

# Network Support Services Contract

BETWEEN:

Electricity Networks Corporation

ABN 18 540 492 861

(Western Power)

~ and ~

[NAME]

ABN [INSERT]

(Supplier)

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## PARTIES

ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861, a statutory body corporate established by section 4(1)(b) of the *Electricity Corporations Act 2005 (WA)*, of 363 Wellington Street, Perth, Western Australia 6000 (**Western Power**)

- and -

## [PARTY NAME, ABN, ADDRESS] (SUPPLIER) INTRODUCTION

### C1. Background

The Supplier has agreed to provide the delivery of Virtual Power Plant Network Support Services on the terms and conditions of this Contract.

### C2. Defined terms

Terms that are used in this Contract that are defined in the dictionary (in Schedule 1) are given the respective meanings detailed in the dictionary.

## OPERATIVE PROVISIONS

### C3. Conditions Precedent

#### C3.1 Conditions Precedent

This Contract (other than clauses C2 (Defined Terms), C10 (Information), C11 (Intellectual Property), C19 (Default and Termination), C22 (Dispute Resolution Procedure), C24 (Restructuring), C25 (Notices), C26 (General) (but excluding clause C26.18), C27 (Interpretation and this clause C3 (Conditions Precedent)) is conditional upon and does not come into force and effect or become binding on the Parties until satisfaction by the Parties, or waiver by mutual agreement of the Parties, of the Conditions Precedent (to the extent that any such Conditions Precedent are specified).

#### C3.2 Satisfaction of Conditions Precedent

The Parties must use their best endeavours to satisfy the Conditions Precedent within sixty (60) Business Days of the date of this Contract.

#### C3.3 Waiver

The Conditions Precedent may be waived by mutual agreement of the Parties in writing.

#### C3.4 Cut-off date

- (a) If the Conditions Precedent are not satisfied or waived (in accordance with clauses C3.2 or C3.3) on or before the period referred to in clause C3.2(a) or such other later period as mutually agreed by the Parties in writing, either Party may terminate this Contract by written notice to the other.
- (b) On termination under clause C3.4(a), this Contract has no further effect, each Party is released from its obligations under this Contract and neither Party will have any liability to the other except in respect of a breach of clauses C10 and C11, which shall continue in effect notwithstanding the termination of this Contract.

## C4. Term

### C4.1 Start Date and End Date

- (a) Subject to the provisions of this clause C4.1, the Term of this Contract commences on the Start Date and ends on the End Date.
- (b) Either party may, no later than 1 month before the End Date, provide notice in writing (**Extension Notice**) to the other party that it wishes to extend the Term by 1 year (**Extension Period**). Each Extension Notice provided under this clause C4.1(b) must specify the following matters as well as any other commercial principles or proposals that it considers should apply during the Extension Period:
  - (i) the Availability Period, Availability Fee and NSS Energy Rate that will apply during the Extension Period;
  - (ii) the number of NSS Activation Requests that Western Power may request under clause C5.3 during the Extension Period;
  - (iii) the percentages set out in the second column of the Availability Non-Performance Discount Schedule in Schedule 7; and
  - (iv) any other amendments to this Contract that the issuing party considers are needed or desirable to enable the contract to continue for the Extension Period, (**Proposed Extension Provisions**).
- (c) Following the provision and receipt of an Extension Notice:
  - (i) the parties agree to meet (with the first meeting to take place no later than 5 Business Days from receipt of the Extension Notice) and negotiate in good faith to try to reach agreement on the terms of the extension of the Term for the Extension Period having regard to the Proposed Extension Provisions. For the avoidance of doubt, where both parties provide an Extension Notice then each party's Proposed Extension Provisions shall be considered for the purposes of the good faith negotiations as that party's preferred commercial position; and
  - (ii) the Contract is deemed extended for a period of 3 months from the End Date (**Negotiation Period**) to facilitate the informed negotiation of the extension and the Proposed Extension Provisions, however, in respect of the Negotiation Period:
    - (A) notwithstanding any other provision of this Contract, during the Negotiation Period, the Supplier's obligation to provide NSS and Western Power's obligation to pay for NSS (after the End Date) is suspended;
    - (B) from the start of the day following the End Date, the cumulative Non-Complying NSS Activation is deemed to be equal to zero; and
    - (C) notwithstanding the extension, the calculation of the true up under Schedule 7 (items 1(b) and (c)) shall occur as if there were no extension and the Supplier must pay Western Power the Availability Non-Performance Discount (\$), calculated as at the End Date, in the next invoice issued after the End Date.
- (d) If, on the expiry of the Negotiation Period the parties, having complied with their obligation to negotiate in good faith under clause C4.1(c):
  - (i) are not able to reach agreement on the terms of the extension of the Term for the Extension Period then this Contract ends;

- (ii) agree in writing on the terms of the extension of the Term for the Extension Period (**Agreed Extension Provisions**) this Contract will continue until the end of the Extension Period on the same terms and conditions as contained in this Contract other than being amended as necessary so that the Agreed Extension Provisions apply during the Extension Period.

## **C5. Service to be provided**

### **C5.1 Obligation to provide the NSS**

Subject to the provisions of this Contract, the Supplier must provide the NSS when, and to the extent required, under this Contract, including the NSS Requirements, the Activation Protocol, GEIP and Legislative Requirements.

### **C5.2 NSS Activation Requests**

Western Power may, at any time during the Term but subject to the other provisions of this Contract, call on the Supplier to provide the NSS by providing a NSS Activation Request to the Supplier.

### **C5.3 NSS Activation Requests**

A NSS Activation Request provided to the Supplier under clause C5.2 may be for up to [INSERT] NSS Activations during the Term:

- (a) the NSS Activation Request must be made in accordance with the Activation Protocol and NSS Requirements; and
- (b) the Supplier may activate any of the NSS Locations.

### **C5.4 Reductions to NSS obligations**

- (a) Notwithstanding any other provision of this Contract, the Supplier's obligation to provide the NSS under clause C5.1 is reduced and will not be considered a Non-Complying NSS Activation in the following circumstances, to the extent that the relevant circumstances impact the Supplier's ability to provide the NSS Activation:
  - (i) Where the capacity to provide the NSS, or part thereof, is reduced or not available due to any Western Power action or inaction, including in the following circumstances:
    - (A) a Planned or Unplanned Outage of the electricity network or third-party communications infrastructure which directly and unavoidably affects the Supplier's capacity to deliver the NSS Activation and was not caused by the action or inactions of the Supplier, its agents or its VPP Customer(s);
    - (B) any switching/reconfiguration of the network by Western Power;
    - (C) Western Power has delayed any approvals of network services under the Applications and Queuing Policy or the ETAC.
  - (ii) Planned maintenance of the VPP, where pre-approved by Western Power, such approval not to be withheld if a NSS Activation has not been requested;
  - (iii) Where the NSS is unavailable due to the operation of Law; or

and any resultant failure by the Supplier to provide the requested NSS Activation is deemed to comply with the requirements of this Contract.
- (b) The Supplier must notify Western Power:

- (i) when the NSS becomes unavailable;
  - (ii) when the NSS is likely to become unavailable; and
  - (iii) as soon as reasonably practicable after becoming aware that it was unavailable for a period.
- (c) If the NSS is, or expected to be, unable to comply with the NSS Requirements for more than 3 consecutive days, the Supplier must provide a written notice including a remedial plan which reflects Good Electricity Industry Practice. The Supplier must rectify any unavailability as soon as practicable and in accordance with Good Electricity Industry Practice.

## **C6. Market Registration**

### **C6.1 Registration of the Supplier**

During the Term, to the extent required under the Rules, the Supplier must be and remain registered in accordance with the Rules sufficient to comply with its obligations under this Contract.

### **C6.2 Registration of Facilities**

During the Term, to the extent required under the Rules, each party must register a NSS Facility, or NSS Facilities, and ensure the facilities remain registered in accordance with the Rules and AEMO's procedures, sufficient to comply with its obligations under this Contract.

## **C7. No exclusivity**

The Supplier acknowledges and agrees that Western Power may engage any number of other contractors to provide services that are the same or materially equivalent to the NSS during the Term.

## **C8. Fees**

### **C8.1 Fee**

In consideration for the Supplier providing the NSS during the Term, Western Power must pay to the Supplier, in accordance with this clause C8 and the provisions of this Contract, the Fee calculated in accordance with Schedule 7. The Fee must be claimed by the Supplier by submitting an invoice to Western Power for the Fee for the previous month on the date specified in Schedule 2.

### **C8.2 Invoices**

(a) All Invoices must be addressed to either:

- (i) [Accounts Payable, Western Power  
Perth BC,  
Locked Bag 2503  
PERTH WA 6849; or]

(ii) Email address: [accounts.payable.invoices@westernpower.com.au]

and must quote the Order Number for this Contract. If an Invoice does not quote the Order Number it will be returned to the Supplier and the Supplier must issue a replacement Invoice that complies with this clause C8.2(a).

**C8.3 Payment of Fee**

- (a) Subject to clause C8.4, unless there is a bona fide Dispute in relation to any Invoice, or Western Power requires further information from the Supplier, or the Invoice does not comply with clause C8.2(a), Western Power will pay the Supplier the amount set out in that Invoice within twenty (20) Business Days of Western Power receiving the Invoice from the Supplier.
- (b) Western Power:
  - (i) will pay the amount set out in an Invoice by electronic transfer to the bank account nominated in Schedule 4, or as notified by the Supplier from time to time through the provision of an updated Schedule 4 to Western Power;
  - (ii) is under no obligation to verify the accuracy of the bank account details provided by the Supplier; and
  - (iii) is not responsible for any delays in payment or error due to factors outside the reasonable control of Western Power including delays in the banking system or incorrect details being provided by the Supplier.

**C8.4 Western Power may set-off**

Western Power may deduct from moneys due to the Supplier under this Contract, any undisputed money due from the Supplier to Western Power under this Contract.

**C9. Change in Laws**

- (a) If there is any Change in Laws which:
  - (i) is effective after the date of execution of this Contract and:
    - (A) which is inconsistent with the terms of this Contract;
    - (B) which materially impacts upon either Party's ability to perform its obligations under this Contract; or
    - (C) reasonably causes the Supplier to reasonably incur increased or decreased costs of performing the Services,
 then the Parties must negotiate in good faith the minimum necessary amendments to the provisions of this Contract (including a reduction in the quantity or frequency that the Supplier is required to provide the NSS or, where clause C9(a)(i)(C) applies, a reasonable adjustment to the Fee) required to enable this Contract to continue to be administered, to the extent practicable, in the same manner as it had been administered prior to the relevant Change in Laws.
- (b) If the Parties are unable to agree on the required amendments to the provisions of this Contract or adjustment to the Fee in accordance with clause C9(a) within forty (40) Business Days after the Change in Laws takes effect, either Party may refer the matter to an Expert for determination in accordance with the procedures set out in clause C22.
- (c) If the Parties are unable to agree on the person to appoint as the Expert within ten (10) Business Days from the date the matter is referred to an Expert under clause C9(b), then either Party may request the President of the Institute of Arbitrators and Mediators Australia to appoint the Expert.
- (d) The following principles apply to the determination of the matter by the Expert:

- (i) each Party must propose to the Expert the set of amendments to the provisions of this Contract or adjustment to the Fee it considers reflects the principles described in clause C9(a) within thirty (30) days of the date of the Expert's appointment;
- (ii) the Expert must be directed to determine a set of amendments or adjustments that reflects the principles described in clause C9(a) and to deliver that determination no later than thirty (30) days after receiving the Parties' proposed sets of amendments;
- (iii) the Expert must do one of the following:
  - (A) choose one of the proposed sets of amendments or adjustments in its entirety without amendment;
  - (B) choose one of the proposed sets of amendments or adjustments in its entirety with amendment; or
  - (C) develop its own set of amendments or adjustments, which may contain some amendments or adjustments proposed by one or both Parties; and
- (iv) the set of amendments or adjustments determined by the Expert in accordance with this clause C9 is deemed to take effect from the date of the Change in Rules.
- (e) Each Party must continue to comply with its obligations under this Contract to the extent possible in accordance with the existing terms of this Contract until such time as the terms of this Contract are amended either by agreement of the Parties or determined by an Expert in accordance with this clause C9.

## **C10. Information**

### **C10.1 Confidentiality obligations**

- (a) Each Party must:
  - (i) keep confidential, and not use or disclose, any Confidential Information of the other Party, except as permitted by this Contract;
  - (ii) immediately notify the other Party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any Confidential Information of the other Party.
- (b) A Party may, to the extent necessary:
  - (i) use Confidential Information of the other Party for the purposes of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Contract;
  - (ii) disclose Confidential Information of the other Party to its officers, employees, delegates, contractors, partners, agents and service providers who have a specific need to access that Confidential Information, but then only to the extent they need for the purpose of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Contract.

### **C10.2 Exclusions**

The obligations in clause C10.1(a) do not apply to:

- (a) any disclosure of information to legal advisers who are under a duty of confidence;
- (b) any disclosure made with the disclosing Party's prior written consent, which must not be unreasonably withheld and may be given subject to conditions;

- (c) any disclosure of information required to be disclosed to any Authority in connection with the granting of any Approval required under this Contract;
- (d) any disclosure required by Law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or statutory duty;
- (e) information which is, at the relevant time, in the public domain other than as a result of a breach of confidence;
- (f) any disclosure of information to the Electricity Review Board, the Economic Regulation Authority, or AEMO, as contemplated by this Contract or as otherwise may be required under the Rules, or the Access Code; and
- (g) for the purposes of the Electricity Industry (Metering) Code 2012 and all other Laws, Western Power may use metering data from any Battery Energy Storage System or connection point to determine whether it will request provision of the Service, whether the provision of Service complied with the Supplier's obligations under the Contract and to exercise any of Western Power's rights under this Contract.

### **C10.3 Publicity**

Each Party must not make any public announcement or issue any media release relating to this Contract or the performance of the NSS or exploit the fact that it has entered into this Contract, without the prior written approval of the other Party, which may be withheld at the other Party's discretion or given subject to any conditions.

### **C10.4 Freedom of Information access**

Each Party acknowledges that it and the other Party are subject to the *Freedom of Information Act 1992 (WA)* and that this Contract or documents relating to this Contract may become the subject of an application under that Act and access to them may need to be given to a Third Party in accordance with that Act. Neither Party has any liability whatsoever to the other Party for giving access to any document in accordance with the *Freedom of Information Act 1992 (WA)*.

### **C10.5 Disclosure of NSS Activations to AEMO**

The Supplier acknowledges and agrees that Western Power may provide details of NSS Activations to AEMO.

### **C10.6 Sharing of Information**

- (a) Subject to the other provisions of this clause C10 and to any contrary obligations of confidentiality or privacy owed by the Parties under any third party contracts:
  - (i) where a Party reasonably requires information from the other Party to be able to perform its obligations under this Contract, that Party may request the other Party to provide information regarding the Service or relating to the discharge of its obligations. The other Party must provide such information within 5 Business Days of receiving the request; and
  - (ii) the Parties will provide to each other such data (produced in connection with the NSS) as contemplated by and in accordance with Schedule 10.
- (b) Notwithstanding any other provision in this Contract, the Supplier is not required to provide Western Power with any information about its arrangements with its VPP Customers regarding their participation in the virtual power plant.

## **C11. Intellectual Property**

### **C11.1 Acknowledgements**

The Supplier acknowledges that:

- (a) the property of a party (**First Party**) includes and will include:
  - (i) the Confidential Information of the First Party; and
  - (ii) all documents relating to the affairs or business of the First Party, or which come into the other party's (**Second Party**) possession in the course, and by reason, of this Contract, whether or not the same were originally supplied by the First Party;
- (b) both Parties have spent and will spend time, effort and money in establishing and maintaining its customer base, employee skills, and its Confidential Information; and
- (c) it is reasonable that both Parties should enter into the representations and warranties contained in clauses C10, C11 and C18 of this Contract.

### **C11.2 Owned IP**

Nothing in this Contract affects the ownership of Supplier Owned IP or Western Power Owned IP.

### **C11.3 Intellectual Property – licensing**

- (a) To the extent strictly necessary for the performance of the obligations under this Contract, the Supplier grants to Western Power an irrevocable, royalty-free, licence (or sub-licence, as the case may be) to exercise the IP rights comprised in Supplier Licensed IP and Supplier Owned IP to use, deal with, maintain, remedy defects or omissions in the NSS or otherwise enjoy its rights under this Contract.
- (b) To the extent strictly necessary for the performance of the obligations under this Contract, Western Power grants to the Supplier a revocable, royalty-free, licence (or sub-licence, as the case may be) to exercise the IP rights comprised in Western Power Licensed IP and Western Power Owned IP to use, deal with, maintain, remedy defects or omissions in the NSS or otherwise enjoy its rights under this Contract.

### **C11.4 Moral Rights - Supplier**

- (a) The Supplier must procure from all authors and holders of Moral Rights in the Supplier Licensed IP and the Supplier Owned IP an unconditional, irrevocable consent in writing authorising Western Power (and its successors in title, and licensees and persons authorised by Western Power, its successors in title and licensees), to the extent strictly necessary for the performance of the obligations under this Contract, to use the Supplier Licensed IP or Supplier Owned IP without attribution of the author, and that any such use shall not be deemed to be:
  - (i) subjecting the Supplier Licensed IP or Supplier Owned IP to derogatory treatment; and/or
  - (ii) falsely attributing the authorship of the Supplier Licensed IP or Supplier Owned IP.
- (b) Western Power may notify Supplier at any time that it requires a further written unconditional and irrevocable consent from an author or holder of Moral Rights in the Supplier Licensed IP and the Supplier Owned IP for specific acts or omissions by Western Power in relation to that subject matter. Where such acts or omissions are

strictly necessary for the performance of the obligations under this Contract, the Supplier must use its reasonable endeavours to procure and promptly provide such consent to Western Power.

- (c) The Supplier warrants that it has obtained all the written consents needed to allow Western Power to perform the acts and omissions specified in clause C11.4(a) from the relevant authors and other holders of Moral Rights.
- (d) On request from Western Power, the Supplier must immediately provide Western Power with copies of the consents referred to in clause C11.4(a).

#### **C11.5 Moral Rights – Western Power**

- (a) Western Power must procure from all authors and holders of Moral Rights in the Western Power Licensed IP and the Western Power Owned IP an unconditional, irrevocable consent in writing authorising the Supplier (and its successors in title, and licensees and persons authorised by the Supplier, its successors in title and licensees), to the extent strictly necessary for the performance of the obligations under this Contract, to use the Western Power Licensed IP or Western Power Owned IP without attribution of the author, and that any such use shall not be deemed to be:
  - (i) subjecting the Western Power Licensed IP or Western Power Owned IP to derogatory treatment; and/or
  - (ii) falsely attributing the authorship of the Western Power IP or Western Power IP.
- (b) The Supplier may notify Western Power at any time that it requires a further written unconditional and irrevocable consent from an author or holder of Moral Rights in the Western Power Licensed IP and the Western Power Owned IP for specific acts or omissions by the Supplier in relation to that subject matter. Where such acts or omissions are strictly necessary for the performance of the obligations under this Contract, Western Power must use its reasonable endeavours to procure and promptly provide such consent to the Supplier.
- (c) Western Power warrants that it has obtained all the written consents needed to allow the Supplier to perform the acts and omissions specified in clause C11.5(a) from the relevant authors and other holders of Moral Rights.
- (d) On request from the Supplier, Western Power must immediately provide the Supplier with copies of the consents referred to in clause C11.5(a).

#### **C11.6 Project IP**

To the extent that IP, which is not owned by or licenced to a Party to this Contract or Third Party, is created in performance of this Contract then it will be deemed to be Project IP and where Project IP is created:

- (a) solely by the Supplier, the Supplier owns all such Project IP and that Project IP is the Supplier's exclusive property;
- (b) solely by a Subcontractor, the ownership and exclusivity of any such Project IP is dealt with in accordance with the arrangements in place between the Supplier and the Subcontractor or, where no such arrangements exist, the Supplier owns all such Project IP and that Project IP is the Supplier's exclusive property;
- (c) solely by Western Power, Western Power owns all such Project IP and that Project IP is Western Power's exclusive property; and

- (d) Project IP Ownership
- (i) where Project IP is created jointly by the Supplier and Western Power, including where such Project IP is created by the personnel of either Party or by the Supplier's Subcontractors in performing the Services, each Party owns the Project IP created by its respective Personnel, contributions and no Project IP will be jointly owned.
  - (ii) Each Party grants the other Party a perpetual, non-exclusive, royalty-free and irrevocable licence to use, reproduce, modify and develop the Project IP owned by the granting Party solely to the extent necessary for the receiving Party's internal operation, maintenance, support and management of its network and related systems.
  - (iii) The licences granted under this Schedule are granted on identical terms, and neither Party has greater rights than the other.
  - (iv) Any commercial exploitation of Project IP that involves third-party licensing or revenue generation will be subject to a separate written agreement between the Parties, including agreement on revenue sharing (if any), costs and governance.
  - (v) Nothing in this Contract obliges either Party to commercialise any Intellectual Property.
  - (vi) Each Party is responsible for ensuring that it has obtained, or will obtain, from its personnel and contractors (including Subcontractors) all rights, licences and consents necessary to:
    - (A) Comply with this clause and
    - (B) Grant the licences it grants under this Contract

## **C12. Liability**

### **C12.1 General exclusion**

- (a) The Parties agree and acknowledge that:
- (i) subject to the other provisions of this clause C12, neither Party will have any liability to the other, nor will they be entitled to make any Claim, in respect of:
    - (A) any act or omission under this Contract unless that act or omission constitutes gross negligence, fraud, wilful misconduct or a breach of this Contract (in which case clause C12.2 will apply); or
    - (B) any Indirect or Consequential Loss incurred or sustained by the other Party;
  - (ii) the limits on liability set out in clause C12.1(a)(i) do not apply to limit Western Power's obligation to pay the Fee in accordance with clause C8 and Schedule 7;
  - (iii) the application of the Availability Non-Performance Discount in accordance with Schedule 7 is Western Power's sole entitlement to any remedy in respect of or in connection with the Supplier providing a Non-Complying NSS Activation and anytime the Supplier provides a Non-Complying NSS Activation, that Non-Complying NSS Activation is deemed to not be a breach of this Contract for the purposes of clause C19 nor for the purposes of the definition of Critical Default.

**C12.2 Indemnity**

Where either Party's (**First Party**) act or omission constitutes gross negligence, fraud or wilful misconduct or a breach of this Contract, the First Party will indemnify the other Party (**Second Party**) for Losses incurred by the Second Party (including any Losses incurred in connection with a Third Party Claim) arising from or in connection with any such act or omission by the First Party.

**C12.3 Exclusion of warranties**

All conditions, warranties and terms not expressly contained in this Contract, whether implied by statute, inferred from circumstances, industry practice or otherwise, for the benefit of the Supplier which can be excluded are excluded.

**C13. Enforcement of indemnities**

- (a) Each Party need not incur any cost or make any payment before enforcing any right of indemnity under this Contract.
- (b) Each indemnity set out in this Contract is a continuing obligation, separate and independent from the other obligations of each Party and survives the termination of this Contract.

**C14. Insurance****C14.1 Insurances to be effected**

The Supplier (**the Insuring Party**) must (at its own cost) effect the insurance policies it is required to effect as listed, and on the terms and conditions set out, in Schedule 6.

**C14.2 Approval of the terms and conditions of insurance**

The policies listed in Schedule 6 must be effected by the Insuring Party with a reputable insurer and maintained throughout the Term.

**C14.3 Common terms**

- (a) Unless otherwise stated in this Contract, every policy of insurance required under clause C14.1 must be obtained before the Start Date, maintained for the Term, and continued throughout, or renewed prior to, the Extension Period if the Term is extended;
- (b) The Insuring Party must pay all premiums and all deductibles on each of the policies it is required to effect when due.

**C14.4 Access to policies**

- (a) Copies of the certificates of currency for the policies required to be maintained under Schedule 6 must be provided by the Insuring Party to the other Party:
  - (i) at least five (5) Business Days before the Start Date;
  - (ii) throughout the Term, within five (5) Business Days of a policy renewal or extension; and
  - (iii) within five (5) Business Days of a written request by the other Party.
- (b) The certificates of currency provided by the Insuring Party to other Party under clause C14.4(a) must contain:

- (i) the limit of cover of the policy;
- (ii) the names of the insurers;
- (c) If the Insuring Party fails to produce evidence of insurance required by this Contract, this shall be deemed a Critical Default, and clause C19.2 applies.
- (d) The rights given to the other Party under this clause C14 are in addition to any other rights the other Party may have.

**C14.5 Notices of potential Claims**

The Insuring Party must, as soon as practicable and in writing, inform the relevant insurer and the other Party of any occurrence that may give rise to a Claim of over \$100,000 under or in connection with this Contract under insurance required by clause C14.1, and must keep the other Party informed of all developments concerning the Claim.

**C14.6 Primary**

Insurance does not limit the liabilities or obligations under other provisions of this Contract.

**C15. Record keeping**

**C15.1 Type of records**

Each Party must compile and maintain the following records:

- (a) the following information relating to any NSS Activation provided or requested;
  - (i) determination of payments made under this contract (including any underlying data)
  - (ii) verification, in accordance with schedule 9, of the NSS provided;
- (b) written communications which are transmitted to Western Power, the Supplier or AEMO that relate to the provision or non-provision of NSS; and
- (c) records which are expressly required to be compiled and maintained by any part of this Contract.

**C15.2 Form and retention**

The records referred to in clause C16.1 may be maintained in writing or electronically.

**C15.3 Maintenance of records**

Each Party must maintain all records referred to in clause C16.1 for at least seven (7) years from the time at which it was created or any longer period required by the Rules.

**C15.4 Right to inspect records**

Each Party must, if requested to do so by the other Party at any time, provide a copy of any of the records maintained under this clause C16 by that Party as soon as is reasonably practicable, but in any event within five (5) Business Days of receiving such a request.

**C15.5 Right to audit**

Each Party (the First Party) must permit the other Party to audit any of the records maintained by the First Party under this clause C16 in relation to the NSS if required by the other Party, and the First Party must fully cooperate with that audit.

## **C16. Information security**

### **C16.1 Information security**

Where this Contract permits a Party (the **First Party**) to have access (whether directly or indirectly) to the information technology systems (**Systems**) of the other Party (the **Second Party**) from any location, for any purpose, then the First Party acknowledges and agrees that:

- (a) the First Party will acquaint itself with and comply with all procedures, protocols and other requirements specified by the Second Party from time to time;
- (b) the Second Party may impose any conditions on the First Party's direct access to its Systems that are reasonably required to protect its information security, including requiring the First Party to enter into a separate information security contract;
- (c) without limiting clause C17.1(b), unless otherwise agreed between the parties, any information obtained by the First Party through the Systems constitutes Confidential Information to which clause C10 applies;
- (d) the First Party will not install any software on or make any modifications to the Systems unless expressly authorised by the Second Party in writing;
- (e) the First Party must maintain appropriate and up to date physical and electronic security (including maintaining usernames and passwords, firewalls and using anti-virus or virus protection programs) to protect the Systems and the First Party's electronic computer and information systems from unauthorised access, damage, corruption and disclosure; and
- (f) the First Party must notify the Second Party immediately by telephone on becoming aware of any actual or threatened security breach (including disclosure of passwords or encryption or signing keys or loss of security tokens) or other risks of damage, corruption or disclosure of the Systems.

## **C17. Warranties and representations**

### **C17.1 Warranties and representations by**

Each Party represents and warrants to the other Party as at the date of this Contract and at all times after the date of this Contract that:

- (a) it has, and its Personnel have, the expertise and skills required to comply with its obligations under this Contract;
- (b) it is legally entitled to use any of its existing IP used by it in connection with the provision of the performance of its obligations under this Contract;
- (c) the performance of its obligations under this Contract (including the provision of the NSS) will not infringe the IP of any Third Party;
- (d) it will perform its obligations (including the NSS) under this Contract in compliance with all the requirements of this Contract and all laws and Approvals;
- (e) has full legal capacity and power to enter into this Contract and carry out the transactions that this Contract contemplates;
- (f) it holds or will hold each Approval that is necessary or desirable to:

- (i) provide the NSS under this Contract, including any Approvals required under any applicable law; or
  - (ii) enable it to properly enter into this Contract and to carry out the transactions that this Contract contemplates,
- and it is complying with any conditions to which any of these Approvals is subject; and
- (g) it has entered into this Contract relying entirely on its own independent appraisal and assessment of all relevant matters and has not relied upon any warranties or representations made by the other Party.

**C17.2 Reliance on the warranties and representations**

Each Party acknowledges that the other Party has entered into this Contract in reliance on the warranties and representations made by the first Party.

**C18. Default and termination**

**C18.1 Notice of default**

- (a) If at any time during the Term, a Party commits a material breach of this Contract, the other Party may issue a Breach Notice.
- (b) The Breach Notice must:
  - (i) state that the Notice is a Breach Notice; and
  - (ii) identify and give details of the breach of this Contract on which the Breach Notice is based.
- (c) If a Party receives a Breach Notice, that Party must remedy the breach within ten (10) Business Days of receiving the Breach Notice (or such further time as the Parties may mutually agree in writing), except in the case of:
  - (i) Western Power failing to pay the Supplier a sum in accordance with this Contract which Western Power must remedy within twenty (20) Business Days; or
  - (ii) a breach not capable of remedy.
- (d) If a Party receives a Breach Notice:
  - (i) and fails to remedy the breach within the time specified; or
  - (ii) that identifies a breach that is not capable of remedy,a **Critical Default** has occurred and the other Party may exercise its rights in accordance with clause C19.2, or, if the other Party is Western Power, Western Power may exercise its rights in accordance with clause C19.3.

**C18.2 Termination for Critical Default**

A Party may, by written Notice to the other Party, terminate this Contract with immediate effect if a Critical Default occurs due to the other Party.

**C18.3 Western Power may cure**

- (a) Western Power may, by written Notice to the Supplier, elect to cure a breach specified in a Breach Notice issued to the Supplier if:

- (i) the Supplier fails to cure that breach within the time specified in accordance with clause C19.1(c); and
  - (ii) the breach is a breach that is capable of remedy.
- (b) If Western Power elects to cure a breach in accordance with clause C19.3(a), Western Power may at any time cease curing the relevant breach, and terminate this Contract in accordance with clause C19.2.

#### **C18.4 Preserving rights**

Termination of this Contract is without prejudice to:

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

#### **C18.5 Consequences of Termination**

- (a) Where this Contract is terminated by the Supplier under clause C19.2 for Western Power Critical Default, the Early Termination Payment will be payable by Western Power to the Supplier.
- (b) The Early Termination Payment shall be an amount equal to:

$$ETPf = (AF) - (ANPDtd)$$

Where:

**ETPf** means the Early Termination Payment payable by Western Power where this Contract is terminated for Western Power Critical Default.

**AF** means the aggregate Availability Fees that would have been paid under this Contract over the remainder of the Term, calculated on the basis that the Contracted Capacity would have been equal to the Contracted Capacity at the time of termination.

**ANPDtd** means the aggregate cumulative Availability Non-Performance Discount determined as at the date of termination (with the date of termination deemed to be the End Date for the purposes of the calculation).

- (c) Where this Contract is terminated by Western Power under clause C19.2 for the Supplier's Critical Default:
  - (i) no Early Termination Payment is payable by Western Power to the Supplier; and
  - (ii) the Supplier will be entitled to retain the aggregate sum of all monthly instalments already paid as at the date of termination less the aggregate cumulative Availability Non-Performance Discount determined by Western Power as at the date of termination (with the date of termination deemed to be the End Date for the purposes of the calculation). Where the value of the cumulative Availability Non-Performance Discount exceeds the aggregate sum of all monthly instalments already paid as at the date of termination, the Supplier must pay the difference (as an absolute value) to Western Power within 15 Business Days of the date of termination.

## **C19. Relationship of the Parties**

### **C19.1 Western Power/Supplier relationship**

- (a) Each Party (the **First Party**) acknowledges and agrees that it is an independent entity and not an agent of the other Party, and that the First Party has no authority to bind the other Party by contract or otherwise.
- (b) In carrying out the NSS under this Contract, the Supplier is acting as an independent contractor to Western Power. Nothing in this Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated herein.

### **C19.2 Compliance with Legislative Requirements**

- (a) Without limiting any other provision of this Contract, each Party must:
  - (i) comply at its own cost and expense with all Legislative Requirements so far as they may affect or apply to that Party in the performance of its obligations under this Contract (including the provision of the NSS); and
  - (ii) give all notices, make all applications and pay all fees and expenses, including increased or new fees and expenses, necessary to ensure compliance with all Legislative Requirements.
- (b) Each Party must provide the other Party with such reasonable assistance as requested by other Party in order for the other Party to satisfy and comply with the Legislative Requirements applying to the other Party and relating to the performance of its obligations under this Contract (including the provision of the NSS).

## **C20. GST**

### **C20.1 General**

- (a) Unless the context indicates otherwise, words or expressions used in this clause which are defined in the GST Act have the same meaning in this clause as in the GST Act.
- (b) Unless otherwise stated, all amounts payable or the value of other consideration provided in respect of the supplies made under this Contract are exclusive of GST and where the value of any supply is to be calculated with reference to a monetary turnover figure, the GST exclusive value of the monetary turnover shall be used in calculating the value of the supply.

### **C20.2 Taxable supplies**

- (a) Subject to clause C21.3 applying, this clause sets out the GST consequences of this Contract.
- (b) If a Party (**supplier**) makes a taxable supply under or in connection with this Contract:
  - (i) the consideration otherwise payable or to be provided for that supply is increased by, and the Party paying or providing the consideration (**recipient**) must also pay to the supplier, an amount equal to the GST payable by the supplier on that supply;
  - (ii) subject to the supplier complying with clause C21.2(b)(iii), the recipient must pay the GST amount in Australian dollars, at the same time and to the same extent as it must pay or provide the consideration for that supply; and

- (iii) the supplier must issue a tax invoice to the recipient of the supply at or before the time of payment of the GST inclusive consideration or at such other time as the Parties agree.
- (c) Where any amount is payable to a Party as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or any other amount incurred by that Party, then such amount must be reduced by any part of that loss, cost, expense or other amount which is attributable to GST for which that Party, or the representative member of any GST group of which that Party is a member, is entitled to an input tax credit.
- (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 ten (10) Business Days after the Party has satisfied itself that the adjustment event has occurred.

### **C20.3 Contract to reverse charge GST on a supply by a non-resident**

- (a) Where the supplier:
  - (i) is a non-resident for Australian tax purposes; and
  - (ii) does not make any supply under this Contract through an enterprise that the supplier carries on in Australia or through a resident agent,
 the supplier must inform the recipient of the fact, and this clause C21.3 will apply.
- (b) The supplier and the recipient agree that the GST on any taxable supply made by the supplier under this Contract will be payable by the recipient under Division 83 of the GST Act.
- (c) The recipient warrants that it is registered for GST purposes and will remain so registered for the Term of this Contract.
- (d) Where this clause C21.3 applies, the supplier must complete form NAT 3346 (or any substitute form) which can be found on the Australian Tax Office website, and supply this to the recipient before any payments are made under this Contract.

## **C21. Dispute resolution procedure**

### **C21.1 Notice of Dispute**

In the event of a Dispute either Party must deliver a Notice of Dispute to the other Party.

### **C21.2 Additional information**

A Party that delivers a Notice of Dispute must also provide enough information about the claimed Dispute for the other Party to reasonably understand the:

- (a) alleged facts on which the Dispute is based;
- (b) legal basis on which the Dispute is made; and
- (c) relief that is claimed.

### **C21.3 Without prejudice meetings**

- (a) If the Dispute is not resolved within five (5) Business Days of the Notice of Dispute, the Dispute must be referred to a manager of each Party to be discussed and the managers will endeavour to resolve the Dispute.
- (b) If the Dispute is not resolved between the managers within seven (7) Business Days of referral to the managers under clause C22.3(a), the Dispute will be referred to a general manager or the managing director (or delegates) of each Party, and the general manager or managing directors (or delegate) will endeavour to resolve the Dispute.
- (c) Unless otherwise agreed in writing, all communications at or in relation to these meetings are without prejudice and confidential.
- (d) Any agreement reached under this clause must be in writing and signed by both Parties.

### **C21.4 Litigation or referral to Expert**

If a Dispute has not been resolved within thirty (30) Business Days after the relevant Notice of Dispute was originally delivered or such further period as the Parties mutually agree, then:

- (a) the Parties may agree to refer the Dispute to an Expert for determination; or
- (b) either Party may issue proceedings to have the Dispute determined.

### **C21.5 Who is an Expert?**

An Expert is a person, having the qualifications set out in clause C22.6, selected by the Parties.

### **C21.6 Expert's qualifications**

An Expert must:

- (a) have suitable and reasonable qualifications as well as commercial and practical experience in the area of the Dispute;
- (b) be independent of each Party; and
- (c) have no interest or duty which conflicts or may conflict with the Expert's function as an expert.

### **C21.7 Referring Dispute to the Expert**

If the Parties agree to refer the Dispute to an Expert for determination:

- (a) the Parties must, within five (5) Business Days after an Expert is selected:
  - (i) arrange for the Expert to be appointed; and
  - (ii) refer the Dispute to the Expert by written submissions setting out the Dispute to be determined as well as all other reasonably relevant matters; and
- (b) each Party must provide the Expert with any information reasonably required by the Expert.

### **C21.8 How the Expert is to conduct dispute resolution procedure**

The Expert acts as an expert and not as an arbitrator, and the Parties:

- (a) must procure that the Expert resolves the Dispute:
  - (i) having regard to the terms of this Contract;

- (ii) exercising the Expert's own skill, judgment and experience; and
- (iii) having regard to relevant standards or guidelines; and
- (b) the Parties agree that:
  - (i) the Dispute is to be resolved according to the Institute of Arbitrators and Mediators Australia Expert Determination Rules, current as at the date the Notice of Dispute is given (**Expert Determination Rules**); and
  - (ii) they must abide by the Expert Determination Rules and must procure the Expert's agreement to resolve the Dispute according to those rules.

**C21.9 Expert to give decision**

The Parties must use their best efforts to ensure the Expert gives the Parties a written decision within twenty (20) Business Days after the Dispute is referred to the Expert under clause C22.7.

**C21.10 Expert's decision is final**

The Expert's decision is, in the absence of manifest error or fraud, final and binding on the Parties.

**C21.11 Expert must give reasons**

The Expert must give written reasons for the decision.

**C21.12 Parties to give effect to decision**

The Parties must give effect to the Expert's decision promptly.

**C21.13 Costs**

Each Party must pay:

- (a) its own expenses incurred in connection with any expert determination process under this clause C22; and
- (b) an equal proportion of the Expert's costs unless the Expert, in its absolute discretion, decides otherwise.

**C21.14 Proceedings for urgent relief**

Nothing in this clause C22 prevents proceedings being issued for urgent injunctive relief.

**C21.15 Continued performance of obligations**

Even if a Dispute exists, each Party must continue to comply with its obligations under this Contract, except with respect to the payment of moneys that is in dispute.

**C22. Statutory powers and functions**

- (a) Nothing in this Contract overrides, restricts or fetters the statutory powers or functions of the Supplier, Western Power or AEMO or the exercise of such statutory powers and functions with respect to the subject matter of this Contract.
- (b) Unless expressly provided otherwise in this Contract, the parties have no liability whatsoever for, or in connection with, the exercise of, or failure to exercise, any power or function by the AEMO with respect to the subject matter of this Contract.
- (c) This clause C23 survives the termination of this Contract.

## **C23. Restructuring**

- (a) If Western Power is restructured:
  - (i) by Law; or
  - (ii) through other means, including the:
    - (A) use of subsidiary or associated companies; or
    - (B) 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 as determined by Western Power or the successors of Western Power under the restructure.

## **C24. Notices**

### **C24.1 How and where Notices may be sent**

- (a) Subject to clauses C25.1(b) and C25.1(c), a Notice must be legible, in writing and delivered by hand or sent by pre-paid post or fax or email to a Party at the address, fax number or email address for that Party set out in Schedule 2 (or to any other address, fax number or email address as specified by a Party by Notice).
- (b) A Notice may be sent by email only if the Notice is an attachment to the email.
- (c) A Notice may be given verbally (by telephone) where this Contract expressly permits or requires a Notice to be given verbally.

### **C24.2 Language**

Notices and other communication between the Parties, and every document required to be delivered by either Party to the other under this Contract, must be in English.

### **C24.3 When Notices are taken to have been delivered and received**

- (a) A Notice sent by post is regarded as given and received:
  - (i) if the address for the recipient Party specified in Schedule 2 is an Australian address, on the second Business Day following the date of postage; or
  - (ii) if the address for the recipient Party specified in Schedule 2 is not an Australian address, on the eighth Business Day following the date of postage.
- (b) Subject to clause C25.3(d), a fax is regarded as delivered and received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete by 3.00pm on the next Business Day after the day it was transmitted.
- (c) Subject to clause C25.3(d), an email is regarded as received one hour after it is sent, unless the sender receives notification from its or the recipient's email server that the email is undeliverable or was not delivered.
- (d) A Notice delivered or received other than on a Business Day or after 3.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day, and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

**C24.4 Reliance on Notices**

A Notice can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee reasonably believes it to be genuine, correct and authorised by the sender.

**C25. General****C25.1 Survival of terms**

The following clauses survive the termination of this Contract and will continue in full force and effect:

- (a) Clauses C2 (Defined terms);
- (b) C10 (Information);
- (c) C11 (Intellectual Property);
- (d) C12 (Liability);
- (e) C21 (GST);
- (f) C22 (Dispute resolution procedure);
- (g) C25 (Notices);
- (h) C26 (General);
- (i) C27 (Interpretation); and
- (j) any other clause that is expressed to, or intended to, survive the termination of this Contract, survive the termination of this Contract and will continue in full force and effect.

**C25.2 Entire agreement**

This Contract states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

**C25.3 Assignment**

- (a) Subject to clauses C23, C24 and this clause C26.3, rights arising out of or under this Contract are not assignable by a Party without the prior written consent of the other Party.
- (b) A breach of clause C26.3(a) by a Party is a Critical Default and clause C19.2 applies.
- (c) The Parties acknowledge that clause C26.3(a) is a prohibition on assignment and nothing in this clause C26.3 is to be construed as a mere promise by a Party not to assign without the other Party's consent.

**C25.4 Subcontracting**

- (a) Subject to clause C26.4(b), the Supplier may subcontract the performance of any of its obligations under this Contract without the prior written consent of Western Power.
- (b) The appointment of or performance of any obligation by any subcontractor under clause C26.4(a) does not relieve the Supplier from any liability or obligation under this

Contract. Except where this Contract otherwise provides, the Supplier is liable to Western Power for the acts and omissions of the Personnel as if they were acts or omissions of the Supplier.

**C25.5 No reliance**

Neither party has relied on any statement by the other party that is not expressly included in this Contract.

**C25.6 Consent of Supplier, Western Power or AEMO**

Whenever either party (**First Party**) requires the consent or approval of the other party (**Second Party**) or AEMO to do anything under or in respect of this Contract, the Second Party or AEMO, as applicable, may withhold its consent or approval or give it conditionally or unconditionally in its absolute discretion unless expressly stated otherwise in this Contract. The First Party must comply with any conditions under which consent or approval is given.

**C25.7 Prohibition, enforceability and severance**

- (a) Any provision of, or the application of any provision of, this Contract or any right, power, authority, discretion or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) If any term or part of this Contract is, or becomes for any reason, invalid or unenforceable at law, that term or part of this Contract is, and is hereby deemed to be, severed from this Contract without affecting the remainder of this Contract and this Contract continues to be valid and enforceable in all things.

**C25.8 Cumulative rights**

The rights, powers, authorities, discretions and remedies arising out of or under this Contract are cumulative and do not exclude any other right, power, authority, discretion or remedy of any Party.

**C25.9 Variation**

A variation of any term of this Contract must be in writing and signed by the Parties.

**C25.10 Further action to be taken at each Party's own expense**

Each Party must do all things and execute all documents necessary to give full effect to its obligations under this Contract and the transactions contemplated by it, including the negotiation, preparation, execution and delivery of this Contract, at its own expense unless otherwise provided in this Contract.

**C25.11 Exercise of rights**

- (a) A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy.
- (c) Failure by a Party to exercise, or a delay in exercising, a right, power or remedy does not prevent its exercise.

**C25.12 Counterparts**

- (a) This Contract may be executed in any number of counterparts.

- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Contract by signing any counterpart.

#### **C25.13 Civil Liability Act**

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

#### **C25.14 Waiver**

- (a) Waiver of any requirement, right, power, authority, discretion or remedy arising under this Contract, including those arising upon default under this Contract, must be in writing and signed by the Party granting the waiver.
- (b) A failure or delay in the exercise, or partial exercise, of:
  - (i) a right arising from a breach of this Contract; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Contract,
 does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A Party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Contract or on a default under this Contract as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A full or partial waiver in respect of a breach of a term of this Contract is not a waiver in respect of further or other breaches of the same or any other term of the Contract.
- (e) This clause C26.14 may not itself be waived except by writing.

#### **C25.15 Costs and expenses**

Any action to be taken by either Party in performing its obligations under this Contract must be taken at its own cost and expense unless otherwise provided in this Contract.

#### **C25.16 Duty**

Each Party must pay in equal portions the duty payable under the *Duties Act 2008 (WA)*, if any, on this Contract and any copies of this Contract and any other document in connection with this Contract.

#### **C25.17 Governing law and jurisdiction**

- (a) This Contract, including the procedures in clause C22 and any Dispute, is governed by the law in force in Western Australia.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Contract. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

#### **C25.18 Force Majeure**

- (a) Subject to clause C26.18(e), a Party (**Affected Party**) is excused from performing its obligations under this Contract to the extent it is hindered or prevented by circumstances which:

- (i) are beyond its reasonable control including natural disasters, acts of war, riots and strikes outside the Affected Party's organisation (other than a lack of funds or any strike, lockout or labour dispute); and
  - (ii) could not have been prevented or overcome by the Affected Party exercising a standard of care and diligence consistent with that of a prudent and competent person operating within the relevant industry.
- (b) When the circumstances described in clause C26.18(a) arise:
  - (i) the Affected Party must give notice of those circumstances (the Force Majeure Event) to the other Party as soon as possible, identifying the effect they will have on its performance, and must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract; and
  - (ii) the Parties must meet within 2 Business Days of a notice under clause C26.18(b)(i) to determine the estimated length of time for which the Force Majeure Event will continue, the likely impact on the Parties obligations under the Contract and how to proceed during that time.
- (c) An Affected Party must:
  - (i) use all reasonable diligence to avoid, remove or limit the effects of the Force Majeure Event on its performance of the suspended obligations as quickly as possible; and
  - (ii) promptly re-commence performing its suspended obligations as soon as reasonably possible.
- (d) If non-performance or diminished performance by the Affected Party due to the circumstances under clause C26.18(a) continues for a period of more than 90 consecutive days, a Party (other than the Affected Party) may terminate this Contract immediately by giving the other Party written notice.
- (e) To the extent that a Force Majeure Event hinders or prevents the Supplier from providing the Services, the Supplier is deemed to be unable to comply with a NSS Activation Request, such that a Non-Complying NSS Activation is deemed to have occurred for the duration of the Force Majeure Event, for the purpose of calculating the Availability Non-Performance Discount.

## **C26. Interpretation**

### **C26.1 General**

In this Contract:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Contract.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Authority as well as an individual.

- (f) A reference to a clause, Party, schedule, attachment or exhibit is a reference to a clause of, and a Party, schedule, attachment or exhibit to, this Contract and a reference to this Contract includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of the legislation.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novation of, that document.
- (i) A reference to a Party includes that Party's successors and permitted assignees.
- (j) A promise on the part of two or more persons binds them jointly and severally.
- (k) A reference to an agreement other than this Contract includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) No provision of this Contract will be construed adversely to a Party because that Party was responsible for the preparation of this Contract or that provision.
- (m) A reference to a body, other than a Party (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

#### **C26.2 Interpretation of inclusive expressions**

Specifying anything in this Contract after the words 'include' or 'for example' or similar expressions does not limit what else is included.

#### **C26.3 Business Day**

Where the day on or by which any payment is to be made is not a Business Day, that payment must be made on or by the next Business Day.

**EXECUTION CLAUSE:**

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

**SIGNED** by an authorised officer 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

\_\_\_\_\_  
Full name of Authorised Officer

**[INSERT SUPPLIER EXECUTION CLAUSE]**

## SCHEDULE 1 – DICTIONARY

<u>Column 1</u>	<u>Column 2</u>
Access Code	<u>Electricity Networks Access Code 2004 (WA).</u>
Activation Fee	<u>means the fee for the operation of the NSS (in MWh),</u> calculated in accordance with Schedule 7.
Activation Event NSS Location	means each of the NSS Locations used to deliver an NSS Activation in response to a specific NSS Activation Request.
Activation Protocol	means the protocol described in Schedule 5.
AEMO	Australian Energy Market Operator established Australian Energy Market Amendment (AEMO and Other Measures) Bill 2009.
Affected Party	has the meaning given in clause C26.18(a).
Agreed Extension Provisions	has the meaning given in clause C4.1(d)(ii).
Approvals	any certificates, licences, consents, permits, approvals, authority or requirements of any Laws or any Authority.
Authority	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia and includes any body, statutory or otherwise, charged with the administration of any Law.
Availability Fee	means the fee for making the NSS available (in MW), calculated in accordance with Schedule 7.
Availability Period	has the meaning given in Schedule 3.
Breach Notice	a Notice from one Party to the other Party advising that the other Party has breached this Contract.
Business Day	a day on which banks are open for general banking business in Perth, Western Australia excluding a Saturday, Sunday or public holiday.
Change in Laws	any change in the Laws or the introduction of a new Law and for the purposes of clause C9 is deemed to include any Law that as at the execution date does not enable the Supplier to provide the NSS from any NSS Location notwithstanding that such Law has not changed or materially changed since the execution date.
Claim	a demand, action or proceeding of any nature whether actual or threatened.
Conditions Precedent	the conditions precedent (if any) set out in Schedule 8.
Confidential Information	the terms of this Contract, and all information regardless of its form: <ul style="list-style-type: none"> <li>(a) which is disclosed directly or indirectly by a Party to the other Party or provided to a Party by AEMO, under or in</li> </ul>

connection with this Contract (whether before the date of this Contract or during the Term); and

- (b) which is treated or designated as confidential by the disclosing Party or the receiving Party knows, or ought to know is confidential,

and includes the following types of information:

- (c) all trade and business secrets of the disclosing Party;
- (d) information concerning clients, suppliers, contractors and other stakeholders of the disclosing Party and any Related Body Corporate including all mailing lists and lists of clients;
- (e) information concerning officers and employees of the disclosing Party; and
- (f) any information of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of the disclosing Party.

Contract	this agreement for the performance of the NSS between the Supplier and Western Power.
Contracted Capacity	means the quantity of capacity, measured in MW, identified in Schedule 2.
Critical Default	a breach that has not been remedied within the time specified in clause C19.1(c) or any other circumstance that is deemed to be a Critical Default under this Contract.
Deployment Time	has the meaning given in Schedule 3.
Dispute	any dispute, difference or issue between the Parties concerning or arising out of or in connection with or in relation to this Contract or the subject matter of this Contract or the existence, breach, termination, validity, repudiation, rectification, frustration, operation or interpretation of this Contract.
Early Termination Payment	has the meaning given in clause C19.5.
Economic Regulation Authority	Economic Regulation Authority established under the <u><i>Economic Regulation Authority Act 2003 (WA)</i></u> .
Electricity Review Board	Western Australian Electricity Review Board established under the <u><i>Energy Arbitration and Review Act 1998 (WA)</i></u> .
End Date	is the date specified in Schedule 2.
Expert	has the meaning given in clause C22.5.
Expert Determination Rules	has the meaning given in clause C22.8(b)(i).
Extension Notice	has the meaning given in clause C4.1(b).

Extension Period	has the meaning given in clause C4.1(b).
Facility	means the notional or physical (as the case requires) infrastructure to aggregate distributed energy resources for the purpose of providing specific market services under instruction from Western Power, including NSS. A Facility will orchestrate distributed energy resources located at a defined group of electricity network connection points identified by their NMIs. A Virtual Power Plant is comprised of one or more Facilities.
Fee	means the fee which the Supplier is entitled to claim in accordance with this Contract and Schedule 7.
Force Majeure Event	has the meaning given in C26.18(b)(i).
Good Electricity Industry Practice (or GEIP)	has the meaning given to the term "good electricity industry practice" in the Access Code.
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.
GST	goods and services tax levied under the GST Act.
GST Act	<u><i>A New Tax System (Goods And Services Tax) Act 1999 (Cth).</i></u>
Indirect or Consequential Loss	means consequential or indirect loss, or any other loss not arising directly from a breach of this Contract, including punitive loss, exemplary loss, economic loss and loss of profit, business interruption, increased cost of working, or loss of revenue, margin, use, production, opportunity, contract, goodwill, business or anticipated savings.
Intellectual Property or IP	all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.
Invoice	an invoice issued by the Supplier to Western Power in accordance with clause C8.
Law	any law, directive, statute, by-law, regulation, rule, order or delegated legislation of any Authority, the common law and the principles and doctrines of equity.
Legislative Requirements	includes Laws, Approvals and the fees and charges payable with respect to these.
Loss	(a) any liability, cost, expense, disadvantage, personal injury (including illness), death or damage;  (b) fine, penalty or contingent payment (howsoever described) under any Legislative Requirement; and

- (c) in relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful), legal costs and disbursements on a full indemnity basis.

Market Participant	has the meaning given in the Rules.
Moral Rights	has the meaning given to that term in Part IX of the <u>Copyright Act 1968 (Cth)</u> .
MW	means mega watt.
MWh	means mega watt hour.
Negotiation Period	has the meaning given in clause C4.1(c)(ii).
Network Support Service or NSS	means a contracted service provided by a generator / retailer / demand side program / distributed energy resource aggregator to help manage network limitations on the low voltage network.
NMIs	means the National Metering Identifier being a unique 10 or 11 digit number used to identify an electricity network connection point in Australia.
NSS Activation	means the act of orchestrating a group of distributed energy resource assets in order to change the load on a local distribution network.
NSS Activation Request	means the request from Western Power that the Supplier provide the NSS Activation.
NSS Location	means for a NSS Activation Request and associated NSS Activation, each location specified as a 'NSS Location' in Schedule 2.
NSS Locations List	has the meaning given in Schedule 10.
NSS Requirements	means the parameters for the NSS Activation Requests specified in Schedule 3 and any requirements for the NSS described in the NSS Activation Request.
Non-Complying NSS Activation	has the meaning given in Schedule 7.
Notice	a written notice or other communication in writing under this Contract.
Notice of Dispute	a written Notice that identifies a Dispute and is subject to the requirements set out in clauses C25 and C22.2.
Operating Protocol	a written record agreed by the Parties of the technical and operational standards for delivering the NSS.
Order Number	the Order Number specified in Schedule 2.
Parties	the parties to this Contract.
Party	a party to this Contract.
Personnel	the Supplier's officers, employees, delegates, contractors, Subcontractors, partners, agents and service providers of any nature.
Planned Outage	means a scheduled disruption to the local network that results in one or more service connections being unable to access the network.

Registration Information	means the information listed in Schedule 2.
Related Body Corporate	has the meaning set out in section 50 of the <u>Corporations Act 2001 (Cth)</u> .
Representative	in relation to a Party, means any officer, employee, agent, adviser, trustee, permitted assignee, liquidator, administrator, or Third Party contractor of that Party.
Rules	the "Market Rules" referred to in section 123(1) of the <u>Electricity Industry Act 2004 (WA)</u> , and includes the Market Procedures (as defined in the "Market Rules").
SCADA	supervisory control and data acquisition computer system.
Scheduled Generator	has the meaning given in the Rules.
Scheduled Outage	has the meaning given in the Rules.
Service	has the meaning given in C5.
SMMITS	AEMO's market information technology system.
Standing Data	has the meaning given in the Rules.
Start Date	is the date specified in Schedule 2.
Supplier	the party identified as the "Supplier" as described in the Parties section of this Contract.
Supplier Licensed IP	IP rights licensed by the Supplier from a Third Party, and which the Supplier is entitled to exercise and sublicense, which are embodied in, attached to or otherwise relate to the performance of the Supplier's obligations under this Contract.
Supplier Owned IP	IP rights: <ul style="list-style-type: none"> <li>(a) owned by the Supplier prior to the commencement of this Contract or which did not come into existence by reason of the provision of the NSS;</li> <li>(b) in subject matter developed by the Supplier (but not jointly with Western Power) in the provision of the NSS or otherwise under this Contract; and</li> <li>(c) which the Supplier is entitled to exercise and sublicense, which are embodied in, attached to or otherwise relate to the performance of the Supplier's obligations under this Contract.</li> </ul>
Supply Year	means: <ul style="list-style-type: none"> <li>(a) each period of 12 calendar months commencing at 0800 hours on the Start Date; provided that</li> <li>(b) the last Supply Year will be for a period commencing at 0800 hours on the day that is immediately following the end of the preceding Supply Year, and ending at 0800 hours on the End Date.</li> </ul>

Subcontractor	any person engaged by the Supplier to perform any part of the Supplier's obligations under this Contract (including the NSS) and includes, where it is not inconsistent with the context, that person's employees, agents, consultants and invitees, but excludes any person (except the Supplier) who is the owner or operator of a Facility that is capable of complying with a Dispatch Instruction.
SWIS	has the meaning given in the Access Code.
Systems	the data, electronic, computer or information systems (including SCADA and SMMITS) and the material and information contained therein as contemplated in clause C17.1.
Technical Rules	the technical rules or technical code applying from time to time to the SWIS under Chapter 12 of the Access Code, as modified in accordance with the Access Code.
Term	the period determined in accordance with clause C4.1.
Third Party	a person not being Western Power, the Supplier, or a director, officer or employee of Western Power or the Supplier, and is deemed to include AEMO.
Trading Interval	has the meaning given in the Rules.
Unplanned Outage	means an unscheduled disruption to the local network that results in one or more service connections being unable to access the network.
Virtual Power Plant (VPP)	means an aggregation of distributed energy resources, such as decentralised generation, storage, and controllable loads, coordinated to deliver services for power system operations and electricity markets and includes any information systems owned or operated by the Supplier, a Subcontractor and its VPP Customers that are associated with the coordination and delivery of those services.
VPP Customer	Means a person that is in a contractual relationship with the Supplier or Subcontractor that provides for the person to participate in the VPP and associated NSS Activation by the Supplier or Subcontractor directing that person to change the operation of one or more distributed energy resource assets owned, operated or controlled by that person, in order to change the load on a local distribution network.
Western Power	Western Power as described in the Parties section of this Contract.
Western Power Licensed IP	IP rights licensed by Western Power from a Third Party, and which Western Power is entitled to exercise and sublicense, which are embodied in, attached to or otherwise relate to the NSS.
Western Power Owned IP	IP rights: <ul style="list-style-type: none"> <li>(a) owned by Western Power prior to the commencement of this Contract;</li> <li>(b) in subject matter developed by Western Power (but not jointly with the Supplier) in the exercise of its rights or performance of its obligations under or as otherwise contemplated by this Contract; and</li> </ul>

- (c) which Western Power is entitled to exercise and sublicense, which are embodied in, attached to or otherwise relate to the exercise of its rights or performance of its obligations under this Contract.

Western Power's  
Personnel

Western Power's directors, officers, employees, agents and subcontractors (excluding the Supplier and the Personnel).

WP's Property

the fixtures, fittings, plant, equipment and all other items owned by Western Power that is used by Western Power in connection with the NSS, and the expression includes all such items that are considered to be WP's Property located at each Facility.

DRAFT

## SCHEDULE 2 – CONTRACT DETAILS

### Contract Details

Western Power's details

Address: 363 Wellington Street, Perth WA 6000

Attention of:

Supplier's details

Address: [Supplier address]

Email: [Supplier email]

Attention of: [Supplier contact]

Order Number

**TBA**

Start Date

1<sup>st</sup> December 2027

End Date

31<sup>st</sup> March 2030

Time for claiming payment:

Payment claims and invoices must be submitted on the 1<sup>st</sup> Business Day of each calendar month, calculated in accordance with Schedule 7.

Contracted Capacity

[INSERT] MW

NSS Locations

[TBC - NSS service areas as agreed / contracted between the parties].

#	Address	NMI	NSS Feeder

(each a "NSS Location", and together the "NSS Locations")

## SCHEDULE 3 – NSS REQUIREMENTS

- 1) NSS for each NSS Location must be made available to conform to the requirements stated below.
  - a) 'Facility NSS Active Power' (as calculated in accordance with Schedule 9) per interval is the lesser of:
    - (i) the total 'Contracted Capacity' for the NSS Locations; and
    - (ii) the aggregate of the values specified in table S3.1 for each of the NSS Locations:
  - b) Facility 'NSS Energy' (as calculated in accordance with Schedule 9) per hour is the lesser of:
    - (i) the total 'Contracted Capacity' for the NSS Locations; and
    - (ii) the aggregate of the values specified in table S3.1 for each of the NSS Locations to which the NSS Activation Request relates:

**Table S3.1: NSS Active Power and Energy requirements**

NSS Location	Active Power	Energy
[Insert]	[Insert]	[Insert]
<b>Total</b>	[Insert]	[Insert]

- c) Availability Period is any day from 1 December to 1 April (inclusive), in each Supply Year.
  - c) Deployment Time is between the hours of 5 pm and 9pm on any day.
  - d) The required Activation duration must be a minimum of 2 hours continuous Activation in 5 min intervals.
- 2) NSS Activation Requests for a NSS Location must be for a period starting and ending within the Availability Period and Deployment Times (stated below) and must also conform to and include the information required by the requirements stated below.
  - a) Maximum NSS Active Power per interval is the lesser of:
    - (i) the total 'Contracted Capacity' for the NSS Locations; and
    - (ii) the aggregate of the values specified in table S3.2 for each of the NSS Locations to which the NSS Activation Request relates.
  - b) Maximum Energy per hour is the lesser of:
    - (i) the total 'Contracted Capacity' for the NSS Locations; and

- (ii) the aggregate of the values specified in table S3.2 for each of the NSS Locations to which the NSS Activation Request relates.

**Table S3.2: NSS Active Power min/max and Energy max**

NSS Location	Minimum Active Power	Maximum Active Power	Maximum Energy
[Insert]	[Insert]	[Insert]	[Insert]
<b>Total</b>	[Insert]	[Insert]	[Insert]

- c) Availability Period is any day from 1 December to 1 April (inclusive), in each Supply Year.
- d) Deployment Time is between the hours of 5 pm and 9 pm on any day.
- e) The required Activation duration must be a minimum of 2 hours continuous activation in 5 min intervals.
- f) The Facility NSS Active Power per interval must be between the Minimum and Maximum NSS Active Power in each 5-minute interval.
- g) Must not require NSS Activation for the same Deployment Time as another NSS Activation Request.
- h) Contain the information specified in Table S3.3:

**Table S3.3: NSS Activation Request Data Requirements**

<i>Field</i>	<i>Description</i>
nssContractId	Identifies the contract that defines the terms under which the service is to be delivered
nssServiceId	Identifies the unique service to be delivered
nssInstance	Uniquely identifies the specific NSS Activation Request against the service, noting that NSS Activations under the contract will be limited to [20].
tradingDate	Identifies the date on which the service is to be delivered
activationIntervalFrom	Identifies the Trading Interval when the NSS Activation is to start (0:288)
activationIntervalTo	Identifies the Trading Interval when the NSS Activation is to end (0:288)
nssServiceType	Identifies the type of NSS (i.e. distribution transformer, level, feeder level)
nssProvisionMW	Identifies the total active power to be delivered as NSS between the period between activationIntervalFrom and activationIntervalTo

## SCHEDULE 4 – SUPPLIER DETAILS

<b>SUPPLIER DETAILS</b>	
<i>Name and address of registered office (including 'trustee' details, if applicable)</i>	
<i>Place of incorporation</i>	
<i>Principal office</i>	
<i>Postal address</i>	
<i>Email address</i>	
<b>ACN, ABN NUMBERS AND GST REGISTRATION DETAILS</b>	
<i>Australian Companies Number (ACN)</i>	
<i>Australian Business Number (ABN)</i> <i>(If no number is yet available please provide the lodgement date for an ABN)</i>	
<i>Is your Company GST Registered?</i> <i>(If NO, please provide the lodgement date for registration)</i>	
<b>SERVICE SUPPLIER ACCREDITATION DETAILS</b>	
<i>Is your Company an Accredited Service Supplier with Western Power?</i>	
<i>If YES, please also provide your Western Power Supplier Code Number</i>	
<i>Further information is available from Western Power's internet website at the following address:</i>	
<a href="http://www.westernpower.com.au/html/commercial_partners/service_supplier_accreditation/index.html" style="color: blue; text-decoration: underline;">http://www.westernpower.com.au/html/commercial_partners/service_supplier_accreditation/index.html</a>	

### BANK ACCOUNT DETAILS

<b>BANK ACCOUNT DETAILS:</b>	
<i>Account Name:</i>	
<i>Bank:</i>	<i>Country:</i>
<i>City:</i>	<i>Branch:</i>
<i>BSB No:</i>	<i>Account No:</i>

Should any of the above particulars alter, the Supplier must complete and send a new Schedule 4 to Western Power for those changes to take effect.

## SCHEDULE 5 – ACTIVATION PROTOCOL

### Activation Protocol

For each NSS Activation Request:

- 1) [Supplier to propose a communication method and system, for agreement by the Parties. WP may also require an alternative method and system. *Example: Western Power will notify the Supplier, of a NSS Activation Request, and such notification must be sent to the Supplier not less than 24 hours prior to the first activation interval of the NSS Activation Request*].
- 2) If the Supplier cannot comply with the NSS Activation Request, it must provide Western Power with a responsive notification to the NSS Activation Request that contains the following information:
  - a) reject/none – decline request; or
  - b) partially met - with committed alternative capacity offer,such responsive notification to be made no later than 12 hours prior to the start time of the NSS Activation.
- 3) If the Supplier provides a notice under paragraph 2) that it can partially meet the initial NSS Activation Request, Western Power may “partially accept” the reduced quantity specified in the Supplier’s notice.
- 4) If WP partially accepts a reduced quantity (notified under paragraph 2)):
  - a) the Supplier shall provide such reduced quantity; and
  - b) the balance of the quantity (i.e. the quantity of the Service that is not being supplied by the Supplier), shall be deemed a Non-Complying NSS Activation for the purpose of calculating the Availability Non-Performance Discount.

## SCHEDULE 6 – 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 Supplier's obligations under this Contract by the Supplier or the contractors, agents or employee of the Supplier; or</li> <li>(d) the quality, disposal or sale of products used by the Supplier in the performance of the Supplier's obligations under this Contract.</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 \$20 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 \$20 million in respect of any one Claim and in the aggregate per annum.</p>
<b>Insured</b>	The insurance must be in the name of the Supplier.

<b>Insurance of Employees</b>	
<b>Scope of cover</b>	<p>Insurance against any Claim in respect of any personal injury to or death of any person employed or engaged by the Supplier which arises out of, or is caused or contributed to by, the performance or non-performance of the Supplier's obligations under this Contract by the Supplier or any Subcontractor or agent or employee of the Supplier or Subcontractor:</p> <ul style="list-style-type: none"> <li>(a) at common law and for breach of any statutory duty or Legislative Requirements; and</li> <li>(b) for any compulsory statutory workers' compensation benefits or other liability under the <u>Workers' Compensation and Injury Management Act 1981 (WA)</u> or other applicable legislation.</li> </ul>
<b>Sum insured</b>	Provide cover to such amount as prescribed from time to time by the <u>Workers' Compensation and Injury Management Act 1981 (WA)</u> or any other applicable legislation.

<b>Insured</b>	The insurance must be in the name of the Supplier.
----------------	--

<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 Supplier's performance or non-performance of any of the Supplier's obligations under this Contract, made within 6 years of the expiry of the Term.
<b>Sum insured</b>	Provide cover to an amount of \$10 million in respect of any one Claim and in aggregate.
<b>Insured</b>	The insurance must be in the name of the Supplier.

## SCHEDULE 7 – FEE

### 1) Payment Philosophy

Subject to the provisions of this Schedule 7, the Parties intend that:

- (a) the NSS Fee will be calculated and invoiced monthly in arrears;
- (b) if a NSS Activation Request is cancelled by Western Power less than 150 minutes from the start of the NSS Activation then this will not be count as a Non-Complying NSS Activation for the amount of energy requested; and
- (c) the Availability Non-Performance Discount will be calculated with regard to each Availability Period, based on the tally of cumulative Non-Complying NSS Activation as at the end of a relevant Availability Period, but shall only be applied against the Availability Fee (as a true up) in the final invoice issued for that Availability Period.

### 2) NSS Prices

The following prices are used to calculate the fees for the delivery of NSS described in this Contract:

**Annual Availability Fee** = [INSERT] / MW

**NSS Energy Rate** = \$[INSERT]/MWh (being the fixed amount agreed between parties)

### 3) Monthly Fees payable for NSS

**NSS Fee** = *Availability Fee* - *Availability Non-Performance Discount* + *NSS Variable Charge*

Where:

**Availability Fee** = (*Annual Availability Fee* / 4 months) x *Contracted Capacity*.

**Availability Non-Performance Discount (\$):**

(a) = \$0 in all but the last month of the Term; and

(b) for the last month of the Availability Period in a Supply Year = *Availability Fee* x *Availability Non-Performance Discount* determined in accordance with Item 6 (Availability Non-Performance Discount Schedule)).

**NSS Variable Charge** = *Monthly Facility NSS Energy Delivered (MWh)* x *NSS Energy Rate (\$/MWh)*

Where:

**Monthly Facility NSS Energy Delivered (MWh)** is the sum of the Facility NSS Energy Delivered (MWh) for all NSS Activations from the previous month.

**Facility NSS Energy Delivered (MWh)** for a given NSS Activation is the sum of the "Facility NSS Energy Delivered per interval (kWh)" across all intervals covered by the Activation divided by 1,000.

**Facility NSS Energy Delivered per interval** (kWh) for a given *NSS Activation* is the lesser<sup>1</sup> of the following two values:

- (a) the NSS Activation Request made but then cancelled by Western Power less than 150 minutes before the start of the NSS Activation (being the **Planned Energy Activation**), converted to kWh (calculated as:  $NSS\ Activation\ Request.nssProvisionMW \times 1000 / (NSS\ Activation\ Request.nssIntervalTo - NSS\ Activation\ Request.nssIntervalFrom)$ ); and
- (b)  $(5 / 60) \times$  (the sum of "DER NSS Active Power per interval" (calculated in accordance with Schedule 9)) for all Activation Event NSS Locations for the relevant NSS Activation, being the **Facility NSS Active Power per interval (kW)**).

<sup>1</sup> Energy delivered in any interval which exceeds the NSS Activation is not counted in the Facility NSS Energy Delivered per interval.

#### 4) Supplier NSS Variation

Western Power cannot, within 24 hours of the start of a NSS Activation, vary a NSS Activation Request to decrease or increase the MW or MWh of NSS Activation the Supplier is required to provide in any interval. This clause does not limit Western Power's rights to cancel an NSS Activation Request at any time.

Unless agreed in writing by the Supplier (at its absolute discretion), any variation to an NSS Activation Request is deemed to cancel the relevant NSS Activation Request.

#### 5) Non-Complying NSS Activation

A NSS Activation will be deemed to be a **Non-Complying NSS Activation** if:

- (a) it does not meet the requirements of any NSS Activation Request made in accordance with clause C5.3; or
- (b) it is:
  - (i) determined or deemed to be a "Non-Complying NSS Activation" under an express provision of this Contract; or
  - (ii) declined by the Supplier under paragraph [2(a)] of the Activation Protocol; or
  - (iii) the quantity of the Service that is not being supplied by the Supplier, described in paragraph [4(a)] of the Activation Protocol; or
  - (iv) with respect to any NSS Activation Request that is:
    - (A) not declined by the Supplier under paragraph [2(a)] of the Activation Protocol; or
    - (B) partially accepted by Western Power under paragraph [3] of the Activation Protocol,

where the NSS Activation does not meet one of the following criteria (but subject to the reduction to NSS Obligations under clause C5.4 of the Contract):

- (C) the sum of Facility NSS Energy Delivered per interval (see above) over any consecutive 30 min period within the activation period must be greater than or equal to 95% of the NSS Activation Request for that 30-minute period; and

- (D) Facility NSS Energy Delivered per interval must be greater than or equal to the lower of 95% of the NSS Activation Request or the NSS Activation Request less 0.01 MW, for all but two or fewer 5-minute intervals of the activation period.

**6) Availability Non-Performance Discount Schedule**

If a NSS Activation is or is deemed to be a Non-Complying NSS Activation then it will add to the tally of cumulative Non-Complying NSS Activation, resulting in the application of the specified Availability Non-Performance Discount % in the table below in the invoice for the final month of the Availability Period for the relevant Supply Year.

<b>Cumulative Non-Complying NSS Activations</b>	<b>Availability Non-Performance Discount %</b>
1	0%
2	0%
3	5%
4	10%
5	15%
6	20%
7	25%
8	30%
9	35%
10	40%
11	45%
12	50%
13	55%
14	60%
15	65%
16	70%
17	75%
18	80%
19	85%
20	90%

## SCHEDULE 8 – CONDITIONS PRECEDENT

- 1) The Supplier notifies Western Power that it has entered into all contracts with end users and/or other third parties that the Supplier considers are sufficient to enable it to comply with its obligations under this Contract.

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## SCHEDULE 9 – VERIFICATION OF SERVICE PROVISION

### Verification of Service Provision

The provision of verification data to Western Power is required for any NSS Activation.

The Supplier will provide to Western Power time series data for all Activation Event NSS Locations, grouped by NMI for each time interval commencing 30 minutes prior to the NSS Activation scheduled start until the scheduled end of the NSS Activation:

- Time stamp (interval start)
- NMI
- DER type
- DER control signal– binary (0 “off” or 1 “on”)
- DER Active power
- The Supplier’s calculation of DER NSS Active Power for each time interval using the above data and the formulas described below.

### Data for NSS Energy Delivered

The Supplier to provide Facility NSS Energy Delivered for NSS Activations for the purposes of Western Power checking invoiced Fees.

### DER NSS Active Power

The following formulas are used to calculate the contribution of individual DER toward the NSS Activation.

For DER type = battery

**DER NSS Active Power per interval** = DER Active Power

**DER Active Power** = battery active power measured per interval<sup>1</sup>

<sup>1</sup> Discharge is a +ve value and charge is -ve. If a battery charges during the NSS Activation interval then this reduces the total NSS Activation.

For validation purposes, NSS Active Power will be measured as the mean of the last four 1-minute intervals of the 5-minute interval.

## SCHEDULE 10 – NSS LOCATIONS LIST

1. Within [2] Business Days of the end of each [calendar /Trading] week of the Term, the Supplier may provide Western Power with a list of NSS Locations that it called upon to provide NSS Activation for that [calendar /Trading] week (**NSS Location List**).
2. The NSS Locations List must contain the following information
  - a. each NSS Location that the Supplier contracted with to provide NSS under this Contract during the relevant [calendar /Trading] week;
  - b. the Contracted Capacity for each NSS Location, being the capacity at that NSS Location that the Supplier has contracted or otherwise has the ability to control, for the provision of NSS pursuant to this Contract;
  - c. the 'DER type' (as used in Schedule 9) of each NSS Location; and
3. Where the Supplier does not provide an updated NSS Locations List within [2] Business Days of the end of a [calendar /Trading] week, the NSS Locations List is deemed to be unchanged from the [calendar /Trading] week immediately prior.