider's then best estimate of the duration of the Unavailability; and
  - (ii) confirmed by email within the time required by the Services Schedule, which notice must include the Service Provider's then best estimate of the duration of the Unavailability and the cause of the Unavailability; and
  - (iii) within the time required by the Services Schedule, confirmed by formal notice in writing which formal notice must set out:
    - (A) the duration of the Unavailability (and if the Unavailability is still continuing the Service Provider's best estimate of when the Unavailability will cease);
    - (B) the cause of the Unavailability; and
    - (C) the measures being taken, or to be taken, by the Service Provider to avoid or mitigate any future occurrence of the Unavailability due to that cause.
- (c) If Unavailability has not ceased as at the time that a notice has been served under clause 5.3(a)(iii), the Service Provider must provide an updated version of such notice every [XXX] and must provide a final version of that notice upon the cessation of the Unavailability.
- (d) If so required by the Services Schedule, a notice issued by the Service Provider under this clause 5.3(a)(iii) must be copied to AEMO.

#### **5.4 Deemed Unavailability due to failure to provide Services**

- (a) If Western Power requests provision of the Services for a period (for which the Service Provider has not, in accordance with clause 5.3, already notified Western Power that the Facility is, or will be, Unavailable) and the Facility fails to provide the Services in accordance with this Contract during that period, then the Facility will be deemed to be Unavailable:
  - (i) commencing upon the latest of the following:

- (A) the date from which the Service Provider last demonstrated to Western Power's reasonable satisfaction that the Facility was Available;
  - (B) the last time a Test demonstrated that the Facility was Available;
  - (C) the last time the Facility provided the Services in accordance with this Contract; or
  - (D) the later of the Services Commencement Date and the Services Readiness Date; and
- (ii) ending upon the first to occur of either a Test demonstrating the Facility is Available or the Service Provider otherwise substantiating to Western Power's reasonable satisfaction that the Facility is Available.

**Explanatory Note**

Western Power notes that the above methods of determining Unavailability may not be appropriate for certain alternative options such as technology-based solutions. Appropriate amendments will be made where required.

**5.5 Remediating Unavailability**

- (a) If the Facility is Unavailable, or deemed to be Unavailable, then Western Power may, by notice to the Service Provider, require that the Service Provider provide, and comply with, a remedial plan for rectifying the Unavailability.
- (b) The Service Provider must, within 5 Business Days of receiving a notice under clause 5.5(a), provide Western Power with a remedial plan to rectify the relevant Unavailability.
- (c) As soon as reasonably possible after receipt by Western Power of a written request from the Service Provider for an extension of the 5 Business Day period under clause 5.5(b), Western Power will, acting reasonably, determine whether to grant such an extension and notify the Service Provider of its determination.
- (d) If, after receipt of a remedial plan pursuant to clause 5.5(b) or 5.5(c), Western Power considers the remedial plan to be an unsatisfactory means for rectifying Unavailability, Western Power may notify the Service Provider of this fact and the Service Provider must, as soon as possible, rectify the remedial plan to Western Power's satisfaction and provide Western Power with a duly rectified version of the remedial plan.
- (e) The Service Provider must, in accordance with Good Electricity Industry Practice, rectify the cause of any Unavailability as soon as possible (including in accordance with any remedial plan prepared under this clause 0) and must:

- (i) keep Western Power informed as to its progress in rectifying the Unavailability (including providing such information as Western Power may reasonably request from time to time); and
  - (ii) provide such evidence as Western Power reasonably requires (which may include the conduct of Tests or permitting Western Power to conduct an inspection) to demonstrate that the Unavailability has been rectified.
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## **6 Market requirements**

- (a) Without derogating from the Service Provider's obligations under clause 4.1(c)(iv), the Service Provider must ensure that the Service Provider, and the Facility, have such registrations as are required under the Market Rules to entitle the Service Provider to provide the Services.
  - (b) The Service Provider must ensure the Standing Data for the Facility is consistent with the Market Rules.
  - (c) The Service Provider must not change the Standing Data minimum response time for the Facility without the prior written consent of Western Power.
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## **7 Access and protection of property**

### **7.1 Access**

- (a) Subject to clause 7.1(d) and clause 7.1(e), the Service Provider must ensure Western Power has reasonably sufficient access to the Facility (and any adjacent properties owned, leased or otherwise controlled by the Service Provider) at such times as Western Power may require to inspect, repair, maintain, modify, replace, or remove any Western Power Property.
- (b) The right of access under clause 7.1(a) may be exercised by Western Power's officers, employees, agents and contractors and using such equipment, materials and vehicles as is reasonable given the reason for which access is required.
- (c) Western Power will provide the Service Provider with reasonable notice prior to exercising its rights of access under this clause 7. However, in the case of an Emergency, Western Power is not required to provide prior notice if Western Power does not consider doing so to be feasible given the nature of the Emergency.
- (d) In exercising its right of access under clause 7.1(a), Western Power will comply with any reasonable occupational health and safety and security procedures.
- (e) Nothing in this clause 7.1 limits any statutory rights of access that Western Power has under the *Energy Operators (Powers) Act 1979* (WA) or under any other legislation.

## 7.2 Protection of property

- (a) The Service Provider must ensure any Western Power Property is kept safe and secure, free from loss or damage and in a clean waterproof area.
  - (b) The Service Provider must not tamper or interfere with Western Power Property, or in any way circumvent or frustrate the operation of Western Power Property or the exercise of any other right that Western Power has at law or in Equity in relation to Western Power Property.
  - (c) The Service Provider must notify Western Power by telephone as soon as possible, and in any event not more than 30 minutes, after becoming aware of any:
    - (i) threatened or actual damage to, or tampering or interference with; or
    - (ii) defect in, or operational failure of,Western Power Property, which notice must be confirmed by the Service Provider via an email to Western Power on the same day that the requisite telephone call is made.
- 

## 8 Inspection and Testing

### 8.1 Inspections

- (a) On 5 Business Days' notice to the Service Provider, or immediately upon giving the Service Provider notice where Western Power believes that the Facility may present a threat to the safety or integrity of the Network, Western Power may inspect the Facility:
  - (i) at such times specified in the Services Schedule; or
  - (ii) if Western Power has reason to believe the Facility may not comply with the requirements of this Contract.
- (b) The Service Provider must provide all co-operation and assistance reasonably required to enable Western Power to undertake an inspection in accordance with clause 8.1(a).
- (c) In undertaking an inspection, Western Power will comply with any reasonable occupational health and safety and security procedures applicable to the site on which the Facility is located.

### 8.2 Obligation to conduct Tests

- (a) The purpose of the Tests is to confirm that the Facility complies with the requirements of this Contract, including that the Facility is able to provide the Services as required by this Contract without adversely impacting the safety and integrity of the Network.

- (b) The Service Provider must undertake the Tests at the times set out in, and in accordance with the requirements of, the Services Schedule.
- (c) The Service Provider may, at its discretion, undertake additional Tests to those set out in the Services Schedule provided that such Tests are undertaken in accordance with the requirements of the Services Schedule and the Market Rules and do not result in the Availability of the Facility being below the Required Availability Level.
- (d) If the Service Provider is directed by AEMO to undertake a Test, or is otherwise required by Law to undertake a Test, the Service Provider may do so provided that, to the extent that it is practicable to do so, such Tests are undertaken in accordance with this clause 8.
- (e) Without limiting clause 8.2(b), to the extent that the Market Rules apply to the conduct of any Tests, the Service Provider must ensure that the Tests are undertaken in accordance with the requirements of the Market Rules (including, but not limited to, obtaining AEMO's approval to conduct such Tests).

### 8.3 Additional Tests

- (a) Subject to clause 8.3(b) or, where applicable, a direction by AEMO to the contrary, Western Power may require the Service Provider to conduct Tests in addition to those required by the Services Schedule if:
  - (i) Western Power considers, on a reasonable basis, that the Facility may not comply with the requirements of this Contract;
  - (ii) Western Power, acting reasonably, is not satisfied that the Facility is currently Available and, within one month prior to that lack of satisfaction, the Facility was Unavailable; or
  - (iii) there has been a modification to the Equipment comprising the Facility and Western Power, on a reasonable basis, considers there to be a risk that the Facility may no longer be able to provide the Services in accordance with the requirements of this Contract.
- (b) Prior to requiring a Test under clause 8.3(a), Western Power must notify the Service Provider of its concerns in relation to the Facility and, subject to clause 8.3(c), afford the Service Provider 5 Business Days within which to respond to those concerns. If the Service Provider fails to respond in time, or its response fails to allay Western Power's concerns, Western Power may require a Test pursuant to clause 8.3(a).
- (c) Western Power may give the Service Provider less than 5 Business Days' notice to conduct a test pursuant to clause 8.3(a), but not less than 1 Business Day, if Western Power considers, on a reasonable basis, that such shorter period of time is necessary because the Facility poses a material threat to the integrity and safety of the Network, which threat may include, but is not limited to, the Facility's potential inability to provide the Services.

- (d) Subject to any direction by AEMO to the contrary (in circumstances where under the Market Rules the approval of AEMO is required to conduct a Test) a Test must commence within the time nominated by Western Power, which time, unless the Parties otherwise agree, may not be earlier than 3 Business Days after issue by Western Power of a notice requiring commencement of the Test.
- (e) A Test under this clause 8.3 must be undertaken in accordance with:
  - (i) any applicable requirements of the Services Schedule;
  - (ii) any additional requirements of Western Power (as determined by Western Power having regard to the reasons for the Test); and
  - (iii) the requirements of the Rules and any requirement of AEMO, provided that the Market Rules apply to the conduct of the Test.

#### **8.4 Conduct of Tests**

- (a) Unless a different notice period for a Test is specified in the Services Schedule, or the Rules require that AEMO be given more than 2 Business Days' notice, the Service Provider must provide Western Power with at least 2 Business Days' notice of the commencement date and time of any Test, which notice must also be provided to AEMO unless otherwise provided in the Services Schedule.
- (b) Western Power may appoint up to two Representatives to witness the conduct of a Test. The Service Provider must ensure that Western Power's Representatives have all necessary access to witness the Test so as to be able to verify whether or not it has been conducted correctly.
- (c) Western Power must ensure that its Representatives who attend a Test:
  - (i) do not interfere with the conduct of the Test; and
  - (ii) comply with any reasonable occupational health and safety and security procedures applicable to the site where the Test is being conducted.
- (d) Subject to clause 8.6(a), the Service Provider must, within 10 Business Days after completion of a Test or within such period as may be specified in the Services Schedule, provide Western Power with a reasonably detailed report that:
  - (i) describes the Test conducted;
  - (ii) sets out the results of the Test; and
  - (iii) if the Test was requested by Western Power, contains any other information sought by Western Power at the time that the Test was requested under 8.4(a).
- (e) In addition to the report required under clause 8.4(d), the Service Provider must provide Western Power with any other information reasonably requested by

Western Power in respect of a Test, which information must be provided within the time reasonably requested by Western Power.

### **8.5 Failure to conduct Test**

- (a) If the Service Provider fails to conduct a Test on the date, at the time, or in the manner, required by this clause 8, the Service Provider must, as soon as practicable (and in any event within 2 Business Days), notify Western Power of that fact. Such notice must specify:
  - (i) if the Test was not conducted, why the Test was not conducted; or
  - (ii) if the Test was conducted but the manner in which it was conducted varied from the requirements of this clause 8, the manner in which the Test so varied; and
  - (iii) subject to 8.5(b), at least one alternative date and time when the Test may be conducted.
- (b) Subject to clause 8.5(c), if:
  - (i) a Test was not conducted, Western Power may require the Service Provider to conduct that Test at the date and time nominated by Western Power; or
  - (ii) a Test was conducted in a manner which varied from the requirements of this clause 8, then Western Power may require the Service Provider to re-perform that Test at the date and time nominated by Western Power unless the Service Provider is able to establish to Western Power's reasonable satisfaction that:
    - (A) the non-compliance was immaterial; or
    - (B) the non-compliance did not adversely impact the reliability of the results of the Test.
- (c) If AEMO directs that a Test required under clause 8.5(b)(i) or clause 8.5(b)(ii) should be conducted at some other date or time, then the Test must be conducted accordingly or, if AEMO nominates a range of dates and times, then the Test must be conducted at a date and time selected by Western Power from within that range.

### **8.6 Deemed Unavailability due to failure to conduct or pass Tests**

- (a) If the purpose of a Test includes demonstrating that the Facility was Available and the Test was not conducted as required by this clause 8 then, unless the Service Provider substantiates to Western Power's reasonable satisfaction within 3 Business Days after such Test that the Facility is Available, the Facility will be deemed to have been Unavailable for the period:

- (i) commencing upon the earlier of the date the Test was required to be conducted and the last in time of the following:
  - (A) the date from which the Service Provider last demonstrated to Western Power's reasonable satisfaction that the Facility was Available;
  - (B) the last time that a Test demonstrated that the Facility was Available;
  - (C) the last time the Facility provided the Services in accordance with this Contract; or
  - (D) the later of the Services Commencement Date and the Services Readiness Date; and
- (ii) ending upon the earlier of:
  - (A) the Test being conducted in accordance with this Contract (including, but not limited to, the results of the Test providing confirmation pursuant to clause 8.2(a)); or
  - (B) the Service Provider otherwise substantiating to Western Power's reasonable satisfaction that the Facility is Available.

## 8.7 Costs of Testing

- (a) Subject to clause 8.7(b), the Service Provider is solely responsible for the costs of all Tests.
- (b) Western Power is responsible for the reasonable costs of its Representatives who attend a Test.
- (c) The conduct of a Test does not constitute dispatch of the Facility and is not taken into account for the purposes of any calculation relating to the number of times that the Facility has been dispatched.

### Explanatory Note

Western Power notes that testing or the manner of testing contemplated in the provisions above may not be relevant for certain alternative solutions. Appropriate amendments will be made where appropriate.

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## 9 Fees

### 9.1 Amount of Fees

- (a) In consideration of the provision of the Services in accordance with the requirements of this Contract, Western Power will pay the Service Provider the Fees.

- (b) The Fees will be calculated in accordance with the Fee Schedule, which calculation will involve the reduction of the Fees to reflect any Unavailability.

## 9.2 Invoicing procedures

- (a) By the number of days after the end of a Month specified in the Fee Schedule, Western Power will notify the Service Provider of its determination of the Fees payable for that Month and provide sufficient detail to enable the Service Provider to understand how Western Power calculated the Fees
- (b) The Service Provider must provide Western Power with such information as Western Power reasonably requests in order for Western Power to be able to calculate the Fees payable for a Month. Western Power may also use information available from AEMO and Western Power's own analysis to determine the Fees payable for a Month.
- (c) If the information required to determine the Fees for a Month is not available in sufficient time before Western Power must give notice under clause 9.2(a), Western Power may determine its best estimate of those Fees. In such circumstances, Western Power must notify the Service Provider of the final Fees for a Month once Western Power is able to determine those Fees.
- (d) Western Power may, at the time of notifying the Service Provider of the Fees for a Month, notify the Service Provider of any adjustment to the invoice for that Month that was required to take into account:
  - (i) the difference between an estimated determination of the Fees in respect of a prior Month and a subsequent final determination made under clause 9.2(c); or
  - (ii) the fact that Fees invoiced for a Month are no longer correct due to further information becoming available to Western Power or other events occurring (including, but not limited to, the operation of clauses 5.4 and 8.6).
- (e) Upon receipt of a notice under clause 9.2(a), the Service Provider must issue an invoice to Western Power for the amount specified by Western Power in the relevant notice. If the Service Provider disputes Western Power's determination of the Fees payable for a Month, it must still issue an invoice less the amount in Dispute and issue a notice in accordance with clause 24.1.
- (f) An invoice issued under clause 9.2(e) may include an adjustment to reflect Fees that have determined via the resolution of a dispute pursuant to 9.2(e), provided that such Fees have not previously been accounted for in an invoice.
- (g) An invoice must:
  - (i) be in the form of a tax invoice complying with the GST Act;

- (ii) be sent to the address or electronic portal specified in the Fee Schedule (or to such other address or electronic portal as notified by Western Power from time to time); and
- (iii) quote the Order Number for this Contract (as specified in 0).

### 9.3 Payment

- (a) Western Power will pay an invoice that has been correctly issued in accordance with clause 9.2(e), 9.2(f) and 9.2(g) within 20 Business Days of receipt of the invoice.
- (b) Western Power:
  - (i) will pay the amount properly included in an invoice by electronic transfer to the bank account specified in the Fee Schedule or to such other bank account as notified by the Service Provider from time to time;
  - (ii) is under no obligation to verify the accuracy of the bank account details provided by the Service Provider; and
  - (iii) is not responsible for any delays in payment or any errors due to factors outside the reasonable control of Western Power including, but not limited to, delays in the banking system or incorrect details being provided by the Service Provider.

### 9.4 GST

- (a) Unless an amount is expressly stated to include GST, the consideration for any supply under, or in connection with, this Contract 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 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) 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.
- (d) 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.

- (e) Definitions in the GST Act apply to this clause 9.4 unless the context indicates otherwise.

## 9.5 Set-off

- (a) 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.
- (b) Except as permitted in clause 9.5(a), no set off is permitted by either Party in connection with this Contract, whether under this Contract or otherwise.

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## 10 Change in Rules

- (a) If there is any Change in Rules which is effective after Execution Date (including a Change in Rules which has the consequence that the provision of the Services becomes subject to regulation under the Market Rules):
  - (i) which is inconsistent with the terms of this Contract; or
  - (ii) which materially impacts upon either Party's ability to perform its obligations under this Contract,then the Parties must meet as soon as reasonably practicable to negotiate in good faith the minimum necessary amendments to the provisions of this Contract required to enable this Contract to continue to operate and to be administered, to the extent practicable, in the same manner as it had been administered and operated prior to the relevant Change in Rules.
- (b) The Parties obligation to negotiate will commence as from the date that the Change in Rules is made even if the Change in Rules is to come into effect at a later date.
- (c) If, in accordance with clause 10(a), the Parties are unable to agree upon the required amendments to the provisions of this Contract then, within 40 Business Days after the Change in Rules take effect, either Party may refer the matter to an Independent Expert for determination in accordance with the procedures set out in clause 25.
- (d) The following principles apply to the determination of the matter by an Independent Expert:
  - (i) within 40 days of the date of the Independent Expert's appointment, each Party must propose to the Independent Expert the set of amendments to the provisions of this Contract that it considers reflect the principle described in clause 10(a);

- (ii) the Independent Expert must, subject to its right under clause 10(d)(iii)(D), determine a set of amendments that reflect the principle described in clause 10(a) and deliver that determination no later than 30 days after receiving the Parties' proposed sets of amendments under clause 10(d)(i);
- (iii) the Independent Expert must do one of the following:
  - (A) choose one of the proposed sets of amendments in its entirety without amendment;
  - (B) choose one of the proposed sets of amendments in its entirety with amendment;
  - (C) develop its own set of amendments, which may contain some amendments proposed by one or both Parties; or
  - (D) determine that no amendments are required;
- (iv) the Independent Expert must give reasons for its decision which, except when clause 10(d)(iii)(D) applies, must include an explanation of the rationale for each amendment made; and
- (v) the set of amendments determined by the Independent Expert in accordance with this clause 10 will take effect from the later of:
  - (A) the date the Change in Rules takes effect; or
  - (B) 10 Business Days after the Independent Expert notifies the Parties of its determination.
- (e) Unless otherwise agreed by the Parties, no amendment will be made to this Contract in accordance with this clause 10 that has the effect of increasing or decreasing the amounts payable by one Party to the other Party under this Contract.
- (f) Until this Contract has been amended pursuant to this clause 10, each Party must continue to comply with its obligations under this Contract to the extent that it is reasonably possible to do so.

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## **11 Liability of Western Power**

### **11.1 Connection Contract**

- (a) This Contract does not regulate the basis upon which the Facility may be connected to the Network or the basis upon which Western Power provides any services in respect of the Facility (for example entry or exit services). Other than those provisions of clause 19 which deal with the disconnection of the Facility from the Network, all such matters are regulated solely by a Connection Contract.

- (b) Western Power has no liability of any nature whatsoever (whether in contract, tort (including negligence), in equity, under statute or otherwise) under this Contract in respect of the connection of the Facility to the Network or the provision of any services in respect of the Facility.

### **11.2 Limitation of liability**

- (a) Western Power has no liability to the Service Provider for any act or omission of Western Power under or in connection with this Contract, unless that act or omission constitutes gross negligence, fraud, wilful misconduct or a breach of this Contract by Western Power.
- (b) Notwithstanding any other provision of this Contract, Western Power has no liability to the Service Provider on any basis whatsoever (including for breach of this Contract or negligence) for any Consequential Loss unless Western Power is fraudulent in respect of its obligations to the Service Provider under this Contract.
- (c) The Service Provider must not make any claim against Western Power which is inconsistent with the limitations on Western Power's liability in this clause 11.2.

### **11.3 Western Power not responsible for the Facility**

- (a) The Service Provider is solely responsible for ensuring the Facility is in a condition such that it complies with this Contract and is able to provide the Services in accordance with this Contract.
- (b) Without limiting clause 11.3(a), Western Power has no obligation to the Service Provider to:
  - (i) in any way inspect, review or test the condition, capability or safety of the Facility including, but not limited to, identifying and notifying the Service Provider of any actual or potential deficiency or defect in the Facility; or
  - (ii) take any action to avoid or mitigate the risk of loss of, or damage to, the Facility (other than the obligations that it has under the Connection Contract in respect of the equipment comprising the Network).
- (c) To the extent that Western Power (including any person acting, or purporting to act, on its behalf) notifies the Service Provider of any actual or potential deficiency or defect in the Facility, or expresses any opinion in respect of such matters, the Service Provider undertakes that it will not rely on such notification or opinion and will make its own independent assessment of such matters.
- (d) The Service Provider will indemnify and keep Western Power indemnified in respect of any Claim brought by, or on behalf of, the Service Provider where the basis of such Claim is that the Service Provider has in any way relied on a notification or opinion referred to in clause 11.3(c).

- (e) Any inspections, tests or reviews of the Facility undertaken by Western Power are solely for Western Power's own purposes (including, but not limited to, assessing the impact of the Facility on the Network) and are not undertaken for the purposes of providing advice of any nature to the Service Provider.
- (f) No review, comment, approval, consent, rejection, refusal, expression of satisfaction or dissatisfaction with, supervision or superintendence by or on behalf of Western Power in respect of the Facility, nor any failure by Western Power to do any of those things will:
  - (i) limit or exclude any obligation or liability of the Service Provider;
  - (ii) prejudice any of Western Power's rights against the Service Provider;
  - (iii) impose on Western Power any duty of care to the Service Provider (whether in contract, tort or otherwise);
  - (iv) result in Western Power assuming any responsibility or liability for the adequacy, quality, compliance or fitness for purpose of the Facility or the Services or for any document provided by the Service Provider, or for any errors in or omissions from any such document; or
  - (v) constitute a representation that Western Power has checked any document, work or service for errors, omissions or compliance with the requirements of this Contract.

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## **12 Liability of Service Provider**

### **12.1 General indemnity**

The Service Provider indemnifies Western Power and Western Power's officers, agents and employees, and must keep Western Power and its officers, agents and employees indemnified, against Losses they suffer or incur arising from or in connection with any:

- (a) breach of contract by the Service Provider;
- (b) tortious act or omission (including negligent act or omission) of the Service Provider;
- (c) breach by the Service Provider of any Law.

### **12.2 Third Party Claims**

The Service Provider indemnifies Western Power and Western Power's officers, agents and employees, and must keep Western Power and its officers, agents and employees indemnified, against any Losses they suffer or incur due to any Claims brought by a Third Party against Western Power or its officers or employees arising from or in connection with any:

- (a) failure by the Service Provider to provide the Services in accordance with this Contract (howsoever caused);
- (b) breach of contract by the Service Provider;
- (c) tortious act or omission (including negligent act or omission) of the Service Provider;
- (d) breach by the Service Provider of any Law.

**Explanatory Note**

Western Power will consider liability caps for smaller scale or low risk solutions if appropriate and will assess this on a case by case basis.

**12.3 Exclusion**

The indemnities in clauses 12.1 and 12.2 do not apply to any Consequential Loss suffered by Western Power or Loss to the extent that the Loss is caused by Western Power's gross negligence or breach of this Contract.

**12.4 Conduct of litigation**

- (a) If a Claim from a Third Party is made against Western Power or Western Power's officers, agents or employees in the circumstances described in clause 12.2, Western Power must, as soon as reasonably practicable after determining that the Claim falls within clause 12.2:
  - (i) notify the Service Provider in writing of the Claim; and
  - (ii) provide the Service Provider with reasonable details about the Claim (to the extent available to Western Power).
- (b) A failure to comply with clause 12.4(a) does not affect the scope or operation of the indemnity in clause 12.2.
- (c) Nothing in clause 12.4(a) requires Western Power to provide the Service Provider with any legal advice received by Western Power in relation to the Claim made by a Third Party.
- (d) Where a Claim has been made by a Third Party under clause 12.4(a), Western Power may either:
  - (i) conduct the defence of the Claim itself; or
  - (ii) at any time require, by written notice to the Service Provider, that the Service Provider take over the defence of the Claim.
- (e) The Party conducting the defence of the Claim must keep the other Party informed of all material matters relating to the conduct of any defence in respect of the Claim.

- (f) The Service Provider, if conducting the defence of a Claim in accordance with clause 12.4(d)(ii):
- (i) must have regard to Western Power's expressed views if those views are confirmed in writing and are reasonable having regard to the legitimate interests of both Parties; and
  - (ii) may not settle a Claim without the consent of Western Power, which consent will be given if Western Power is satisfied the Service Provider has the financial resources to meet the Claim.
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## **13 Insurance**

### **13.1 Insurances to be effected and maintained**

The Service Provider must (at its own cost) effect and maintain the insurance policies listed, and on the terms and conditions set out, in 0.

### **13.2 Approval of the terms and conditions of insurance**

The policies listed in 0 must be effected with a reputable insurer and maintained by the Service Provider throughout the Term, which insurer must be approved in writing by Western Power whose approval will not be unreasonably withheld.

### **13.3 Common terms**

- (a) Unless otherwise stated in this Contract, every policy of insurance required under clause 13.1 must:
- (i) be effected on or before the Start Date and maintained for the Term and any Extension Period(s);
  - (ii) except for compulsory statutory workers' compensation and compulsory motor vehicle insurance, include a cross liability endorsement that all agreements and endorsements, except limits of liability, must operate in the same manner as if there was a separate policy of insurance covering each party insured and a failure by any insured party to observe and fulfil the terms and conditions will not affect any other party;
  - (iii) provide that a notice of Claim given to the insurer arising from this Contract must be accepted by the insurer as a notice of Claim given by all parties insured under the policy;
  - (iv) provide that any breach of the conditions of the insurances by the Service Provider or the Service Provider Personnel for whose actions the Service Provider is responsible, must not in any way prejudice or diminish any rights which Western Power has under the insurances; and

- (v) provide the insurance is primary with respect to the interests of Western Power and any other insurance maintained by it is excess to, and not contributory with, the insurance policies listed in 0.
- (b) The Service Provider must pay all premiums and all deductibles on the insurance policies listed in 0 when due.
- (c) Where Western Power has an insured interest or may be entitled to insurance proceeds under any policy listed in 0, the Service Provider must cause its insurers to waive all rights of subrogation against Western Power in respect of a Claim arising under the insurance policy.

#### **13.4 Subcontractor insurance**

If the Service Provider subcontracts any part of the Services, the Service Provider must ensure that every Subcontractor purchases and, for the duration of the subcontract, maintains all the insurance required under clause 13.1.

#### **13.5 Access to policies**

- (a) A copy of the certificate of currency for a policy that is required to be maintained under 0 must be provided by the Service Provider to Western Power:
  - (i) at least 5 Business Days before the Start Date;
  - (ii) throughout the Term, within 5 Business Days of the policy being renewed or extended; and
  - (iii) within 5 Business Days of a written request by Western Power.
- (b) The certificates of currency provided by the Service Provider to Western Power under clause 13.5(a) must contain:
  - (i) the limit of cover of the policy;
  - (ii) the amount of the deductible that the policy is endorsed with;
  - (iii) the names of the insurer;
  - (iv) all exclusions in the policy; and
  - (v) all terms in the policy that an experienced service provider, having regard to the nature of the Services and the risks to which the policy relates, would reasonably consider to be unusual.

#### **13.6 Consequences of non-compliance**

If the Service Provider fails to maintain the insurances required under this Contract, or fails to provide certificates of currency in accordance with clause 13.5, Western Power may suspend payment of amounts due under this Contract until the failure has been remedied.

Any payments so suspended will be paid to the Service Provider within 20 Business Days of the Service Provider remedying the default to the satisfaction of Western Power.

### **13.7 Service Provider's further obligations**

- (a) The Service Provider must not do, or omit to do, any act that would be grounds for an insurer to refuse to pay a Claim made under any of the policies of insurance required under clause 13.1 of this Contract.
- (b) Within 24 hours of receipt by the Service Provider of a notice of cancellation, non-renewal or alternation, or any other notice that materially affects, or may materially affect, the nature of the risks insured under any of the policies of insurance required under clause 13.1 of this Contract, the Service Provider must give Western Power a copy of that notice.

### **13.8 Notices of potential Claims**

The Service Provider must, as soon as practicable and in writing, inform the relevant insurer and Western Power of any occurrence that may give rise to a Claim of over \$100,000 under, or in connection with, any insurance policy required pursuant to clause 13.1, and must keep Western Power informed of all developments concerning such Claim.

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## **14 Security**

### **14.1 Provision**

- (a) If the Contract Details indicate that the Service Provider is required to provide Security, then the Service Provider must provide Security to Western Power on the Start Date and in an amount equal to the Security Amount.
- (b) A Security may have an expiry date, but such date must be at least 12 months after the Security is provided or the termination date of this Contract, whichever is the later date.

### **14.2 Purpose of Security**

Where Security is required under clause 14.1(a), it is to be provided and maintained by the Service Provider for the purposes of:

- (a) ensuring the due and proper performance of all of the Service Provider's obligations under this Contract; and
- (b) allocating to the Service Provider the risk in respect of any claimed entitlements of Western Power under or in connection with this Contract pending the resolution under clause 24 or clause 25 of any claim or dispute in relation to such entitlements.

### 14.3 Set-off and recourse to Security

Where Security has been provided pursuant to clause 14.1(a) or clause 14.5(a), Western Power may have recourse to any such Security (including, but not limited to, converting the Security into money) to recover:

- (a) any amounts that Western Power in good faith claims are due from the Service Provider to Western Power pursuant to this Contract but which have not been paid;
- (b) any liquidated damages that Western Power in good faith claims are payable by the Service Provider;
- (c) any Losses that Western Power in good faith claims it has suffered or incurred due to a breach of this Contract by the Service Provider or as a direct or indirect consequence of the Service Provider's negligence; and
- (d) any other amounts paid or payable by Western Power in respect of matters for which Western Power in good faith claims the Service Provider is liable or responsible for pursuant to this Contract.

### 14.4 No injunction or beneficial interest

- (a) The Service Provider must not take any steps to injunct or otherwise inhibit or restrain:
  - (i) the issuer of any Security from paying Western Power under that Security;
  - (ii) Western Power from taking any steps for the purposes of making a demand, or receiving payment, under any Security; or
  - (iii) Western Power from using any money received under any Security.
- (b) Each Security held or utilised by Western Power in accordance with this clause 14 is not held by Western Power as trustee and the Service Provider will have no beneficial interest in any Security or the proceeds of any Security. Western Power is not obliged to invest any proceeds, or to account for any advantage, derived from holding or retaining such proceeds, or to hold such proceeds in a separate or particular account. Any interest earned on any Security, as well as any proceeds of any Security, will be to the benefit of Western Power.

### 14.5 Replacement of Security

- (a) If any Security has been provided pursuant to clause 14.1(a) and:
  - (i) Western Power draws upon that Security; or
  - (ii) a Security Invalidation Event occurs in relation to that Security,the Service Provider must, within 5 Business Days of such drawing or Security Invalidation Event, as the case may be, provide Western Power with a replacement

Security that complies with the requirements of this Contract so that the total value of the Security held by Western Power is equal to the Security Amount.

- (b) If, pursuant to clause 14.1(b), a Security has an expiry date, the Service Provider must provide a new Security to Western Power that complies with the requirements of this Contract (including that it must equal the Security Amount) no later than 15 Business Days prior to the relevant expiry date. Upon the provision of that new Security, Western Power will return the existing Security held by it to the Service Provider.
- (c) If the Service Provider fails to comply with clause 14.5(a) or 14.5(b), Western Power may make a demand on, and convert to cash, the entire amount of the existing Security held by it and may, where applicable, exercise any of its rights under clause 14.3 or hold such cash until such time as the Service Provider provides replacement Security complying with the requirements of this Contract.

#### **14.6 Release of Security on expiry or termination**

- (a) Subject to clause 14.3 and 14.6(b), Western Power will release to the Service Provider any Security held under this Contract within 10 Business Days of the termination or expiry of this Contract.
- (b) Before releasing any Security under clause 14.6(a), Western Power may have recourse to any amounts of the Security to which it is, as at the date of termination or expiry of this Contract, entitled to have recourse. Where Western Power is contemplating as at the date of expiry or termination whether it will have recourse to the Security then, subject to it notifying the Service Provider of this fact, it may hold the Security for the lesser of a further 30 days and the date Western Power determines it will not have recourse to the Security.

#### **14.7 Failure to provide Security**

- (a) Without limiting Western Power's remaining remedies under this Contract, for any period during which the Service Provider fails to provide any Security in accordance with the requirements of this Contract, Western Power may suspend any payments that are due to the Service Provider.
- (b) Any payments suspended under clause 14.7(a) will be paid by Western Power within 20 Business Days of the Service Provider providing Security to Western Power in compliance with the requirements of this Contract.

##### **Explanatory Note**

Western Power notes that security will only be requested where it is reasonable to do so in light of the services to be provided under this Contract.

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## 15 Record keeping

### 15.1 Records to be maintained

The Service Provider must, in accordance with Good Electricity Industry Practice, maintain records:

- (a) evidencing, at all times during the Services Term, whether the Facility was Available or Unavailable (including all necessary information to determine whether the Facility was Available or Unavailable);
- (b) of all Tests conducted pursuant to this Contract (including the procedures used to conduct the Test, the persons who conducted or witnessed the Test, the results of the Test and any actions taken consequent upon the Test);
- (c) of all repairs to, and maintenance of, the Facility for the purposes of ensuring that it is able to provide the Services;
- (d) of all communications that have been made or received by telephone under this Contract; and
- (e) that are otherwise required to be maintained by the Market Rules or any other Laws applicable to the provision of the Services,  
  
("Records").

### 15.2 Form and Inspection of records

- (a) Records may be maintained in hard copy or electronically. However, where Records are maintained electronically, they must be maintained in a form such that the Records can be loaded onto the computer systems used by Western Power and those Records read by Western Power without the requirement for Western Power to purchase software other than software available off the shelf or otherwise in common usage amongst Western Australian electricity industry participants.
- (b) Records must be maintained for a period of 7 years from when they are created, or for such longer period required by the Market Rules or other Laws.
- (c) The Service Provider must, within 5 Business Days' notice from Western Power, make any Records available for:
  - (i) an audit under clause 15.3; or
  - (ii) inspection and copying by Western Power or any agent who has been appointed by Western Power to attend to such inspection and copying.

### 15.3 Auditing

- (a) Western Power, or such persons as Western Power appoints, may, subject to the confidentiality provisions in clause 29:

- (i) undertake an audit of any Records:
    - (A) annually during the Service Term; and
    - (B) (in addition to the annual audit) if there has been:
      - (1) Unavailability of the Facility for more than [XXX] in any period of 30 days;
      - (2) Unavailability of the Facility for a period of more than [XXX] days; or
      - (3) an incident in respect of the Facility which threatened, or adversely affected, the safety and integrity of the Network; and
  - (ii) make and retain copies of any Records that have been audited, or will be audited, pursuant to clause 15.3(a)(i)(A) or clause 15.3(a)(i)(B).
- (b) In relation to an audit under clause 15.3(a), the Service Provider must:
- (i) provide all assistance and co-operation reasonably required to enable the conduct such audit; and
  - (ii) answer, to the best of its knowledge and belief (established after making all necessary enquiries), any questions asked of it (including providing those answers in writing if requested to do so).

**Explanatory Note**

Western Power notes that some obligations may not be applicable depending on the services to be provided (i.e. records of testing and maintenance) and amendments will be made to the record keeping obligations where required.

## 16 Information Security

- (a) If, in the course of provision of the Services, the Service Provider interacts with any of Western Power's information technology systems, the Service Provider must:
  - (i) comply with all procedures, protocols and other requirements specified by Western Power from time to time;
  - (ii) maintain appropriate and up to date physical and electronic security systems and protocols (including, but not limited to, firewalls, maintaining usernames and passwords, and using anti-virus or virus protection programs) to protect the Service Provider's and Western Power's information technology systems from any unauthorised access, damage, corruption or disclosure;

- (b) If the Service Provider is given access to any Western Power information technology systems, the Service Provider:
    - (i) must not install any software on or make any modifications to the systems unless expressly authorised by Western Power in writing; and
    - (ii) must notify Western Power immediately by telephone on becoming aware of any actual or threatened unauthorised access or other security breach (including disclosure of passwords or encryption or signing keys or loss of security tokens), or any risk of damage to, corruption of, or disclosure of, the systems.
- 

## **17 Representations and warranties**

### **17.1 Service Provider's representations and warranties**

- (a) The Service Provider represents and warrants to Western Power that:
  - (i) the Service Provider's obligations under this Contract are valid, binding and enforceable against the Service Provider in accordance with their terms;
  - (ii) this Contract and any other transaction under it does not: contravene the Service Provider's constituent documents, any Law, or any of the Service Provider's obligations or undertakings by which the Service Provider or any of the Service Provider's assets are bound; or cause to be exceeded any limitation on the Service Provider's, or the Service Provider's directors', powers; and
  - (iii) neither the Service Provider 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 17.1(a) are to be taken to be made on each day on which this Contract is in effect.

### **17.2 Western Power's representations and warranties**

- (a) Western Power represents and warrants to the Service Provider that:
  - (i) Western Power's obligations under this Contract are valid, binding and enforceable against Western Power in accordance with their terms;
  - (ii) this Contract and any other transaction under it does not: contravene Western Power's constituent documents, 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

- (iii) Western Power does not 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 17.2(a) are to be taken to be made on each day on which this Contract is in effect.

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## 18 Force Majeure

### 18.1 Force majeure relief

Non-performance as a result of a Force Majeure Event by either Party of an obligation or condition required by this Contract to be performed:

- (a) will be excused during the time and to the extent that such performance is prevented, wholly or in part, by the Force Majeure Event; and
- (b) will not to that extent give rise to any liability to the other Party arising from that non-performance,

but no Party will be relieved by a Force Majeure Event of any obligation to pay a sum of money under this Contract or from liability under any indemnity in this Contract.

### 18.2 Affected Person's obligations

A Party which is, by reason of a Force Majeure Event, unable to perform an obligation required by this Contract to be performed (**Affected Party**) must:

- (a) notify the other Party as soon as possible giving:
  - (i) reasonably full particulars of the event or circumstance of the Force Majeure Event;
  - (ii) the date of commencement of the event or circumstance and an estimate of the period of time required to enable the Affected Party to resume full performance of its obligations; and
  - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
- (b) as soon as possible, provide the other Party with any information that the other Party requests in respect of the Force Majeure Event, including, but not limited to, its impact on the Affected Party's ability to perform its obligations under this Contract and the measures being taken by the Affected Party to overcome it;
- (c) use reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible, provided that nothing in this clause 18 will require a Party to settle a strike, lockout, ban or other industrial disturbance against its own judgment;

- (d) resume performance as expeditiously as possible after termination of the Force Majeure Event; and
- (e) notify the other Party when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur.

### **18.3 In case of breach**

An Affected Person is not obliged to incur any expenditure in complying with clause 18.2(c) if the Force Majeure Event is constituted by a breach of, or failure to comply with, this Contract by the other Party.

### **18.4 Limits of Force Majeure**

No Force Majeure Event affecting the performance of this Contract by either Party will operate to prevent a cause of action arising from and after the expiration of the period of time within which, by the exercise of reasonable diligence and the employment of all reasonable means, that Party could have remedied the situation preventing its performance.

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## **19 Disconnection**

### **19.1 Right to Disconnect**

- (a) Western Power may disconnect the Facility from the Network if:
  - (i) the Facility fails to comply with the requirements of this Contract and, due to such failure, there is a material risk to the safety and integrity of the Network; and
  - (ii) the Service Provider fails to remedy that failure within 10 Business Days of receipt of a notice from Western Power instructing the Service Provider to do so.
- (b) Western Power may reduce the 10 Business Day period in clause 19.1(a) if Western Power considers that doing so is required due to the immediacy of the threat to the safety and integrity of the Network.
- (c) In addition to its rights under clause 19.1(a), Western Power may immediately disconnect the Facility from the Network if a failure of the Facility to comply with the requirements of this Contract gives rise to, or may give rise to, an Emergency.

### **19.2 Reconnection**

If Western Power disconnects the Facility under clause 19.1, Western Power is not required to reconnect the Facility until such time as the failure to comply with this Contract has been remedied to Western Power's satisfaction and Western Power is otherwise satisfied that it is safe to reconnect the Facility.

### 19.3 Costs

The Service Provider must, on demand, reimburse Western Power for all costs incurred in disconnecting and reconnecting the Facility under this clause 19.

### 19.4 Interaction with other rights

- (a) Western Power's rights to disconnect the Facility under this clause 19 are in addition to any rights Western Power has to disconnect the Facility:
  - (i) under any other contract between the Parties (including the Connection Contract);
  - (ii) under any contract between Western Power and a retailer to the Service Provider; or
  - (iii) at Law.
- (b) No disconnection of the Facility by Western Power under this Contract will be regarded as a breach by Western Power of any other contractual arrangement between the Parties.

### 19.5 Effect on Availability

The Facility will be regarded as Unavailable during any period in which it is disconnected from the Network due to:

- (a) Western Power disconnecting the Facility under clause 19.1;
- (b) Western Power disconnecting the Facility under any other contractual arrangement between the Parties due to the Service Provider's breach of that contractual arrangement; or
- (c) Western Power disconnecting the Facility pursuant to any other contractual or legal right because the Service Provider has breached a contractual or legal obligation binding upon it.

#### Explanatory Note

Western Power notes that there may be alternatives to disconnection such as curtailment for certain alternative options and will consider the appropriate mechanism in such cases having regard to the type of services being provided.

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## 20 Default and termination

### 20.1 Notice of default

If a Party breaches this Contract, the other Party may serve a notice on the Party in breach (**Defaulting Party**) setting out details of the breach and requiring it to be remedied within:

- (a) 20 Business Days if the breach relates to a failure to pay money due under this Contract;
- (b) 15 Business Days if the breach relates to the Facility's compliance with the requirements of this Contract; or
- (c) 10 Business Days if the breach relates to anything other than a failure to pay money or the Facility's compliance with the requirements of this Contract.

## **20.2 Extension of cure period**

Where a breach relates to a failure of the Facility to comply with the requirements of this Contract the Service Provider may, prior to the expiry of the 15 Business Days under clause 20.1(b), request Western Power to extend the period for remedy of the breach. Western Power will act reasonably when considering whether to grant such extension but will not grant an extension if:

- (a) Western Power considers, in good faith, that the breach has a material risk of exposing Western Power to liability to Third Parties;
- (b) Western Power considers that the breach (if unremedied) poses a material threat to the safety and integrity of the Network;
- (c) the Service Provider fails to provide a cure plan to Western Power which substantiates to Western Power's satisfaction that the Service Provider will be able to cure the breach within the extended period of time; or
- (d) the requested extension period exceeds 40 Business Days.

## **20.3 Failure to cure**

If the Defaulting Party fails to cure a breach within the time required by clause 20.1 or within an extension period granted by Western Power under clause 20.2, the other Party may by notice to the Defaulting Party terminate this Contract.

## **20.4 Immediate rights of termination**

- (a) Subject to any restrictions imposed by Law, a Party may terminate this Contract by notice to the other Party if the other Party is subject to an Insolvency Event.
- (b) Western Power may terminate this Contract by notice to the Service Provider if the Availability of the Facility for a period is below the Termination Threshold.

## **20.5 Time of termination**

A notice terminating this Contract takes effect from the time specified in the notice (which may be the time of receipt of the notice or a later time).

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## **21 Cure of Service Provider breaches by Western Power**

### **21.1 Right to cure**

If:

- (a) the Facility fails to comply with the requirements of this Contract; and
- (b) the Service Provider fails to remedy that breach within the time required under clause 20.1(b) or within an extension period granted by Western Power under clause 20.2, and Western Power, acting reasonably, forms the view that the Service Provider will not be able to remedy the breach within that timeframe,

then Western Power may, but has no obligation to, take steps to remedy the breach.

### **21.2 Obligation to co-operate**

If Western Power elects under clause 21.1 to take steps to remedy a breach, the Service Provider must provide Western Power with unfettered access to the Facility, as well as all co-operation and information required by Western Power to facilitate remedy of the breach.

### **21.3 End of remedy**

- (a) If Western Power has elected under clause 21.1 to take steps to remedy a breach, Western Power may cease taking such steps at any time and has no liability to the Service Provider for ceasing to take those steps.
- (b) If Western Power elects to cease remedying a breach under clause 21.3(a) prior to the breach being remedied, Western Power will provide the Service Provider with such information as the Service Provider may reasonably request regarding the actions taken by Western Power to remedy the breach and the status of the breach.

### **21.4 Costs and liability**

- (a) The Service Provider must, on demand, reimburse Western Power any costs Western Power incurs in attempting to remedy a breach under this clause 21.
- (b) The Service Provider must indemnify Western Power and Western Power's officers, agents and employees against any Loss from Third Party Claims arising from Western Power or its officers, agents and employees taking steps to remedy a breach under this clause 21, other than claims arising due to Western's Power's fraud, gross negligence or wilful misconduct.
- (c) Western Power has no liability to the Service Provider or the Facility for any act or omission of Western Power in connection with attempting to remedy a breach under this clause 21 unless the act or omission is fraudulent, grossly negligent or constitutes wilful misconduct.

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## 22 Termination for Convenience

- (a) Western Power may, in its absolute discretion and for any reason whatsoever, terminate this Contract at any time for convenience by providing a notice to the Service Provider stating that this Contract has been so terminated pursuant to this clause 22.
- (b) If a notice is served under clause 22(a), this Contract will terminate:
  - (i) 30 Business Days after receipt of the notice; or
  - (ii) at such later date specified in the notice.
- (c) If Western Power terminates this Contract under this clause 22, Western Power's sole liability to the Service Provider will be to pay the termination payment (if any) specified in the Fees Schedule.

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## 23 Preservation of Rights

- (a) The expiry or termination of this Contract is without prejudice to the accrued rights of the Parties as at the date of expiration or termination.
- (b) Clauses 11, 12, 14.6, 29 and this clause 23 survive the expiration or termination of this Contract, as do any other clauses which of their nature are intended to survive, or which evidence an intention to survive termination or expiration.

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## 24 Disputes

### 24.1 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 and the Parties must do so (**Representatives' Meeting**).

### 24.2 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**).

### 24.3 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 24.1 or 24.2 in the allocated time frame, the meeting will take place at a place determined by Western Power (acting reasonably).

### 24.4 Party may commence court proceedings

If, after complying with the process set out in clauses 24.1 and 24.2, a Dispute is not resolved, either Party may:

- (a) where clause 25 applies to the Dispute, serve notice under clause 25.3; or
- (b) commence an action to resolve the Dispute through litigation or other court processes.

### 24.5 Obligations must be performed

This clause 24 does not apply in circumstances where clause 10 applies.

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## 25 Independent Expert Dispute Resolution

### 25.1 Application

This clause 25 applies to any Dispute between the Parties:

- (a) as to the level of Availability of the Facility;
- (b) as to whether the Facility complies with the technical requirements of this Contract;
- (c) under clause 10; or
- (d) which the Parties agree to refer to expert determination in accordance with this clause 25,

(each an **Independent Expert Dispute**).

### 25.2 Resolution Institute Rules

Except to the extent that doing so will be inconsistent with the remaining provisions of this clause 25, the expert determination and resolution of the Independent Expert Dispute will be governed by the Expert Determination Rules of the Resolution Institute (**Resolution Institute Rules**).

### 25.3 Reference to Independent Expert

- (a) Where an Independent Expert Dispute is referred to determination under this clause 25, either Party may serve a notice on the other Party requiring the appointment of an independent expert (**Independent Expert**).

- (b) The Parties must endeavour to agree upon the appointment of an Independent Expert within 3 Business Days of the service of a notice under clause 25.3(a)25.3(b), failing which the Independent Expert will be appointed in accordance with the Resolution Institute Rules.
- (c) Immediately upon the appointment of an Independent Expert under clause 25.3(b), the Independent Expert Dispute will be referred to him or her.

#### **25.4 Qualifications of Independent Expert**

An Independent Expert must not (unless otherwise agreed in writing between the Parties):

- (a) be a current or former officer or employee of a Party or a Related Body Corporate of a Party; nor
- (b) at the time of appointment, have any financial relationship or other direct or indirect association with a Party which might jeopardise, or otherwise affect, the impartiality of an Independent Expert.

#### **25.5 Presentation of evidence**

Each Party:

- (a) will be entitled to provide an Independent Expert with any materials or evidence which that Party believes is relevant to the determination of an Independent Expert Dispute;
- (b) will make available to an Independent Expert all materials requested by him or her, as well as all other materials which are relevant to his or her determination of an Independent Expert Dispute; and
- (c) may be represented by a legal representative (or any other person nominated by the Party) before an Independent Expert.

#### **25.6 Role of Independent Expert**

An Independent Expert will:

- (a) act as an expert and not as an arbitrator;
- (b) not be bound by the rules of evidence; and
- (c) have the power to inform himself or herself independently as to the facts to which an Independent Expert Dispute relates and to take such measures as he or she thinks fit to expedite the determination of such dispute.

#### **25.7 Determination**

An Independent Expert will make a determination on an Independent Expert Dispute and will determine what, if any, adjustments may be necessary between the Parties. Except to the

extent otherwise required by Law, a determination by an Independent Expert will be, in the absence of manifest error of fact or error of law, final and binding upon the Parties.

### **25.8 Legal Assistance**

Where an Independent Expert has, under clause 25.7, made a determination which determination requires the drafting of amendments to this Contract, the Independent Expert may retain a senior legal practitioner with at least 10 years' experience in energy or infrastructure law to assist the Independent Expert with the drafting of those amendments.

### **25.9 Costs**

Unless the Parties otherwise agree in writing, an Independent Expert will determine which Party will bear the costs of the determination (including, without limitation, the remuneration of the Independent Expert and the costs of any legal practitioner engaged under clause 0), and in what proportion, having regard to the degree to which he or she considers that Party was at fault or, where applicable, that that Party was unreasonable in failing to agree to the matter under reference, and the Party so determined will bear those costs accordingly.

### **25.10 Replacement of Independent Expert**

- (a) If, prior to resolution of an Independent Expert Dispute, an Independent Expert appointed under this clause 25 dies or is, due to some other cause (including illness, bankruptcy, or death or illness of a family member), unable to commence or to continue acting (or refuses to commence or to continue acting) in order to determine the Independent Expert Dispute, then the Parties must endeavour to agree upon the appointment of a new Independent Expert within 3 Business Days of the service of notice by a Party requiring the appointment of a replacement Independent Expert.
- (b) If the Parties are unable to agree upon a replacement Independent Expert within the time period specified in clause 25.10(a), then a new Independent Expert will be appointed in accordance with the Resolution Institute Rules.
- (c) Immediately upon the appointment of a replacement Independent Expert in accordance with clause 25.10(a) or 25.10(b), the Independent Expert Dispute will be referred to that Independent Expert.

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## **26 Disputes Generally**

### **26.1 Obligations and rights not affected**

- (a) During the period of any resolution of an Independent Expert Dispute in accordance with this clause 25, or the period of any resolution of a Dispute under clause 24, the Parties must continue to perform their obligations under this Contract.

- (b) The existence of a Dispute or an Independent Expert Dispute does not prevent a Party exercising any rights it has under this Contract, including a right of termination.

## **26.2 Urgent relief**

Nothing in clause 24 or clause 25 will prevent a Party from seeking urgent injunctive or declaratory relief from a court where, in that Party's opinion, such action is necessary to protect that Party's rights.

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## **27 Corporate restructuring of Western Power**

### **27.1 Transfer of Contract Consequent Upon Restructuring**

If Western Power is restructured:

- (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.

### **27.2 Service Provider's consent not required**

A restructure, transfer or Assignment under clause 27.1 does not require the Service Provider's approval or consent.

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## **28 Assignment and Novation**

### **28.1 Requirement for Consent**

- (a) Except as permitted under clause 27, a Party may only Assign its rights or obligations under this Contract if it has the consent of the other Party, which consent is not to be unreasonably withheld or delayed.
- (b) Without limiting the considerations to which a Party may have regard in determining whether to give consent under clause 28.1(a), such considerations include the financial and technical capacities of any person who it is proposed will assume the other Party's obligations under this Contract, as well as whether that person will have all required Approvals to discharge the obligations to be assumed by it under this Contract.
- (c) An Assignment made without consent under this clause 28 is, unless the Assignment is permitted under clause 27, a breach of this Contract.

## 28.2 Costs

A Party seeking consent under clause 28.1 must pay:

- (a) the other Party's costs of determining whether to give such consent and of drafting and negotiating any documentation required to affect the Assignment; and
- (b) any taxes and imposts levied on any such Assignment or documentation.

## 28.3 Ownership of the Facility

- (a) The Service Provider warrants that it is the sole owner of the Facility.
- (b) The Service Provider may not deal with an ownership interest in the Facility without the written consent of Western Power, which consent is not to be unreasonably withheld or delayed. The conditions that Western Power may impose upon the grant of such consent include, but are not limited to, the person who is to acquire an ownership interest in the Facility acceding to this Contract or entering into a deed agreeing to be bound by nominated provisions of this Contract.

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## 29 Confidentiality

### 29.1 Confidential information

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

- (a) the information exchanged contains a notification by the disclosing Party that the information is confidential;
- (b) the circumstances in which the information was exchanged, or the nature of the information exchanged, may reasonably be considered as being confidential;
- (c) the information constitutes trade secrets;
- (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,

(each constituting "**Confidential Information**").

### 29.2 When information is not confidential

Clause 29.1 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.

### **29.3 Prohibited disclosure**

Subject to clause 29.4, an Information Recipient must not disclose, or otherwise allow or permit the disclosure of, any Confidential Information to a Third Party Recipient.

### **29.4 Permitted disclosure**

- (a) An Information Recipient may disclose, or allow the disclosure of, Confidential Information to a Third Party Recipient if:
  - (i) the Information Provider has provided its written consent to such disclosure;
  - (ii) the disclosure is to the employees, a Related Body Corporate, or the legal advisers, auditors, insurers or other consultants of the Party requiring such information for the purposes of this Contract or for the purposes of providing professional advice in relation to this Contract;
  - (iii) the Third Party Recipient is 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;
  - (iv) the Information Recipient is required to make such disclosure by Law, or by an authority (including AEMO) which has jurisdiction over the Information Recipient or any of its Related Bodies Corporate, or by the rules of a securities exchange which has jurisdiction over a Party or any of its Related Bodies Corporate; or
  - (v) such disclosure if it is required for the purposes of prosecuting or defending a Dispute or if it is otherwise required in connection with legal proceedings related to this Contract.
- (b) Nothing in clause 29.4 limits Western Power's obligations to comply with Chapter 13 of the Code.

### **29.5 Third party disclosure**

An Information Recipient disclosing information under clause 29.4 must:

- (a) use all reasonable endeavours to ensure that a Third Party Recipient does not disclose the Confidential Information except in the circumstances permitted under clause 29.4; and

- (b) notify the Third Party Recipient that it has a duty of confidence to the Information Provider in respect of the Confidential Information.

### **29.6 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 exercise its rights or discharge its obligations under this Contract.

### **29.7 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.

### **29.8 Return of materials**

Subject to any obligation under any Law relating to records retention and subject to prudent recording-keeping procedures (including, but not limited to, in contemplation of potential legal action), a Party must return all documents containing the other Party's Confidential Information, including all copies, to the other Party on termination of this Contract or, upon request by the other Party, destroy all such documents.

### **29.9 Remedies**

Each Party acknowledges and agrees that any breach or threatened breach of clauses 29.1 to 29.10 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 performance of these clauses 29.1 to 29.10 in respect of any such breach or threatened breach.

### **29.10 Survival of obligations**

- (a) Clauses 29.1 to 29.10 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 29.1 to 29.10.

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## **30 Notices**

### **30.1 Requirements for Communications**

Except as provided in clause 30.2, or where given under the electronic communications protocol in 0, 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 0 by one or more of the following means:
  - (i) by hand delivery;
  - (ii) by priority post (airmail if posted to or from a place outside Australia);
  - (iii) by way of a courier service for hand delivery; or
  - (iv) electronically to the email address of the addressee.

### **30.2 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 Emergency,  
may be given orally and confirmed in writing, under the electronic communications protocol in 0, within five Business Days.

### **30.3 Communication takes effect**

Subject to clause 30.4, a Communication takes effect from the later of:

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

### **30.4 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) 10 Business Days after the day of posting if the Communication is sent from outside the country of the address to which it is sent; and

- (ii) 3 Business Days after the day of posting where it has been sent other than in accordance with 30.4(b)(i);
- (c) a Communication sent under the electronic communications protocol in 0 is deemed to be received by the Party as specified in the electronic communications protocol in 0.

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## **31 Miscellaneous**

### **31.1 Relationship**

- (a) The Service Provider provides the Services as an independent contractor. The Service Provider is not an agent of Western Power and has no authority to bind Western Power.
- (b) Nothing in this Contract creates any partnership, trust, agency or fiduciary relationship between the Parties.

### **31.2 Statutory powers**

Nothing in this Contract in any way overrides, restricts or fetters the statutory powers or functions of Western Power.

### **31.3 Variation**

- (a) Subject to clause 31.3(b), a purported agreement between Western Power and the Service Provider to revoke, substitute or amend any provision of this Contract has no effect unless it is in writing.
- (b) Clause 31.3(a) does not prevent the Service Provider and Western Power from agreeing, by non-written means under clause 30.2, 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.

### **31.4 No third-party benefit**

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

### **31.5 Duty**

The Service Provider is liable for, and must pay, any duty that is assessed on this Contract under the *Duties Act 2008* (WA). If it is dutiable, the Service Provider must produce this Contract to the Office of State Revenue for assessment.

### **31.6 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 this Contract, 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.

### **31.7 Indemnities**

Unless this Contract expressly provides otherwise:

- (a) each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties, and survives termination, completion or expiration of this Contract;
- (b) it is not necessary for a Party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract; and
- (c) the making of a claim by a Party under an indemnity contained in this Contract in respect of a particular event does not preclude that Party from subsequently making further claims under that indemnity in respect of the same event.

### **31.8 Waiver**

A right may only be waived by notice from the Party giving the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given. No other conduct of a Party (including a failure to exercise, or delay in exercising, a right) operates as a waiver of a right or otherwise prevents the exercise of a right.

### **31.9 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.

### **31.10 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 31.10 has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.

### **31.11 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.

### **31.12 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 0 to an Authorised Officer of another Party specified in 0.
- (b) A Party may at any time, by notice given to the other Party, add or replace an Authorised Officer for the purposes of this clause 31.12.

### **31.13 Merger**

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

### **31.14 Remedies**

- (a) Subject to clause 31.14(b), the rights, powers and remedies provided in this Contract are cumulative with, and not exclusive of, the rights, powers or remedies provided by Law independently of this Contract.
- (b) A Party may only terminate this Contract in circumstances permitted by express provisions of this Contract. Any rights to terminate this Contract at common law are excluded.

### **31.15 Civil Liability Act**

Part 1F of the *Civil Liability Act 2002* (WA) does not apply to this Contract.

### **31.16 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 31.15, each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia, and the Courts of appeal from them, for the purpose of determining any Dispute concerning this Contract or the transactions contemplated by this Contract.

**Execution Clause:**

Executed as an agreement on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ by:

EXECUTED for and on behalf of **ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861** in accordance with sub-section 156(4) of the *Government Trading Enterprises Act 2023 (WA)*:

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Signature of Director/Company Secretary

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

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

## - Dictionary

Unless the context otherwise requires, the defined terms in column 1 below have the respective meanings in column 2. Other terms are defined in the clause of this Contract in which they are used.

<u>Column 1</u>	<u>Column 2</u>
AEMO	means the Australian Energy Market Operator.
Acceptable Credit Rating	means a Credit Rating of at least A- issued by Standard and Poor's Ratings Group or a Credit Rating of at least A3 issued by Moody's Investors Service, Inc.
Approval	means a licence, permit, consent, certificate, approval or other authorisation required to be obtained pursuant to Law to perform an act or discharge an obligation.
Assign	includes assign or Novate.
Assignment	includes an assignment or Novation.
Availability	means, at a given time, that the Facility is capable (if called upon) to provide the Services in accordance with the requirements of this Contract including (as relevant) that the Services meet any quality requirements under this Contract, that electricity is able to be generated at the maximum amount which may be required under this Contract or that load may be reduced to the maximum level required by this Contract. "Available" has a corresponding meaning.
Authorised Officer	means the authorised officer of a Party as specified in 0 to whom any Communication may be given.
Business Day	means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.
Change in Rules	means any change to one or more Market Rules, including the replacement of the Market Rules by a new regulatory instrument and any subsequent changes to that instrument.
Claim	means any claim, demand, action or proceeding made or instituted against a Party.
Code	means the Electricity Networks Access Code 2004.
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 29.1.
Connection Contract	means the contract under which Western Power agrees to permit the Facility to connect to the Network and (if different) any contract under which Western Power agrees to provide entry and/or exit services in respect of the Facility.
Consequential Loss	means each of the following: <ul style="list-style-type: none"> <li>(a) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings;</li> <li>(b) loss due to business interruption;</li> <li>(c) punitive or exemplary damages.</li> </ul>
Contract	means this agreement between Western Power and the Service Provider.
Corporations Act	means the Corporations Act 2001 of the Commonwealth.
COVID-19 Event	means an event directly related to the COVID-19 pandemic, including but not limited to governmental measures taken in relation to COVID-19, that significantly impacts the ability of either Party to perform its obligations under this Contract.
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 1.4.
Credit Rating	means, in respect of an entity, the published rating then assigned by a ratings agency referred to in the definition of Acceptable Credit Rating to the unsecured, senior long term debt obligations of the entity

Dispute	means any dispute or difference concerning: (a) the construction of; (b) anything contained in or arising out of; or (c) the rights, obligations, duties or liabilities of a Party under, this Contract.
Emergency	means any accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
Equipment	means plant, equipment, goods, telecommunications systems, information technology systems and any software and firmware used in connection with any of those items.
Execution Date	means the date this Contract is executed by the last Party to execute it.
Extension Period	means the period, if any, so described in 0.
Facility	means the facility described in 0.
Fees	means the fees set out in the Fee Schedule.
Fee Schedule	means 0.

## Force Majeure

in respect of a Party, means an event or circumstance beyond the Party's control, and which the Party, acting in accordance with Good Electricity Industry Practice, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):

- (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster;
- (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;
- (c) subject to paragraph (l) of this definition, an epidemic, pandemic or quarantine;
- (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);
- (e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority; or
- (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances,

but does not include:

- (g) a failure or breakdown of the Facility unless caused by an event external to the Facility;
- (h) any occurrence which results from the wrongful or negligent act or omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with Good Electricity Industry Practice;
- (i) an event or circumstance where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent person;
- (j) strikes or industrial action by the Service Provider's Personnel;

- (k) normal weather conditions for the time of year according to the Australian Bureau of Meteorology; or
- (l) a COVID-19 Event because, as at the date of this Contract, the Parties anticipate that they will be able to perform their respective obligations under this agreement in spite of the COVID-19 pandemic, however, to the extent that a COVID-19 Event occurs it will be regarded as a Force Majeure Event if it:
  - i. is beyond the reasonable control of the party affected by that event and could not have been prevented, overcome or remedied by that party (provided, however that the affected Party being aware of the existence of COVID-19 at the date of this Contract will not be a sufficient ground to determine that the impact of the COVID-19 Event (on its own) would be within the reasonable control of the affected Party or could have been prevented, overcome or remedied by the affected Party);
  - ii. may have a significant impact on the scope, timing or scheduling of the Services; and
  - iii. does not include any of the instances referred to paragraphs (g) to (k) of the definition of Force Majeure Event.

Good Electricity Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in Australia in the same type of undertaking under the same or similar circumstances having regard to the accepted industry best practice in Australia at the time.

GST means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Independent Expert means an independent expert who, under clause 25.3(a), is to be appointed for the determination of an Independent Expert Dispute in accordance with the provisions of clause 25.

Independent Expert Dispute means a Dispute that has been so described in clause 25.1.

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 person, means any one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) the person is in solvent within the meaning of section 95A of the Corporations Act;</li> <li>(b) any execution or other process of any court or authority being issued against or levied upon any material part of that person's property or assets;</li> <li>(c) a petition or application being presented (and not being withdrawn within 10 Business Days) or an order being made or a resolution being passed for the winding up or dissolution without winding up of that person otherwise than for the purpose of reconstruction or amalgamation under a solvent scheme;</li> <li>(d) a receiver or a receiver and manager of the undertaking or any material part thereof of that person being appointed;</li> <li>(e) that person proposing to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors;</li> <li>(f) an administrator of that person being appointed or the board of directors of that person passing a resolution to the effect that is specified in section 436A(1) of the Corporations Act;</li> <li>(g) that person failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand;</li> <li>(h) a controller (as defined in the Corporations Act) being appointed in respect of that person or the whole or a material part of that person's undertaking, property or assets;</li> <li>(i) an application being made to a court for an order in respect of that person under part 2F.1 of the Corporations Act;</li> <li>(j) an event referred to in section 459C(2) of the Corporations Act occurring in respect of that person; or</li> <li>(k) anything analogous or having a substantially similar effect to any of the events specified above occurring under the Law of any applicable jurisdiction.</li> </ul>

Law	means “written laws” and “statutory instruments” as defined in the Code, the Market Rules, orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.
LD Rate	means the rate of liquidated damages set out in 0.
Loss	means losses, damages, costs, expenses and liabilities.
Market Rules	means the ‘market rules’ referred to in section 123(1) of the <i>Electricity Industry Act 2004</i> , and includes all rules, policies or other subordinate documents developed under the Market Rules.
Month	means a calendar month.
Network	has the same meaning given to ‘Western Power Network’ in the Code.
Novate and Novation	<p>mean to substitute, with the consent of all Parties to this Contract and with effect on and from a date nominated as the effective date of the novation, an assignee for the Service Provider as a party to this Contract, with the result that:</p> <p>(a) all rights and obligations of the Service Provider under this Contract become rights and obligations of the assignee as if the assignee had been named in the Contract in place of the Service Provider; and</p> <p>(b) the Service Provider 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.</p>
Operating Protocol	means any operating protocol referred to in the Services Schedule, attached to this Contract, or otherwise agreed by the Parties from time to time in writing.
Party	means Western Power or the Service Provider.
Parties	means Western Power and the Service Provider.
Performance Requirements	means any requirements described as such in the Services Schedule.

Personnel	means any of the Service Provider's:  (a) employees, agents or representatives;  (b) Subcontractors; and  (c) employees, agents or representatives of, or contractors to, Subcontractors,  involved in the performance of the Services or otherwise involved in the discharge of the Service Provider's obligations under this Contract.
Possession	includes custody, control, and an immediate right to possession, custody, or control.
Records	means the records described in clause 15.1.
Related Body Corporate	has the meaning given to 'Related Body Corporate' in section 9 of the Corporations Act.
Representative	means any employee, agent, officer of, or contractor or consultant to, a Party.
Required Availability Level	means the amount so described in 0.
Resolution Institute Rules	means the Expert Determination Rules of the Resolution Institute described in clause 25.2.
Scheduled Maintenance	means planned maintenance and repair of the Facility which, in accordance with Good Electricity Industry Practice, is undertaken at scheduled intervals or otherwise during planned outages of the Facility.
Scheduled Maintenance Plan	means a plan developed in accordance with clause 5.2.
Security	means an unconditional undertaking in the form of a bank guarantee in a form and on terms satisfactory to Western Power from an Australian based financial institution with a credit rating of not less than an Acceptable Credit Rating.
Security Amount	means the amount so described in 0.

Security Invalidation Event	means one of the following: <ul style="list-style-type: none"> <li>(a) the issuer of a Security ceases to have an Acceptable Credit Rating;</li> <li>(b) the issuer of a Security is subject to an Insolvency Event;</li> <li>(c) the issuer of a Security repudiates its obligations under the Security;</li> <li>(d) the issuer of a Security claims that the Security is no longer valid and binding; or</li> <li>(e) for any other reason a Security ceases to be valid and binding.</li> </ul>
Services	means the services described in the Services Schedule.
Service Commencement Date	means the date so described in 0.
Service Readiness Date	means the date upon which the Works (if any) described in the Works Schedule have been completed and the Service Readiness Requirements specified in the Services Schedule have been satisfied.
Service Readiness Requirements	means the requirements so described in the Services Schedule.
Services Schedule	means 0.
Services Term	means the period from the latter of the Service Readiness Date and the Services Commencement Date to the expiry or termination of this Contract.
Standing Data	has the meaning given in the Market Rules.
Start Date	means the day following the date of satisfaction or waiver of all the Conditions Precedent (or if there are no Conditions Precedent, then the Execution Date).
Subcontractor	means anyone, other than an employee of the Service Provider or a Supplier, with whom the Service Provider enters into a contract under which that person will perform part of the activities involved in undertaking the Services for the Service Provider.
Sunset Date	means the date so described in Schedule 2.
Supplier	means a person who only supplies goods, services or goods and services to the Service Provider.

Tax Invoice	has the meaning given to 'Tax Invoice' in the GST Act.
Term	means the period from the Start Date to the expiry or termination of this Contract.
Termination Date	means the date so described in 0 or, if there is an Extension Period, any later date arising under clause 2.1(c).
Termination Threshold	means the amount so described in 0.
Test	means a test of the capabilities or performance of the Facility or its compliance with the requirements of this Contract.
Third Party	means a person other than Western Power, Western Power's officers, agents and employees and the Service Provider.
Third Party Recipient	means any person to whom the Information Recipient discloses Confidential Information or to whom the Information Recipient allows Confidential Information to be disclosed.
Unavailable	means, at any given time, the Facility does not meet all the requirements required to be satisfied for the Facility to be regarded as Available, excluding periods of Scheduled Maintenance or where it is unable to do so as a direct result of actions taken by Western Power or AEMO .
Unscheduled Maintenance	means repair or maintenance which must either be undertaken on the Facility immediately to preserve its safety and operational integrity or which otherwise cannot, consistently with Good Electricity Industry Practice, be deferred until the next time at which Scheduled Maintenance is to be undertaken on the Facility in accordance with a Scheduled Maintenance Plan.
Western Power	means the Electricity Networks Corporation established under section 4(1)(b) of the <i>Electricity Corporations Act 2005</i> (WA).
Western Power Property	the fixtures, fittings, plant, equipment and all other items owned by Western Power that is used by Western Power in connection with the Services and any other property specifically identified in this Contract as being "Western Power Property".
Works	means any construction, upgrade, modification or other work in relation to the Facility outlined in the Works Schedule.
Works Schedule	means 0.

Year

means each calendar year as from the later of the Service Commencement Date and the Service Readiness Date.

## – Contract Details

### Contract Details

Western Power's details	Address: <b>[insert]</b>
	Email: <b>[insert]</b>
	Attention of: <b>[insert]</b>
Service Provider's details	Address: <b>[insert]</b>
	Email: <b>[insert]</b>
	Attention of: <b>[insert]</b>
Order Number	<b>[insert]</b>
Termination Date	<b>[insert]</b> (see clause 2.1)
Extension Period	<b>[insert]</b> (see clause 2.1)
LD Rate	<b>[insert]</b> (see clause 3(d))
Sunset Date	<b>[insert]</b> (see clause 3(d)(ii))
Required Availability Level	<b>[insert]</b> (see clause 5.1) (Note cross-reference to Services Schedule as required to explain Required Availability Level)
Security	<b>[insert]</b> (see clause 14.1(a))
Security Amount	<b>[insert]</b> (see clause 14.1(a))
Termination Threshold	<b>[insert]</b> (see clause 20.4(b)) (Note cross-reference to Services Schedule as required to explain Termination Threshold)

Conditions Precedent:

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

## – Facility Details

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<b>Facility Details</b>	<i>[Insert name of Scheduled Generator/Dispatchable Load/Demand Side Programme #1]</i>
<b>Description of Facility</b>	<i>[Insert description of Facility including (in the case of a Demand Side Programme), each Associated Load]</i>
<b>Target Network Segment</b>	that part of the SWIS <i>[insert description of the part of the Network in respect of Services are required]</i>
<b>Equipment at Facility</b>	<i>[Insert description of any Equipment which the Service Provider must ensure is operational at the Facility]</i>
<b>Western Power Property at Facility</b>	<i>[Insert description of any Western Power Property at the Facility]</i>
<b>Agreed Service Capability (in MW)</b>	<i>[insert]</i>
<b>Agreed Response Time (in minutes)</b>	<i>[insert]</i>
<b>Standing Data</b>	

– Works Schedule

## – Services Schedule

### 1. Service Details

Required Registrations:

Period for lodgement of Scheduled Maintenance Plan: **[insert]** (see clause 5.2(b))

Period to which Scheduled Maintenance Plan will relate: **[insert]** (see clause 5.2(b))

Period for notices of current Unavailability by telephone: **[insert]** (see clause 5.3(b)(i))

Period for notices of current Unavailability by email: **[insert]** (see clause 5.3(b)(ii))

Period for notices of current Unavailability by formal notice: **[insert]** (see clause 5.3(a)(iii))

Period for notices of future Unavailability by email: **[insert]** (see clause 5.3(b)(ii))

Period for notices of future Unavailability by formal notice: **[insert]** (see clause 5.3(b)(iii))

Notices required to be copied to AEMO:

Inspection Frequency **[insert]** (see clause 8.1(a))

**2. Service Overview**

**3. Services Readiness Requirements**

*[Insert description of any tests which must be passed, inspections which must occur and documents which must be provided to achieve Service Readiness Date]*

**4. Specific Service Requirements**

**5. Performance Requirements**

**6. Tests**

## – Fee Schedule

### 1. *Fee Calculation*

### 2. *Invoicing*

Time for notification of **[insert]** (see clause 9.2(a))  
Fees for a Month:

Address for Invoices: **[insert]** (see clause 9.2(g))

Bank Account for Invoice **[insert]** (see clause 9.3(b))  
Payments:

#### **Explanatory Note**

As per the Alternative Options Strategy, the following key principles will be considered in developing the payment levels for alternative options:

- In assessing the overall costs and benefits to Western Power and the community, the value for money assessment will focus on the best outcome considering price, economic, environmental and social benefits, in addition to qualitative, risk and technical requirements of both Network and alternative options. The assessment will include consideration of the annual deferral value of the network option proposed by Western Power (please refer to the NOM for further details).
- The Access Code contains a number of tests to assess the prudence and efficiency of capital and operating expenditure. These tests apply to Network and alternative option solutions equally and will be applied to ensure that investments are economically efficient and provide the best value to customers

**– Insurances**

**Explanatory Note**

Western Power notes that the below are examples of the types of insurance that may be required. Certain types of insurances may not be relevant for certain alternative solutions and these will be considered on a case by case basis.

**Public and Product Liability Insurance**

<b>Public and Product Liability Insurance</b>	
<b>Scope of cover</b>	<p>Insurance against any Claim in respect of:</p> <ul style="list-style-type: none"> <li>(a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property; or</li> <li>(b) any personal injury to or death of any person, arising out of, or caused by:</li> <li>(c) the performance or non-performance of the Services by the Service Provider or the contractors, agents or employee of the Service Provider; or</li> <li>(d) the quality, disposal or sale of products used by the Service Provider in the performance of the Services.</li> </ul> <p>The policy must be endorsed to extend to include liability arising out of the use of unregistered motor vehicles.</p>
<b>Sum insured</b>	<p>With respect to Public Liability Insurance, provide cover to an amount of \$[insert] million in respect of any one Claim and unlimited as to the number of Claims.</p> <p>With respect to Product Liability Insurance, provide cover to an amount of \$[insert] million in respect of any one Claim and in the aggregate per annum.</p>
<b>Deductible</b>	\$[insert].
<b>Insured</b>	The insurance must be in the name of the Service Provider with Western Power's rights and interests noted on the policy to the satisfaction of Western Power.
<b>Insurance of Employees</b>	
<b>Scope of cover</b>	Insurance against any Claim in respect of any personal injury to or death of any person employed or engaged by the Service Provider which arises out of, or is caused or contributed to by, the performance or non-performance of the Services by the Service

	<p>Provider or any Subcontractor or agent or employee of the Service Provider or Subcontractor:</p> <p>(a) at common law and for breach of any statutory duty or legislative requirements; and</p> <p>(b) for any compulsory statutory workers' compensation benefits or other liability under the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) or other applicable legislation.</p>
<b>Sum insured</b>	Provide cover to such amount as prescribed from time to time by the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) or any other applicable legislation.
<b>Insured</b>	The insurance must be in the name of the Service Provider.

<b>Motor Vehicles and Equipment</b>	
<b>Scope of cover</b>	<p>Insurance against all loss and/or damage to all items of the Service Provider's plant and equipment (whether owned, hired or leased) used in the performance of the Services.</p> <p>The Service Provider must insure all vehicles or items which are licensed as motor vehicles or are required to be so licensed (whether owned, hired or leased) used in the performance of the Services under:</p> <p>(a) compulsory motor vehicle third party insurance; and</p> <p>(b) a comprehensive motor vehicle and third party liability policy.</p>
<b>Sum insured</b>	The limit of liability must be no less than \$ <i>[insert]</i> million for any one occurrence and unlimited as to the number of occurrences.
<b>Insured</b>	Other than for compulsory third party motor vehicle insurance, the insurance must be in the name of the Service Provider and, to the extent permitted by law, be extended to indemnify Western Power as principal for Claims from Third Parties.

<b>Professional Indemnity Insurance</b>	
<b>Scope of cover</b>	Insurance against any Claim in respect of loss or damage (direct and indirect) suffered by Western Power caused by or attributable

	to the Service Provider's performance or non-performance of any of the Services, made within 6 years of the expiry of the Term.
<b>Sum insured</b>	Provide cover to an amount of \$ <i>[insert]</i> million in respect of any one Claim and unlimited as to the number of Claims.
<b>Insured</b>	The insurance must be in the name of the Service Provider.

**– Notices**

{Note: Referred to in clause 30.}

**Service Provider**

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

**Western Power**

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

## – Electronic Communications Protocol

{Note: Referred to in clause 30}

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

<b><u>Column 1</u></b>	<b><u>Column 2</u></b>
Addressee	means the person to whose Email Address an email is sent.
Automated Message Response	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"> <li>(i) the name of the Originator of the Original Email; and</li> <li>(ii) at least the time, date and subject title of the Original Email; and</li> <li>(iii) the name of the Addressee of the Original Email; and</li> <li>(iv) the date and time the Original Email was received by the Addressee’s Information System (which in the absence of evidence to the contrary is taken to be the creation date of the Reply Email).</li> </ul>
Data	includes the whole or part of a computer program within the meaning of the Copyright Act 1968 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 0, 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 0 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 3 of this Schedule.

1. Parties to establish email Addresses

- (a) Western Power and the User must each:
- (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.

2. 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 2(b) does not limit the Addressee's responsibilities under clause 3 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 person within the Addressee's organisation; and
  - (ii) if necessary, notify the Originator of any difficulty in opening, reading, decompressing 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.

3. 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.

4. Attribution of emails and reliance

Except to the extent that:

- (a) the Purported Originator of an email and the Addressee of the email agree otherwise; or
  - (b) 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:
- (c) Purported Originator of the email is the Originator of the email; and
  - (d) email was sent by, or with the knowledge and express authority of, the Purported Originator.

5. Signatures

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

6. 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.