

RELOCATION WORKS

TERMS AND CONDITIONS

1. Enquiry

1.1 By completing and submitting a Relocation Enquiry Form and paying the Relocation Enquiry Fee, the Applicant agrees to enter into this Contract with Western Power, commencing upon the later of Western Power's receipt of the Relocation Enquiry Form and payment by the Applicant of the Relocation Enquiry Fee (**Commencement Date**).

2. Review of Relocation Enquiry Form

2.1 Upon the later of receipt of the Relocation Enquiry Form submitted by the Applicant and payment by the Applicant of the Relocation Enquiry Fee, Western Power will review the Relocation Enquiry Form to determine, in its absolute discretion, whether or not to proceed with the proposed Relocation Work under the Contract.

2.2 Following the review of the Relocation Enquiry Form under clause 2.1, Western Power will notify the Applicant (whether verbally or otherwise) whether or not Western Power will proceed with the Relocation Work under the Contract.

2.3 If Western Power elects not to proceed with the Relocation Work under the Contract, this Contract terminates automatically and the Applicant agrees that, it has no Claim against the Western Power, and Western Power will have no liability (howsoever arising, including negligence) to the Applicant, in connection with such termination, the Relocation Work under the Contract and this Contract. Western Power will, at its sole discretion, determine whether it will refund the Relocation Enquiry Fee (or any portion thereof) having regard to the costs incurred by Western Power.

3. Performance of Relocation Work under the Contract

3.1 Subject to clauses 2.2 and 4, and otherwise subject to the Terms and Conditions, Western Power will perform the Relocation Work under the Contract in consideration of the Applicant paying the Relocation Fees to Western Power in accordance with the terms of this Contract.

4. Scope of this Contract

4.1 The Parties acknowledge and agree that the Relocation Work under the Contract comprises the following phases (to be performed in the order appearing below):

- (a) delivery of an Enquiry Assessment;
- (b) Initiation Services;
- (c) subject to clause 7.1:
 - (i) Scoping Services; and
 - (ii) Planning Services, (**Processing Services**); and

(d) the performance of the Relocation Works, (each a **Phase**).

4.2 Notwithstanding that the Relocation Work under the Contract comprises a number of Phases, as at the Commencement Date and subject to clause 2:

- (a) the Relocation Work under the Contract to be performed by Western Power consists of the delivery of the Enquiry Assessment only;
- (b) at the completion of a Phase (other than in respect of the Relocation Works), and subject to clause 7.1, Western Power will issue an Annexure in respect of the Subsequent Phase to the Applicant; and
- (c) any reference in this Contract, express or implied, to the performance by Western Power of a Subsequent Phase must be construed as being subject to receipt by Western Power of:
 - (i) the relevant executed Acceptance Form;
 - (ii) the information, documents or other deliverables or services requested of the Applicant in the relevant Annexure (including, for clarity, the provision or completion of the Applicant Deliverables where required in respect of the Annexure referable to the Relocation Works); and
 - (iii) the relevant contribution to the Anticipated Relocation Fee (if any), as may be specified in the relevant Annexure (**Conditions**).

4.3 Each Annexure is an offer by Western Power to perform the relevant Subsequent Phase of the Relocation Work under the Contract. The offer is subject to these terms and conditions and any other terms and conditions set out in the relevant Annexure.

4.4 Unless otherwise stated in the relevant Annexure, each offer will remain valid for 30 days of the date of the relevant Annexure. If the Applicant fails to satisfy the Conditions within this timeframe (other than in respect of payment, which must be paid by the Applicant in accordance with clause 15.2), Western Power's offer expires and this Contract terminates automatically (unless Western Power provides written Notice to the Applicant stating otherwise) and the Applicant agrees that it has no Claim against the Western Power, and Western Power will have no liability (howsoever arising, including negligence) to the Applicant, in connection with such termination, the Relocation Work under the Contract and this Contract. Western Power will undertake the reconciliation under clause 16 in these circumstances.

4.5 Western Power has no obligation to commence performance of a Subsequent Phase until the Applicant has satisfied all of the relevant Conditions in their entirety.

4.6 The Applicant must not amend an Annexure or Acceptance Form without Western Power's written consent. Any such amendments proposed by the Applicant will be null and void unless Western Power expressly agrees otherwise in writing.

4.7 To the extent of any inconsistency between these Terms and Conditions and any Annexure, the terms of these Terms and Conditions prevail.

5. Long Lead Items

5.1 If Long Lead Items are required to complete the Relocation Works, Western Power may advise the Applicant of this in the Enquiry Assessment. The Parties may execute a separate contract in respect of those items. Those Long Lead Items will then, subject to the terms of the contract between the Parties in respect of those Long Lead Items, be incorporated into the Relocation Works.

6. Delivery of Enquiry Assessment

6.1 Subject to clause 2, upon Western Power's receipt of the Applicant's Relocation Enquiry Form and payment of the Relocation Enquiry Fee, Western Power will use its reasonable endeavours to deliver to the Applicant the Enquiry Assessment as soon as reasonably practicable.

6.2 In preparing any Enquiry Assessment, Western Power relies upon the accuracy and currency of the information provided by the Applicant, including as stated in the Relocation Enquiry Form. The Applicant is responsible for identifying and notifying Western Power of the existence of any errors, inconsistencies, defects or omissions in the information provided by the Applicant. Any additional work arising as a result of any errors, inconsistencies, defects or omissions will be solely at the Applicant's cost and expense. The Applicant indemnifies Western Power for any Loss or Claims suffered or incurred arising out of or in connection with those errors, inconsistencies, defects or omissions.

7. Performance of Processing Services

7.1 Western Power:

- (a) is only obliged to perform those Processing Services that it determines (in its absolute discretion) are required given the complexities of the requested relocation; and
- (b) may perform the Processing Services that it determines are required under clause 7.1(a) either as a separate Phase or concurrently as one Phase.

7.2 Upon satisfaction of the relevant Conditions to Western Power's satisfaction, Western Power will as soon as practicable thereafter commence performance of the relevant Processing Services.

8. Performance of the Relocation Works

8.1 Without limiting clause 4, if the Applicant requires Western Power to perform the Relocation Works,

following receipt of the Annexure issued by Western Power in respect of Relocation Works, the Applicant must satisfy all of the Conditions stated in the relevant Annexure (including, for clarity, payment of the relevant contribution to the Anticipated Relocation Fee) in their entirety as a condition precedent to Western Power being obliged to perform the Relocation Works.

8.2 Upon satisfaction of the relevant Conditions to Western Power's satisfaction, Western Power will as soon as practicable thereafter commence performance of the Relocation Works.

9. Deliverables

9.1 To the extent it is required to do so under an Annexure, Western Power will provide the Applicant with a copy of each deliverable that Western Power is required to produce under an Annexure as soon as reasonably practicable after such deliverable is finalised by Western Power.

10. Suspension of work

10.1 The Applicant may at any time, in writing, request Western Power suspend the performance of the Relocation Work under the Contract on a temporary basis (which must not be for more than 6 months in the aggregate). If the Applicant makes such a request:

- (a) Western Power will suspend performance of the relevant Relocation Work under the Contract until the Applicant requests that Western Power re-commence the Relocation Work under the Contract in writing;
- (b) any costs incurred by Western Power associated with such suspension will be a cost payable by the Applicant as part of the Relocation Fees; and
- (c) Western Power will not be obliged to re-commence the Relocation Work under the Contract until the Applicant has paid to Western Power an amount determined to cover the costs under clause 10.1(b).

10.2 If the Applicant does not request that Western Power recommence performance of the Relocation Work under the Contract within 6 months of the request to suspend the performance of the Relocation Work under the Contract, the Applicant will be deemed to have terminated this Contract in accordance with clause 28.1(c).

11. Applicant acknowledgements

11.1 The Applicant acknowledges and agrees that:

- (a) each Annexure has been prepared by Western Power based on the Assumed Conditions;
- (b) it is responsible for reviewing each Annexure to ensure it accords with the Applicant's requirements;

- (c) Western Power may not be able to perform the Relocation Works in accordance with the Applicant's requirements; and
- (d) Western Power accepts no responsibility or liability for defects, errors or deficiencies in the Detailed Design that are not notified in writing by the Applicant to Western Power prior to the Relocation Works commencing.

12. Ownership

- 12.1 The Applicant acknowledges and agrees that the Relocation Works and all Intellectual Property in the design and installation of the Relocation Works will at all times be held by and remain the property of Western Power, and the Applicant will not acquire any proprietary or other interest in any of the Relocation Works or any deliverables created by Western Power by reason of this Contract or action or any representation under this Contract unless Western Power determines otherwise.

13. Reasonable Assistance

- 13.1 The Applicant must provide Western Power with such reasonable assistance as requested by Western Power in order for Western Power to comply with the Laws that affect or apply to Western Power in the performance of the Relocation Work under the Contract.

14. Relocation Fees

- 14.1 The Applicant acknowledges and agrees that:
- (a) the Anticipated Relocation Fee is based on a forecast of the total cost of performing the Relocation Work under the Contract. The forecast is calculated based on the best known information at the time of preparing the Anticipated Relocation Fee and is not final or binding on Western Power; and
 - (b) the Relocation Fee will be adjusted to reflect the actual total costs and expenses incurred by Western Power in performing the Relocation Work under the Contract.
- 14.2 Western Power, to the extent permitted by Law, accepts no liability and the Applicant will have no Claim or right or cause of action against Western Power, for any errors or omissions or for any discrepancy between the cost forecast and the final cost.

15. Payment

- 15.1 If:
- (a) an Annexure requires payment of the Anticipated Relocation Fee (or a part thereof) or any other amount from the Applicant; and
 - (b) the Applicant requires Western Power to commence performance of a Subsequent Phase,
- on receipt of the relevant Acceptance Form from the Applicant in respect of the relevant Subsequent Phase (or at an earlier time, if so requested by the Applicant),

Western Power will issue to the Applicant an tax invoice for the relevant amount.

- 15.2 The Applicant must pay the amount stated in the relevant tax invoice:
- (a) within 30 days after the date of the tax invoice (or such other period as stated in that invoice); and
 - (b) by direct electronic transfer into a bank account nominated by Western Power.

- 15.3 In respect of the Anticipated Relocation Fee attributable to the Relocation Works, the Applicant must pay all of the required portion of the Anticipated Relocation Fee in accordance with clause 15.2 unless it makes alternative arrangement for the payment of the Anticipated Relocation Fee on the terms acceptable to Western Power.

- 15.4 If any amount payable by the Applicant to Western Power under this Contract is not paid by the due date, such amount will accrue interest calculated daily at 3 percentage points above the prevailing Reserve Bank of Australia cash rate between the due date for payment and the date on which payment is actually made. Accrued interest is payable on demand.

16. Reconciliation of the Relocation Fee

- 16.1 Within six months of the earlier of:
- (a) the issue of the Completion Notification to the Applicant; or
 - (b) termination of this Contract in accordance with clause 21.4 or 28.1,
 - (e) Western Power will reconcile the Relocation Fee with the paid portion of the Anticipated Relocation Fee and may either:
 - (c) issue a tax invoice to the Applicant for the amount the Relocation Fee exceeds the paid portion of the Anticipated Relocation Fee; or
 - (d) subject to clause 16.3, refund the Applicant the amount that the Anticipated Relocation Fee exceeds the Relocation Fee.

- 16.2 If clause 16.1(c) or 16.4(a) applies, the Applicant must pay the tax invoice:
- (a) within the timeframe stated on the tax invoice; and
 - (b) in the manner specified in the tax invoice.

- 16.3 Western Power is not required to pay any refund to the Applicant until such time that the Applicant satisfies all of its outstanding obligations under this Contract to Western Power's satisfaction.

- 16.4 Western Power may at its absolute discretion following the completion of the Processing Services, reconcile the Relocation Fee attributable to the Processing Services with the paid portion of the Anticipated Relocation Fee may either:

- (a) issue a tax invoice to the Applicant for the amount the Relocation Fee attributable to Processing Services exceeds the paid portion of the Anticipated Relocation Fee; or
- (b) subject to clause 16.3, refund the Applicant the amount that the paid portion of the Anticipated Relocation Fee exceeds the Relocation Fee attributable to Processing Services.

17. Time for performance of Relocation Work under the Contract

- 17.1 Western Power does not guarantee or make any representation in relation to the timeframe for the commencement or completion of the Relocation Work under the Contract, notwithstanding the provision of indicative timetables in any Annexure.

18. Standard of Relocation Work under the Contract

- 18.1 Western Power will use its reasonable endeavours to execute the Relocation Work under the Contract:
- (a) in accordance with Good Electricity Industry Practice; and
 - (b) in compliance with all applicable Laws.

19. Work site

- 19.1 The Applicant and the Applicant's Personnel must:
- (a) not cause any damage or interference with the performance of the Relocation Works, the Relocation Work under the Contract, the Work Site or Western Power's Personnel or equipment; and
 - (b) observe all reasonable requirements, directions or instructions of Western Power and its Personnel when at the Work Site.

20. Completion Notification

- 20.1 As soon as practicable after Western Power determines, acting reasonably, that the Relocation Works have been Completed, Western Power will issue a Completion Notification to the Applicant.

21. Force Majeure

- 21.1 A Party affected by Force Majeure is not responsible for any involuntary inability to perform its obligations under this Contract which is caused by Force Majeure.
- 21.2 If a Party is affected by Force Majeure, it must as soon as reasonably practicable notify the other Party and keep the other Party informed as to the details of any event or circumstances giving rise to Force Majeure and the effect that the Force Majeure will have on that Party performing its obligations under this Contract.
- 21.3 The Party affected by Force Majeure must as quickly as possible use all reasonable measures to overcome the

effect of the Force Majeure provided that neither Party is required by reason of this clause to settle or resolve any strike, lockout or labour dispute on terms that it considers to be unreasonable.

- 21.4 If an event of Force Majeure results in the affected Party being unable to perform its material obligations under this Contract for a continuous period of 6 or more months, either Party may at any time, in its discretion, terminate this Contract by giving the other Party one month's prior written Notice to that effect.

22. Limit of liability

- 22.1 To the extent permitted by law and subject to clauses 22.2 and 22.3, Western Power will have no liability for any Loss suffered or incurred by the Applicant arising from or in connection with the performance of the Relocation Work under the Contract, howsoever arising (including Western Power's negligence),[except in relation to defects in the Relocation Works which will be limited to the re-performance of the Relocation Works.
- 22.2 Subject to clause 22.3 a Party has no liability to the other, nor is a Party entitled to make any Claim, in respect of any Indirect or Consequential Loss incurred or sustained by the other Party as a result of any act or omission of that Party (whether negligent or otherwise) or as a result of a breach of this Contract by that Party.
- 22.3 The limitations of liability in clause 22.2 do not apply in respect of any fraud, deliberate default or wilful misconduct or any act or omission done or not done by a Party with a reckless disregard for the consequences by the other Party (or any other person for whom the Applicant or Western Power is responsible).

22.4

23. Indemnity

- 23.1 The Applicant indemnifies Western Power against any Loss or Claims (or both) suffered or incurred by Western Power arising out of or in connection with the performance or non-performance of the Relocation Work under the Contract.
- 23.2 The indemnity in clause 23.1 does not apply to the extent such Loss or Claim (or both) is directly caused by the negligence of Western Power or its Personnel.
- 23.3 Western Power need not incur any cost or make any payment before enforcing any right of indemnity under clause 23.1.

24. Insurance

- 24.1 The Applicant must (at its own cost) effect the following insurance policies:
- (a) public and product liability insurance in the sum of at least \$20 million;
 - (b) employee insurance in the sum of at least \$50 million; and

(c) motor vehicles and equipment insurance in the sum of at least \$5 million,

that contain terms and conditions approved by Western Power acting reasonably.

24.2 The policies referred to in clause 24.1 must be obtained from one or more insurers with a current Standard & Poors rating of not less than A- or a similar rating from another agency acceptable to Western Power.

24.3 Unless otherwise stated in this Contract, the policies of insurance referred to in clause 24.1 must be maintained from the date the Relocation Works commence until Western Power issues a Completion Notification under clause 20.

24.4 The Applicant must pay all premiums and all deductibles on the policies of insurance when due.

24.5 The Applicant must cause its insurers to waive all rights of subrogation against Western Power in respect of a Claim arising under an insurance policy where Western Power is a named insured entitled to cover under the policy or Western Power is a noted interested party on the policy.

24.6 A party must not do or omit to do any act that would be grounds for an insurer to refuse to pay a Claim made under any of the policies of insurance.

24.7 A certificate of currency for each of the policies must be provided by the Applicant to Western Power at least 5 Business Days before the commencement of the Relocation Works and within 5 Business Days of a written request by Western Power.

25. Work data and confidential information

25.1 All Work Data will at all times be held by and remain the property of Western Power, and the Applicant will not acquire any proprietary or other interest in any of the Work Data by reason of this Contract or action or any representation under this Contract.

25.2 Subject to clauses 25.3 to 25.6 (inclusive), the Applicant will have the right to use the Work Data for the purposes of progressing the Relocation Work under the Contract.

25.3 The Parties must keep confidential, and not use or disclose, any Confidential Information, except as permitted by this Contract and immediately notify the other Party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any Confidential Information.

25.4 A Party may to the extent necessary disclose Confidential Information to its Personnel who have a specific need to access that Confidential Information, but then only to the extent that they need, for the purposes of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Contract.

25.5 The obligations in clause 25.3 do not apply to any disclosure of information:

(a) to a Party's legal advisers who are under a duty of confidence;

(b) made with the other Party's prior written consent, which can be withheld in its discretion or given subject to conditions;

(c) required to be disclosed to any government agency in connection with the granting of any Government Approval required under this Contract or the fulfilment by Western Power of any of its functions;

(d) any disclosure required by any legal requirement (including any order of a court of competent jurisdiction) or the rules of any stock exchange or statutory duty or a government minister; and

(e) which is, at the relevant time, in the public domain other than as a result of a breach by a Party of its obligations under this Contract.

25.6 The Applicant must, and must procure that its Personnel, either:

(a) return to Western Power; or

(b) destroy or delete,

as Western Power directs, all original documents and copies (including in electronic form) in the Applicant's possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to the Confidential Information, at the earliest of the following:

(c) as soon as such documents and other materials, or any of them, are no longer required by the Applicant or its Personnel, as applicable;

(d) immediately on demand by Western Power; or

(e) the expiry or termination of this Contract.

26. Freedom of information

26.1 The Applicant acknowledges that Western Power is legally bound by the *Freedom of Information Act 1992 (WA)* and that this Contract or Work Data 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.

26.2 Western Power has no liability to the Applicant whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992 (WA)*.

27. Default

27.1 If, during the term of this Contract, a Party breaches this Contract, the other Party may issue a default Notice specifying the breach details and requiring the defaulting Party to remedy the default.

27.2 If a default occurs and the defaulting Party fails to remedy it within 10 Business Days after receipt of a default Notice

then a critical default has occurred and the non-defaulting Party may exercise its rights in accordance with clause 28.

28. Termination

28.1 This Contract may be terminated by Notice with immediate effect by:

- (a) either Party if the other Party suffers an Insolvency Event;
- (b) either Party if the other Party commits a critical default under clause 27.2; or
- (c) the Applicant, at any time, for its sole convenience.

28.2 Termination of this Contract is without prejudice to:

- (a) the rights and obligations of the Parties under this Contract arising prior to termination; and
- (b) except as otherwise provided in this Contract, any rights or remedies which may be available to a non-defaulting Party under this Contract or at law or in equity.

29. Dispute resolution

29.1 In the event of a dispute in relation to the subject matter covered by this Contract, either Western Power or the Applicant must deliver a Notice of dispute to the other Party.

29.2 The Party delivering the Notice of dispute must provide enough information about the dispute for the other Party to reasonably understand the dispute, the basis on which it is claimed and the relief that is claimed.

29.3 Unless otherwise agreed in writing, all communications at or in relation to these meetings are without prejudice and confidential, and an agreement reached must be in writing and signed by both Western Power and the Applicant.

29.4 Neither Party may issue proceedings to have a dispute determined unless the dispute is not resolved within 35 calendar days after the relevant Notice of dispute was originally delivered (or such further period as the Parties mutually agree).

29.5 Nothing in this Contract affects the Applicant's rights under an electricity ombudsman scheme made under the Electricity Industry (Ombudsman Scheme) Regulations 2005 (WA) or the Electricity Industry Act 2004 (WA).

30. GST

30.1 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.

30.2 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.

30.3 If a Party (**supplier**) makes a taxable supply under or in connection with this Contract:

- (a) 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;
- (b) 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
- (c) 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.

30.4 Where any amount is payable to a Party as a reimbursement, offset, 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.

31. Miscellaneous provisions

31.1 (**Entire Agreement**) This Contract states all the express terms of the agreement between the Parties in respect of its subject matter and supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

31.2 (**Subcontracting and assignment**)

- (a) Western Power may subcontract all or any part of the Relocation Work under the Contract to any person without the Applicant's consent.
- (b) The Applicant must not assign, transfer or novate any rights or obligations under this Contract without Western Power's prior written consent.
- (c) If Western Power is restructured by Law or through other means, including the use of subsidiary or associated companies or the 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.

31.3 (**Variation**) A variation of any term of this Contract must be in writing and signed by the Parties.

31.4 (**Waiver**) The failure of either Party to enforce any provision of this Contract will not affect that Party's rights to require complete performance by the other Party, nor will the waiver of any breach of any provision be taken or

- held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself. Any waiver to be effective must be in writing and signed by or on behalf of the Party granting the waiver.
- 31.5 **(Severance)** If any part of this Contract is or becomes void, voidable or otherwise invalid or unenforceable, whether due to the provisions of any statute or otherwise, that part:
- (a) will be read down, if possible, so as to be valid and enforceable; or
 - (b) will be severed from this Contract to the extent that all parts of this Contract that are not or do not become void, voidable or otherwise invalid or unenforceable will remain in full force and effect and be unaffected by such severance.
- 31.6 **(Supplementary rights)** Any right that a Party may have under this Contract is in addition to (and does not replace or limit) any other right that the Party may have.
- 31.7 **(Giving effect to this Contract)** At the Applicant's cost, the Applicant must do anything (including execute any document) and must ensure that its Personnel do anything (including execute any document), that Western Power may reasonably require to give full effect to this Contract.
- 31.8 **(Notices)** A Notice:
- (a) must be legible, in writing and delivered by hand or sent by pre-paid post or email to:
 - (i) Western Power at:
 - (A) post: Locked Bag L921, Perth, Western Australia 6001;
 - (B) email: relocations@westernpower.com.au,
 - (ii) the Applicant at the address or email address last specified by the Applicant in the Relocation Enquiry Form, Acceptance Form or by way of Notice;
 - (b) sent by post is regarded as being received on the second Business Day following the date of postage;
 - (c) sent by email is regarded as being 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; and
 - (d) delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as being 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.
- 31.9 **(Multiple parties)** If the Applicant is made up of more than one person, the following rules will apply:
- (a) an obligation imposed on the Applicant is imposed jointly and severally on those persons who comprise the Applicant;
 - (b) a right of those persons who comprise the Applicant is held by each of them severally;
 - (c) any other reference to the Applicant, is a reference to each of those persons who comprise the Applicant separately, so that (for example) a representation, warranty or undertaking is given by each of them separately; and
 - (d) this Contract is enforceable against and binds each and every person who executes it, notwithstanding that any other person referred to in this Contract has not executed it, or any other person has failed to perform any obligation or undertaking in it.
- 31.10 **(Survival of terms)** clauses 21, 22, 23, 24, 26, 29, 31, 32 and 33 survive the termination of this Contract and continue in full force and effect.
- 31.11 **(No reliance)** The Applicant has not relied on any statement by Western Power not expressly included in this Contract.
- 31.12 **(Consent of Party)** Whenever the Applicant requires the consent or approval of Western Power to do anything under or in respect of this Contract, Western Power may withhold its consent or approval or give it conditionally or unconditionally in its sole and absolute discretion unless expressly stated otherwise in this Contract.
- 31.13 **(Relationship of Parties)** The relationship of the Parties is that of independent parties and nothing in this Contract will be construed so as to constitute one Party a partner, joint venturer, agent, employee or representative of the other, or to create any partnership or trust for any purpose whatsoever.
- 31.14 **(Sale of goods)** The United Nations Convention on Contracts for the International Sales of Goods (1980) does not apply to this Contract.
- 31.15 **(Electricity regime)** Nothing in this Contract in any way affects, limits, alters the:
- (a) rights of the Applicant to access the Network;
 - (b) Applicant's right to transfer electricity to or from Western Power's Network; or
 - (c) operation or effect of *the Electricity Corporations Act 2005 (WA)*, *Energy Operators (Powers) Act 1979 (WA)*, *Electricity Industry Act 2004 (WA)*, or any Regulations, By-laws or Orders or subsidiary legislation made under these Acts.
- 31.16 **(Governing law and jurisdiction)** This Contract is governed by the law in force in Western Australia. Each Party irrevocably submits to the 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.

32. Interpretation

32.1 In this Contract, unless the contrary intention is expressed:

- (a) a reference to a statute, rule, ordinance or other law, includes regulations, codes and other instruments under it and consolidations, amendments, re-enactments or replacements (whether in substantially the same or a different form) of any of them;
- (b) the singular includes the plural and the plural includes the singular;
- (c) the word "person" includes a firm, a body corporate, company, corporation, partnership, joint venture, association, authority, and any government agency as well as an individual;
- (d) the words "include" and "including" mean "include, without limitation" and "including, without limitation" respectively;
- (e) a reference to a person includes a reference to the person's administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) the word "costs" includes costs, losses, expenses, taxes, and duties of all descriptions, and further includes a reduction in net anticipated returns, and additional costs has a like meaning;
- (g) the word "tax" and "taxes" includes any present or future tax, levy, duty, charge, impost or withholding of any type or description;
- (h) headings are inserted for convenience and do not affect the interpretation of this Contract;
- (i) words of any gender include all genders;
- (j) other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning;
- (k) 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;
- (l) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (m) a promise on the part of two or more persons binds them jointly and severally;
- (n) 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;
- (o) 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; and

- (p) 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.

33. Definitions

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

<u>Column 1</u>	<u>Column 2</u>
Acceptance Form	the 'Acceptance' form as attached to each Annexure issued by Western Power to the Applicant.
Annexure	the written offer by Western Power to the Applicant to perform the relevant Relocation Work under the Contract (as stated in the relevant Annexure), subject to the terms of this Contract, and includes the Enquiry Assessment.
Anticipated Relocation Fee	Western Power's estimated fee of completing the Relocation Work under the Contract, as set out in the Enquiry Assessment, as may be updated by Western Power from time to time.
Applicant	the applicant as described as such in the Relocation Enquiry Form.
Applicant Deliverables	the requirements set out in the Annexure referable to the Relocation Works that must be fulfilled by the Applicant as a condition precedent to Western Power performing the Relocation Works, including: <ul style="list-style-type: none"> (a) Community engagement; (b) vegetation clearing; (c) upgrading Applicant infrastructure; (d) Work Site preparation; (e) Land Access Right requirements; (f) Government Approval requirements; and (g) surveying boundaries.

Assumed Conditions

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| <ul style="list-style-type: none"> (a) there are no latent conditions on or about the Work Site including the sub-soil and other geographical, geological and environmental conditions likely to affect Western Power's performance of the Relocation Works; (b) Western Power can reasonably meet the terms on which any required Government Approvals and Land Access Rights are granted with regards to the Relocation Work under the Contract; (c) the relevant property boundaries are accurately pegged; (d) there are no native title claims and no Aboriginal heritage issues over or at the Work Site; (e) the Applicant complies with all of the requirements under this Contract; (f) there are no environmental issues at the Work Site; (g) the Applicant delivers all of the Applicant Deliverables in accordance with this Contract; (h) Western Power can use established Western Power standards, processes, systems, working patterns, tender terms and conditions, contract terms and conditions and Western Power preferred contractors; (i) all information provided by the Applicant to Western Power to be used by Western Power with respect to the Relocation Works is accurate; (j) during the performance of the Relocation Work under the Contract, the Applicant provides to Western Power any information it reasonably requests from the Applicant within a reasonable timeframe; (k) the Applicant provides to Western Power access to the Work Site and any related approvals as reasonably required by Western Power for its performance of the Relocation Works, as and when Western Power requires such access; | <ul style="list-style-type: none"> (l) Western Power is not required to provide the Applicant with additional information, including explanations, justifications, proving established Western Power methods, and presentation of alternative options with respect to the Relocation Work under the Contract; (m) the Relocation Work under the Contract can be performed in a continuous manner; (n) standard Western Power foundations are suitable for the performance of the Relocation Works; (o) the system operator allows outages on the Network when required by Western Power with respect to the Relocation Works, acting reasonably; and (p) any other assumption stated by Western Power in the Annexures. |
| | Claim a demand, action or proceeding of any nature whether actual or threatened. |
| | Commencement Date has the meaning set out in clause 1. |
| | Completion when the performance of the Relocation Works is complete in accordance with this Contract as determined by Western Power in its absolute discretion. |
| | Completion Notification a certificate issued by Western Power stating that Completion of the Relocation Works has occurred. |
| | Conditions has the meaning set out in clause 4.2(c). |
| | Confidential Information the terms of this Contract and all information which is received by one Party from the other Party under this Contract (and includes Work Data). |
| | Contract the: <ul style="list-style-type: none"> (a) Relocation Enquiry Form; (b) Terms and Conditions; (c) each Annexure; and (d) each Acceptance Form. |
| | Detailed Design a comprehensive design, plan and scope for the construction and implementation of the Relocation Works. |
| | Enquiry Assessment the document that records: <ul style="list-style-type: none"> (a) an estimated cost payable by the Applicant for Western Power to |

	perform the Relocation Works; and			
	(b) the additional information Western Power requires from the Applicant to proceed with a Detailed Design, if any.			
Force Majeure	an event beyond a person's control which a person acting in accordance with Good Electricity Industry Practice but constrained by and having regard to prudent business principles regarding expenditure would not be able to prevent or overcome, but does not include any inability (for any reason whatsoever) to pay or make payment.			or a partnership including an individual person and that person: <ul style="list-style-type: none"> (i) commits an act of bankruptcy or presents or has a bankruptcy petition presented against him or her or is made bankrupt; (ii) makes a proposal for an arrangement or a composition with his or her creditors or enters a debt agreement under Part IX or a personal insolvency agreement under Part X of the <u>Bankruptcy Act 1966 (Cth)</u> or like provision under the law governing this Contract; or
Good Electricity Industry Practice	has the same meaning as "good electricity industry practice" as defined in section 1.3 of the <u>Electricity Networks Access Code 2004</u> (WA).			(d) if a Party is a corporation and: <ul style="list-style-type: none"> (i) it fails to comply with, or have set aside, a statutory demand within 20 Business Days of the time for compliance; (ii) a meeting of creditors is called with a view to the corporation entering a compromise or arrangement with its creditors or it enters a deed of company arrangement with its creditors; (iii) a controller or administrator is appointed to it; or (iv) an application is made to a court for its winding up and not stayed or discontinued within ten Business Days or a winding up order is made in respect of it or a resolution is made that it be wound up.
Government Approvals	approvals, certificates, permits, licences, consents, authorisations and agreements from or with a government agency necessary to perform the Relocation Work under the Contract.			
GST	the goods and services tax levied under the GST Act.			
GST Act	A New Tax System (Goods And Services Tax) Act 1999 (Cth).			
Indirect or Consequential Loss	means: <ul style="list-style-type: none"> (a) loss of revenue, loss of profit, loss of business opportunity and payment of liquidated sums, penalties or damages under any agreement (other than this Contract); but (b) does not include damage or losses arising from Claims by third parties or Western Power's Personnel in respect of property damage, personal injury or nervous shock. 			
Initiation Services	identification at a high level by Western Power of the work required for the relocation of the relevant part of the Network, as further described in the Annexure relevant to Initiation Services.	Intellectual Property		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.
Insolvency Event	the happening of any of the following: <ul style="list-style-type: none"> (a) a Party informs the other Party in writing or its creditors generally that it is insolvent or is financially unable to proceed with this Contract; (b) execution is levied against a Party by a creditor and is not stayed or discharged within 20 Business Days; (c) if a Party is an individual person 	Land Rights	Access	easements or other legal rights acceptable to Western Power over or in respect of land.
		Laws		any act, ordinance, regulation, subordinate legislation, by-law, award or proclamation of the State of Western Australia or the Commonwealth of Australia.

Long Items	Lead	the placing of orders for long-lead items that are anticipated to be required for the Relocation Works.		cost recovery charge applicable at that time).
Loss	(a)	any liability, cost, expense, loss, personal injury (including illness), death or damage; and	Relocation Work under the Contract	all of the work under the Contract to be performed by Western Power under this Contract, comprising each Phase.
	(b)	in relation to a Claim, includes amounts payable on the Claim and (whether or not the Claim is successful) legal costs and disbursements on an indemnity basis.	Relocation Works	the relocation of the Network requested by the Applicant under the Relocation Enquiry Form which is performed by Western Power in accordance with the Detailed Design, the Scope of Work and the terms of this Contract.
Network		has the meaning given to 'Western Power Network' in the <u>Electricity Networks Access Code 2004 (WA)</u> .	Scope of Work	the scope for performance of the Relocation Works, [as set out in the Annexure relevant to the performance of the Relocation Works.]
Notice		a notice or other communication under this Contract.	Scoping Services	the identification of options to relocate the Network in contemplation of the request set out in the Relocation Enquiry Form and the estimation of the cost for each identified option.
Party		a party to this Contract.		
Parties		all of the parties to this Contract.		
Personnel		officers, employees, agents, consultants, invitees, visitors and contractors of a Party (excluding the other Party).	Subsequent Phase	the Phase that occurs immediately after the then current Phase.
Phase		has the meaning set out in clause 4.1.	Terms and Conditions	these terms and conditions.
Planning Services		preparing the design information to be used in the development of a detailed cost estimate for the final option selected by the Applicant to modify the Network, preparing the Detailed Design and scope of work for the performance of the Relocation Work under the Contract, as may be set out in the Annexure in respect of Planning Services.	Western Power	Electricity Networks Corporation (trading as Western Power) ABN 18 540 492 861, a statutory body corporate established by section 4(1)(b) of the <u>Electricity Corporations Act 2005 (WA)</u> .
Processing Services		has the meaning set out in clause 4.10.	Work Data	the information, studies, reports and data exchanged between the Parties for, and derived from, the performance of the Relocation Works, in whatever form.
Relocation Enquiry Fee		the 'Relocation Enquiry Fee' published by Western Power at the time that the Applicant submits the Relocation Enquiry Form.	Work Site	the location(s) at which Western Power may or will require access for the purposes of performing the Relocation Works, which may include third party land, the Applicant's premises, the Network and Western Power's premises.
Relocation Enquiry Form		the online 'Relocation Enquiry Form' form as published on Western Power's website from time to time.		
Relocation Fee		at any given time, Western Power's actual cost of performing the Relocation Work under the Contract (including, if applicable, the cost of materials and equipment ordered by Western Power for the performance of the Relocation Works, the costs incurred by Western Power to remove any works associated with the Relocation Works and the cost incurred in returning the Works Site to its original condition and Western Power's indirect		