

Microgrid Electricity Transfer Access Contract

Eglinton Village Energy Pty Ltd

[Name of Retailer]

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Parties

Microgrid Operator Eglinton Village Energy Pty Ltd
ACN 665 916 085
Address: 52 Belmont Avenue, Rivervale, Western Australia 6103
Attention: Rob Breden
Email: robbreden@zenithenergy.com.au

Retailer ##[Name]
ACN ##
Address: ##
Attention: ##
Email: ##

Guarantor ##[Name]
ACN ##
Address: ##
Attention: ##
Email: ##

Background

- A The Microgrid Operator operates the Network, which is a part of the Microgrid and supplies Electricity to Customers on the Network.
- B The Retailer wishes to sell Electricity to one or more Customers at one or more Connection Points.
- C The Retailer wishes to obtain and the Microgrid Operator wishes to make available the Services in respect of each relevant Connection Point, on and subject to the terms of this Contract.
- D The Guarantor has agreed to indemnify the Microgrid Operator in respect of the Retailer's liabilities under this Contract.

Operative Provisions

1 Definitions and interpretation

Definitions

1.1 In this Contract the following definitions apply:

Access Contract means a contract for the provision of Services, which may include a Microgrid Electricity Transfer Access Contract.

Accounting Period means one calendar month, or where the context requires, part thereof.

Act	means the <i>Electricity Industry Act 2004 (WA)</i> .
Affected Obligation	has the meaning given to it in clause 22.1.
Affected Person	has the meaning given to it in clause 22.1.
Affected Service	has the meaning given to it in clause 7.5.
Affected Service Period	has the meaning given to it in clause 7.5.
Application	means an application made under the Customer Connection and Contribution Guidelines.
Assign	includes assign and Novate.
Attachment Point	has the meaning given to 'attachment point' in the Customer Connection and Contribution Guidelines.
Augmentation	means the capital upgrade of the Microgrid or the Western Power network (as the context requires) required to meet electrical growth requirements in respect of a Connection Point as determined by the Microgrid Operator, acting reasonably.
Australian Energy Market Operator or AEMO	is the Australian Energy Market Operator, exercising functions under the Act.
Bilateral Contract	has the meaning given to that term in the Market Rules.
Build Pack	means the 'Build Pack' developed under the Electricity Industry Customer Transfer Code 2004 Communication Rules (made under Part 5 of the Customer Transfer Code) and/or the Electricity Industry Metering Code 2004 Communication Rules (made under Part 6 of the Metering Code), as applicable in the circumstances.
Business Day	means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.
CEO Meeting	has the meaning given to it in clause 30.2.
Charge	for a Service in respect of an Accounting Period, means the amount that is payable by the Retailer to the Microgrid Operator for the Electricity in respect of that Accounting Period, calculated by applying the Tariff for the Electricity consumed during that Accounting Period.
Claim	means any claim, demand, action or proceeding made or instituted against a Party.
CMD	means Contract Maximum Demand.

Code	means the <i>Electricity Networks Access Code 2004</i> .
Commencement Date	means the date of execution of this Contract by the last signing Party, or the first date on which all of the Conditions Precedent are satisfied or waived, whichever is later.
Communication	means a notice, approval, consent or other communication given or made under this Contract.
Conditions Precedent	means the conditions precedent specified in Part 3 of Schedule 1.
Confidential Information	means information which is confidential under clause 33.1.
Connect	means to form a physical link to or throughout a Network.
Connection Assets	for a Connection Point, means all of the Network Assets that are used only in order to provide Services at the Connection Point.
Connection Contract	<p>means, at the option of the Microgrid Operator:</p> <ul style="list-style-type: none"> (a) a contract containing provisions materially equivalent to those in this Contract; or (b) some other agreement in writing to be bound by provisions materially equivalent to such terms and conditions of this Contract satisfactory to the Microgrid Operator, <p>but omitting clauses 3 to 10 of this Contract.</p>
Connection Point	means a point on the Network where Electricity is transferred out of the Network which is identified, or to be identified in the Contract Database.
Connection Point Database	<p>means:</p> <ul style="list-style-type: none"> (a) the description of Connection Points at Schedule 2; or (b) another database or databases containing information relating to this Contract and maintained by the Microgrid Operator as agreed between the Parties, which for the avoidance of doubt can include the Metering Database if the Retailer is not a Metering Code Participant and this is agreed by the Retailer and the Microgrid Operator, <p>as applicable.</p>
Connection Service	means the right to Connect Facilities and Equipment at a Connection Point offered by the Microgrid Operator as part of its Services List and selected by the Retailer.
Consume	means to consume Electricity and Consuming has a corresponding meaning.

Consumption	for a Connection Point, means the amount of Electricity Consumed at the Connection Point, and is measured in Watt-hours.
Contract	means this agreement between the Microgrid Operator and the Retailer.
Contract Database	means the Connection Point Database or, if the Metering Database is not included within the Connection Point Database and clause 3.26 applies, then it means the Metering Database.
Contracted Capacity	<p>for a Connection Point, means the maximum rate at which the Retailer is permitted to transfer Electricity from the Microgrid to a Customer at the Connection Point under this Contract, being either:</p> <ul style="list-style-type: none"> (a) the rate specified in the Connection Point Database from time to time; or (b) if no rate is specified in the Connection Point Database, the maximum rate of Electricity permitted to be transferred under the Eligibility Criteria for the Service for that Connection Point; or (c) if no rate is specified in the Connection Point Database or in the Eligibility Criteria for the Service for that Connection Point, the maximum rate of Electricity permitted to be transferred through the Connection Assets under the Microgrid Technical Rules, <p>and is measured in Watts or Volt-Amps.</p>
Contribution	means any contribution made under the Customer Connection and Contribution Guidelines.
Controller	means, in respect of a Connection Point, a person, including a Customer, who owns, operates, controls or otherwise is responsible for the operation of the Facilities and Equipment at the Connection Point, and includes the Controller's Workers and Visitors.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Coverage Event	has the meaning given to it in clause 28.1.
Coverage Event Notice	has the meaning given to it in clause 28.2.
CPI or Consumer Price Index	means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as the Microgrid Operator acting reasonably and in good faith may determine, and

in all cases the CPI figure is to be adjusted to correct for any effects of a change in the rate of GST.

CPI-Adjusted	has the meaning given to it in clause 1.4.
Curtail	means curtailing or interrupting the whole or part of a Service.
Curtailment	includes a whole or partial curtailment or whole or partial interruption of a Service.
Customer	has the meaning given to 'customer' in section 3 of the Act.
Customer Connection and Contribution Guidelines	means the document of that name published on the Microgrid Operator's website, from time to time.
Customer Transfer Code	means the Electricity Industry Customer Transfer Code 2016, made under section 39(2a) of the Act in respect of the matter referred to in section 39(2)(b) of the Act, and includes all rules, policies or other subordinate documents developed under the Customer Transfer Code.
De-energise	in respect of a Connection Point, means to operate, modify or remove switching or other equipment to prevent the transfer of Electricity through the Connection Point.
Default	in relation to a Party, has the meaning given to it in clause 27.
Direct Damage	suffered by a person means loss or damage suffered by the person which is not Indirect Damage.
Disconnect	in respect of a Connection Point, means to physically detach Network Assets from assets owned by another person at the Connection Point and Disconnection has a corresponding meaning.
Dispute	means any dispute or difference concerning: (a) construction of; or (b) anything contained in or arising out of; or (c) rights, obligations, duties or liabilities of a Party under, this Contract.
Due Date	means, for a Tax Invoice issued under clauses 9.1 to 9.8, the date 10 Business Days after the Party to whom it is addressed receives the Tax Invoice.
Easement Area	means any parcel of land in respect of which a part of the Microgrid is located.
Electricity	means electrical energy made available to the Retailer by the Microgrid Operator.

Electricity Metering Service	means the metering service or services provided by the Microgrid Operator in respect of a Connection Point pursuant to its obligations under the Metering Code and described in the Microgrid Operator's Services List, or as otherwise agreed between the Microgrid Operator and the Retailer.
Electricity Supply Service	means the right to receive a transfer of Electricity at a Connection Point for on-sale to a Customer as described in the Microgrid Operator's Services List.
Electronically	in relation to a Communication, means a communication of information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP or other widely accepted protocol for packet transfer.
Eligibility Criteria	means, for a Service, the 'Eligibility Criteria' associated with a Service described in the Services List.
Emergency	means any accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
End Date	for a Connection Point, means the date specified as such in the Connection Point Database for the Connection Point.
Extension Period	has the meaning given to it in clause 2.3.
Facilities and Equipment	in relation to a Connection Point, means the apparatus, equipment, plant and buildings used for or in connection with generating, Consuming and transporting Electricity at the Connection Point.
First Party	has the meaning given to it in clause 31.1.
FM Period	means the period of suspension of the Affected Obligation pursuant to clause 22.1.
Force Majeure	<p>in respect of a Party, means an event or circumstance beyond the Party's control, and which the Party, acting as a Reasonable and Prudent Person, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):</p> <ul style="list-style-type: none"> (a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or (b) any insurrection, revolution or civil disorder, terrorism, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or

- (c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the Commencement Date; or
- (d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade or any other authority other than a Party (including restraint, expropriation, prohibition, intervention, direction or embargo); or
- (e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority; or
- (f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or
- (g) any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice; or
- (h) any act or omission of any person (other than a Party) with Facilities and Equipment connected to the Network which prevents the Party's ability to perform its obligations under this Contract; or
- (i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or
- (j) accidents, weather and acts of third parties (such as third party operators of Generating Plant or Customers) that affect the quality, frequency and continuity of the supply of Electricity; or
- (k) any Curtailment, limitation or restriction in the supply of Electricity under the Microgrid Operator's contract for the supply of electricity to, or from, the Microgrid from the Western Power network; or
- (l) any Third Party Force Majeure Event under a contract for the supply of Electricity with the owner or operator of Generating Plant.

Force Majeure Event

means an event of Force Majeure.

Generating Plant

means all equipment involved in generating Electricity.

Good Electricity Industry Practice

means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable Laws and applicable recognised codes, standards and guidelines.

GST	means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act or otherwise.
GST Act	means the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth.
Guarantor	means the Guarantor specified in the Parties section of this Contract (if any).
Guest Party	has the meaning given to it in clause 16.1.
Host Party	has the meaning given to it in clause 16.1.
Indemnified Party	has the meaning given to it in clause 20.14.
Indemnifying Party	has the meaning given to it in clause 20.14.
Indirect Damage	<p>suffered by a person means any one or more of:</p> <ul style="list-style-type: none"> (a) any consequential loss, consequential damage or special damages however caused or suffered by the person, including: <ul style="list-style-type: none"> (i) loss of (or loss of anticipated) opportunity, use production, revenue, income, profits, business and savings; or (ii) loss due to business interruption; or (iii) increased costs; or (iv) punitive or exemplary damages, whether or not the consequential loss or damage or special damage was foreseeable; or (b) in respect of contractual damages, damages which would fall within the second limb of the rule in <i>Hadley v Baxendale</i> [1854] 9 Exch. 341; or (c) any liability of the person to any other person, or any Claim brought against the person by any other person, and the costs and expenses connected with the Claim.
Information Provider	in relation to Confidential Information, means the Party providing the information.
Information Recipient	in relation to Confidential Information, means the recipient of the information.
Insolvency Event	<p>in respect of a Party, means any one or more of:</p> <ul style="list-style-type: none"> (a) that Party is insolvent within the meaning of section 95A of the Corporations Act; or

- (b) any execution or other process of any court or authority being issued against or levied upon any material part of that Party's property or assets; or
- (c) a petition or application being presented (and not being withdrawn within 10 Business Days) or an order being made or a resolution being passed for the winding up or dissolution without winding up of that Party otherwise than for the purpose of reconstruction or amalgamation under a solvent scheme; or
- (d) a receiver or a receiver and manager of the undertaking or any material part thereof of that Party being appointed; or
- (e) that Party proposing to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; or
- (f) an administrator of that Party being appointed or the board of directors of that Party passing a resolution to the effect that is specified in section 436A(1) of the Corporations Act; or
- (g) that Party failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand; or
- (h) a controller (as defined in the Corporations Act) being appointed in respect of that Party or the whole or a material part of that Party's undertaking, property or assets; or
- (i) an application being made to a court for an order in respect of that Party under part 2F.1 of the Corporations Act; or
- (j) an event referred to in section 459C(2) of the Corporations Act occurring in respect of that Party; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above occurring under the Law of any applicable jurisdiction.

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

Large-scale Generation Certificate has the meaning given in the Renewable Energy Act.

Large-scale Generation Shortfall Charge has the meaning given in the Renewable Energy Act.

Latest Termination Date has the meaning given to it in clause 2.4.

Law means:

- (a) Written Laws;
- (b) Statutory Instruments; and/or
- (c) orders given or made under a Written Law or Statutory Instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards deemed applicable under a Written Law and rules of the general law including the common law and equity.

Liabe Entity	has the meaning given in the Renewable Energy Act.
Licence	means any of the licences required under the Act from time to time and granted by the authority established pursuant to the <i>Economic Regulation Authority Act 2003</i> (WA) to the Microgrid Operator to construct or operate the Microgrid and to supply and sell Electricity to Customers, and Licences have an equivalent meaning.
Lonnegal	means Lonnegal Property Pty Ltd (ACN 101 617 574).
Lonnegal Claim	has the meaning given to it in clause 20.13.
Maintain, and Maintenance	includes (as necessary and as applicable) calibrate, test, verify, renew, replace, repair and update.
Market Participant	has the meaning given to that term in the Market Rules.
Market Rules	means the 'market rules' referred to in section 123(1) of the Act, and includes all rules, policies or other subordinate documents developed under the Market Rules.
Material Change	any change external to a Party, including any change to the regulatory environment or market structure of the Western Australian electricity market, which materially alters or could reasonably be expected to materially alter the risk of a Party under this Contract, the nature of any Claim that can be made under this Contract or both.
Meter	has the meaning given to 'meter' in the Metering Code.
Metering Code	means the code made under section 39(1) of the Act in respect of a matter referred to in section 39(2)(a) of the Act, and includes any service level agreement, metering data agency agreement, communications rules, metrology procedure, mandatory link criteria and registration process developed under that code.
Metering Code Participant	has the meaning given to 'Code Participant' in the Metering Code.
Metering Database	means the metering database operated by the Microgrid Operator under the Metering Code.

Metering Equipment	means a Meter or Meters and associated equipment complying with the Metering Code used to measure and record Electricity as transferred to or from the Network at a Connection Point, which may include the measurement of the rate of transfer and the quantity and quality of the transferred Electricity.
Microgrid	means the Network and all Generating Plant electrically connected to the Microgrid that are operated in a vertically integrated manner by the Microgrid Operator.
Microgrid Electricity Transfer Access Contract	means a contract between the Microgrid Operator and another person for the provision of Services.
Microgrid Operator	means Eglinton Village Energy Pty Ltd ACN 665 916 085.
Microgrid Operator's Default	means an event of Default by the Microgrid Operator.
Microgrid Technical Rules	means the technical rules published on the Microgrid Operator's website from time to time, including any derogations agreed to by the Microgrid Operator in writing and specified in Part 3 of Schedule 2.
Network	means the "distribution system" as that term is defined in the Act, which is operated by the Microgrid Operator and situated at Eglinton Village and which is not part of the Western Power network.
Network Assets	in relation to the Network, means the apparatus, equipment, plant and buildings used to provide or in connection with providing Services on the Network.
Network, Generation and Storage Infrastructure	means any plant, equipment or infrastructure used or to be used in connection with any "distribution system", "generating works" or "transmission system" (as each of those terms are defined in the Act) or any battery energy storage system plant, equipment or infrastructure, including "roof top solar systems" at the Eglinton Villlage.
NMI or National Metering Identifier	means the unique identifier assigned to the Connection Point.
Nominated Person	has the meaning given to it in clause 10.1.1.
Novate and Novation	<p>mean to substitute, with the consent of all Parties to this Contract and with effect on and from a date nominated as the effective date of the novation, an assignee for the Retailer as a party to this Contract, with the result that:</p> <p>(a) all rights and obligations of the Retailer under this Contract become rights and obligations of the assignee</p>

as if the assignee had been named in the Contract in place of the Retailer; and

- (b) the Retailer is released from any obligations under this Contract arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.

Parties	means the Microgrid Operator and the Retailer, and “other Party” in relation to the Guarantor, means the Microgrid Operator.
Party	means the Microgrid Operator or the Retailer and, “other Party” in relation to the Guarantor, means the Microgrid Operator.
Party Representative	means the person described in Schedule 5 to whom any Communication may be given.
Payment Error	means: <ul style="list-style-type: none">(a) any underpayment or overpayment by a Party of any amount in respect of a Tax Invoice; or(b) any error in a Tax Invoice (including the omission of amounts from that Tax Invoice, the inclusion of incorrect amounts in that Tax Invoice, calculation errors in the preparation of a Tax invoice or a Tax Invoice being prepared on the basis of data which is later established to have been inaccurate).
Permitted Person	means, in respect of a Party, any Related Body Corporate, invitee, tenant, sub-tenant, licensee, customer, Customer, supplier, contractor, adviser, officer, employee or director of the relevant Party.
Possession	includes custody, control, and an immediate right to possession, custody, or control.
Prescribed Rate	means, at any point in time, the interest rate (expressed as a rate per cent per annum) equal to the aggregate of 3 annual percentage points and the interest rate (expressed as a rate per cent per annum) then published by the Reserve Bank of Australia as the large business variable indicator lending rate.
Price List	means the ‘price list’ published on the Microgrid Operator’s website from time to time.
Reasonable and Prudent Person	means a person acting in good faith and, where applicable, in accordance with Good Electricity Industry Practice.
Real-Time Market	has the meaning given to that term in the Market Rules.
Receipt Date	has the meaning given to it in clause 30.1.

Related Body Corporate	has the meaning given to 'Related Body Corporate' in section 50 of the Corporations Act.
Relevant Acquisition	has the meaning given to that term in the Renewable Energy Act.
Renewable Energy Act	means the <i>Renewable Energy (Electricity) Act 2000</i> (Cth).
Representatives' Meeting	has the meaning given to it in clause 30.1.
Reserve Capacity Mechanism	has the meaning given to that term in the Market Rules.
Retailer	means the person described as such in the 'Parties section' of this Contract.
Retailer's Default	means an event of Default by the Retailer.
Retailer's Premises	means the land on which the Retailer's Facilities and Equipment are located.
Service	means a bundled: <ul style="list-style-type: none"> (a) Connection Service; (b) Electricity Metering Service; and (c) Electricity Supply Service, selected by the Retailer from the Services List on and subject to the terms of this Contract.
Services List	means the list of Services published on the Microgrid Operator's website from time to time.
Small Customer	means a customer (as defined in section 3 of the Act) consuming not more than 160 MWh of Electricity per annum.
Small-scale Technology Certificate	has the meaning given to it in the Renewable Energy Act.
Small-scale Technology Shortfall Charge	has the meaning given to it in the Renewable Energy Act.
Standing Charges	has the meaning given to it in clause 7.6.
Start Date	for a Connection Point, means the date specified as such in the Connection Point Database for the Connection Point.
Statutory Instrument	means all relevant instruments made under a Written Law including all directions, notices, orders and other instruments given or made under a Written Law and includes, as existing from time to time: <ul style="list-style-type: none"> (a) orders made under section 8 of the Act;

- (b) licences granted, renewed or transferred under section 19 of the Act;
- (c) orders made under section 181(3) of the *Electricity Corporations Act 2005*;
- (d) approved policies as defined in section 60 of the Act;
- (e) last resort supply plans approved under section 73 of the Act as amended under sections 74 and 75 of the Act; and
- (f) Market Rules.

Tariff	for a Service, means the tariff specified in clause 7.1 for that Service.
Tax Invoice	has the meaning given to 'Tax Invoice' in the GST Act.
Term	means, from time to time, the term of this Contract which commences on the Commencement Date and ends on the date which is then the Termination Date.
Termination Date	means, subject to clauses 2.3 and 2.4, the date specified in Part 1 of Schedule 1.
Third Party Force Majeure Event	<p>means any event of "force majeure" (or similar expression and however defined) under a contract provided that the definition of "force majeure" in such contract must only apply to events or circumstances, the occurrence of which:</p> <ul style="list-style-type: none"> (a) are beyond the reasonable control of the affected party; (b) are not reasonably able to be prevented or overcome by the exercise of the Party affected of an appropriate standard of care and diligence including Good Electricity Industry Practice; and (c) results in or causes the failure by the Party affected to perform one or more of its obligations under the contract.
Third Party Recipient	means any person to whom the Information Recipient discloses Confidential Information, or allows Confidential Information to be disclosed.
Undisputed Portion	for the purposes of a Tax Invoice issued under 9.6 has the meaning given to it in clause 9.8 and, in all other cases, means the portion of the amount set out in a Tax Invoice that is not in Dispute.
Visitors	means the customers, Customers, invitees, licensees and visitors of a Party or a Controller, as the case requires.

Western Power	means the “Electricity Networks Corporation” established under the <i>Electricity Corporations Act 2005</i> (WA).
Workers	means the directors, officers, servants, employees, agents and contractors of a Party or a Controller, as the case requires.
Works	has the meaning given to it in the Customer Connection and Contribution Guidelines.
Written Law	means: <ul style="list-style-type: none"> (a) all Western Australian Acts and all Western Australian subsidiary legislation for the time being in force; and (b) all Commonwealth Acts and all Commonwealth subsidiary legislation for the time being in force, where the term “subsidiary legislation” has the meaning given to it under the <i>Interpretation Act 1984</i> (WA), if “Commonwealth Act” were substituted for “Written Law”.
Year	means a period of 12 consecutive months.

Interpretation

1.2 In this Contract :

1.2.1 a reference to:

- (a) the singular includes the plural and the plural includes the singular; and
- (b) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body; and
- (c) this Contract or any other instrument includes any variation or replacement of it; and
- (d) “under” includes “by”, “by virtue of”, “pursuant to” and “in accordance with”; and
- (e) “day” means a calendar day; and
- (f) “person” includes a public body, company, or association or body of persons, corporate or unincorporated; and
- (g) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
- (h) any monetary amount means that amount in Australian dollars, and

1.2.2 a word of any gender includes the corresponding words of each other gender; and

1.2.3 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and

- 1.2.4 “copy” includes a photocopy or Electronic copy; and
- 1.2.5 “including” and similar expressions are not words of limitation; and
- 1.2.6 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- 1.2.7 where information is set out in braces (namely “{“ and ”}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information:
- (a) is provided for information only and does not form part of this Contract; and
 - (b) is to be disregarded in interpreting this Contract; and
 - (c) might not reflect amendments to this Contract or other documents or Laws,
- and
- 1.2.8 a reference to:
- (a) this Contract includes any Schedule to this Contract; and
 - (b) a clause is a reference to a clause of this Contract; and
 - (c) a series of consecutive clauses or Schedules is to be read as inclusive of the first and last in the series; and
 - (d) “other Party”, in relation to the Guarantor, means the Microgrid Operator.

Interpretation Act applies

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

CPI adjustment

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

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

where:

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

“**C**” is the current amount being adjusted; and

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

“**CPI_c**” is the value of CPI applicable for the calendar quarter occurring 12 months before the calendar quarter referred to in the definition of CPI_n.

2 Duration

Commencement and Term

- 2.1 This Contract commences on the Commencement Date.

2.2 This Contract ends on the Termination Date (unless terminated earlier under this Contract).

Option to extend Term

2.3 Subject to clause 2.4, the Retailer may, by notice to the Microgrid Operator given no later than 6 months prior to the expiration of the Term as at the time the notice is given, elect to extend the Term by such period as is specified in Part 2 of Schedule 1 as the “**Extension Period**”, in which event the Termination Date shall be the last day of the Extension Period.

2.4 The Term shall not in any event be extended such that the Termination Date is later than the date specified in Part 2 of Schedule 1 as the “**Latest Termination Date**”, except by mutual agreement between the Parties.

Conditions Precedent

2.5 The formation of this Contract, other than this clause 2.5 and clauses 30.1 to 30.6, 32, 33, 34 and 36.17 and 36.18 is subject to and conditional upon each of the Conditions Precedent being satisfied on or before the date specified in Part 3 of Schedule 1 or:

2.5.1 where a Condition Precedent is not specified to be for the benefit of a particular Party, that Condition Precedent being waived by agreement between all Parties; and

2.5.2 where a Condition Precedent is specified to be for the benefit of a particular Party, that Condition Precedent being waived by that Party,

on or before the respective date specified in Part 3 of Schedule 1.

2.6 Where a Condition Precedent is not specified to be for the benefit of a particular Party, each of the Parties must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent.

2.7 Where a Condition Precedent is specified to be for the benefit of a particular Party, that Party must use all reasonable endeavours to obtain the fulfilment of the Condition Precedent and the other Party shall not, by wilful act or omission, prevent its fulfilment.

2.8 A Party must promptly notify the other Parties if it:

2.8.1 discovers that any of the Conditions Precedent are not satisfied by the date specified in Part 3 of Schedule 1; or

2.8.2 discovers that any of the Conditions Precedent have become incapable of being satisfied by the date specified in Part 3 of Schedule 1; or

2.8.3 waives any right to continue to treat any of the Conditions Precedent as conditions precedent to the formation of this Contract.

2.9 If a Condition Precedent is not satisfied or waived by the date specified in Part 3 of Schedule 1 (or such longer period as the Parties may in writing agree) then, if the Party who seeks to terminate this Contract has complied with clause 2.6 or 2.7, as the case requires, that Party may, without prejudice to any other right or remedy it may have, terminate this Contract by giving written notice to the other Party.

Service Provisions

3 Services

Provision and use of the Service

- 3.1 For each Connection Point, on and from the Start Date and up to and including the End Date, subject to and under this Contract:
- 3.1.1 the Microgrid Operator must provide the Service (up to the Contracted Capacity); and
 - 3.1.2 the Retailer must pay the Charges for, and may use, the Service.
- 3.2 The Retailer must not:
- 3.2.1 transfer Electricity out of the Network at a Connection Point unless it has a Service for that Connection Point; and
 - 3.2.2 transfer Electricity into the Network at a Connection Point.
- 3.3 For each Service at each Connection Point, the Retailer must ensure that the rate at which Electricity is transferred out of the Network by or on behalf of the Retailer does not exceed the Contracted Capacity for that Service.
- 3.4 The Microgrid Operator provides the Services under this Contract to the Retailer and does not provide any such Service to the Guarantor. The Microgrid Operator's sole liability in connection with the provision of the Service (including any failure of, or defect in provision of the Service) is to the Retailer and the Microgrid Operator has no liability of any nature to the Guarantor in connection with the provision of the Service.

The Retailer may select Services

- 3.5 The Retailer may from time to time give notice to the Microgrid Operator seeking to change the Service in respect of a Connection Point in accordance with the Customer Connection and Contribution Guidelines.
- 3.6 The Microgrid Operator must process any notice given by the Retailer under clause 3.5 in accordance with the Customer Connection and Contribution Guidelines.

Eligibility Criteria

- 3.7 The Retailer must in relation to each Connection Point, comply with the Eligibility Criteria applicable to the Service provided, or to be provided, at the Connection Point.

Increase or decrease of Contracted Capacity

- 3.8 The Retailer may not increase or decrease the Contracted Capacity at an existing Connection Point to this Contract, unless the Retailer makes an application to the Microgrid Operator and the Microgrid Operator approves that application under the Customer Connection and Contribution Guidelines.
- 3.9 If the Retailer makes an application to the Microgrid Operator under clause 3.8 then the Microgrid Operator must process the application under the Customer Connection and Contribution Guidelines.

Addition of a Connection Point

- 3.10 The Retailer may not add an additional Connection Point to this Contract unless the Retailer makes an application to the Microgrid Operator, and the Microgrid Operator approves that application, under:
- 3.10.1 the Customer Connection and Contribution Guidelines; or
 - 3.10.2 the Customer Transfer Code,
- as applicable.
- 3.11 If the Retailer makes an application to the Microgrid Operator under clause 3.10 then the Microgrid Operator must process the application under:
- 3.11.1 the Customer Connection and Contribution Guidelines; or
 - 3.11.2 the Customer Transfer Code,
- as applicable.

Deletion of a Connection Point

- 3.12 The Retailer may give notice to the Microgrid Operator seeking to delete a Connection Point from this Contract where:
- 3.12.1 a transfer request has been made in relation to the Customer for that Connection Point under the Customer Transfer Code; or
 - 3.12.2 the Connection Point will be added to another Access Contract by some other means to that stipulated in clause 3.12.1; or
 - 3.12.3 the Facilities and Equipment in respect of the Connection Point will be permanently Disconnected from the Connection Point.
- 3.13 If the Retailer seeks to permanently Disconnect any Facilities and Equipment at a Connection Point, then the notice under clause 3.12 must be given to the Microgrid Operator:
- 3.13.1 for Generating Plant, excluding Generating Plant up to and including 30 kVA which is being used to offset load, at a Connection Point, at least 6 months before the planned Disconnection; and
 - 3.13.2 for Consuming plant and Generating Plant up to and including 30 kVA which is being used to offset load, at a Connection Point, at least one month before the planned Disconnection.
- 3.14 Clause 3.13 does not limit, and applies in addition to, the requirement for the Retailer and the Microgrid Operator comply with their obligations (including timeframe service standards) specified in the model service level agreement under the Metering Code (to the extent that model service level agreement applies to the Retailer and the Microgrid Operator) in respect of any supply abolishment service required to give effect to a permanent Disconnection of Facilities and Equipment.
- 3.15 Subject to clause 3.16, if the Microgrid Operator receives a notice from the Retailer under clause 3.12, then it must notify the Retailer that it accepts the deletion, and the date that the deletion takes effect, if:
- 3.15.1 the Microgrid Operator has successfully processed a Customer transfer request in relation to the Connection Point under the Customer Transfer Code; or

- 3.15.2 the Connection Point has been added to another Access Contract by some other means; or
 - 3.15.3 the Facilities and Equipment in respect of the Connection Point have been permanently Disconnected from the Connection Point, as soon as reasonably practicable, otherwise the Microgrid Operator may notify the Retailer as soon as reasonably practicable that it rejects the deletion.
- 3.16 Clause 3.15 does not limit the requirement of the Retailer and the Microgrid Operator to comply, in respect of any supply abolishment service that may be required to give effect to a permanent Disconnection, with their obligations (including timeframe service standards) specified in the model service level agreement under the Metering Code (to the extent that model service level agreement applies to the Retailer and the Microgrid Operator).
- 3.17 Subject to the Customer Transfer Code, the Microgrid Operator must not delete a Connection Point from this Contract other than in accordance with a notice given by the Retailer under clause 3.12.

Amendment to Connection Point data

- 3.18 Unless the Parties otherwise agree, the Microgrid Operator must, as soon as reasonably practicable, record the information referred to in Part 1 of Schedule 2, with respect to each Connection Point, in the Connection Point Database.
- 3.19 The Microgrid Operator must, as soon as reasonably practicable, update the information contained in a Connection Point Database following any variation made under this clause 3.
- 3.20 Upon request by the Retailer for information referred to in the Connection Point Database, the Microgrid Operator will, as soon as reasonably practicable, provide to the Retailer the most up-to-date version of that information.
- 3.21 The Parties acknowledge that if the Retailer is a Metering Code Participant, for each Connection Point the Microgrid Operator must also record and update the relevant information required under Part 1 of Schedule 2 in the Metering Database in accordance with the provisions of the Metering Code and, to the extent that a timeframe is not specified in the Metering Code or a service level agreement in force between the Retailer and the Microgrid Operator, the Microgrid Operator must do so as soon as is reasonably practicable.
- 3.22 Nothing in this Contract restricts or prohibits the Microgrid Operator from maintaining and updating the Metering Database in accordance with the Metering Code.
- 3.23 The Microgrid Operator will provide the Retailer with access to the information in the Metering Database in accordance with the Build Pack.
- 3.24 The Parties must notify each other of any errors discovered in the Connection Point Database as soon as reasonably practicable after becoming aware of the error.
- 3.25 The Microgrid Operator must amend any error in the Connection Point Database as soon as reasonably practicable after becoming aware of the error and upon the Microgrid Operator becoming aware of an error, the Retailer for the Connection Point shall also be given notice of the error.
- 3.26 Where under this Contract the Microgrid Operator has recorded information in more than one of Part 1 of Schedule 2, the Metering Database and any other database maintained by the Microgrid Operator for the purposes of this Contract and there is an inconsistency or

conflict between the information in the databases in which the information is recorded, then the following order of precedence applies, from highest to lowest:

- 3.26.1 the Metering Database;
- 3.26.2 Part 1 of Schedule 2;
- 3.26.3 any other database.

- 3.27 The Microgrid Operator must notify the Retailer as soon as reasonably practicable upon becoming aware that a Connection Point has reverted to the Retailer as a default supplier retailer (being a retailer of the type contemplated in section 59 of the Act).

4 The Retailer must provide forecast information

Microgrid Operator may request information

- 4.1 The Microgrid Operator may as a Reasonable and Prudent Person, in respect of a Connection Point, request power and energy forecast information from the Retailer.

When the Microgrid Operator may request information

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

Retailer must comply with request

- 4.3 The Retailer must comply with the Microgrid Operator's reasonable request under clause 4.1.

5 Title to Electricity

Transfer out of the Network

- 5.1 Title to Electricity that is transferred out of the Network at a Connection Point passes from the Microgrid Operator to the Retailer at the time it passes through the Connection Point.

6 Controllers

Retailer must nominate Controller where Connection Point exceeds threshold

- 6.1 If the Retailer is not the Controller of a Connection Point then the Retailer must, by notice to the Microgrid Operator before the Start Date for the Service at the relevant Connection Point, or as soon as reasonably practicable thereafter (but in all cases no later than 30 Business Days after the Start Date for the Service at the relevant Connection Point), nominate a person as the Controller for a Connection Point where:
- 6.1.1 Generating Plant with installed capacity exceeding 30 kVA is connected at the Connection Point; or
 - 6.1.2 The Connection Point is capable of having a Contracted Capacity of greater than 200 kVA per hectare of land in the premises serviced by that Connection Point; or

- 6.1.3 the Connection Assets for the Connection Point are operated at 66 kV or greater; or
- 6.1.4 the rating of the largest motor connected at the Connection Point is greater than 0.4% of the three phase short circuit fault level at the Attachment Point.
- 6.2 The Retailer may, from time to time, by notice to the Microgrid Operator, change the person the Retailer nominates as the Controller of a Connection Point.
- 6.3 The Parties must amend the Connection Point Database following any variation made under this clause 6.
- 6.4 The Microgrid Operator, acting as a Reasonable and Prudent Person, may at any time on reasonable technical or commercial grounds object to a person nominated by the Retailer as a Controller under clause 6.1, in which case the Retailer must either:
 - 6.4.1 Dispute the Microgrid Operator's objection; or
 - 6.4.2 nominate a different person as a Controller.
- 6.5 If the Microgrid Operator requires, the Retailer must use reasonable endeavours to procure that the person nominated by the Retailer as a Controller enters into a Connection Contract with the Microgrid Operator in respect of the Connection Point.
- 6.6 If the Retailer requests the Microgrid Operator to do so, the Microgrid Operator must use reasonable endeavours and act in good faith to enter into a Connection Contract with a Controller (validly nominated by the Retailer under clause 6.1) in respect of the Connection Point.

Where the Retailer is not the Controller

- 6.7 Subject to clause 6.14, if the Retailer is not the Controller of a Connection Point, and the Controller of that Connection Point has not entered into a Connection Contract with the Microgrid Operator in respect of the Connection Point, then the Retailer must ensure that the Controller of that Connection Point complies, and will continue to comply, with the obligations set out in this Contract, to the extent that such compliance is reasonably necessary for the Parties to satisfy their obligations under this Contract, including, but not limited to:
 - 6.7.1 clause 12 (Good Electricity Industry Practice); and
 - 6.7.2 clause 13 (Microgrid Technical Rules); and
 - 6.7.3 clause 14 (Technical characteristics of Facilities and Equipment); and
 - 6.7.4 clause 15 (Cooperation); and
 - 6.7.5 clause 16 (Access to premises); and
 - 6.7.6 clause 17 (Directions relating to security and reliability); and
 - 6.7.7 clause 18 (Removal of equipment); and
 - 6.7.8 clause 24 (Curtailment); and
 - 6.7.9 clause 34 (Notices).
- 6.8 The Retailer must also ensure that the Controller of that Connection Point provides a release in favour of Lonnégat and an indemnity in respect of any Lonnégat Claim in favour of the Microgrid Operator, consistent with the terms set out in clauses 20.11 to 20.13.

- 6.9 If the Retailer is not the Controller of a Connection Point, and the Controller of that Connection Point has not entered into a Connection Contract with the Microgrid Operator in respect of the Connection Point, then the Retailer must ensure that it enters into a contract with the Controller obliging the Controller to comply with the obligations set out in this Contract (to the extent set out in clause 6.7) and that such contract entered into between the Retailer and a Controller relating to Services under this Contract contains a provision:
- 6.9.1 that neither the Retailer nor the Microgrid Operator is in any circumstances liable for Indirect Damage suffered by the Controller, however arising, excluding any damage caused by, consequent upon or arising out of fraud; and
 - 6.9.2 under which the Controller covenants in favour of the Microgrid Operator (which covenant is expressed to be enforceable by the Microgrid Operator in accordance with section 11 of the Property Law Act 1969 (WA)) that it will not bring a Claim against the Microgrid Operator for such Indirect Damage and will not bring a Claim which will result in the Microgrid Operator's aggregate liability to the Controller and the Retailer, under or in connection with this Contract or the Services provided under or in connection with this Contract, exceeding the monetary cap on the Microgrid Operator's liability in clause 20.7
- 6.10 The exclusion of Indirect Damage in clause 20.3 does not apply to a failure by the Retailer to ensure that its contract with the Controller contains the covenant referred to in clause 6.9.2 above.
- 6.11 On reasonable request from the Microgrid Operator, the Retailer must (unless the Controller has already entered into a Connection Contract with the Microgrid Operator) provide evidence to the Microgrid Operator's satisfaction as a Reasonable and Prudent Person that the Retailer is complying, and will continue to comply, with clause 6.7.
- 6.12 If the Retailer does not satisfy the Microgrid Operator under clause 6.11, the Microgrid Operator may refuse to commence the Services or may Curtail the provision of Services in respect of the relevant Connection Point unless and until:
- 6.12.1 the Controller has entered into a Connection Contract with the Microgrid Operator in respect of the Connection Point; or
 - 6.12.2 the Retailer satisfies the Microgrid Operator under clause 6.11.
- 6.13 For the avoidance of doubt, if the Retailer is in breach of clause 6.7, then the Retailer is liable for, and must indemnify the Microgrid Operator pursuant to clause 20.2 against any Direct Damage caused by, consequent upon or arising out of the acts and omissions, negligent or otherwise, of the Controller to the extent that the acts or omissions, negligent or otherwise, of the Controller are attributable to that breach, unless the Controller has entered into a Connection Contract with the Microgrid Operator.
- 6.14 Subject to clause 6.15, the Retailer is required to commence, maintain or continue legal proceedings to procure compliance of the Controller with the obligations set out in this Contract, to the extent that such compliance is reasonably necessary for the Parties to satisfy their obligations under this Contract.
- 6.15 For a Connection Point other than as referred to in clause 6.1, the Retailer is not required to comply with clause 6.14 unless the Microgrid Operator provides an indemnity to the Retailer for all of the Retailer's costs of and incidental to the proceedings.
- 6.16 Nothing in clause 6.14 or clause 6.15:

- 6.16.1 limits the Retailer's obligations under the remainder of this clause 6; or
- 6.16.2 derogates from the Microgrid Operator's other rights under this Contract including its rights under clause 6.12, or requires the Microgrid Operator to pay any compensation to the Retailer for exercising any of those rights.

Microgrid Operator may enter into Access Contracts

- 6.17 Nothing in clause 6.7 is to be taken to prevent the Microgrid Operator from entering into an Access Contract with any person, including a person who is a Controller.

Liability and Force Majeure not limited

- 6.18 Nothing in clause 6.7 limits the operation of clauses 20.2 or in respect of either the Retailer or the Microgrid Operator.

7 Tariff and Charges

Tariff

- 7.1 The Tariff payable under this Contract for the Service is the Tariff, or Tariffs, as applicable, specified in the Price List from time to time.

Charges

- 7.2 The Retailer must pay to the Microgrid Operator the Charge for the Service calculated at the Tariff determined under clause 7.1.
- 7.3 Notwithstanding clauses 7.1 and 7.2, the Charge for the Services in respect of an Accounting Period must not exceed the aggregate amount that would be payable by the Retailer in respect of that same period to:
 - 7.3.1 Western Power in respect of network, Metering and related charges of Western Power, assuming that the Connection Point were on the Western Power network and had comparable characteristics; and
 - 7.3.2 AEMO in respect of charges for electricity from the Real-Time Market, assuming that the Retailer was Market Participant without any Bilateral Contracts with full exposure to purchase electricity from the Real-Time Market (loss factor adjusted), obligations under the Reserve Capacity Mechanism, ancillary services and all related charges in respect of the electricity consumed at the Connection Point, which was on the Western Power network and had comparable characteristics.
- 7.4 Clause 7.3 does not apply to:
 - 7.4.1 fees and charges that may be imposed in relation to a required Augmentation or amount payable under the Customer Connection and Contribution Guidelines; or
 - 7.4.2 any other amounts that the Microgrid Operator may otherwise recover from the Retailer under this Contract or at Law.

Charges during Microgrid Operator's Force Majeure Event

- 7.5 If the Service ("**Affected Service**") is unavailable for any consecutive period of two days or longer ("**Affected Service Period**") due to a Force Majeure Event where:
 - 7.5.1 the Microgrid Operator is the Affected Person;

7.5.2 the Retailer is unable to use the Affected Service because of the Force Majeure Event; and

7.5.3 the Microgrid Operator's inability to provide the Affected Service has not been caused by the Retailer's default or negligence,

then, for that part of the Affected Service Period in which the Retailer's Facilities and Equipment in respect of the Affected Service were not or would not have been subject to a scheduled or unscheduled outage by which the Retailer's Facilities and Equipment were De-energised, the Retailer is relieved of its obligation under clause 7.2 and instead must pay 10% of the "**Standing Charges**" for the Affected Service during that part of the Affected Service Period.

7.6 Under clause 7.5, "**Standing Charges**" means:

7.6.1 those Charges or components of a Charge which apply to a Service regardless of the actual Consumption by the Retailer in respect of that Service, as recorded by the Metering Equipment; and

7.6.2 is not those components of a Charge which are determined by reference to the actual Consumption by the Retailer in respect of that Service, as recorded by the Metering Equipment.

8 Renewable energy content

8.1 The Retailer must comply with the Renewable Energy Act as if:

8.1.1 it were a Liable Entity; and

8.1.2 the quantity of Electricity acquired by the Retailer for on-sale to its Customers at relevant Connection Points is a Relevant Acquisition.

8.2 In respect of the obligations set out at clause 8.1, the Retailer is not permitted to pay the Large-scale Generation Shortfall Charge or the Small-scale Technology Shortfall Charge instead of acquiring and acquitting Large-scale Generation Certificates and Small-scale Technology Certificates.

8.3 Clause 8.1 and clause 8.2 apply whether the Retailer has any obligation under the Renewable Energy Act or is or would be entitled to be exempted from any such obligation.

8.4 The Retailer must:

8.4.1 on reasonable notice from the Microgrid Operator, provide all reasonable documentary evidence to demonstrate its compliance with this clause 8; and

8.4.2 despite anything to the contrary in this Contract, indemnify the Microgrid Operator for Direct Damage and Indirect Damage arising from any breach by the Retailer of this clause 8 and the exclusion of Indirect Damage in clause 20.3 does not apply.

8.5 This clause 8 survives termination of this Contract.

9 Invoicing and payment

Microgrid Operator invoices

- 9.1 Subject to clause 9.4, the Microgrid Operator must, within 14 Business Days after the end of an Accounting Period, issue to the Retailer a Tax Invoice for the Accounting Period showing:
- 9.1.1 all amounts payable by the Retailer to the Microgrid Operator under this Contract for the Accounting Period; and
 - 9.1.2 all outstanding amounts as at the end of the Accounting Period and interest payable on those amounts; and
 - 9.1.3 GST payable on those amounts under clause 9.23 to 9.28.
- 9.2 A Tax Invoice issued by the Microgrid Operator under clause 9.1 or 9.4 may include other amounts payable by the Retailer to the Microgrid Operator with regards to the Service under this Contract or at Law.
- 9.3 At the same time as issuing a Tax Invoice under clause 9.1 to 9.4, the Microgrid Operator must provide to the Retailer, in Electronic form, the metering information used to calculate the Charges shown on the Tax Invoice in sufficient detail to enable the Retailer to understand how the Microgrid Operator calculated the Charges.
- 9.4 Notwithstanding clause 9.1, the Parties may, by mutual agreement, implement a different system of invoicing to that stipulated in clause 9.1 including, for example, issuing two or more Tax Invoices per Accounting Period, and separate invoicing for different classes or groups of Customers, Connection Points or Services.

Retailer invoices

- 9.5 At the same time as the Microgrid Operator issues to the Retailer a Tax Invoice for an Accounting Period under clause 9.1 to 9.4, the Microgrid Operator must provide the Retailer with all information necessary for the Retailer to determine any amounts payable by the Microgrid Operator to the Retailer for the Accounting Period.
- 9.6 The Retailer must, within five Business Days after receiving the information under clause 9.5, issue to the Microgrid Operator a Tax Invoice for the Accounting Period showing:
- 9.6.1 all amounts payable by the Microgrid Operator to the Retailer under this Contract, which amounts may be calculated using the information provided to the Retailer by the Microgrid Operator under clause 9.5; and
 - 9.6.2 all outstanding amounts as at the end of the Accounting Period and interest payable on those amounts; and
 - 9.6.3 GST payable on those amounts payable under clause 9.23 to 9.28.
- 9.7 If the Retailer Disputes the information provided by the Microgrid Operator under clause 9.5, then:
- 9.7.1 the Retailer may issue a Tax Invoice under clause 9.5 for an amount the Retailer (acting as a Reasonable and Prudent Person) estimates to be the correct amount payable; and
 - 9.7.2 the Retailer must, before the Due Date of the Tax Invoice under clause 9.6, give notice to the Microgrid Operator that it Disputes the information provided under clause 9.5 and provide in that notice full details of the Dispute, including the difference between the amount for which the Tax Invoice has been issued by the

Retailer and the amount for which that Tax Invoice would have been issued had the information provided by the Microgrid Operator under clause 9.5 been accepted by the Retailer as correct.

- 9.8 Clauses 9.11 to 9.13 applies in respect of a Tax Invoice issued under clause 9.6, for the purposes of which the “**Undisputed Portion**” is taken to be an amount calculated in accordance with the information provided by the Microgrid Operator under clause 9.5.

Payment of invoices

- 9.9 Each Party which receives a Tax Invoice under clause 9.1 to 9.8, must on or before the Due Date of the Tax Invoice pay to the Party issuing the Tax Invoice all amounts shown on the Tax Invoice which are payable under this Contract.
- 9.10 If a Party fails to comply with clause 9.9 then, without prejudice to the other Party's other rights, the Party must pay interest on any unpaid amount, calculated daily at the Prescribed Rate from the Due Date of the Tax Invoice until payment.

Disputed invoices

- 9.11 If a Party Disputes any amount set out in a Tax Invoice issued under clause 9.1 to 9.8 then that Party must pay the Undisputed Portion (if any) and must, prior to the Due Date of the Tax Invoice, give notice to the other Party that it Disputes the amount and provide in that notice full details of the Dispute.
- 9.12 Without prejudice to the other Party's other rights, any amount withheld by a Party under clause 9.11 but subsequently found to have been payable attracts interest calculated daily at the Prescribed Rate from the Due Date of the Tax Invoice until payment.
- 9.13 Without prejudice to the other Party's other rights, any amount paid by a Party under clause 9.11 but subsequently found not to have been payable attracts interest calculated daily at the Prescribed Rate from the date the Party paid the amount to the date the other Party repays the amount.

Under and over payments

- 9.14 Subject to clause 9.18, if a Party detects a Payment Error by a Party of any amount within 18 calendar months after the Payment Error:
- 9.14.1 the Party must as soon as reasonably practicable give notice to the other Parties of the Payment Error; and
- 9.14.2 an adjusting payment must be made by the appropriate Party within 10 Business Days of the notice.
- 9.15 Except where clause 9.16 applies, the adjusting payment must, without prejudice to the Party's other rights, include interest calculated daily at the Prescribed Rate from the date of the Payment Error until the date of the adjusting payment.
- 9.16 An adjusting payment by a Party will not attract interest under clause 9.15 if it is made in relation to an underpayment and the underpayment was the result of an error by the other Party.
- 9.17 Subject to clause 9.18, a Party is not entitled to an adjusting payment for a Payment Error notified to the other Parties after the expiry of 18 calendar months after the Payment Error.
- 9.18 Notwithstanding clauses 9.14 and 9.17, where:
- 9.18.1 Payment Errors have occurred as a result of an error in the data used to calculate the Charges; and

- 9.18.2 the Payment Errors occurred in one or more Accounting Periods,
- 9.19 the Party who was underpaid or who made an overpayment (as applicable) is entitled to an adjusting payment only for the Payment Errors that occurred in the Accounting Periods that were within the 12 month period preceding the date that the Payment Errors were notified by one Party to the other.
- 9.20 Where a Payment Error is an error as a result of which the amount set out in a Tax Invoice is less than what it would have been had the error not been made, the Payment Error will be taken to have occurred on the Due Date of the Tax Invoice.
- 9.21 Where a Payment Error is an error as a result of which the amount set out in a Tax Invoice is more than what it would have been had the error not been made, the Payment Error will be taken to have occurred on the date the Retailer has paid the total amount of the Tax Invoice in full.

Interest on overdue payment

- 9.22 If a Party Defaults in due and punctual payment of a Tax Invoice:
- 9.22.1 clause 27 applies; and
- 9.22.2 the overdue payments attract interest payable at the Prescribed Rate from the Due Date of the Tax Invoice until the Default is remedied.

GST

- 9.23 Unless expressly included, the consideration for any supply under or in connection with this Contract (including any Charge or Tariff derived from a Price List and any Contribution) is GST exclusive.
- 9.24 To the extent that any supply made under or in connection with this Contract is a taxable supply and the price for it (including any Charge or Tariff derived from a Price List and any Contribution) is stated to be GST exclusive, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of the consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 9.25 Without limiting the obligation to provide a Tax Invoice under clauses 9.1 to 9.8, the supplier must issue a Tax Invoice to the recipient of a supply to which clause 9.24 applies before the payment of the GST inclusive consideration determined under that clause.
- 9.26 If a Party is entitled under this Contract to be reimbursed or indemnified by another Party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Party entitled to be reimbursed or indemnified, or by its representative member.
- 9.27 If a Party becomes aware of an adjustment event, that Party agrees to notify the other Party as soon as practicable after becoming so aware, and the Parties agree to take whatever steps are necessary, including the issue of an adjustment note, and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply or any refund of any GST (or part of GST) is paid as soon as is practicable but no later than 10 Business Days after the Party has satisfied itself that the adjustment event has occurred.
- 9.28 Definitions in the GST Act apply also in this clause 9.23 to 9.27 unless the context indicates otherwise.

10 Security for Charges

10.1 Subject to clause 10.2, if the Microgrid Operator determines at any time during the Term that either or both of the Retailer's or the Guarantor's technical or financial resources are such that a Reasonable and Prudent Person would consider there to be a material risk that the Retailer will be unable to meet its obligations under this Contract, then:

10.1.1 the Microgrid Operator may require the Retailer to within 15 Business Days nominate which of the Retailer or the Guarantor ("**Nominated Person**") is to provide security; and

10.1.2 within 15 Business Days of the Retailer's nomination under clause 10.1.1, the Nominated Person, at the Retailer's election, must either:

- (a) pay to the Microgrid Operator a cash deposit equal to the Charges for two months' Services; or
- (b) provide an irrevocable and unconditional bank guarantee or equivalent financial instrument in terms acceptable to the Microgrid Operator (acting as a Reasonable and Prudent Person), guaranteeing or otherwise securing the Charges for two months' Services; or
- (c) if the Microgrid Operator is satisfied, as a Reasonable and Prudent Person, that the Retailer's parent company's financial and technical resources are such that the Retailer's parent company would be able to meet the Retailer's obligations under this Contract (including because the Retailer's parent company meets at least one of the credit ratings given in clauses 10.2.1 and 10.2.2), procure from the Retailer's parent company a guarantee substantially in the form set out in Schedule 6.

10.2 If the Retailer or the Guarantor has an unqualified credit rating of at least:

10.2.1 BBB from Standard and Poor's Australia Pty Ltd; or

10.2.2 Baa from Moody's Investor Service Pty Ltd,

and provides evidence to this effect to the Microgrid Operator, then the Microgrid Operator is not entitled to determine under clause 10.1 that the Retailer's financial resources are such that there would be a material risk that the Retailer will be unable to meet its obligations under this Contract.

10.3 If any security held by the Microgrid Operator under clause 10.1.2(a) or 10.1.2(b) at any time is not equal to the Charges for two months' Services, then the Nominated Person must, within 15 Business Days of a written request by the Microgrid Operator to the Retailer:

10.3.1 if the security is a cash deposit under clause 10.1.2(a), provide the Microgrid Operator with an additional cash payment to increase the security so that it is equal to the Charges for two months' Services; or

10.3.2 if the security is a guarantee under clause 10.1.2(b), replace the guarantee with another guarantee (that is in accordance with clause 10.1.2(b)) in an amount that is equal to the Charges for two months' Services.

10.4 If any security held by the Microgrid Operator under clause 10.1.2(a) or 10.1.2(b) is called upon by the Microgrid Operator or if that security ceases to be enforceable for any reason (including due to expiry of the security) then within 15 Business Days the Nominated

- Person must provide replacement security to the Microgrid Operator complying with the requirements of clause 10.1.1.
- 10.5 Where a guarantee has been provided to the Microgrid Operator by the Retailer's parent company but the Microgrid Operator ceases to be satisfied, as a Reasonable and Prudent Person, that the criteria in clause 10.1.2(c) are met then by notice to the Retailer the Microgrid Operator may require the provision of a new form of security complying with the requirements of clause 10.1.2(a) or 10.1.2(b) which security must be provided within 15 Business Days of service of the Microgrid Operator's notice.
- 10.6 Upon the termination of this Contract and receipt by the Microgrid Operator of all amounts due by the Retailer to it under this Contract the Microgrid Operator will return to the Retailer any security provided under this clause 10 which is still held by the Microgrid Operator. Where the security provided to the Microgrid Operator was a cash deposit, then the Microgrid Operator will return to the Retailer the unutilised balance of the cash deposit and interest accrued on the deposit less any charges (including fees and charges associated with maintaining the interest bearing account) and taxes attributable to the maintenance of the interest bearing account in which the cash deposit was kept.
- 10.7 The Microgrid Operator may call upon a cash deposit or bank guarantee (or equivalent financial instrument) provided to it under this clause 10 if an amount due by the Retailer to the Microgrid Operator under this Contract is not paid by the Due Date for payment of that amount or, where this Contract does not specify a due date for payment, is not paid within 10 Business Days of the Microgrid Operator issuing a notice to the Retailer requiring payment of the amount.
- 10.8 In this clause 10, a reference to the Charges for two months Services means the Microgrid Operator's reasonable estimate of the Charges which will be incurred by the Retailer for the Services provided under this Contract in the next two calendar month period from the end of the next Accounting Period (that is, from the end of the Accounting Period which expires after the Accounting Period in which the Retailer is notified of the current level of security it is required to provide).
- 10.9 Where security is provided to the Microgrid Operator in the form of a cash deposit, then the Microgrid Operator shall deposit the amount in an interest bearing account maintained with a financial institution, selected consistently with the Microgrid Operator's policies. Any interest which accrues on the cash deposit shall form part of the security however where, as at the end of a month, the aggregate amount of cash deposit held by the Microgrid Operator (including interest and after deducting any fees, charges and taxes associated with maintaining the interest bearing account) exceeds the Charges for two months' Services the Microgrid Operator will, within a reasonable time, pay the excess amount held (above the Charges for two months' Services) to the Customer's nominated bank account.
- 10.10 Where the Microgrid Operator is required, under this Contract, to return the whole of a security held as a cash deposit then it will, within a reasonable time, return to the Retailer the unutilised balance of the cash deposit and interest accrued less any charges (including fees and charges associated with maintaining the interest bearing account) and taxes attributable to the maintenance of the interest bearing account.
- 10.11 Nothing in this Contract is to be taken as imposing any obligation on the Microgrid Operator to maximise or obtain any return on cash deposit amounts held by the Microgrid Operator as security.

11 Security for Contribution

- 11.1 Without limiting the Retailer's security obligations in this Contract, where the Microgrid Operator has determined in accordance with the Customer Connection and Contribution Guidelines that the Retailer is required to provide an irrevocable and unconditional bank guarantee (or equivalent financial instrument) in terms acceptable to the Microgrid Operator (acting as a Reasonable and Prudent Person), guaranteeing the present value of any amount of any Contribution to be made by the Retailer that remains unpaid or unprovided as calculated by the Microgrid Operator under the Customer Connection and Contribution Guidelines, the Nominated Person must provide to the Microgrid Operator the requested bank guarantee (or equivalent financial instrument).

Technical Compliance Provisions

12 Good Electricity Industry Practice

Microgrid Operator must comply with Good Electricity Industry Practice

- 12.1 The Microgrid Operator must comply with Good Electricity Industry Practice when providing the Services and performing its obligations under this Contract.

Retailer must comply with Good Electricity Industry Practice

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

13 Microgrid Technical Rules

Microgrid Operator and the Retailer must comply

- 13.1 The Microgrid Operator and the Retailer must each comply with the Microgrid Technical Rules.

Retailer to bear costs

- 13.2 The Retailer must bear its own costs in relation to compliance with the Microgrid Technical Rules.
- 13.3 The Microgrid Operator must bear its own costs in relation to compliance with the Microgrid Technical Rules.
- 13.4 Notwithstanding clause 13.3, where an act or omission of the Retailer in breach of this Contract causes the Microgrid Operator to incur extra costs in order to ensure the Microgrid Operator complies with the Microgrid Technical Rules, the Retailer shall bear the Microgrid Operator's reasonable extra costs so incurred to the extent that such costs are not already recovered from the Retailer or any other person under any other arrangement, including the Customer Connection and Contribution Guidelines.
- 13.5 Without limiting clause 13.4, where a Retailer's equipment increases the fault levels in the Network, the Retailer must bear the Microgrid Operator's reasonable costs of any upgrades to the Network required under the Microgrid Technical Rules to the extent that such costs are not already payable by the Retailer under the Customer Connection and Contribution Guidelines.

- 13.6 For the avoidance of doubt, the Retailer is not liable for any costs incurred by another Retailer of the Network arising from compliance by the other Retailer with the Microgrid Technical Rules.
- 13.7 If the Microgrid Operator recovers costs referred to in clause 13.4 from another party in circumstances where the Retailer has already paid them to the Microgrid Operator, the Microgrid Operator must refund those costs without interest to the Retailer.

Actions of third parties

- 13.8 Subject to clause 6.13, if the actions of a third party cause a Party to breach the Microgrid Technical Rules, then the Party is not in breach of clause 13.1 unless the Party has:
- 13.8.1 been negligent; or
 - 13.8.2 has not acted as a Reasonable and Prudent Person.
- 13.9 Nothing in this clause 13 limits the operation of clauses 20.2 or 22 in respect of either Party.

14 Technical characteristics of Facilities and Equipment

- 14.1 The Parties must record:
- 14.1.1 in Part 2 of Schedule 2 any technical information that the Retailer was required to provide to the Microgrid Operator under the Customer Connection and Contribution Guidelines; and
 - 14.1.2 in Part 3 of Schedule 2 any exemptions to the Microgrid Technical Rules given to the Retailer under the Microgrid Technical Rules.
- 14.2 Each Party must record any other information required to be recorded in this Contract by the Microgrid Technical Rules within a database maintained by that Party, and provide the other Parties with reasonable access to the information upon request by that Party.
- 14.3 The Retailer must not materially modify any Generating Plant connected at a Connection Point unless:
- 14.3.1 where such modification requires an Application under the Customer Connection and Contribution Guidelines:
 - (a) the Retailer makes such an Application; and
 - (b) the Application is processed by the Microgrid Operator under the Customer Connection and Contribution Guidelines;
 - 14.3.2 where such modification does not require an Application under the Customer Connection and Contribution Guidelines and relates to a Generating Plant owned by a person other than a Small Customer:
 - (a) the Retailer notifies the Microgrid Operator of the modifications to the Generating Plant in writing at least 45 days prior to the modifications being made; and
 - (b) the modified Generating Plant does not adversely impact the safety, security or reliability of the Network.
- 14.4 The replacement of like for like parts within a Generating Plant or the replacement of parts in the ordinary course of maintenance and repair is not a material modification for the purposes of clause 14.3.

- 14.5 If the Microgrid Operator does not notify the Retailer within 45 days of receipt of notice under clause 14.3.2 that the modification may adversely impact the safety or security of the Network the Retailer may proceed to make the modification. However nothing in this clause derogates from the Retailer's responsibility to ensure the Generating Plant complies with the requirements of this Contract including the obligations to comply with the Microgrid Technical Rules.

15 Cooperation

- 15.1 The Retailer and the Microgrid Operator (each acting as a Reasonable and Prudent Person) must cooperate and coordinate with each other where reasonably necessary in relation to:
- 15.1.1 the planning, development, inspection, testing and commissioning of Facilities and Equipment for a Connection Point and Network Assets for the Network; and
 - 15.1.2 the development and implementation of Maintenance schedules for Facilities and Equipment for a Connection Point and Network Assets for the Network.

16 Access to premises

Parties must allow reasonable rights of entry

- 16.1 Each Party ("**Host Party**") must allow, or use its reasonable endeavours to procure for, the other Party ("**Guest Party**") all reasonable rights of entry to the Host Party's premises:
- 16.1.1 for the purposes of constructing, installing, operating, Maintaining and verifying the accuracy of any Metering Equipment or other equipment or thing;
 - 16.1.2 to inspect for safety or other reasons the construction, installation, operation, maintenance and repair of any Metering Equipment or other equipment or thing;
 - 16.1.3 to test, operate and maintain, repair, replace and remove any Network, Generation and Storage Infrastructure owned or placed at the premises by the Microgrid Operator and
 - 16.1.4 for any other reasonable purpose connected with or arising out of this Contract.

Entry made at risk of Guest Party

- 16.2 Any entry under clause 16.1 is made in all respects at the expense and risk of the Guest Party, who must, subject to clauses 20.3 and 20.4, make good any damage occasioned by or resulting from the entry, other than to the extent the damage is caused by:
- 16.2.1 fair wear and tear; or
 - 16.2.2 the negligence or Default of the Host Party or any of its Workers or Visitors; or
 - 16.2.3 a Force Majeure Event.

Guest Party obligations

- 16.3 A Guest Party must:
- 16.3.1 before exercising a right of entry under clause 16.1, give reasonable notice to the Host Party specifying the purpose, proposed time and estimated duration of entry, except where it is not practicable to do so due to any Emergency; and
 - 16.3.2 while exercising a right of entry under clause 16.1:

- (a) act as a Reasonable and Prudent Person; and
- (b) without limiting clause 16.2.3, take steps that are reasonable in the circumstances to ensure that during the entry its Workers and Visitors cause as little inconvenience to the Host Party as possible, except to the extent that it is not practicable to do so due to any Emergency, and at all times comply with:
 - (i) all reasonable health and safety standards, induction and supervision requirements and other requirements of the Host Party; and
 - (ii) all reasonable and lawful directions by or on behalf of the Host Party.

Third person's premises

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

17 Directions relating to security and reliability

Microgrid Operator and the Retailer must comply

- 17.1 Without limiting the generality of clause 15:
- 17.1.1 the Microgrid Operator must comply with any directions given:
 - (a) by Western Power or AEMO in relation to security or reliability; and
 - (b) by the person responsible under contract for supplying Electricity to the Network from the Western Power network or by the Market Participant under the Market Rules responsible for the supply of Electricity to the Network, where that person has received an instruction or direction from Western Power or AEMO in relation to security or reliability.
 - 17.1.2 the Retailer must comply with any directions given:
 - (a) directly by Western Power or AEMO in relation to security or reliability;
 - (b) indirectly by either:
 - (i) the person responsible under contract for supplying Electricity to the Network from the Western Power network; or
 - (ii) the Market Participant under the Market Rules responsible for the supply of Electricity to the Network, where that person has received an instruction or direction from Western Power or AEMO in relation to security or reliability (and only to such extent); and
 - (c) directly by the Microgrid Operator where the Microgrid Operator issues a direction concerned with its obligation to maintain the security and reliability of the Network and the Microgrid (and only to such extent).

18 Removal of equipment

- 18.1 On the permanent Disconnection of Facilities and Equipment at any Connection Point:
- 18.1.1 the Microgrid Operator may dismantle, decommission and remove the Microgrid Operator's Network, Generation and Storage Infrastructure, Works and any Metering Equipment installed on the Retailer's Premises; and
 - 18.1.2 under the Microgrid Operator's reasonable instructions, the Retailer must dismantle and decommission or remove any of the Retailer's Works at or connected to the Connection Point.

Common Provisions

19 Representations and warranties

The Retailer's representations and warranties

- 19.1 The Retailer represents and warrants to the Microgrid Operator that:
- 19.1.1 the Retailer has complied with the Customer Connection and Contribution Guidelines, except where any non-compliance arises as the direct result of a breach by the Microgrid Operator of the Customer Connection and Contribution Guidelines; and
 - 19.1.2 the Retailer's obligations under this Contract are valid and binding and are enforceable against the Retailer under their terms; and
 - 19.1.3 the Retailer is compliant with clause 8; and
 - 19.1.4 this Contract and any other transaction under it does not contravene the Retailer's constituent documents or any Law or any of the Retailer's obligations or undertakings by which the Retailer or any of the Retailer's assets are bound or cause to be exceeded any limitation on the Retailer's or the Retailer's directors' powers; and
 - 19.1.5 neither the Retailer nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).
- 19.2 The representations and warranties in clause 19.1 to 19.4 are to be taken to be made on each day on which:
- 19.2.1 this Contract is in effect; or
 - 19.2.2 any amount payable by the Retailer to the Microgrid Operator under this Contract is or may be outstanding.
- 19.3 To the maximum extent permitted by Law, the only warranties given by and terms which apply to the Retailer under this Contract are those expressly contained in this Contract, and all warranties and terms implied by Law, including those on the part of the Retailer implied by the *Competition and Consumer Act 2010* of the Commonwealth or the *Fair Trading Act 2010* (WA) or any other Law to similar effect do not apply to this Contract.
- 19.4 If at Law the exclusion of any warranty or term is prohibited, then the Retailer's liability in respect of a breach of such warranty or term is limited to the maximum extent permitted by

Law. For example, where any Law permits the Retailer to limit its liability in respect of a breach of an implied warranty or condition to the replacement or resupply of equivalent goods and services, then the Retailer's liability will be so limited.

Microgrid Operator's representations and warranties

- 19.5 The Microgrid Operator represents and warrants to the Retailer that:
- 19.5.1 the Microgrid Operator has complied with the Customer Connection and Contribution Guidelines, except where any non-compliance arises as the direct result of a breach by the Retailer of the Customer Connection and Contribution Guidelines; and
 - 19.5.2 the Microgrid Operator's obligations under this Contract are valid and binding and are enforceable against the Microgrid Operator under their terms; and
 - 19.5.3 this Contract and any other transaction under it does not contravene the Microgrid Operator's constituent documents or any Law or any of the Microgrid Operator's obligations or undertakings by which the Microgrid Operator or any of the Microgrid Operator's assets are bound or cause to be exceeded any limitation on the Microgrid Operator's or the Microgrid Operator's directors' powers; and
 - 19.5.4 neither the Microgrid Operator nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).
- 19.6 The representations and warranties in clause 19.5 are to be taken to be made on each day on which:
- 19.6.1 this Contract is in effect; or
 - 19.6.2 any amount payable by the Microgrid Operator to the Retailer under this Contract is or may be outstanding.
- 19.7 To the maximum extent permitted by Law, the only warranties given by and terms which apply to the Microgrid Operator under this Contract are those expressly contained in this Contract, and all warranties and terms implied by Law, including those on the part of the Microgrid Operator implied by the *Competition and Consumer Act 2010* of the Commonwealth or the *Fair Trading Act 2010* (WA) or any other Law to similar effect do not apply to this Contract.
- 19.8 If at Law the exclusion of any warranty or term is prohibited, then the Microgrid Operator's liability in respect of a breach of such warranty or term is limited to the maximum extent permitted by Law. For example, where any Law permits the Microgrid Operator to limit its liability in respect of a breach of an implied warranty or condition to the replacement or resupply of equivalent goods and services, then the Microgrid Operator's liability will be so limited.

Guarantor's representations and warranties

- 19.9 The Guarantor represents and warrants to the Microgrid Operator that, as at the Commencement Date, there has been no material change in the Guarantor's financial position since the date the Microgrid Operator received information from the Guarantor stating that position.

20 Liability and indemnity

No several liability

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

Liability for Direct Damage

20.2 Subject to the terms of this Contract:

20.2.1 a Party who:

(a) is negligent; or

(b) commits a Default under this Contract,

is liable to the other Party for, and must indemnify the other Party against, any Direct Damage caused by, consequent upon or arising out of the negligence or Default; and

20.2.2 the Guarantor must indemnify the Microgrid Operator in respect of the liabilities of the Retailer under this Contract.

Exclusion of Indirect Damage

20.3 Subject to clauses 20.4 and 20.13:

20.3.1 either or both of the Retailer or the Guarantor is not in any circumstances liable to the Microgrid Operator for any Indirect Damage suffered by the Microgrid Operator, however arising; and

20.3.2 the Microgrid Operator is not in any circumstances liable to either or both of the Retailer or the Guarantor for any Indirect Damage suffered by the Retailer, however arising.

20.4 Where this Contract states that “the exclusion of Indirect Damage in clause 20.3 does not apply”, or words to a similar effect, in relation to a matter, then:

20.4.1 the exclusion of Indirect Damage in clause 20.3 does not apply in relation to that matter; and

20.4.2 except to the extent otherwise expressly provided for, the Parties’ liability in relation to the matter is to be determined by Law, and to avoid doubt the definition of Indirect Damage in this Contract is to be disregarded for the purposes of that determination.

Fraud

20.5 If the Microgrid Operator is fraudulent in respect of its obligations to the Retailer under this Contract, then the Microgrid Operator is liable to either the Retailer or the Guarantor for, and is to indemnify both the Retailer and the Guarantor against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 20.3 does not apply.

20.6 If the Retailer or the Guarantor is fraudulent in respect of its obligations to the Microgrid Operator under this Contract, then the Retailer or the Guarantor is liable to the Microgrid Operator for, and is to indemnify the Microgrid Operator against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of Indirect Damage in clause 20.3 does not apply.

Limitation of liability

20.7 Subject to clauses 20.9 and 20.13, the maximum liability of the Microgrid Operator to the Retailer and the Guarantor collectively under and in connection with this Contract is limited to an amount of \$5 million in the aggregate and refreshed annually each 1 July, except that the liability described in clauses 7, 8, 10, 11, 20.13 and 26 are not counted for the purposes of the Microgrid Operator's maximum liability under this Contract.

20.8 Subject to clauses 20.9 and 20.13, the maximum liability of both the Retailer and the Guarantor collectively to the Microgrid Operator under and in connection with this Contract is limited to the lesser of:

20.8.1 an amount of \$80 million in the aggregate, refreshed annually each 1 July; and

20.8.2 the sum of:

- (a) for each Connection Point at which Generating Plant (other than wind or solar powered generation) is connected at a voltage of 66 kV and above - \$22 million in the aggregate, refreshed annually each 1 July; and
- (b) for each Connection Point at which wind or solar powered Generating Plant is connected at a voltage of 66 kV or above - \$11 million in the aggregate, refreshed annually each 1 July; and
- (c) for each Connection Point at which Generating Plant is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July; and
- (d) for each Connection Point at which Consuming plant is connected at a voltage of 66 kV and above - \$6 million in the aggregate, refreshed annually each 1 July; and
- (e) for every 100 Connection Points at which Consuming plant is connected at a voltage below 66 kV - \$1.2 million in the aggregate, refreshed annually each 1 July,

except that the liabilities described in clauses 7, 8, 10, 11, 20.13 and 26 are not counted for the purposes of both the Retailer's and the Guarantor's collective maximum liability under this Contract.

20.9 The monetary caps on liability in clauses 20.7 and 20.8 will be CPI-Adjusted every three Years from the Commencement Date provided that for the purposes of such CPI adjustment the following formula will be used:

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

where:

"N" is the new amount being calculated; and

"C" is the current amount being adjusted; and

"CPI_n" is the CPI applicable at the end of the calendar quarter (quarter_n) most recently ended prior to the current adjustment date; and

"CPI_c" is the value of CPI applicable for the calendar quarter occurring 12 months before the calendar quarter referred to in the definition of CPI_n.

- 20.10 At the end of each three-Year period from the Commencement Date, if there has been a Material Change affecting the liability of a Party under this Contract, then the Parties must negotiate in good faith to reset the monetary caps on liability in this clause 20.10. If the Parties are unable to agree on re-setting the monetary caps on liability, the matter shall be determined by an expert nominated by the Parties or, failing agreement, nominated by the Chairperson of the Institute of Arbitrators (Western Australian Chapter) or their nominee and the determination of the expert shall be final and binding upon the Parties.

Lonnegal release and indemnity

- 20.11 The Retailer acknowledges and agrees that Lonnegal has no liability to the Retailer, any Customer of the Retailer or any Permitted Person of the Retailer for any Direct Damage or Indirect Damage arising out of or in relation to:
- 20.11.1 this Contract, including any breach of this Contract or breach of any representation or warranty given by a person in connection with the supply of Electricity or a Service;
 - 20.11.2 the Microgrid or any act or omission of the Microgrid Operator or any of its Permitted Persons;
 - 20.11.3 the installation, maintenance, operation, performance, non-performance or removal of any Generating Plant owned or operated by the Microgrid Operator or any of its Permitted Persons;
 - 20.11.4 the use or occupation of the Retailer's Premises, any Easement Area or any adjoining or nearby property;
 - 20.11.5 the injury, death or illness or any person sustained when on, using, entering or near the Retailer's Premises, any Easement Area or any adjoining or nearby property; and
 - 20.11.6 any work carried out by or on behalf of the Microgrid Operator or any of its Permitted Persons.
- 20.12 Each of the Microgrid Operator and the Retailer acknowledge and agree that clause 20.11 is for the benefit of, and is enforceable against the Retailer, by Lonnegal in accordance with section 11 of the *Property Law Act 1969* (WA).
- 20.13 The Retailer hereby indemnifies and agrees to keep indemnified the Microgrid Operator from and against all damage, sums of money, costs, charges, expenses, actions, Claims and demands (including Indirect Damage) that is incurred, suffered or accrued, or brought or made against the Microgrid Operator by Lonnegal, which arises out of or is in relation to any Claim brought by the Retailer, a Customer of the Retailer, or any Permitted Person of the Retailer against Lonnegal in relation to the matters referred to in clause 20.11 ("**Lonnegal Claim**"). The exclusion of Indirect Damage in clause 20.3 does not apply to this clause 20.13.

Procedure for party seeking to rely on indemnity

- 20.14 If any Claim is made or instituted against:
- 20.14.1 either or both of the Retailer or the Guarantor in respect of which either or both of the Retailer or the Guarantor ("**Indemnified Party**") may seek to claim indemnity under this Contract against the Microgrid Operator ("**Indemnifying Party**"); or

20.14.2 the Microgrid Operator in respect of which the Microgrid Operator (“**Indemnified Party**”) may seek to claim indemnity under this Contract against either or both of the Retailer or the Guarantor (“**Indemnifying Party**”),

the following procedure applies:

20.14.3 the Indemnified Party must give notice of the Claim to the Indemnifying Party as soon as reasonably practicable; and

20.14.4 where the Claim is not a Lonnegal Claim, the Indemnified Party must not admit, compromise, settle or pay any Claim or take any other steps which may in any way prejudice the defence or challenge of the Claim without the prior written consent of the Indemnifying Party (which must not be unreasonably withheld) except as may be reasonably required in order to defend any judgment against the Indemnified Party (to avoid doubt, Part 1E of the Civil Liability Act 2002 (WA) applies in respect of any ‘apology’ (as defined in section 5AF of that Act) given by the Indemnified Party); and

20.14.5 where the Claim is not a Lonnegal Claim, the Indemnified Party must permit the Indemnifying Party to take, at the Indemnifying Party’s expense, any reasonable action in the name of the Indemnified Party to defend or otherwise settle the claim as the Indemnifying Party may reasonably require; and

20.14.6 where the Claim is not a Lonnegal Claim, the Indemnified Party must ensure that the Indemnifying Party and its representatives are given reasonable access to any of the documents, records, staff, premises and advisers of the Indemnified Party as may be reasonably required by the Indemnifying Party in relation to any action taken or proposed to be taken by the Indemnifying Party under clause 20.14.5.

Obligation to pay and right to indemnities survives termination

20.15 A Party’s and the Guarantor’s obligation to pay an amount to another Party under this Contract is a continuing obligation, separate and independent from the other obligations of either or both of the Party and the Guarantor and survives termination (for any reason) of this Contract.

20.16 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of both the Parties and the Guarantor and survives termination (for any reason) of this Contract. It is not necessary for either or both of a Party or a Guarantor to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

Apportionment of liability

20.17 For the avoidance of doubt, where an obligation to indemnify arises otherwise than under a Lonnegal Claim, and either or both of the Retailer or the Guarantor is liable to, or is to indemnify, the other Party under this Contract, the liability or indemnity owed by either or both of the Retailer or the Guarantor is limited to the proportion of the damage suffered by the Microgrid Operator as a consequence of the Default, negligence or fraud of either or both of the Retailer or the Guarantor giving rise to the liability or indemnity.

20.18 For the avoidance of doubt, where the Microgrid Operator is liable to, or is to indemnify, either or both of the Retailer or the Guarantor under this Contract, the liability or indemnity owed by the Microgrid Operator is limited to the proportion of the damage suffered by either or both of the Retailer or the Guarantor as a consequence of the Default, negligence or fraud of the Microgrid Operator giving rise to the liability or indemnity.

- 20.19 For the purposes of the application of the indemnity given by the Guarantor under this Contract:
- 20.19.1 clause 20.17 may apply to reduce the Retailer's liability to the Microgrid Operator and, consequently, the amount of liability for which the Guarantor must indemnify the Microgrid Operator;
- 20.19.2 except as provided in clause 20.19.1, clause 20.17 does not apply to reduce the Guarantor's indemnification obligation.

Mitigation of losses

- 20.20 A Party and the Guarantor must take such action as is reasonably required to mitigate any loss or damage to it for which indemnity may be claimed under this Contract or otherwise, except in relation to any Lonnegal Claim.

Recoveries under insurance

- 20.21 To the extent that the Microgrid Operator recovers against any insurer under an insurance policy effected by either Party or the Guarantor for a Claim in connection with this Contract in respect of which either or both of the Retailer or the Guarantor is liable, for any reason (including negligence), the amount as recovered shall, for the purposes of clause 20.7 and 20.8, be deemed to have been paid.
- 20.22 To the extent that the Retailer recovers against any insurer under an insurance policy effected by either Party or the Guarantor for a Claim in connection with this Contract in respect of which the Microgrid Operator is liable, for any reason (including negligence), the amount as recovered shall, for the purposes of clause 20.7 and 20.8, be deemed to have been paid.

21 Insurances

The Retailer's insurances

- 21.1 Subject to clause 21.2, the Retailer must obtain and maintain insurance, commencing from the Commencement Date, covering those matters, on the terms and basis, and for the amounts, referred to in Part 1 of Schedule 4.
- 21.2 To the extent that the Microgrid Operator consents (such consent not to be unreasonably withheld), the Retailer may self-insure for some or all of the matters and amounts referred to in Schedule 4.
- 21.3 For each Connection Point, prior to the Start Date of a Service at the Connection Point, and at such other times as the Microgrid Operator shall reasonably request in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), the Retailer must provide the Microgrid Operator with certificates of currency for the insurances required under clause 21.1.

Microgrid Operator's insurances

- 21.4 Subject to clause 21.5, the Microgrid Operator must obtain and maintain insurance, commencing from the Commencement Date, covering those matters, on the terms and basis, and for the amounts referred to in Part 2 of Schedule 4.
- 21.5 To the extent that the Retailer consents (such consent not to be unreasonably withheld), the Microgrid Operator may self-insure for some or all of the matters and amounts referred to in Part 2 of Schedule 4.

21.6 The Microgrid Operator must, before the Commencement Date and at such other times as the Retailer reasonably requests in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide the Retailer with certificates of currency for the insurances required this Contract.

Names of insured

21.7 In respect of the insurances referred to in Schedule 4 Part 1.1.1 (public and products liability insurance) and Schedule 4 Part 1.1.4 (contractors' plant and equipment insurance) the insurance must list the Microgrid Operator as an additional insured.

Cross liability

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

Notice of cancellation

21.9 A Party must notify the other Party immediately on being advised by its insurer of cancellation or non-renewal of any of the insurance policies in Schedule 4, and immediately use all reasonable endeavours to reobtain the insurance policies in Schedule 4.

Further obligation

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

22 Force Majeure

Affected Person's obligations are suspended

22.1 If a Party ("**Affected Person**") is unable wholly or in part to perform any obligation ("**Affected Obligation**") under this Contract (other than an obligation to pay money) because of the occurrence of a Force Majeure Event, then, subject to this clause 22, the Affected Person's obligation to perform the Affected Obligation is suspended to the extent that, and for so long as, the Affected Person's ability to perform the Affected Obligation is affected by the Force Majeure Event (such period being the "**FM Period**").

When Services are Curtailed

22.2 Without limiting clause 22.1, the Microgrid Operator's obligation in respect of a Connection Point to provide the Services is suspended during any period that the provision of the Services in respect of that Connection Point is Curtailed under clause 24.1, to the extent of the Curtailment.

Affected Person's obligations

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

22.3.1 notify the other Party if the FM Period continues for a period of two days or longer; and

- 22.3.2 use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to:
- (a) mitigate the consequences of the Force Majeure Event; and
 - (b) minimise any resulting delay in the performance of the Affected Obligation.

A notice under clause 22.3.1 must be given as soon as reasonably practicable and in any event within 5 Business Days of a Party becoming aware an event is or is likely to be a Force Majeure Event.

In case of breach

- 22.4 An Affected Person is not obliged to incur any expenditure in complying with clause 22.3.2 if the Force Majeure Event is constituted by a breach of, or failure to comply with, this Contract by the other Party.

Failure to minimise delays

- 22.5 If an Affected Person fails to comply with clause 22.3.2(b), then the only consequence of that failure is that the FM Period is reduced by the period of any delay in the performance of the Affected Obligation attributable to that failure.

Settlement of a labour dispute

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

23 Retailer does not acquire interest in Network

- 23.1 To avoid doubt, nothing in, and nothing done under or in connection with, this Contract causes the Retailer to acquire any right, title or interest in or to:
- 23.1.1 the Network or any part of it; or
 - 23.1.2 the Microgrid, more generally, or any part of it.

24 Curtailment

Microgrid Operator may Curtail Services

- 24.1 The Microgrid Operator may, in accordance with Good Electricity Industry Practice, Curtail the provision of Services in respect of a Connection Point:
- 24.1.1 to carry out planned Augmentation or Maintenance to the Network; or
 - 24.1.2 to carry out unplanned Maintenance to the Network where the Microgrid Operator considers it necessary to do so to avoid injury to any person or material damage to any property or the environment; or
 - 24.1.3 if there is any breakdown of or damage to the Network or any Generating Plant that affects the Microgrid Operator's ability to provide the Service at that Connection Point; or
 - 24.1.4 if a Force Majeure Event occurs affecting the Microgrid Operator's ability to provide the Service at the Connection Point, for so long as the Microgrid Operator's ability to provide Services is affected by the Force Majeure Event; or
 - 24.1.5 to the extent necessary for the Microgrid Operator to comply with a Law.

Extent of Curtailment

- 24.2 The Microgrid Operator must keep the extent and duration of any Curtailment under clause 24.1 to the minimum reasonably required in accordance with Good Electricity Industry Practice.

Notification of Curtailment

- 24.3 The Microgrid Operator must use reasonable endeavours to notify the Retailer of any Curtailment under clause 24.1 as soon as practicable.

Retailer must comply with Curtailment

- 24.4 If the Microgrid Operator notifies the Retailer of a Curtailment of the Service under clause 24.3 in respect of a Connection Point, the Retailer (acting as a Reasonable and Prudent Person) must comply, or procure compliance, with any reasonable requirements set out in the notice concerning the Curtailment.

25 Powers under the Energy Operators Powers Act

- 25.1 The Microgrid Operator and the Retailer acknowledge and agree that the Microgrid Operator is taken to have each of the powers granted to an “energy operator” under the *Energy Operators (Powers) Act 1979 (WA)* that are capable of being granted by the Minister for Energy to the holder of a distribution licence under section 45 of the Act.
- 25.2 No provision of this Contract shall be taken to limit the scope of the powers described in clause 25.1.

26 Payments and recoveries under the Customer Connection and Contribution Guidelines

- 26.1 The Parties must comply with the provisions set out in Schedule 3 regarding any Contributions.

27 Default

Default

- 27.1 A Party is in “Default” if:
- 27.1.1 that Party defaults in the due and punctual payment, at the time and in the manner required for payment by this Contract, of any amount payable under this Contract; or
 - 27.1.2 that Party defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of Law in this Contract; or
 - 27.1.3 an Insolvency Event occurs in respect of that Party; or
 - 27.1.4 that Party materially breaches any representation or warranty given to the other Party under this Contract.

Default by the Retailer

- 27.2 In the event of the Retailer’s Default, then the Microgrid Operator may:

- 27.2.1 notify the Retailer of the Retailer's Default and require the Retailer to remedy the Retailer's Default; or
- 27.2.2 if the Retailer's Default is a Default in the payment of any amount and has not been remedied by the end of the third Business Day after the notice was given, De-energise, or Curtail the provision of Services in respect of, all or any of the Retailer's Connection Points from the Network whilst the Retailer's Default is continuing; or
- 27.2.3 if the Retailer's Default is any other type of Default and at the end of the fifth Business Day after the notice was given:
 - (a) the Retailer's Default has not been remedied; or
 - (b) the Retailer has not to the reasonable satisfaction of the Microgrid Operator begun remedying the Retailer's Default or has begun remedying but is not, in the reasonable opinion of the Microgrid Operator, diligently proceeding to remedy the Retailer's Default, De-energise, or Curtail the provision of Services in respect of, all or any of the Retailer's Connection Points from the Network whilst the Retailer's Default is continuing; and
- 27.2.4 if the Retailer's Default has not been remedied at the end of the 20th Business Day after the notice was given, terminate this Contract.

Microgrid Operator's rights not affected

- 27.3 The Retailer's Default under clause 27.2 does not prejudice the rights or remedies accrued to the Microgrid Operator at the date of the Retailer's Default.

Default by Microgrid Operator

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

Retailer's rights not affected

- 27.5 The Microgrid Operator's Default under clause 27.4 does not prejudice the rights or remedies accrued to the Retailer at the date of the Microgrid Operator's Default.

28 Coverage Event

Definition of Coverage Event

- 28.1 A “**Coverage Event**” is any event of circumstance that causes the Microgrid or any Generating Plant owned or operated by the Microgrid Operator or a Related Body Corporate of the Microgrid Operator to become subject to, or required to comply with:
- 28.1.1 any Law pertaining to third party access, whether pursuant to the Code or under the *Competition and Consumer Act 2010* (Cth); and
 - 28.1.2 any provision of the Market Rules.

Notification of Coverage Event

- 28.2 If a Coverage Event occurs, or the Microgrid Operator considers acting in accordance with Good Electricity Industry Practice that a Coverage Event will occur, the Microgrid Operator may give notice (“**Coverage Event Notice**”) to the Retailer setting out:
- 28.2.1 the actual or anticipated occurrence of that Coverage Event;
 - 28.2.2 the impact of that actual or anticipated Coverage Event;
 - 28.2.3 any direct or indirect financial or operational impacts of that Coverage Event on the Microgrid Operator’s provision of the Services or any of the financial assumptions on which the Microgrid has been based; and
 - 28.2.4 the Microgrid Operator’s proposal to address the impacts described in clause 28.2.3 by means of a variation to this Contract or the Services and the date on which that variation should occur.
- 28.3 The Retailer must promptly but not less than 20 Business Days following receipt of the Coverage Event Notice consider the Coverage Event Notice and notify the Microgrid Operator whether it accepts or rejects the Microgrid Operator’s proposal to address the impacts of the Coverage Event Notice.
- 28.4 If the Retailer accepts the Microgrid Operator’s proposal to address the Coverage Event, the Microgrid Operator must promptly do all things necessary to incorporate the proposal into the terms of this Contract, including drafting and executing one or more deeds of variation to this Contract and the Retailer must do all things necessary to give effect to those deeds of variation to this Contract.
- 28.5 If the Retailer does not accept the Microgrid Operator’s proposal to address the Coverage Event, then within 25 Business Days of the date the Retailer received the Coverage Event Notice, the Parties must meet and agree such changes to this Contract as are reasonably necessary to allow the Microgrid Operator to achieve a financial and operational outcome that is, insofar as practicable, materially identical to that which would have been achieved by the Microgrid Operator had the Coverage Event not occurred.
- 28.6 If the Parties do not agree the changes described in clause 28.5 within 40 Business Days of the date the Retailer received the Coverage Event Notice, either Party may terminate this Contract on not less than 20 Business Days’ notice.

29 Termination

Termination

- 29.1 Subject to clause 29.2, this Contract terminates on the Termination Date.

- 29.2 This Contract may be terminated before the Termination Date by:
- 29.2.1 written agreement between the Microgrid Operator and the Retailer; or
 - 29.2.2 notice by either Party at any time at which this Contract does not include at least one Connection Point; or
 - 29.2.3 notice by either Party where there is a Default by the other Party under this Contract, subject to clauses 27.2 or 27.4, as the case may be; or
 - 29.2.4 notice by either Party pursuant to clause 28.6; or
 - 29.2.5 notice by the Microgrid Operator if the Microgrid Operator ceases to hold, or reasonably anticipates ceasing to hold any licence under the Act that is required in order for the Microgrid Operator to perform the Service; or
 - 29.2.6 notice by either Party to an Affected Person if a Force Majeure Event occurs and then:
 - (a) the Affected Person is unable wholly or in part to perform any obligation under this Contract; and
 - (b) the FM Period continues for a period of greater than 180 days in aggregate in any 12-month period.
- 29.3 On termination of this Contract the Microgrid Operator may Disconnect any one or more of the Retailer's Connection Points, permanently (under clause 18) or otherwise.
- 29.4 On termination of this Contract, unless otherwise agreed by the Parties:
- 29.4.1 the Retailer must pay any unpaid amount owed to the Microgrid Operator pursuant to this Contract; and
 - 29.4.2 the Microgrid Operator must pay any unpaid amount owed to the Retailer pursuant to this Contract.

Rights of Parties not affected

- 29.5 Termination of this Contract under clause 29.2 does not prejudice the rights or remedies accrued to either Party at the date of termination.

30 Disputes

Party may give notice of Dispute and require Representatives' Meeting

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

Party may require CEO Meeting

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

endeavours to resolve the Dispute within 35 Business Days after the Receipt Date (“**CEO Meeting**”).

Method of Meetings

- 30.3 A Representatives’ Meeting or CEO Meeting may be conducted in person, by telephone, video conference or similar method of real time communication.
- 30.4 If the Parties are unable to agree on a meeting place under clause 30.1 or 30.2 in the allocated time frame, the meeting will take place at a place determined by the Microgrid Operator (acting as a Reasonable and Prudent Person).

Party may commence court proceedings

- 30.5 If, after complying with the process set out in clauses 30.1 and 30.2 a Dispute is not resolved, then either Party may commence an action to resolve the Dispute through litigation and other court processes.

Obligations must be performed

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

31 Set off

Party may set off payment

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

No other set off permitted

- 31.2 Except as permitted in clause 31.1, no set off is permitted by either Party in connection with this Contract, whether under this Contract or otherwise.

32 Assignment

- 32.1 The Microgrid Operator may Assign or deal with any of its rights under this Contract without the consent of the Retailer.
- 32.2 The Retailer may only Assign or deal with any of its rights under this Contract with the Microgrid Operator’s prior written consent, which shall not be unreasonably withheld or delayed.

33 Confidentiality

Confidential information

- 33.1 This Contract and information exchanged between the Parties under this Contract or during the negotiations preceding this Contract is confidential to them if:
- 33.1.1 the information disclosed contains a notification by the disclosing Party that the information is confidential; or
 - 33.1.2 the circumstances in which the information was disclosed or the nature of the information disclosed may reasonably be considered as being confidential; or

- 33.1.3 the information constitutes trade secrets; or
- 33.1.4 the information has a commercial value to a Party which would be destroyed or diminished by the publication of the information; or
- 33.1.5 the information relates to the business, professional, commercial or financial affairs of a Party and the value to the Party would be destroyed or diminished by the publication of the information; or
- 33.1.6 the information is about or relating to a Controller or a person who is proposed to be a Controller.

When information is not confidential

- 33.2 Clause 33.1 does not apply to information which, without breach of this Contract or other breach of confidence:
 - 33.2.1 is or becomes generally and publicly available; or
 - 33.2.2 is lawfully obtained by a Party from a person other than a Party or a Related Body Corporate of a Party where such person is entitled to disclose the Confidential Information; or
 - 33.2.3 is, at the date of this Contract, lawfully in the Possession of the recipient of the Confidential Information through sources other than the Party which supplied the information.

Prohibited disclosure

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

Permitted disclosure

- 33.4 An Information Recipient may disclose or allow to be disclosed any Confidential Information to a Third Party Recipient in the following circumstances:
 - 33.4.1 with written consent of the Information Provider; or
 - 33.4.2 to employees, a Related Body Corporate or legal advisers, auditors or other consultants of the Party requiring information for the purposes of this Contract or for the purposes of providing professional advice in relation to this Contract; or
 - 33.4.3 to a bona fide proposed assignee of a Party to this Contract or registered shareholder of 20 percent or more of the voting shares in a Party; or
 - 33.4.4 if required by Law or by an authority (including the Australian Energy Market Operator) which has jurisdiction over a Party or any of its Related Bodies Corporate or by the rules of a stock exchange which has jurisdiction over a Party or any of its Related Bodies Corporate; or
 - 33.4.5 if required for the purposes of prosecuting or defending a Dispute or if otherwise required in connection with legal proceedings related to this Contract.
- 33.5 The Retailer may disclose or allow to be disclosed a copy of this Contract to a Controller with whom the Retailer will enter, or has entered into, a contract as required by clause 6.
- 33.6 Nothing in clause 33.4 limits the Microgrid Operator's obligations to comply with Chapter 13 of the Code.

Third party disclosure

- 33.7 An Information Recipient disclosing information under clause 33.4 must:
- 33.7.1 use all reasonable endeavours to ensure that a Third Party Recipient does not disclose the Confidential Information except in the circumstances permitted by clause 33.4; and
 - 33.7.2 notify the Third Party Recipient that it has a duty of confidence to the Information Provider in respect of the Confidential Information; and
 - 33.7.3 except to the extent that the Third Party Recipient is under an existing enforceable legal obligation to maintain the confidence of the Confidential Information as contemplated in clause 33.7.2, procure a written confidentiality undertaking from the Third Party Recipient consistent with clauses 33.1 to 33.13.

No unauthorised copying

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

Secure storage

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

Return of materials

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

Remedies

- 33.11 Each Party acknowledges and agrees that any breach or threatened breach of clauses 33.1 to 33.13 may cause a Party immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, each Party has the right, in addition to any other remedies available at Law, to seek injunctive relief or compel specific performances of these clauses 33.1 to 33.13 in respect of any such breach or threatened breach.

Survival of obligations

- 33.12 Clauses 33.1 to 33.13 survive the termination of this Contract and remain enforceable for a period of 7 Years from the date of such termination.
- 33.13 Any person who ceases to be a Party to this Contract continues to be bound by these clauses 33.1 to 33.13.

34 Notices

Requirements for Communications

- 34.1 A Communication must be:
- 34.1.1 in writing (which includes any Electronic form capable of being reduced to paper writing by being printed); and
 - 34.1.2 delivered or sent to the address of the addressee as specified in Schedule 5 by one or more of the following means:
 - (a) by hand delivery; or
 - (b) by priority post (airmail if posted to or from a place outside Australia); or
 - (c) by way of a courier service for hand delivery; or
 - (d) Electronically to the email address of the addressee.

Operational and urgent Communication

- 34.2 Where this Contract expressly provides:
- 34.2.1 and where the Parties agree in writing, Communications of a day to day operational nature; or
 - 34.2.2 Communications given in an operational Emergency, may be given orally and confirmed in writing within five Business Days.

Communication takes effect

- 34.3 Subject to clause 34.4, a Communication takes effect from the later of:
- 34.3.1 the time it is received; and
 - 34.3.2 any later time specified in the Communication.

Deemed receipt

- 34.4 For the purposes of this Contract:
- 34.4.1 a Communication delivered by hand to the address of a Party (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgment of the person making the delivery (upon making appropriate enquiries):
 - (a) appears to be; and
 - (b) represents himself or herself as, a representative of the Party to whom the Communication is addressed;
 - 34.4.2 a Communication which is posted is deemed to be received by the Party to whom the Communication is addressed:
 - (a) where the Communication is sent from outside the country of the address to which it is sent – 10 Business Days after the day of posting; and
 - (b) otherwise – three Business Days after the day of posting; and

- 34.4.3 a Communication sent by email is deemed to have been received by the Party under the Electricity Industry Metering Code 2005 Communication Rules (or within 4 hours if such rules have not established a method for determining receipt).

35 Change of address

- 35.1 A Party may at any time, by notice given to the other Party to this Contract, designate a different email or postal address for the purpose of clauses 34.1 to 34.4.

36 Miscellaneous

Compliance

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

Variation

- 36.2 Subject to clause 36.3, a purported agreement between the Microgrid Operator and the Retailer to revoke, substitute or amend any provision of this Contract has no effect unless it is in writing.
- 36.3 Clause 36.2 and this clause 36.3 does not prevent the Retailer and the Microgrid Operator from agreeing by non-written means under clause 34.2 to revoke, substitute or amend any provision of this Contract in an Emergency provided that the non-written revocation, substitution or amendment applies only while the effects of the Emergency subsist.

Duty

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

Costs

- 36.5 Each Party must pay its own costs, charges, expenses, disbursements or fees in relation to:
- 36.5.1 the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- 36.5.2 the performance of any action by that Party in compliance with any liability arising,
- under this Contract, or any agreement or document executed or effected under this Contract, unless this Contract provides otherwise.

Waiver

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

Entire agreement

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

Severance

- 36.8 If the whole or any part of this Contract is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Contract has full force and effect and the validity or enforceability of the provision in any other jurisdiction is not affected. This clause 36.8 has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.

Counterpart execution

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

Further assurance

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

Party Representatives

- 36.12 Notice, approval, consent or other Communication given under this Contract may be given by an Party Representative of a Party specified in Schedule 5 to an Party Representative of another Party specified in Schedule 5.
- 36.13 A Party may at any time, by notice given to the other Party, add or replace an Party Representative for the purposes of clause 36.12 and this clause 36.13.

Merger

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

Remedies

- 36.15 Subject to clause 36.16, the rights, powers and remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Contract.
- 36.16 A Party may only terminate this Contract in circumstances permitted by express provisions of this Contract. Any rights to terminate this Contract at common law are excluded.

Governing Law

- 36.17 This Contract and the transactions contemplated by this Contract are governed by the Law in force in Western Australia.
- 36.18 Without limiting clause 36.17, each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and the Courts of appeal from them for the purpose of determining any Dispute concerning this Contract or the transactions contemplated by this Contract.

Schedule 1 Microgrid Electricity Transfer Access Contract Information

1 Term

Termination Date:	
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2 Extension of Term

Extension Period:	
Latest Termination Date:	

3 Conditions Precedent

For the benefit of the Retailer	1	[Description]
		[Date to be satisfied by]
For the benefit of the Microgrid Operator	1	[Description]
		[Date to be satisfied by]

Schedule 2 Details of Connection Points

1 Commercial Details

1.1 {Note:

1.1.1 If in accordance with clause 3.18 the Parties agree to not have these details stored in this Part then state in each row in the right hand column below where the respective details are to be stored; and

1.1.2 the Microgrid Operator will store these details in the Metering Database where the Retailer is a Metering Code Participant.}

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

2 Technical Details

#	Connection Point	Description of Facilities and Equipment
1		

{Note: attach plans, drawings and other documentation as necessary }

3 Agreed exemptions from Microgrid Technical Rules

#	Connection Point	Technical Rules Reference	Description of Microgrid Technical Rules requirements	Description of Derogation
1				

Schedule 3 Works and Contributions

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

Schedule 4 Insurances

{Note: Referred to in clause 21.}

1 Retailer insurances

- 1.1 The Retailer must effect and maintain, commencing from the Commencement Date the following policies of insurance:
- 1.1.1 public and products liability of:
- (a) public liability insurance for a limit of not less than \$50 million or the maximum liability of the Retailer under clause 20.8 (whichever is greater) in the aggregate of all claims made in an Insured Year; and
 - (b) products liability insurance for a limit of not less than the maximum liability of the Retailer under clause 20 per claim and in the aggregate, refreshed annually;
- covering the Retailer's liability to the Microgrid Operator or any third party for death, bodily injury and loss or damage to property caused by any act, omission or negligence in relation to this Contract;
- 1.1.2 when reasonably requested by the Microgrid Operator, workers' compensation insurance for all persons employed by the Retailer including employer's liability at common law, with a limit of cover in respect of any one occurrence at least equal to \$50 million;
- 1.1.3 when reasonably requested by the Microgrid Operator, motor vehicle third party property insurance for all loss or damage to property caused by or attributable to the use of a motor vehicle in the performance of the Services or any Works under the Contract, for a limit of \$10 million per claim and unlimited in the aggregate of all claims made; and
- 1.1.4 contractors' plant and equipment insurance covering all loss or damage to the Retailer's plant or equipment used in connection with this Contract for its replacement value.
- 1.2 The policies of insurance under Schedule 4 Part 1.1 must be with an insurer authorised under the Insurance Act 1973 (Cth) or the equivalent in the United States of America or the United Kingdom.

2 Microgrid Operator insurances

- 2.1 The Microgrid Operator must effect and maintain, commencing from the Commencement Date, the following policies of insurance:
- 2.1.1 public and products liability of:
- (a) public liability insurance for a limit of not less than the maximum liability of the Microgrid Operator under clause 20.7 per claim and unlimited in the aggregate of all claims made; and
 - (b) products liability insurance for a limit of not less than the maximum liability of the Microgrid Operator under clause 20 per claim and in the aggregate, refreshed annually;

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

- 2.1.2 workers' compensation insurance for all persons employed by the Microgrid Operator including employer's liability at common law, with a limit of cover in respect of any one occurrence at least equal to \$50 million;
 - 2.1.3 motor vehicle third party property insurance for all loss or damage to property caused by or attributable to the use of a motor vehicle in the performance of the services or any work under the Contract, for a limit of \$10 million per claim and unlimited in the aggregate of all claims made; and
 - 2.1.4 contractors' plant and equipment insurance covering all loss or damage to the Microgrid Operator's plant or equipment used in connection with this Contract for its replacement value.
- 2.2 The policies of insurance under Schedule 4 Part 2.1 must be with an insurer authorised under the *Insurance Act 1973* (Cth) or the equivalent in the United States of America or the United Kingdom.

Schedule 5 Notices

1 Retailer

Subject	Information
Address for service of notices/ place of business:	
Party Representatives:	
Email address:	

2 Microgrid Operator

Subject	Information
Address for service of notices/ place of business:	
Party Representatives:	
Email address	

Schedule 6 Form of Guarantee

Parties

Guarantor

ACN
Address:
Attention:
Email:

Microgrid Operator

Eglinton Village Energy Pty Ltd
ACN 665 916 085
Address: 52 Belmont Avenue, Rivervale, Western Australia 6103
Attention: Rob Breden
Email: robbreden@zenithenergy.com.au

Background

- A The Microgrid Operator may in its discretion provide Services to [###] (“Retailer”) under a Microgrid Electricity Transfer Access Contract at the request of each of the Retailer and the Guarantor.
- B The Guarantor wishes to execute this Guarantee to secure payment of all amounts payable under the Microgrid Electricity Transfer Access Contract to the Microgrid Operator.

Operative Provisions

1 Guarantee

- 1.1 The Guarantor unconditionally and irrevocably Guarantees as a continuing security to the Microgrid Operator payment by the Retailer of all moneys and liabilities due and/or payable from or by the Retailer to the Microgrid Operator under or in connection with the contract dated [###] (“METAC”) created between the Retailer and the Microgrid Operator (“Secured Moneys”), including moneys and liabilities incurred or arising:
- 1.1.1 (liability): at any present or future time, whether actually or contingently;
 - 1.1.2 (default): as a result of any breach of or default under the METAC; and/or
 - 1.1.3 (account): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other duty, indemnity, damages or monetary judicial order.

2 Secured Moneys

2.1 Demand payment

- 2.1.1 The Guarantor must pay to the Microgrid Operator, upon demand by the Microgrid Operator at any present or future time, the amount of the Secured Moneys due from and payable by the Retailer to the Microgrid Operator at that

time under, and in the manner and currency specified in, the METAC.

2.2 **Costs**

2.2.1 The Guarantor must at any present or future time indemnify the Microgrid Operator upon demand for any cost, charge, expense, disbursement, fee, tax or stamp or other duty incurred by the Microgrid Operator at any time in connection with the METAC, this Guarantee or the Secured Moneys relating to:

- (a) (security agreements): preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;
- (b) (security rights): any exercise or enforcement of any right or power conferred on the Microgrid Operator;
- (c) (credit increases): any extension of further, additional or increased credit or financial accommodation by the Microgrid Operator, or agreement by the Microgrid Operator to increase the amount secured; and/or
- (d) (payments): the receipt or payment of any moneys, including moneys paid by the Microgrid Operator by way of reimbursement to any third party.

2.3 **Set-Off exclusion**

2.3.1 The Guarantor must make any payment required under this Guarantee without set-off or other deduction, except for the deduction or withholding of any tax compelled by law.

3 **Indemnity**

3.1.1 The Guarantor must as a separate and additional liability of the Guarantor as a principal debtor, and not as a surety, indemnify the Microgrid Operator against, and pay to the Microgrid Operator upon demand by the Microgrid Operator an amount equal to, all Secured Moneys that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to the Microgrid Operator by the Guarantor as a surety, despite any other provision of this Guarantee.

4 **Guarantee protection**

4.1.1 This Guarantee, and the liability of the Guarantor under this Guarantee, is not affected at any time by:

- (a) (waiver): the granting to any person by the Microgrid Operator of any waiver;
- (b) (agreements): any agreement, deed or document created with, or action or omission performed, representation made or non-disclosure of any fact or information by, the Microgrid Operator or any person;
- (c) (Secured Moneys): any increase or variation in the amount of the Secured Moneys occurring for any reason;

- (d) (document amendment): any amendment to or transfer, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;
- (e) (enforcement decisions): any exercise or enforcement, or any failure or invalidity in, the exercise or enforcement by the Microgrid Operator of any right or power conferred on the Microgrid Operator under any agreement, deed or document or by law;
- (f) (invalidity): any actual or potential invalidity, unenforceability, illegality or irrecoverability of any agreement, deed or document or consent or any payment made or due to the Microgrid Operator under any agreement for any reason;
- (g) (incapacity): any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or
- (h) (residual): any other breach, default, waiver or fact which, except for this provision, might legally operate:
 - (i) to release or discharge or have any prejudicial effect on; or
 - (ii) in any manner to release or discharge the Guarantor from performance of, or limit or provide a defence to any legal action to enforce,

this Guarantee, or any liability of the Guarantor under or in connection with this Guarantee.

5 Termination

- 5.1 The Guarantor is not entitled to terminate or limit this Guarantee, or any liability of the Guarantor under this Guarantee, until the Secured Moneys have been paid in full.

6 Governing Law

- 6.1 This Guarantee is governed by and construed under the law of the State of Western Australia.

7 General

Continuing Security

- 7.1.1 This Guarantee is a continuing security and is not wholly or partially discharged by the payment at any time of any Secured Moneys, settlement of account or other fact and applies to the balance of the Secured Moneys at any time until a final termination of this Guarantee by the Microgrid Operator.

7.2 Further Assurance

- 7.2.1 The Guarantor must upon request by the Microgrid Operator at any time execute any document and perform any action necessary to give full effect to this Guarantee, whether prior or subsequent to performance of this Guarantee.

7.3 **Waivers**

7.3.1 Any failure or delay by the Microgrid Operator to exercise any right or power under this Guarantee does not operate as a waiver and the single or partial exercise of any right or power by the Microgrid Operator does not preclude any other or further exercise of that or any other right or power by the Microgrid Operator.

Execution

Executed as an agreement

Microgrid Operator:

Executed by Eglinton Village Energy Pty Ltd
ACN 665 916 085 in accordance with
Section 127 of the *Corporations Act 2001* (Cth)

Signature of director

Name of director (print)

Signature of director/company secretary

(Please delete as applicable)

Name of director/company secretary (print)

Date of execution

Retailer:

[Drafting Note: insert required execution provisions for Retailer]

Guarantor:

[Drafting Note: insert required execution provisions for Guarantor]