

# Access Contract

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Regional Power Corporation (trading as Horizon Power)

[Name of User]

{Note: This contract has been prepared in accordance with the requirements of the  
*Pilbara Networks Access Code 2021*}

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## Access Contract

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Date ►

Between the Parties

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Horizon Power Pilbara  
Network

**Regional Power Corporation (trading as Horizon Power)** a  
statutory body established under section 4(1)(d) of the *Electricity  
Corporations Act 2005* (WA)

ABN 57 955 011 697 of 1 Stovehill Road, Karratha, Western Australia  
6714

**(Horizon Power Pilbara Network)**

*{Note: in this Contract, Horizon Power Pilbara Network refers to the  
Horizon Power's ring fenced Network Business, responsible for  
providing Services in the Network. Horizon Power Pilbara Network is  
not a separate legal entity and all contractual commitments will be  
executed in the name of Horizon Power. Where the term Horizon  
Power Pilbara Network is used in this Contract, it means Horizon  
Power, acting in its capacity as the owner and operator of the  
Network.}*

---

User

**[insert]**

ABN **[insert]** of **[insert]**

**(User)**

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Recitals

- 1 The User has made an Application requesting Covered Services  
at one or more Connection Points.
  - 2 Horizon Power Pilbara Network has made an Access Offer in  
accordance with the processes detailed in its User Access Guide to  
provide the Covered Services to the User.
  - 3 The User has signed the Access Offer, which has become this  
Contract.
- 

The Parties agree as follows:

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## Operative provisions

### 1 Interpretation

#### 1.1 Interpretation

In this Contract:

- (a) a reference to:
  - (1) the singular includes the plural and the plural includes the singular;
  - (2) 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;
  - (3) this Contract or any other instrument includes any variation or replacement of it;
  - (4) “under” includes “by”, “by virtue of”, “pursuant to” and “in accordance with”;
  - (5) “day”, “week”, “month”, “quarter” or “year” means a calendar day, week, month, quarter or year (respectively);
  - (6) “person” includes a public body, company, or association or body of persons, corporate or unincorporated;
  - (7) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
  - (8) any monetary amount means that amount in Australian dollars;
- (b) a word of any gender includes the corresponding words of each other gender;
- (c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (d) “copy” includes a photocopy or (subject to the Electronic Communications Protocol in Schedule 7) electronic copy;
- (e) “including” and similar expressions are not words of limitation;
- (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (g) where information is set out in braces (namely “{” and “}”), whether or not preceded by the expression “Note”, “Outline” or “Example”, the information:
  - (1) is provided for information only and does not form part of this Contract;
  - (2) is to be disregarded in interpreting this Contract; and
  - (3) might not reflect amendments to this Contract or other documents or Laws; and
- (h) a reference to:
  - (1) a clause is a reference to a clause of this Contract; and



- (2) a series of consecutive clauses or Schedules is to be read as inclusive of the first and last in the series.

## 1.2 Rights and obligations of more than one person

Where the User consists of more than one person, unless the context otherwise requires:

- (a) the User's obligations under this Contract bind each person jointly and severally;
- (b) the User's rights under this Contract benefit each person jointly; and
- (c) a reference to the User is a reference to each person separately and any 2 or more of them together, for example:
  - (1) a representation, warranty or undertaking given by the Party relates to each person separately and any 2 or more of them together; and
  - (2) an act or omission of a Party includes an act or omission taken or made by each person separately and any 2 or more of them together.

## 1.3 Interpretation Act applies

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

# 2 Conditions Precedent

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## 2.1 Conditions Precedent

- (a) Clauses 2 {conditions precedent}, 29 {disputes}, 30 {assignment}, 34 {confidentiality}, 36 {notices} and 37 {miscellaneous} come into full force and effect on the Execution Date.
- (b) Subject to clause 2.1(a), this Contract does not come into force or effect until the Commencement Date.

## 2.2 Reasonable endeavours to satisfy

- (a) The Party who is specified in Part 2 of Schedule 2 as the 'Responsible Party' in respect of a Condition Precedent, must use all reasonable endeavours to satisfy that Condition Precedent as soon as reasonably practicable.
- (b) Each Party agrees to use its reasonable endeavours to provide any reasonable assistance sought by the other Party in connection with the satisfaction of the Conditions Precedent.

## 2.3 Waiver of Conditions Precedent

- (a) Where a Condition Precedent:
  - (1) is for the sole benefit of a Party that Condition Precedent may be waived by that Party; and
  - (2) is for the benefit of both Parties, it may be waived with the agreement of those Parties.

- (b) A Party must promptly notify the other Party if it:
  - (1) discovers that any of the Conditions Precedent are not satisfied by the 'Due Date' specified in Part 2 of Schedule 2; or
  - (2) discovers that any of the Conditions Precedent have become incapable of being satisfied by the 'Due Date' specified in Part 2 of Schedule 2.

## 2.4 Non-satisfaction of Conditions Precedent

- (a) Subject to clause 2.4(b), if the Conditions Precedent are not satisfied or waived by Horizon Power Pilbara Network in accordance with clause 2.3(a) by the 'Due Date' specified in Part 2 of Schedule 2 (or such longer period as the Parties may in writing agree) then either Party may, without prejudice to any other right or remedy it may have, terminate this Contract by giving written notice to the other Party.
- (b) A Party is only entitled to exercise the termination right under clause 2.4(a), if it has complied with clause 2.2.

## 3 Term

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This Contract commences on the Commencement Date and ends on the Termination Date, unless terminated earlier under this Contract (**Term**).

## Network access provisions

## 4 Services

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### 4.1 Provision and use of Services

- (a) For each Connection Point, on and from the Start Date and up to and including the End Date, subject to and under this Contract:
  - (1) Horizon Power Pilbara Network must provide the Services (up to the Contracted Capacity); and
  - (2) the User must pay the Charges for, and may use, the Services.
- (b) The User must not:
  - (1) transfer electricity out of the Network at a Connection Point unless it has an Exit Service or Bidirectional Service for that Connection Point; and
  - (2) transfer electricity into the Network at a Connection Point unless it has an Entry Service or Bidirectional Service for that Connection Point.
- (c) For each Service at each Connection Point, the User must endeavour, as a Reasonable and Prudent Person, to ensure that the rate at which electricity is

transferred into or out of the Network by or on behalf of the User does not exceed the Contracted Capacity for that Service.

- (d) Notwithstanding anything else in this Contract, if, during the Term, Horizon Power Pilbara Network determines (acting reasonably) that the User's Facilities and Equipment have impacted, are impacting, or are likely (at any time during the Term) to impact, the security of the Network, and that impact is not otherwise being resolved by the System Operator, then:

- (1) Horizon Power Pilbara Network may:
- (A) in accordance with Good Electricity Industry Practice, give the User a notice of its intention to implement a Constraint Solution that will, from time to time, limit the output or consumption (as applicable) of the Facilities and Equipment; and
  - (B) request the User to provide all such information and data that Horizon Power Pilbara Network reasonably requires to inform its determination of the best form of Constraint Solution to be implemented; and

- (2) the User must:

- (A) on receiving a request from Horizon Power Pilbara Network under clause 4.1(d)(1)(B), promptly (and in any event within 10 Business Days of receiving the request) provide the requested information and data to Horizon Power Pilbara Network;
- (B) co-operate, and procure that any relevant Controller co-operates, with Horizon Power Pilbara Network in the implementation and installation of the Constraint Solution and comply, and procure that any relevant Controller complies, with any reasonable directions given by Horizon Power Pilbara Network from time to time in connection with the implementation and installation of the Constraint Solution (which may include a direction to make changes to the control system of the User's Generating Plant, where applicable); and
- (C) reimburse Horizon Power Pilbara Network on demand for Horizon Power Pilbara Network's reasonably incurred costs of establishing the Constraint Solution.

- (e) Notwithstanding anything else in this Contract, title to, and risk in, all materials and equipment forming part of the Constraint Solution (including, where applicable, the Run-Back Equipment) remains with Horizon Power Pilbara Network at all times.

## 4.2 User may select Services

- (a) The User may from time to time give notice to Horizon Power Pilbara Network seeking to change the Service in respect of a Connection Point.
- (b) If Horizon Power Pilbara Network receives a notice from the User under clause 4.2(a), then Horizon Power Pilbara Network must process that request in accordance with the procedures detailed in the User Access Guide.

### 4.3 Eligibility Criteria

The User must in relation to each Reference Service Point or Non-Reference Service Point (as applicable), comply with the Eligibility Criteria applicable to that Reference Service or Non-Reference Service (as applicable) provided, or to be provided, at the Reference Service Point or Non-Reference Service Point.

### 4.4 Increase or decrease of Contracted Capacity

- (a) The User may not increase or decrease the Contracted Capacity at an existing Connection Point, unless the User makes an Application to Horizon Power Pilbara Network and Horizon Power Pilbara Network approves that Application.
- (b) If the User makes an Application to Horizon Power Pilbara Network under clause 4.4(a), then Horizon Power Pilbara Network must process the Application in accordance with the procedures detailed in the User Access Guide.

### 4.5 Addition of a Connection Point

- (a) The User may not add an additional Connection Point to this Contract unless the User makes an Application to Horizon Power Pilbara Network, and Horizon Power Pilbara Network approves that Application.
- (b) If the User makes an Application to Horizon Power Pilbara Network under clause 4.5(a), then Horizon Power Pilbara Network must process the Application:
  - (1) in accordance with the procedures detailed in the User Access Guide; or
  - (2) under the Customer Transfer Code, as applicable.
- (c) If, at any point during the Term, Horizon Power Pilbara Network becomes aware that a Connection Point at which the User is provided with an Entry Service is a 'balancing point' (as defined in the Pilbara Network Rules) nominated to a 'balancing nominee' (as defined in the Pilbara Network Rules) in respect of a supply of electricity to an Exit Point that is not directly connected to the Network, Horizon Power Pilbara Network may add the Interconnect as an additional Connection Point to this Contract at which the User is provided with an Exit Service.

### 4.6 Deletion of a Connection Point

- (a) The User may give notice to Horizon Power Pilbara Network seeking to delete a Connection Point from this Contract where:
  - (1) a transfer request has been made in relation to the Customer for that Connection Point under the Customer Transfer Code;
  - (2) the Connection Point will be added to another Access Contract by some other means to that stipulated in clause 4.6(a)(1); or
  - (3) the Facilities and Equipment in respect of the Connection Point will be permanently Disconnected from the Connection Point.
- (b) If the User seeks to permanently Disconnect any Facilities and Equipment at a Connection Point, then the notice under clause 4.6(a)(3) must be given to

Horizon Power Pilbara Network at least 3 months before the planned Disconnection.

- (c) Clause 4.6(b) does not limit, and applies in addition to, the requirement for the User and Horizon Power Pilbara Network to 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 User and Horizon Power Pilbara Network) in respect of any supply abolishment service required to give effect to a permanent Disconnection of Facilities and Equipment.
- (d) Subject to clause 4.6(e), if Horizon Power Pilbara Network receives a notice from the User under clause 4.6(a), then it must notify the User that it accepts the deletion, and the date that the deletion takes effect, if:
  - (1) Horizon Power Pilbara Network has successfully processed a Customer transfer request in relation to the Connection Point under the Customer Transfer Code;
  - (2) the Connection Point has been added to another Access Contract by some other means; or
  - (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 Horizon Power Pilbara Network may notify the User as soon as reasonably practicable that it rejects the deletion.
- (e) Clause 4.6(d) does not limit the requirement for the User and Horizon Power Pilbara Network to comply, in respect of any supply abolishment service 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 User and Horizon Power Pilbara Network).
- (f) Subject to the Customer Transfer Code, Horizon Power Pilbara Network must not delete a Connection Point other than in accordance with a notice given by a User under clause 4.6(a).
- (g) If Horizon Power Pilbara Network commits a breach of clause 4.6(f) in circumstances that constitute Wilful Default, it is liable to the User for any damage caused by, consequent upon or arising out of the Wilful Default.

#### **4.7 Amendment to Connection Point data**

- (a) Unless the Parties otherwise agree, where information is referred to in Part 1 of Schedule 3, Horizon Power Pilbara Network must, as soon as reasonably practicable after the Commencement Date, record as much of that information with respect to each Connection Point as it is reasonably able to in an electronic database. For the avoidance of doubt, the electronic database referred to in this clause 4.7(a) will form part of the Connection Point Database.
- (b) Subject to clauses 4.7(h) and 4.7(i), Horizon Power Pilbara Network must, as soon as reasonably practicable, update the information contained in the Connection Point Database following any variation made under this clause 4.
- (c) Where, under this Contract, the Connection Point Database consists of Part 1 of Schedule 3 (either partially or wholly), the User acknowledges and agrees that Horizon Power Pilbara Network may, following any:
  - (1) variation made under this clause 4; or

- (2) requirement under this clause 4 to update the Connection Point Database,
- update the information contained in Part 1 of Schedule 3 by written notice to the User.
- (d) Upon request by the User for information referred to in the Connection Point Database, Horizon Power Pilbara Network will, as soon as reasonably practicable, provide to the User the most up-to-date version of that information.
- (e) The Parties acknowledge that if the User is a Metering Code Participant, for each Connection Point Horizon Power Pilbara Network must record and update as much of the information required under Part 1 of Schedule 3 as it is reasonably able to 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 the Model Service Level Agreement in force between the User and Horizon Power Pilbara Network, Horizon Power Pilbara Network must do so as soon as is reasonably practicable.
- (f) Nothing in this Contract restricts or prohibits Horizon Power Pilbara Network from maintaining and updating the Metering Database in accordance with the Metering Code.
- (g) Horizon Power Pilbara Network will provide the User with access to the information in the Metering Database relating to each Connection Point in accordance with the Communication Rules and the Metering Code.
- (h) Subject to clause 4.7(i), where Horizon Power Pilbara Network causes a Permanent Reconfiguration of the Network which results in the information contained in the Connection Point Database having to be updated, Horizon Power Pilbara Network:
- (1) is not required to update the information contained in the Connection Point Database before the next 1 July following the Permanent Reconfiguration of the Network; and
  - (2) must update the information contained in the Connection Point Database before the date that is 21 days after the date referred to in clause 4.7(h)(1).
- (i) Where a Permanent Reconfiguration of the Network occurs as a result of, or arising from, a notice or Application by the User under clauses 4.4, 4.5 or 4.6, or which results in the information contained in the Connection Point Database having to be updated:
- (1) clause 4.7(h) does not apply; and
  - (2) Horizon Power Pilbara Network must update the information contained in the Connection Point Database as soon as reasonably practicable after the Permanent Reconfiguration of the Network.
- (j) 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.
- (k) Horizon Power Pilbara Network must amend any error in the Connection Point Database as soon as reasonably practicable after becoming aware of the error, provided that if Horizon Power Pilbara Network becomes aware of an error otherwise than by notice from the User under clause 4.7(j), no amendment will be made until Horizon Power Pilbara Network has given notice to the User of the error.

- (l) Where, under this Contract, the Connection Point Database consists of more than one database, and there is an inconsistency or conflict between the information in those databases, then Horizon Power Pilbara Network will, as soon as reasonably practicable after it becomes aware of the inconsistency or conflict:
  - (1) notify the User of the correct information; and
  - (2) resolve the inconsistency or conflict in accordance with the notice referred to in clause 4.7(l)(1).
- (m) Horizon Power Pilbara Network must notify the User as soon as reasonably practicable upon becoming aware that a Connection Point has reverted to the User as a default supplier retailer (being a retailer of the type contemplated in section 59 of the Act).

#### **4.8 Interconnector as a Connection Point**

- (a) Notwithstanding anything to the contrary in this Contract, if a Connection Point is an Interconnector, the provision of Services by Horizon Power Pilbara Network at that Connection Point is conditional upon, and subject to, there being an agreement in place between Horizon Power Pilbara Network and the Interconnected Network Service Provider for that Interconnector governing (among other things) the flow of electricity across that Interconnector.
- (b) The User acknowledges and agrees that, where the condition in clause 4.8(a) has not been satisfied (or, where applicable, ceases to be satisfied), Horizon Power Pilbara Network:
  - (1) may suspend the provision of Services at the relevant Connection Point until such time as the condition in clause 4.8(a) is satisfied; and
  - (2) will have no liability to the User arising out of or in connection with a suspension of the Services under clause 4.8(b)(1).
- (c) For so long as the provision of Services at a Connection Point has been suspended under clause 4.8(b)(1), the Charges for the suspended Services will not be payable by the User.

## **5 Energy balancing and the Essential System Services Regime**

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### **5.1 User to remain in balance**

At all times that the User is a 'balancing nominee' for the purposes of the Pilbara Network Rules, the User must comply with its obligations as a balancing nominee, including in relation to the obligation to remain in energy balance.

### **5.2 Essential System Services Regime**

The Parties acknowledge that:

- (a) the System Operator administers the Essential System Services Regime, and is responsible for energy balancing and settlement services, in respect of the Network; and
- (b) Horizon Power Pilbara Network is not, and will not be, responsible for administering the Essential System Services Regime, or providing any energy

balancing or settlement services, including if the Essential System Services Regime fails or is changed for any reason.

## 6 User must provide forecast information

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### 6.1 Horizon Power Pilbara Network may request information

Horizon Power Pilbara Network may, from time to time, and as a Reasonable and Prudent Person, request demand and energy forecast information from the User in respect of a Connection Point.

### 6.2 When Horizon Power Pilbara Network may request information

A request under clause 6.1 must not be made more than once in any 12 month period, except in an Emergency or where any forecasts provided by the User materially differ from the User's actual performance and, in the opinion of Horizon Power Pilbara Network (as a Reasonable and Prudent Person), require revision in order to facilitate the operation of the Network in accordance with Good Electricity Industry Practice.

### 6.3 User must comply with request

The User must promptly (and in any event within 5 Business Days) comply with Horizon Power Pilbara Network's request under clause 6.1, and use its reasonable endeavours to ensure the forecast information provided is accurate and correct.

## 7 Title to electricity

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### 7.1 Transfer into the Network

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

### 7.2 Transfer out of the Network

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

### 7.3 User does not acquire interest in Network

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



## 8 Controllers

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### 8.1 Where User is not the Controller

- (a) If:
- (1) the User is not the Controller; or
  - (2) there is more than one Controller,
- of the Facilities and Equipment or a Connection Point (or both, as applicable), and if Horizon Power Pilbara Network requires, the User must use reasonable endeavours to procure that each Controller that is not the User enters into a Connection-only Access Contract with Horizon Power Pilbara Network in respect of the Facilities and Equipment or Connection Point (or both, as applicable).
- (b) Subject to clause 8.1(g), if clause 8.1(a) applies, and any Controller has not entered into a Connection-only Access Contract with Horizon Power Pilbara Network in respect of the Facilities and Equipment or Connection Point (or both, as applicable), then the User must ensure that the relevant Controller complies, and will continue to comply, with the obligations set out in the Pilbara Network Rules, the Technical Requirements, and in this Contract more broadly (to the extent that such compliance is reasonably necessary for the Parties to satisfy their obligations under this Contract) including:
- (1) clause 5 (Energy balancing and the Essential System Services Regime)
  - (2) clause 11 (Metering);
  - (3) clause 14 (Good Electricity Industry Practice);
  - (4) clause 15 (Technical Requirements);
  - (5) clause 16 (Technical characteristics of Facilities and Equipment);
  - (6) clause 17 (Cooperation);
  - (7) clause 18 (Access to premises);
  - (8) clause 19 (Directions from System Operator);
  - (9) clause 20 (Removal of equipment);
  - (10) clause 25 (Curtailment); and
  - (11) clause 36 (Notices).
- (c) If:
- (1) the User is not the Controller; or
  - (2) there is more than one Controller,
- of the Facilities and Equipment or a Connection Point (or both, as applicable), then the User must ensure that it enters into a contract with each Controller that is not the User obliging the Controller to comply with the obligations set out in the Pilbara Network Rules, the Technical Requirements, and this Contract more broadly (to the extent set out in clause 8.1(b)) and that such contract entered into between the User and a Controller relating to Services under this Contract contains a provision:
- (3) that Horizon Power Pilbara Network is not in any circumstances liable for Indirect Damage suffered by the Controller, however arising, except to the extent that Horizon Power Pilbara Network would have

- been liable for such Indirect Damage in accordance with clause 22.3 (had the damage been suffered by the User under or in connection with this Contract); and
- (4) under which the Controller covenants in favour of Horizon Power Pilbara Network (which covenant is expressed to be enforceable by Horizon Power Pilbara Network in accordance with section 11 of the *Property Law Act 1969* (WA)) that it will not bring a claim against Horizon Power Pilbara Network:
    - (A) for Indirect Damage, except to the extent that Horizon Power Pilbara Network would have been liable for such Indirect Damage in accordance with clause 22.3 (had the damage been suffered by the User under or in connection with this Contract); or
    - (B) which will result in Horizon Power Pilbara Network's aggregate liability to the Controller and the User, under or in connection with this Contract, or the Services provided under or in connection with this Contract, exceeding the Horizon Power Pilbara Network Maximum Liability Amount.
  - (d) On reasonable request from Horizon Power Pilbara Network, the User must (unless the Controller has already entered into a Connection-only Access Contract with Horizon Power Pilbara Network) provide evidence to Horizon Power Pilbara Network's satisfaction as a Reasonable and Prudent Person that the User is complying, and will continue to comply, with clause 8.1(c).
  - (e) If the User does not satisfy Horizon Power Pilbara Network under clause 8.1(d), Horizon Power Pilbara Network may refuse to commence provision of the Services or may Curtail the provision of Services in respect of the relevant Connection Point unless and until:
    - (1) the Controller has entered into a Connection-only Access Contract with Horizon Power Pilbara Network in respect of the Connection Point; or
    - (2) the User satisfies Horizon Power Pilbara Network under clause 8.1(d).
  - (f) Where the User is in breach of clause 8.1(b), the User indemnifies Horizon Power Pilbara Network and each of its Workers from and against any Claim or Loss caused by, consequent upon, or arising out of the acts or omissions (negligent or otherwise) of the Controller, which Claim or Loss is brought against, suffered or incurred by Horizon Power Pilbara Network or its Workers (as applicable).
  - (g) Where the Controller has not entered into a Connection-only Access Contract with Horizon Power Pilbara Network, the User is (subject to clause 8.1(h)) 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.
  - (h) The User is not required to comply with clause 8.1(g) unless Horizon Power Pilbara Network confirms it will indemnify the User for all of the User's reasonably and actually incurred costs (including incidental costs) of commencing, maintaining or continuing legal proceedings in accordance with clause 8.1(g).
  - (i) Nothing in clause 8.1(g) or 8.1(h):
    - (1) limits the User's obligations under the remainder of this clause 8.1; or
    - (2) derogates from Horizon Power Pilbara Network's other rights under this Contract, including under clause 8.1(f).

## 8.2 Horizon Power Pilbara Network may enter into Access Contracts

Nothing in clause 8.1 is to be taken to prevent Horizon Power Pilbara Network from entering into an Access Contract with any person, including a person who is a Controller.

## 8.3 Liability and Force Majeure not limited

Nothing in clause 8.1 limits the operation of clauses 22.1 or 24.1 in respect of either the User or Horizon Power Pilbara Network.

# 9 Tariff and Charges

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## 9.1 Tariff

- (a) The '**Tariff**' payable by the User under this Contract for:
  - (1) a Reference Service, is the tariff, or tariffs, as applicable, specified from time to time in the Price List (or part of a Price List) applicable to the period during which the Service is provided, including any component of such a tariff in respect of a Temporary Access Contribution; and
  - (2) a Non-Reference Service, is the tariff, or tariffs, as applicable, specified in Schedule 9.
- (b) Where the User's use of a Service is metered with an accumulation meter, and the meter reading interval causes some of the metered use to lie across 2 periods of different pricing, the Tariff applicable to such use will be determined by apportioning the metered use to each period of different pricing, uniformly on a daily basis.
- (c) For the purposes of calculating Tariffs and Charges for a Service:
  - (1) Horizon Power Pilbara Network is entitled to rely on the information contained in the Connection Point Database (as updated from time to time in accordance with this Contract); and
  - (2) where information contained in the Connection Point Database is updated, or to be updated, in accordance with this Contract, the updated information:
    - (A) will not apply to any period before; and
    - (B) must not be used to calculate a Tariff or Charge until, the date that the information is actually updated in accordance with this Contract.

## 9.2 Amounts payable in respect of excess demand

Without limiting (and in addition to) Horizon Power Pilbara Network's rights under clause 25.1(f), where, during an Accounting Period, the rate at which electricity is transferred out of the Network by or on behalf of the User exceeds the Contracted Capacity applicable to the relevant Service at that Connection Point, the User must pay to Horizon Power Pilbara Network (as part of the Charges) an 'excess demand charge', calculated in accordance with the following formula:

*N*

$$EDC = \sum_{n=1} EV_n \times EF \times AT_n$$

where:

- (a) **EDC** (in \$) is the excess demand charge for an Accounting Period;
- (b) **EV<sub>n</sub>** (in kVA) is the greater of 0, or the value of (in respect of the N<sup>th</sup> Exit Point in the relevant Accounting Period):

$$ECMD_n - CMD_n$$

where:

- (1) **ECMD<sub>n</sub>** (in kVA) is, for that Exit Point during that Accounting Period, the highest mean demand for any Trading Interval occurring during that Accounting Period (**Peak Interval**); and
- (2) **CMD<sub>n</sub>** (in kVA) is the CMD applicable to that Exit Point during the Peak Interval;
- (c) **EF** (expressed as a decimal number) is equal to 2.0, or such other multiple specified in the Price List (or part of a Price List) applicable to the period during which the transfer of electricity in excess of the Contracted Capacity occurred;
- (d) **N** is the total number of Exit Points in the applicable Accounting Period; and
- (e) **AT<sub>n</sub>** (in \$/kVA/month) is the applicable monthly Tariff in respect of the N<sup>th</sup> Exit Point in the applicable Accounting Period.

### 9.3 Charges

- (a) In consideration for the Services, the User must pay the Charges to Horizon Power Pilbara Network pursuant to this clause 9 and clause 10.
- (b) Nothing in this clause 9.3 prevents Horizon Power Pilbara Network from recovering any other monies otherwise payable by the User to Horizon Power Pilbara Network under this Contract or at Law.
- (c) If the System Operator levies a charge on Horizon Power Pilbara Network under the Essential System Services Regime (**Essential System Services Regime Charge**), Horizon Power Pilbara Network will pass through, on a fair and reasonable basis, the amount of the Essential System Services Regime Charge to the User, which is referable to an act or omission of the User, or the use of a Service provided under this Contract. Horizon Power Pilbara Network will invoice the User for the Essential System Services Regime Charge in accordance with clause 10.1.

### 9.4 Charges during Horizon Power Pilbara Network's Force Majeure Event

If a Service (**Affected Service**) is unavailable for any period of 2 or more consecutive days (**Affected Service Period**) due to the occurrence of a Force Majeure Event where:

- (a) Horizon Power Pilbara Network is the Affected Person;
- (b) the User is unable to use the Affected Service because of the Force Majeure Event; and
- (c) Horizon Power Pilbara Network's inability to provide the Affected Service has not been caused by the User's default or negligence,

then, for those parts of the Affected Service Period in which the Facilities and Equipment were not (or would not have been) subject to a scheduled or unscheduled outage during which the Facilities and Equipment were (or would have been) De-energised, the User is relieved of its obligation under clause 9.3(a) and instead must pay Horizon Power Pilbara Network an amount equal to 10% of the Charges for the Affected Service during that part of the Affected Service Period.

## 10 Invoicing and payment

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### 10.1 Horizon Power Pilbara Network invoices

- (a) Subject to clause 10.1(d), Horizon Power Pilbara Network must, within 14 Business Days after the end of an Accounting Period, issue to the User a Tax Invoice for the Accounting Period stating the amount payable by the User to Horizon Power Pilbara Network for the Accounting Period (being the aggregate of all amounts detailed in the worksheet referred to in clause 10.1(b)), and GST payable on that amount under clause 10.6.
- (b) Each Tax Invoice issued by Horizon Power Pilbara Network under clause 10.1(a) will be accompanied by a worksheet, detailing how the amount stated in the Tax Invoice was determined by Horizon Power Pilbara Network, including line items for:
  - (1) all amounts payable by the User to Horizon Power Pilbara Network under this Contract for the Accounting Period; and
  - (2) any other amounts payable by the User to Horizon Power Pilbara Network in connection with the Service under this Contract, or at Law (including under the Model Service Level Agreement).
- (c) In respect of each Accounting Period during the Term, the User will:
  - (1) by electronic transfer to the User in accordance with clause 36; or
  - (2) by means of automated access being granted to the User,
 be provided with the relevant Metering Data for each Connection Point referred to in clause 11.2(a), which was used by Horizon Power Pilbara Network in determining the quantity of electricity transferred to or from the Network at each Connection Point under this Contract.
- (d) Notwithstanding clause 10.1(a), the Parties may, by mutual agreement in writing, implement a different system of invoicing to that stipulated in clause 10.1(a).

### 10.2 User invoices

- (a) At the same time as Horizon Power Pilbara Network issues to the User a Tax Invoice for an Accounting Period under clause 10.1(a), Horizon Power Pilbara Network must provide the User with all information necessary for the User to determine any amounts payable by Horizon Power Pilbara Network to the User for the Accounting Period.
- (b) The User must, within 5 Business Days after receiving the information under clause 10.2(a), issue to Horizon Power Pilbara Network a Tax Invoice for the Accounting Period showing:
  - (1) all amounts payable by Horizon Power Pilbara Network to the User under this Contract, which amounts may be calculated using the

information provided to the User by Horizon Power Pilbara Network under clause 10.2(a); and

- (2) GST payable on those amounts payable under clause 10.6.
- (c) If the User Disputes the information provided by Horizon Power Pilbara Network under clause 10.2(a), then:
  - (1) the User may issue a Tax Invoice under clause 10.2(b) for an amount the User (acting as a Reasonable and Prudent Person) estimates to be the correct amount payable; and
  - (2) the User must, before the Due Date of the Tax Invoice under clause 10.2(b), give notice to Horizon Power Pilbara Network that it Disputes the information provided under clause 10.2(a) and provide in that notice full details of the Dispute, including the difference between the amount for which the Tax Invoice has been issued by the User and the amount for which that Tax Invoice would have been issued had the information provided by Horizon Power Pilbara Network under clause 10.2(a) been accepted by the User as correct.
- (d) Clause 10.4 applies in respect of a Tax Invoice issued under clause 10.2(b), for the purposes of which the '**Undisputed Portion**' is taken to be an amount calculated in accordance with the information provided by Horizon Power Pilbara Network under clause 10.2(a).

### 10.3 Payment of invoices

- (a) Subject to clause 10.4, each Party which receives a Tax Invoice under clause 10.1(a) or 10.2(b) must, on or before the Due Date of the Tax Invoice, pay to the Party issuing the Tax Invoice all amounts shown on the Tax Invoice which are payable under this Contract.
- (b) If a Party fails to comply with clause 10.3(a) then, without prejudice to the other Party's other rights, the Party must pay interest on any unpaid amount, calculated daily at the Prescribed Rate from the Due Date of the Tax Invoice until payment.

### 10.4 Disputed invoices

- (a) If a Party Disputes any amount set out in a Tax Invoice issued under clause 10.1(a) or 10.2(b) then that Party must pay the Undisputed Portion (if any) and must, prior to the Due Date of the Tax Invoice, give notice to the other Party that it Disputes the amount and provide in that notice full details of the Dispute.
- (b) Without prejudice to the other Party's other rights, any amount:
  - (1) withheld by a Party under clause 10.4(a) but subsequently found to have been payable attracts interest calculated daily at the Prescribed Rate from the Due Date of the Tax Invoice until payment; and
  - (2) paid by a Party under clause 10.4(a) but subsequently found not to have been payable attracts interest calculated daily at the Prescribed Rate from the date the Party paid the amount to the date the other Party repays the amount.

### 10.5 Under and over payments

- (a) If a Party detects a Payment Error by a Party of any amount within:

- (1) in respect of a Payment Error resulting from an error in the Metering Data used to calculate the Charges, 12 months after the Payment Error; or
- (2) in respect of any other Payment Error, 18 months after the Payment Error,

the Party must as soon as reasonably practicable give notice to the other Party of the Payment Error, and an adjusting payment must be made by the appropriate Party within 10 Business Days of the notice, including any applicable interest in accordance with clause 10.5(c).

- (b) For the avoidance of doubt, a Party is not entitled to an adjusting payment for a Payment Error notified to the other Party after the expiry of 12 months (in the case of clause 10.5(a)(1)) or 18 months (in the case of clause 10.5(a)(2)) after the Payment Error.
- (c) Excluding a Payment Error notified under clause 10.5(a) that is an underpayment which resulted from an error by the other Party, 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.
- (d) For the purposes of calculating interest payable under clause 10.5(c):
  - (1) 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; and
  - (2) 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 relevant Party has paid the total amount of the Tax Invoice in full.

## 10.6 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this Contract (including any Charge or Tariff, and any Contribution) is GST exclusive.
- (b) To the extent that any supply made under or in connection with this Contract is a taxable supply and the price for it (including any Charge or Tariff, and any Contribution) is stated to be GST exclusive, the consideration for that supply is increased by an amount determined by the supplier, not exceeding the amount of the consideration (or its market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) Without limiting the obligation to provide a Tax Invoice under this clause 10, the supplier must issue a Tax Invoice to the recipient of a supply to which clause 10.6(b) applies before the payment of the GST inclusive consideration determined under that clause.
- (d) If a Party is entitled under this Contract to be reimbursed or indemnified by another Party for a cost or expense incurred in connection with this Contract, the reimbursement or indemnity payment must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Party entitled to be reimbursed or indemnified, or by its representative member.

- (e) Each Party agrees to notify the other Party as soon as practicable after becoming aware of an adjustment event, 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, and in any event no later than 10 Business Days after the Party has satisfied itself that the adjustment event has occurred.
- (f) Where interest is payable under this Contract, no GST is to be added to the interest amount on the Tax Invoice as the interest amount is a financial supply under the GST Act.
- (g) Definitions in the GST Act apply also in this clause 10.6 unless the context indicates otherwise.

## **10.7 Set off**

- (a) Horizon Power Pilbara Network may set off any amount due for payment by it to the User under this Contract against any amount which is due for payment by the User to Horizon Power Pilbara Network under this Contract.
- (b) Except as permitted in this clause 10.7, no set off is permitted by either Party in connection with this Contract, whether under this Contract or otherwise.

# **11 Metering**

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## **11.1 Metering Equipment**

- (a) Horizon Power Pilbara Network may (in its discretion) install, or require the User to install (in each case, at the User's sole cost), Metering Equipment to measure and record, in real time, the electricity transferred to or from the Network at each Connection Point under this Contract in accordance with the requirements of the Metering Code and the Pilbara Network Rules.
- (b) Horizon Power Pilbara Network will, at the User's cost (unless agreed otherwise), operate and maintain the Metering Equipment (including the testing, calibration and repair of the Metering Equipment) in accordance with the requirements of the Metering Code.
- (c) The User must not tamper with, bypass, circumvent or otherwise interfere with the Metering Equipment or do anything that will prevent Horizon Power Pilbara Network from accessing the Metering Equipment or allow anyone else to do so.
- (d) The User indemnifies Horizon Power Pilbara Network and each of its Workers from and against any Claims or Loss however caused (including negligence), brought against, suffered or incurred by Horizon Power Pilbara Network or its Workers (as applicable), arising out of or in connection with damage to the Metering Equipment caused by an act or omission of the User, or a failure to comply with clause 11.1(c).

## **11.2 Metering Data**

- (a) Subject to clause 11.2(b), the quantity of electricity transferred to or from the Network at each Connection Point under this Contract is to be determined from Metering Data (which will be recorded by the Metering Equipment in real time, and collected and used by Horizon Power Pilbara Network).



- (b) If, during any period, the Metering Data cannot be relied on when required due to any one or more of:
  - (1) the occurrence of a Force Majeure Event;
  - (2) the removal or failure of, or erroneous recording by, the Metering Equipment;
  - (3) an inaccuracy in the Metering Equipment; or
  - (4) the obtaining of only partial interval data from the Metering Equipment,
 the quantity of electricity transferred to or from the Network at a Connection Point will be determined by Horizon Power Pilbara Network in accordance with the Metering Code, and using information reasonably available to it, including (where appropriate) historical Metering Data.
- (c) The Parties must comply with any applicable Model Service Level Agreement.
- (d) The User acknowledges and agrees that Horizon Power Pilbara Network may (without limiting any other rights Horizon Power Pilbara Network may have in respect of Metering Data), use Metering Data for any purpose in connection with its Network Business, including:
  - (1) aggregating that Metering Data with similar data from Other Network Users for the purposes of determining the load of Horizon Power Pilbara Network's Other Business on the Network at any point in time;
  - (2) using that Metering Data in the performance of its functions under the Pilbara Network Rules; and
  - (3) disclosing that Metering Data to the System Operator.

## 12 Security for Charges

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### 12.1 Provision of security

- (a) Subject to clause 12.1(b) if Horizon Power Pilbara Network determines (as a Reasonable and Prudent Person) at any time during the Term that the User's technical or financial resources are such that the User may be unable to meet its obligations under this Contract, then:
  - (1) Horizon Power Pilbara Network may, by written notice to the User, require the User to provide security; and
  - (2) within 15 Business Days of receiving Horizon Power Pilbara Network's notice under clause 12.1(a)(1), the User must provide security which complies with clause 12.2 to Horizon Power Pilbara Network.
- (b) If:
  - (1) the User has:
    - (A) an unqualified credit rating of at least BBB from Standard and Poor's Australia Pty Ltd or Baa from Moody's Investor Service Pty Ltd; or
    - (B) an equivalent rating from an internationally recognised credit ratings agency which is acceptable to Horizon Power Pilbara Network (acting reasonably),

and provides evidence to this effect to Horizon Power Pilbara Network;  
and

- (2) the User has not, at any point during the Term, defaulted in the payment of any amount due under this Contract on time and in full,

then Horizon Power Pilbara Network is not entitled to determine under clause 12.1(a) that the User's financial resources are such that the User may be unable to meet its obligations under this Contract.

## 12.2 Requirements for security

- (a) Security provided by the User to Horizon Power Pilbara Network under clause 12.1(a)(2) must be (at the User's election), either:
- (1) a cash deposit equal to the Charges for 6 months' Services;
  - (2) an irrevocable and unconditional on demand bank guarantee (or equivalent financial instrument on terms acceptable to Horizon Power Pilbara Network acting as a Reasonable and Prudent Person), which:
    - (A) is issued by a major Australian bank or financial institution with an unqualified credit rating of at least BBB with Standard and Poor's Australia Pty Ltd, or Baa with Moody's Investor Service Pty Ltd;
    - (B) has no expiry date, or an expiry date that is at least 3 months after the security is reasonably expected to be returned under clause 12.6; and
    - (C) is for an amount equal to the Charges for 6 months' Services; or
  - (3) if Horizon Power Pilbara Network is satisfied, as a Reasonable and Prudent Person, that the User's parent company's financial and technical resources are such that the User's parent company would be able to meet the User's obligations under this Contract (including because the User's parent company meets at least one of the credit ratings given in clause 12.1(b)), a parent company guarantee substantially in the form set out in Schedule 8.
- (b) In this clause 12, a reference to an amount equal to the "Charges for 6 months' Services" means Horizon Power Pilbara Network's reasonable estimate of the Charges which will be payable by the User for the Services to be provided under this Contract in the next 6 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 User is notified of the current level of security it is required to provide).

## 12.3 Provision of supplementary security

- (a) If any security held by Horizon Power Pilbara Network under clause 12.2(a)(1) or 12.2(a)(2) is at any time not equal to the Charges for 6 months' Services (as described in clause 12.2(b)), then the User must, within 15 Business Days of a written request by Horizon Power Pilbara Network to the User, provide Horizon Power Pilbara Network with:
- (1) if the security is a cash deposit under clause 12.2(a)(1), an additional cash payment to increase the security so that it is equal to the Charges for 6 months' Services; or

- (2) if the security is a bank guarantee under clause 12.2(a)(2), a replacement bank guarantee (that is in accordance with clause 12.2(a)(2), and in an amount that is equal to the Charges for 6 months' Services).
- (b) If any security is held by Horizon Power Pilbara Network under clause 12.2(a)(3), but Horizon Power Pilbara Network ceases to be satisfied, as a Reasonable and Prudent Person, that the criteria in clause 12.2(a)(3) are met then by notice to the User, Horizon Power Pilbara Network may require the provision of a new form of security complying with the requirements of clause 12.2(a)(1) or 12.2(a)(2), which security must be provided within 15 Business Days of service of Horizon Power Pilbara Network's notice.

## 12.4 Replacement of security

- (a) The User must replace any security held by Horizon Power Pilbara Network under clause 12.1(a)(2) as follows:
  - (1) where the security held is a cash deposit under clause 12.2(a)(1), within 15 Business Days after the security is called upon by Horizon Power Pilbara Network, or otherwise ceases to be enforceable for any reason; and
  - (2) where the security held is a bank guarantee under clause 12.2(a)(2):
    - (A) at least 15 Business Days before the security expires;
    - (B) within 15 Business Days after written request by Horizon Power Pilbara Network if the issuer of the security no longer satisfies the requirements of clause 12.2(a)(2)(A); and
    - (C) within 15 Business Days after the security is called upon by Horizon Power Pilbara Network, or otherwise ceases to be enforceable for any reason.
- (b) The replacement security provided under clause 12.4(a) must comply with clause 12.2.
- (c) This Contract will apply to any replacement security provided under clauses 12.3(a)(2) or 12.4(a) (as applicable) as if it was the security being replaced.
- (d) Horizon Power Pilbara Network must return the security to be replaced under clause 12.3(a)(2) or 12.4(a) (as applicable) to the User immediately following receipt of the replacement security.
- (e) If the User does not replace any security as required by this clause 12.4, Horizon Power Pilbara Network may make a demand for the full amount of the security to be replaced, and hold the proceeds on the basis that the security to be replaced was held under this Contract.

## 12.5 Recourse to security

- (a) Horizon Power Pilbara Network may call upon (and use the proceeds of) a cash deposit or bank guarantee (or equivalent financial instrument) provided to it under clause 12.2(a)(1) or 12.2(a)(2) (respectively) in respect of any amount due and payable by the User to Horizon Power Pilbara Network under or in connection with this Contract which, remains unpaid by the due date for payment of that amount or, where this Contract does not specify a due date for payment, has not been paid within 10 Business Days of Horizon Power Pilbara Network issuing a notice to the User requiring payment of the amount.

- (b) If Horizon Power Pilbara Network terminates this Contract under clause 28.1, Horizon Power Pilbara Network may make demands under the security provided to it under this clause 12 and apply the proceeds in respect of any Loss suffered or incurred by Horizon Power Pilbara Network as a result of the termination.
- (c) The User covenants that it will not take any steps (including commencing proceedings or seeking an injunction or declaration) to prevent the issuer of a security (in the case of clause 12.2(a)(2)) paying a demand made by Horizon Power Pilbara Network.

## 12.6 Release of security

Upon the termination of this Contract and receipt by Horizon Power Pilbara Network of all amounts due by the User to it under this Contract, Horizon Power Pilbara Network will return to the User any security provided under this clause 12 which is still held by Horizon Power Pilbara Network.

## 12.7 Interest

- (a) Where security is provided to Horizon Power Pilbara Network in the form of a cash deposit under clause 12.2(a)(1), then Horizon Power Pilbara Network will deposit the amount in a non-interest bearing account maintained with a financial institution, selected consistently with Horizon Power Pilbara Network's policies, or with the Western Australian Treasury Corporation or other government body.
- (b) Nothing in this Contract is to be taken as imposing any obligation on Horizon Power Pilbara Network to maximise or obtain any return on cash deposit amounts held by Horizon Power Pilbara Network as security.

# 13 Security for Contribution

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- (a) Without limiting the User's security obligations related to clause 26, where Horizon Power Pilbara Network has determined in accordance with the Contributions Policy that the User is required to provide an irrevocable and unconditional bank guarantee (or equivalent financial instrument) in terms acceptable to Horizon Power Pilbara Network (acting as a Reasonable and Prudent Person), the User must provide to Horizon Power Pilbara Network the requested bank guarantee (or equivalent financial instrument), which guarantee must:
  - (1) be issued by a major Australian bank or financial institution with an unqualified credit rating of at least BBB with Standard and Poor's Australia Pty Ltd, or Baa with Moody's Investor Service Pty Ltd;
  - (2) have no expiry date, or an expiry date that is at least 3 months after the Termination Date; and
  - (3) be for the present value of any amount of any Contribution to be made by the User that remains unpaid or unprovided as calculated by Horizon Power Pilbara Network under the Contributions Policy.
- (b) Clauses 12.4 to 12.6 (inclusive) apply to this clause 13 as if the bank guarantee to be provided by the User under clause 13(a) was provided under clauses 12.1(a)(2) and 12.2(a)(2).

## Technical compliance provisions

### 14 Good Electricity Industry Practice

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#### 14.1 Horizon Power Pilbara Network must comply with Good Electricity Industry Practice

Horizon Power Pilbara Network must comply with Good Electricity Industry Practice when providing Services and performing its obligations under this Contract.

#### 14.2 User must comply with Good Electricity Industry Practice

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

### 15 Technical Requirements

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#### 15.1 Horizon Power Pilbara Network and User must comply

- (a) Horizon Power Pilbara Network must comply with the Technical Requirements as they apply to a Network Service Provider.
- (b) The User must procure that each Controller complies, and where the User is a Controller it must itself comply, with the Technical Rules as they apply to a Controller.
- (c) The User must:
  - (1) comply, and must procure that each Controller complies, with the Horizon Power Technical Rules as they apply to a User; and
  - (2) ensure that the Facilities and Equipment comply with the Pilbara Network Rules and the Technical Requirements at all times.

#### 15.2 User to ensure its Customer's comply with Technical Requirements

- (a) This clause 15.2 only applies where a Service under this Contract is being used by the User to supply electricity to a Customer.
- (b) The User must ensure that each of its Customers that receive electricity through a Connection Point under this Contract comply with the Technical Requirements as they apply to:
  - (1) a Controller;
  - (2) Controller 'facilities' and 'equipment' (in each case, as defined in the Technical Rules);
  - (3) Embedded Generating Units; and
  - (4) small 'generating units' (as defined in the Technical Rules),
 in each case, to the extent applicable to the Customer.

- (c) The User must allow, or procure that each of its Customers that receive electricity through a Connection Point under this Contract allow, Horizon Power Pilbara Network all reasonable rights of entry to such Customer's premises:
  - (1) to inspect the construction, installation, operation, maintenance and repair of the Embedded Generating Unit (if any), and all other equipment associated with the Customer's embedded generation (if any);
  - (2) to exercise its rights under the Technical Requirements in respect of the Embedded Generating Unit (if any); and
  - (3) for any other reasonable purpose connected with or arising out of this Contract.
- (d) The User indemnifies Horizon Power Pilbara Network and each of its Workers from and against any Claims or Loss however caused (including negligence), brought against, suffered or incurred by Horizon Power Pilbara Network or its Workers (as applicable), arising out of or in connection with damage to the Network, Network Assets or the Metering Equipment caused by an act or omission of any of the User's Customers that receive electricity through a Connection Point under this Contract, or a failure of the User to comply with this clause 15.2.

### 15.3 User to bear costs

- (a) The User must bear its own costs in relation to compliance with clauses 15.1(b), 15.1(c) and 15.2.
- (b) Horizon Power Pilbara Network must bear its own costs in relation to compliance with clause 15.1(a).
- (c) Notwithstanding clause 15.3(b), where an act or omission of:
  - (1) the User in breach of this Contract; or
  - (2) a Controller, or any of the User's Customers that receive electricity through a Connection Point under this Contract, in each case in breach of the Technical Requirements (as applicable),
 causes Horizon Power Pilbara Network to incur extra costs in order to ensure Horizon Power Pilbara Network complies with clause 15.1(a), the User must bear Horizon Power Pilbara Network's reasonable extra costs so incurred to the extent that such costs are not already recovered from the User or any other person under any other arrangement, including the Contributions Policy.
- (d) Without limiting clause 15.3(c), where a User's equipment, or a User's Customer's equipment, increases the fault levels in the Network, the User must bear Horizon Power Pilbara Network's reasonable costs of any upgrades to the Network required under the Technical Requirements to the extent that such costs are not already payable by the User under the Contributions Policy.
- (e) For the avoidance of doubt, the User is not liable for any costs incurred by Other Network Users arising from compliance by the Other Network Users with the Technical Requirements.
- (f) If Horizon Power Pilbara Network recovers costs referred to in clause 15.3(c) from another party in circumstances where the User has already paid them to Horizon Power Pilbara Network, Horizon Power Pilbara Network must refund those costs without interest to the User.

## 15.4 Actions of third parties

Subject to clause 8.1(f), if the actions of any third party (excluding a Customer of the User or a Controller that is not the User) cause a Party to breach the Technical Requirements, then the Party is not in breach of clause 15.1 unless the Party has:

- (a) been negligent; or
- (b) has not acted as a Reasonable and Prudent Person.

## 16 Technical characteristics of Facilities and Equipment

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- (a) The Parties must record:
  - (1) in Part 2 of Schedule 3 any technical information that the User was required to provide to Horizon Power Pilbara Network under the User Access Guide, and as part of the Application; and
  - (2) in Part 3 of Schedule 3 any exemptions to:
    - (A) the Technical Rules given to the User or any Controller under rule 64 of the Pilbara Network Rules; and
    - (B) the Horizon Power Technical Rules agreed between the Parties.
- (b) Each Party must record any other information required to be recorded in this Contract by the Technical Requirements within a database maintained by that Party, and provide the other Party with reasonable access to the information upon request by that Party.
- (c) The User must not materially modify (or suffer or permit the material modification of) any Facilities and Equipment connected at a Connection Point unless:
  - (1) where such modification requires an Application under the User Access Guide:
    - (A) the User makes such an Application; and
    - (B) the Application is processed by Horizon Power Pilbara Network under the User Access Guide, resulting in an Access Offer for the change, which the User accepted; or
  - (2) where such modification does not require an Application under the User Access Guide and relates to Facilities and Equipment owned by a person other than a Small Customer:
    - (A) the User notifies Horizon Power Pilbara Network of the modifications to the Facilities and Equipment in writing at least 65 Business Days prior to the modifications being made;
    - (B) the User demonstrates to Horizon Power Pilbara Network's satisfaction that the User has complied with the WA Electrical Requirements in respect of the modifications to the Facilities and Equipment; and
    - (C) Horizon Power Pilbara Network notifies the User that Horizon Power Pilbara Network and the System Operator have each determined (in their respective discretions) that the modified Facilities and Equipment do not adversely impact the safety or security of the Network.

- (d) For the purposes of clause 16(c), a modification is material only if:
  - (1) it involves expenditure of more than \$100,000; or
  - (2) the modification is one which, consistently with Good Electricity Industry Practice, requires review by a duly qualified engineer before being made.
- (e) If Horizon Power Pilbara Network does not issue a notice to the User under clause 16(c)(2)(C) regarding the determination that the modified Facilities and Equipment do not adversely impact the safety or security of the Network within 30 Business Days of receiving a notice from the User under clause 16(c)(2)(A), the User may (subject to its compliance with clause 16(c)(2)(B)) proceed to make the relevant modification.
- (f) Nothing in this clause 16 derogates from the User's responsibility to ensure, or procure that the Controller ensures, the Facilities and Equipment at all times comply with:
  - (1) the requirements of this Contract; and
  - (2) the Technical Requirements.

## 17 Cooperation

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

- (a) the planning, development, inspection, testing and commissioning of Facilities and Equipment for a Connection Point and Network Assets for the Network, including in respect of any obligations under the Technical Requirements; and
- (b) the development and implementation of Maintenance schedules for Facilities and Equipment for a Connection Point and Network Assets for the Network, including in respect of any obligations under the Technical Requirements.

## 18 Access to premises

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### 18.1 Parties must allow reasonable rights of entry

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

- (a) for the purposes of constructing, installing, operating, maintaining and verifying the accuracy of any Metering Equipment or other equipment or thing;
- (b) to inspect the construction, installation, operation, maintenance and repair of any Metering Equipment or other equipment or thing;
- (c) where the Guest Party is Horizon Power Pilbara Network, for the purposes of:
  - (1) effecting a Disconnection that cannot reasonably be effected remotely; or
  - (2) exercising any of its rights of inspection under the Technical Requirements; and



- (d) for any other reasonable purpose connected with or arising out of this Contract.

## 18.2 Entry made at risk of Guest Party

Any entry under clause 18.1 is made in all respects at the expense and risk of the Guest Party, who must, subject to clauses 22.3 and 22.4, make good any damage occasioned by or resulting from the entry, other than to the extent the damage is caused by:

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

## 18.3 Guest Party obligations

Without limiting the Guest Party's obligations under the Technical Requirements regarding the notice of, and conduct of, inspections, a Guest Party must:

- (a) before exercising a right of entry under clause 18.1, give reasonable notice to the Host Party specifying the purpose, proposed time and estimated duration of entry, except where it is not practicable to do so due to any Emergency; and
- (b) while exercising a right of entry under clause 18.1:
  - (1) act as a Reasonable and Prudent Person;
  - (2) without limiting clause 18.3(b)(1), 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;
  - (3) at all times comply with:
    - (A) all reasonable health and safety standards, induction and supervision requirements and other requirements of the Host Party; and
    - (B) all reasonable and lawful directions by or on behalf of the Host Party; and
  - (4) ensure that its Workers and Visitors display identification to show they are a Worker or Visitor of the Guest Party.

## 18.4 Third person's premises

Without limiting the obligations imposed on the User under clause 15.2(c), 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.

# 19 Directions from System Operator

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Horizon Power Pilbara Network and the User must each comply with any directions given by the System Operator pursuant to the Act and subsidiary instruments arising under the Act, including the Code and Pilbara Network Rules.

## 20 Removal of equipment

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

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

## Common provisions

## 21 Representations and warranties

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### 21.1 User's representations and warranties

- (a) The User represents and warrants to Horizon Power Pilbara Network that:
  - (1) the User has complied with the User Access Guide and the requirements in the Code in respect of its Application;
  - (2) the User's obligations under this Contract are valid and binding and are enforceable against the User under their terms;
  - (3) this Contract and any other transaction under it does not contravene the User's constituent documents or any Law or any of the User's obligations or undertakings by which the User or any of the User's assets are bound or cause to be exceeded any limitation on the User's or the User's directors' powers; and
  - (4) neither the User nor any of its Related Bodies Corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgement, attachment in aid of execution, execution or otherwise).
- (b) For the purposes of the warranty in clause 21.1(a)(1), the User will be taken to have complied with the User Access Guide and the requirements in the Code in respect of its Application, where the only reason it has failed to be in compliance is a breach by Horizon Power Pilbara Network of the User Access Guide or the Code.
- (c) The representations and warranties in clause 21.1(a) are to be taken to be made on each day on which:
  - (1) this Contract is in effect; and
  - (2) any amount payable by the User to Horizon Power Pilbara Network under this Contract is or may be outstanding.

### 21.2 Horizon Power Pilbara Network's representations and warranties

- (a) Horizon Power Pilbara Network represents and warrants to the User that:

- (1) Horizon Power Pilbara Network has complied with the User Access Guide and the requirements in the Code in respect of the User's Application;
  - (2) Horizon Power Pilbara Network's obligations under this Contract are valid and binding and are enforceable against Horizon Power Pilbara Network under their terms;
  - (3) this Contract and any other transaction under it does not contravene Horizon Power Pilbara Network's constituent documents or any Law or any of Horizon Power Pilbara Network's obligations or undertakings by which Horizon Power Pilbara Network or any of Horizon Power Pilbara Network's assets are bound or cause to be exceeded any limitation on Horizon Power Pilbara Network's or Horizon Power Pilbara Network's directors' powers; and
  - (4) Horizon Power Pilbara Network does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgement, attachment in aid of execution, execution or otherwise).
- (b) For the purposes of the warranty in clause 21.2(a)(1), Horizon Power Pilbara Network will be taken to have complied with the User Access Guide and the requirements in the Code in respect of the User's Application, where the only reason it has failed to be in compliance is a breach by the User of the User Access Guide or the Code.
- (c) The representations and warranties in clause 21.2(a) are to be taken to be made on each day on which:
- (1) this Contract is in effect; and
  - (2) any amount payable by Horizon Power Pilbara Network to the User under this Contract is or may be outstanding.

### 21.3 No other warranty given by Horizon Power Pilbara Network

- (a) To the maximum extent permitted by Law:
- (1) the only warranties given by and terms which apply to Horizon Power Pilbara Network under this Contract are those expressly contained in this Contract; and
  - (2) all warranties and terms implied by Law (including those implied by the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA), and any other Law to similar effect) do not apply to this Contract.
- (b) If at Law the exclusion of any warranty or term is prohibited, then Horizon Power Pilbara Network'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 Horizon Power Pilbara Network 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 Horizon Power Pilbara Network's liability will be so limited.
- (c) Nothing in this Contract is intended to exclude, restrict or modify rights which the User may have under the *Competition and Consumer Act 2010* (Cth) or any other Law which may not be excluded, restricted or modified by agreement.

## 22 Indemnity and limit on liability

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### 22.1 Indemnity

- (a) Subject to clause 22.1(b), each Party (**Indemnifying Party**) indemnifies the other Party (**Indemnified Party**) from and against any Claim or Loss, however caused (including negligence), brought against, suffered or incurred by the Indemnified Party, arising out of, or in connection with:
  - (1) any negligent, fraudulent or unlawful act or omission of the Indemnifying Party; or
  - (2) a Default of the Indemnifying Party.
- (b) The Indemnifying Party's liability to indemnify the Indemnified Party under clause 22.1(a) will be proportionately reduced to the extent the Claim or Loss was caused by the negligence or fraud of the Indemnified Party.

### 22.2 Enforcement of indemnities

Neither Party need incur any cost or make any payment before enforcing any right of indemnity under this Contract, including the indemnity in clause 22.1.

### 22.3 Exclusion of Indirect Damage

- (a) To the extent permitted by Law, but subject to clause 22.3(b), each Party will have no liability to the other Party for any Claims for Indirect Damage (however arising, including negligence), arising under or in connection with this Contract.
- (b) A Party's liability for Indirect Damage in respect of the following is not excluded by clause 22.3(a):
  - (1) in respect of the User:
    - (A) payment of the Charges (or any other liability described in clauses 9 or 10) to Horizon Power Pilbara Network in consideration for provision of the Services;
    - (B) the failure to ensure that, where applicable, its contract with a Controller contains the covenant referred to in clause 8.1(c)(4);
    - (C) liability under an indemnity in clauses 11.1(d) or 15.2(d); or
    - (D) liability, to the extent that the User recovers insurance proceeds in respect of the liability from any of the insurances required to be maintained under clause 23, or would have recovered insurance proceeds if it had complied with this Contract and taken all reasonable steps to do so;
  - (2) in respect of Horizon Power Pilbara Network:
    - (A) liability under clause 4.6(g); or
    - (B) any liability described in clauses 9 or 10; or
  - (3) in respect of either Party:
    - (A) injury to, or illness or death of, any person;
    - (B) damage to, or loss or destruction of, any third party property; or

- (C) fraud of the Party in respect of its obligations to the other Party under this Contract.

## 22.4 Limitation of liability

- (a) To the extent permitted by Law, despite any other provision of this Contract but subject to clause 22.4(b):
- (1) the User's liability to Horizon Power Pilbara Network for all Loss and Claims arising out of or in connection with this Contract (howsoever arising, including negligence) for each Contract Year is limited to the User Maximum Liability Amount; and
  - (2) Horizon Power Pilbara Network's liability to the User for all Loss and Claims arising out of or in connection with this Contract (howsoever arising, including negligence) for each Contract Year is limited to the Horizon Power Pilbara Network Maximum Liability Amount.
- (b) A Party's liability in respect of the following is not limited by clause 22.4(a), and is not counted towards the limit under clause 22.4(a):
- (1) in respect of the User:
    - (A) payment of the Charges (or any other liability described in clauses 9 or 10) to Horizon Power Pilbara Network in consideration for provision of the Services;
    - (B) fraud or wilful misconduct of the User;
    - (C) injury to, or illness or death of, any person; or
    - (D) liability, to the extent that the User recovers insurance proceeds in respect of the liability from any of the insurances required to be maintained under clause 23, or would have recovered insurance proceeds if it had complied with this Contract and taken all reasonable steps to do so; and
  - (2) in respect of Horizon Power Pilbara Network:
    - (A) any liability described in clauses 9 or 10;
    - (B) fraud or wilful misconduct of Horizon Power Pilbara Network; or
    - (C) injury to, or illness or death of, any person.
- (c) The Horizon Power Pilbara Network Maximum Liability Amount and User Maximum Liability Amount will be CPI-adjusted on the third anniversary of the Execution Date, and every 3 years thereafter, provided that for the purposes of such 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 liability cap amount being calculated;

**C** is the current liability cap amount being adjusted;

**CPI<sub>n</sub>** is the CPI applicable at the end of the quarter (quarter <sub>n</sub>) most recently ended prior to the adjustment date; and

**CPI<sub>c</sub>** is the value of CPI applicable for the quarter occurring 36 months before the quarter referred to in the definition of CPI<sub>n</sub>.

## 22.5 Application of caps and exclusions

- (a) When determining the insurance proceeds that would have been recovered for the purposes of clauses 22.3(b)(1)(D) and 22.4(b)(1)(D), the exclusions and limits of liabilities under clauses 22.3 and 22.4 will not be taken into account.
- (b) Liability to which a limit under clause 22.4 applies is counted towards the limit when discharged by the liable Party.

## 22.6 Defence of indemnified claims

If a third party Claim is made or instituted against a Party (**Indemnified Party**) in respect of which the Indemnified Party may seek to claim indemnity under this Contract against the other Party (**Indemnifying Party**), the following procedure applies:

- (a) the Indemnified Party must give notice of the Claim to the Indemnifying Party as soon as reasonably practicable;
- (b) 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 judgement 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);
- (c) 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
- (d) the Indemnified Party must ensure that the Indemnifying Party and its representatives are given reasonable access to any of the documents and records (other than documents and records subject to legal professional privilege), 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 22.6(c).

## 22.7 Mitigation of losses

A Party 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.

# 23 Insurances

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## 23.1 Insurances

- (a) Subject to clause 23.1(b), the User must obtain and maintain insurance, commencing from the Commencement Date, covering those matters, on the terms and basis, and for the amounts, referred to in Schedule 5.
- (b) For each Connection Point, prior to the Start Date of a Service at the Connection Point, and at such other times as Horizon Power Pilbara Network may

reasonably request in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), the User must provide Horizon Power Pilbara Network with certificates of currency for the insurances required under clause 23.1(a).

## 23.2 Notice of cancellation

The User must notify Horizon Power Pilbara Network immediately on being advised by its insurer of cancellation or non-renewal of any of the insurance policies in Schedule 5, and immediately use all reasonable endeavours to reobtain the insurance policies in Schedule 5. Any cancellation or non-renewal of any of the insurance policies will constitute a Default.

## 23.3 Further obligation

The User 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.

# 24 Force Majeure

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## 24.1 Affected Person's obligations are suspended

If a Party (**Affected Person**) is unable, wholly or in part, to perform any obligation (**Affected Obligation**) under this Contract (other than an obligation to pay money) because of the occurrence of a Force Majeure Event, then, subject to this clause 24, 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**).

## 24.2 When Services are Curtailed

Without limiting clause 24.1, Horizon Power Pilbara Network's obligation in respect of a Connection Point to provide the Services is suspended during any period that the provision of the Services in respect of that Connection Point is Curtailed under clause 25.1 to the extent of the Curtailment.

## 24.3 Affected Person's obligations

- (a) Subject to clause 24.5, 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:
  - (1) notify the other Party if the FM Period continues for a period of 2 days or longer; and
  - (2) use reasonable endeavours (including 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.

- (b) A notice under clause 24.3(a) must be given as soon as reasonably practicable, and must include details of the event or circumstance constituting the Force Majeure Event.
- (c) The Affected Person must notify the other Party as soon as reasonably practicable after it is no longer affected by the Force Majeure Event, and the notice must:
  - (1) include the actual period of the Force Majeure Event, stating the start date and end dates; and
  - (2) detail the effect that the Force Majeure Event had on the Affected Person's ability to perform its obligations under this Contract.

#### **24.4 Failure to minimise delays**

If an Affected Person fails to comply with clause 24.3(a)(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.

#### **24.5 Settlement of a labour dispute**

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

#### **24.6 Termination for extended Force Majeure Event**

If a Force Majeure Event occurs which prevents (or will prevent) the Affected Person from performing some or all of its obligations under this Contract in respect of any Connection Point for a continuous period of at least 6 months, then either Party may, unless the Force Majeure Event has ceased to have that effect, terminate either:

- (a) the provision of the Services in respect of that Connection Point; or
- (b) this Contract,

by written notice to the other Party, and the obligation to provide the Services or this Contract (as applicable) will terminate on the date specified in the notice.

#### **24.7 No extension of Term**

The suspension of obligations under clause 24.1 does not extend the Term.

## **25 Curtailment and Constraint Directions**

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### **25.1 Horizon Power Pilbara Network may Curtail Services**

In addition to any other rights Horizon Power Pilbara Network may have to Curtail Services under this Contract, Horizon Power Pilbara Network may Curtail the provision of Services in respect of a Connection Point:

- (a) to carry out planned Augmentation or Maintenance to the Network;
- (b) to carry out unplanned Maintenance to the Network where Horizon Power Pilbara Network considers it necessary to do so to avoid injury to any person or material damage to any property or the environment;



- (c) if there is any breakdown of or damage to the Network that Horizon Power Pilbara Network considers (in its absolute discretion) affects or is likely to affect Horizon Power Pilbara Network's ability to provide Services at that Connection Point;
- (d) if Horizon Power Pilbara Network considers (in its absolute discretion) the Curtailment is required to maintain safety, to avoid injury to any person or damage to any property or the environment;
- (e) if required as a result of, or in connection with, a Force Majeure Event;
- (f) if the rate at which electricity is transferred into, or out of, the Network by or on behalf of the User exceeds the:
  - (1) Contracted Capacity applicable for the Service at that Connection Point; or
  - (2) limits specified in a Constraint Direction the subject of clause 25.3;
- (g) in circumstances where Horizon Power Pilbara Network is entitled to Curtail the Services or Disconnect a User at Law (including under the Technical Rules) or under the Horizon Power Technical Rules; or
- (h) to the extent Horizon Power Pilbara Network considers it necessary for Horizon Power Pilbara Network to comply with:
  - (1) any Law (including the Technical Rules);
  - (2) the Horizon Power Technical Rules; or
  - (3) any lawful directions given by the System Operator, the minister responsible for administering the Act, the minister responsible for administering the *Electricity Corporations Act 2005* (WA), the Coordinator of Energy, or the Director of Energy Safety.

## **25.2 Extent of Curtailment and suspension of Horizon Power Pilbara Network's obligations**

- (a) Horizon Power Pilbara Network must keep the extent and duration of any Curtailment under clause 25.1 to the minimum reasonably required in accordance with Good Electricity Industry Practice.
- (b) For the duration of any Curtailment, Horizon Power Pilbara Network's obligations to provide the Services are suspended.

## **25.3 System Operator Constraint Directions**

- (a) Without limiting anything else in this Contract, the Parties acknowledge and agree that from time to time a Controller (including the User in its capacity as a Controller) may receive a Constraint Direction from the System Operator, pursuant to which the Controller must ensure the electricity transferred into, or out of, the Network by or on behalf of the User does not exceed the limits specified in the Constraint Direction.
- (b) The User must comply, and (where the User is not the Controller) must procure that the relevant Controller complies, with any Constraint Direction received from the System Operator.
- (c) The User acknowledges and agrees that a Constraint Direction (or a Constraint Rule or Limit Advice which has resulted in the need for a Constraint Direction) may take into account any event that occurs anywhere in the Power System before or after the Execution Date, including:

- (1) an Access Contract being entered into;
  - (2) a change in generation or load;
  - (3) the addition, modification, re-rating, disconnection or removal of a facility or network element;
  - (4) a Network Service Provider (including, for the avoidance of doubt, Horizon Power Pilbara Network) giving the System Operator new or revised Limit Advice; and
  - (5) the System Operator adopting a new or revised Constraint Rule.
- (d) Receipt by a Controller (including the User in its capacity as a Controller) of any Constraint Direction from the System Operator as contemplated by clause 25.3(a) has no effect on the Contracted Capacity provided to the User under this Contract, or the associated Charges under clause 9.
- (e) The User acknowledges and agrees that Horizon Power Pilbara Network may, from time to time:
- (1) give the System Operator a Limit Advice, and maintain and consult with the System Operator in connection with a Limit Advice; or
  - (2) consult and agree with the System Operator on the form and content of a Constraint Rule,

which advice or rule may result in the issuance by the System Operator of a Constraint Direction to a Controller (including the User in its capacity as a Controller).

- (f) In:
- (1) giving the System Operator a Limit Advice (or maintaining and consulting with the System Operator in connection with a Limit Advice); or
  - (2) consulting with the System Operator on the form and content of a Constraint Rule,

in each case as contemplated by clause 25.3(e), Horizon Power Pilbara Network must:

- (3) give due consideration to whether or not the User has the benefit of a Legacy Right, and where the User has the benefit of a Legacy Right:
  - (A) use reasonable endeavours to ensure that the User obtains as part of its Access Rights, priority rights of access to network capacity; and
  - (B) ensure that the Limit Advice it gives to the System Operator provides for the User to have priority rights of access to network capacity,

in each case, to the extent described in rule 250(1), but at all times subject to rule 254, of the Pilbara Network Rules; and

  - (C) ensure that, in consulting with the System Operator on the form and content of a Constraint Rule, the priority rights of access detailed in the Limit Advice are communicated to the System Operator;
- (4) give due consideration to whether or not the User has contributed funding (by way of capital contribution, underwriting, increased tariffs, risk allocation or otherwise) to Constraint Works; and

- (5) where the User has contributed funding as contemplated by clause 25.3(f)(4), and to the extent those Constraint Works have resulted in additional network capacity:
  - (A) use reasonable endeavours to ensure that the User obtains as part of its Access Rights, priority rights of access to that additional network capacity; and
  - (B) ensure that the Limit Advice it gives to the System Operator provides for the User to have priority rights of access to that additional network capacity,

in each case, as reasonably determined by Horizon Power Pilbara Network, having regard to the nature and scale of the User's contribution; and

  - (C) ensure that, in consulting with the System Operator on the form and content of a Constraint Rule, the priority rights of access detailed in the Limit Advice are communicated to the System Operator.
- (g) Provided it has complied with its obligations in clause 25.3(f), Horizon Power Pilbara Network has no liability to the User or a Controller, under this Contract or otherwise, in respect of Constraint Directions issued by the System Operator (including where a Constraint Direction arises in the circumstances contemplated by clause 25.3(e)).
- (h) The issuance of a Constraint Direction by the System Operator (and the actions taken by either or both of the User and Horizon Power Pilbara Network to ensure the Constraint Direction is complied with) does not in any way limit the User's obligation (where applicable) to remain in balance in accordance with the Pilbara Network Rules.

## 25.4 Notification of Curtailment

Except for where:

- (a) Horizon Power Pilbara Network uses a Constraint Solution implemented in accordance with clause 4.1(d) to automatically Curtail the provision of Services; or
- (b) the System Operator has issued a Constraint Direction as contemplated by clause 25.3(a) and Horizon Power Pilbara Network Curtails the provision of the Services under clause 25.1(f)(2),

Horizon Power Pilbara Network must use reasonable endeavours to notify the User of any Curtailment under clause 25.1 as soon as practicable.

## 25.5 User must comply with Curtailment

If Horizon Power Pilbara Network notifies the User of a Curtailment of Services under clause 25.4 in respect of a Connection Point, the User (acting as a Reasonable and Prudent Person) must comply, or procure compliance, with any reasonable requirements set out in the notice concerning the Curtailment.

## 25.6 No liability for Curtailment

Horizon Power Pilbara Network is not liable for any Claim or Loss suffered or incurred by the User, or any other person, as a result of or arising out of or in connection with a

Curtailment effected pursuant to this clause 25, or otherwise in accordance with this Contract.

## 25.7 Disconnection for emergency

- (a) If Horizon Power Pilbara Network, acting reasonably, forms the opinion that the operation of the Facilities and Equipment, a Customer's Embedded Generating Unit (if any), or any part of either of them, pose a threat to the integrity of the Network (including a threat to power system security) or may lead to damage to the Network, Network Assets or Other Network Users, Horizon Power Pilbara Network may immediately Disconnect the Network Assets.
- (b) Horizon Power Pilbara Network must notify the User of any Disconnection it effects under clause 25.7(a) (**Emergency Disconnection**) as soon as reasonably practicable after taking that action.
- (c) To the extent that a Disconnection under clause 25.7(a) was as a result of the User's action or inaction, whether or not a breach of its obligations under this Contract (including a breach of the Technical Requirements), Horizon Power Pilbara Network may direct the User to take specific reasonable steps to avoid the recurrence of the threat or the potential damage to the Network, Network Assets or Other Network Users.
- (d) If the User is directed by Horizon Power Pilbara Network pursuant to clause 25.7(c), the User must comply, or procure compliance by the Controller (as applicable), with that direction at the User's expense.

## 25.8 Disconnection for User's breach of Technical Requirements

- (a) Horizon Power Pilbara Network may Disconnect the Network Assets if, in Horizon Power Pilbara Network's reasonable opinion:
  - (1) the User or any Controller (or both, as applicable), has breached, or is likely to breach, the Technical Requirements; and
  - (2) that breach, or likely breach, is likely to have a material adverse effect on the Network, Network Assets or Other Network Users.
- (b) Without limiting its rights under clause 25.7, Horizon Power Pilbara Network must notify the User of:
  - (1) any breach (or likely breach) of the Technical Requirements by the User or any Controller (or both, as applicable), which Horizon Power Pilbara Network is aware of; and
  - (2) any proposed Disconnection under clause 25.8(a),
 which notice must include, to the extent practicable:
  - (3) sufficient detail to enable the User to identify the breach, or likely breach (as applicable) of the Technical Requirements, and to remedy the breach, or prevent the likely breach (as applicable), before the proposed Disconnection; and
  - (4) the date and time of any proposed Disconnection.
- (c) If the User is notified of a proposed Disconnection under clause 25.8(b), the User must:
  - (1) remedy the breach (or prevent the likely breach, as applicable) within the stipulated period; and

- (2) continue to pay the Charges payable under clause 10, despite the breach or (if the breach is not remedied within the stipulated period) Disconnection (or both, as applicable).

## 26 Payments and recoveries under the Contributions Policy

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

## 27 Default

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### 27.1 Default

A Party is in **Default** if:

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

### 27.2 Default by User

- (a) In the event of the User's Default, Horizon Power Pilbara Network may notify the User of the User's Default, which notice must:
  - (1) state that the notice is a notice of Default; and
  - (2) require the User to remedy the User's Default.
- (b) If the User's Default is a payment Default under clause 27.1(a), the User must remedy that Default within 3 Business Days after receiving a notice under clause 27.2(a).
- (c) If the User's Default is a Default other than a payment Default under clause 27.1(a), the User must, within 5 Business Days after receiving a notice under clause 27.2(a), either:
  - (1) remedy that Default; or
  - (2) have commenced remedying that Default, and be diligently proceeding with that remedy (in each case to Horizon Power Pilbara Network's reasonable satisfaction).
- (d) If the User:
  - (1) fails to remedy a Default; or
  - (2) where applicable, fails to have commenced remedying a Default, and be diligently proceeding with that remedy (in each case, to Horizon Power Pilbara Network's reasonable satisfaction),

within the time required by clauses 27.2(b) or 27.2(c) (as applicable), without limiting its right under clause 27.2(e), Horizon Power Pilbara Network may De-energise, or Curtail the provision of Services in respect of, all or any of the User's Connection Points while the User's Default is continuing.

- (e) Notwithstanding anything else in this clause 27.2, if the User's Default has not been remedied by the User within 20 Business Days after receiving a notice under clause 27.2(a), Horizon Power Pilbara Network may terminate this Contract by written notice, with immediate effect.

### **27.3 Default by Horizon Power Pilbara Network**

- (a) In the event of Horizon Power Pilbara Network's Default, the User may notify Horizon Power Pilbara Network of Horizon Power Pilbara Network's Default, which notice must:
  - (1) state that the notice is a notice of Default; and
  - (2) require Horizon Power Pilbara Network to remedy the Default.
- (b) Horizon Power Pilbara Network must remedy a Default the subject of a notice under clause 27.3(a) within 20 Business Days after receiving such notice.
- (c) If Horizon Power Pilbara Network fails to remedy a Default within the time required by clause 27.3(b), the User may:
  - (1) terminate this Contract by written notice, with immediate effect; or
  - (2) withhold payment of the Charges from the date of Horizon Power Pilbara Network's Default, for so long as the Default continues unremedied (and no interest is payable by the User on any amounts so withheld provided they are paid in full within 10 Business Days after the Default is remedied).

### **27.4 Party's rights not affected**

Nothing in this clause 27 in any way prejudices the rights or remedies accrued by a Party, whether under this Contract or at Law, as at the date of a Default (including a right to general damages for breach of contract).

## **28 Termination**

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### **28.1 Termination**

- (a) Subject to clause 28.1(b), this Contract terminates on the Termination Date.
- (b) This Contract may be terminated before the Termination Date:
  - (1) by written agreement between the Parties;
  - (2) by notice by either Party to the other Party if, at any time, this Contract does not include at least one Connection Point;
  - (3) under clauses 27.2(e) or 27.3(c)(1) in respect of unremedied Default of a Party;
  - (4) under clause 31(b) in respect of a Change in Control of the User without the consent of Horizon Power Pilbara Network; or

- (5) under clause 24.6 in respect of an extended Force Majeure Event.
- (c) On termination of this Contract Horizon Power Pilbara Network may disconnect (either permanently under clause 20, or otherwise) any Connection Point under this Contract.
- (d) On termination of this Contract, unless otherwise agreed by the Parties:
  - (1) the User must pay any unpaid amount owed to Horizon Power Pilbara Network pursuant to this Contract; and
  - (2) Horizon Power Pilbara Network must pay any unpaid amount owed to the User pursuant to this Contract.

## 28.2 Rights of Parties not affected

Termination of this Contract does not prejudice:

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

# 29 Disputes

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## 29.1 Procedure

- (a) Any Dispute between the Parties must be resolved in accordance with this clause 29.
- (b) For the avoidance of doubt:
  - (1) a Dispute does not include an Access Dispute or Price List Dispute;
  - (2) any Access Dispute or Price List Dispute must be referred to the Arbitrator and resolved in accordance with Chapter 7 of the Code; and
  - (3) this clause 29 does not apply to any Access Dispute or Price List Dispute.
- (c) The Parties must continue to perform their obligations under this Contract despite the existence of any Dispute.

## 29.2 Party may give notice of Dispute and require Representatives' Meeting

- (a) 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.
- (b) Within 10 Business Days of the date of receipt of a notice under clause 29.2(a) (**Receipt Date**), duly authorised representatives of each Party must meet, at a place agreed between the Parties, and attempt in good faith, by way of discussions and using their best endeavours, to resolve the Dispute (**Representatives' Meeting**).

### 29.3 Party may require CEO Meeting

If the Dispute is not resolved (as evidenced by the terms of a written settlement signed by each Party's duly authorised representative) within 20 Business Days after the Receipt Date, then either Party may, by written notice, require that the senior executive officer of each Party:

- (a) meet, at a place agreed between the Parties, within 30 Business Days after the Receipt Date; and
- (b) attempt in good faith, by way of discussions and using their best endeavours, to resolve the Dispute, within 35 Business Days after the Receipt Date,

(CEO Meeting).

### 29.4 Method of meetings

- (a) A Representatives' Meeting or CEO Meeting may be conducted in person, by telephone, video conference or similar method of real time communication.
- (b) If the Parties are unable to agree on a meeting place under clauses 29.2(b) or 29.3(a) in the allocated time frame, the meeting will take place at a place determined by Horizon Power Pilbara Network (acting as a Reasonable and Prudent Person).

### 29.5 Party may commence court proceedings

- (a) If a Dispute is not wholly resolved within 35 Business Days after the Receipt Date, then either Party may commence proceedings in a court of competent jurisdiction to have the Dispute determined.
- (b) Subject to clause 29.7, a Party must not commence legal proceedings in relation to a Dispute unless the Dispute has been referred to the Representatives' Meeting and CEO Meeting under clauses 29.1 and 29.3 (respectively), and the Party commencing proceedings has complied with the procedure for resolving the Dispute under clauses 29.1 and 29.3 (to the extent possible).

### 29.6 Expert determination

- (a) **(Application):** Where in this Contract, any matter or point of difference is to be referred to an Expert, this clause 29.6 will apply.
- (b) **(Appointment):** The procedure for the appointment of an Expert will be as follows:
  - (1) Within 5 Business Days after the referral of a matter to an Expert, the Parties will meet in an endeavour to agree upon a single person to act as the Expert.
  - (2) If the Parties are unable to agree upon a person to act as the Expert within 5 Business Days after the meeting referred to in clause 29.6(b)(1), the Parties will, having regard to the nature of the matters to be determined, request an appropriate industry or technical body to nominate the person to act as the Expert (**Nominating Body**). Unless agreed otherwise, the Nominating Body will be the Resolution Institute (ACN 008 651 232).
  - (3) The request to the Nominating Body under clause 29.6(b)(2) will state:



- (A) the nature of the matter to be determined (or the point of difference); and
  - (B) that the person to be appointed to act as the Expert must have qualifications and experience that are relevant and suitable to assist in determining the matter or point of difference, and must be independent of the Parties.
- (4) Upon receiving the nomination from the Nominating Body, the Parties must (provided the nominee meets the requirements stated in the request to the Nominating Body) jointly appoint the person so nominated to act as the Expert.
- (c) **(Qualification)**: The Parties agree that notwithstanding the procedure in clause 29.6(b), no person will be appointed to act as the Expert unless he or she is independent of the Parties and qualified by education, experience and training to determine the matter or point of difference.
- (d) **(Disclosure of interest)**: The Parties, and any person to be appointed to act as an Expert, will be required to fully disclose any interest the proposed Expert has in a matter or point of difference, or duty owed to a Party by the proposed Expert, prior to that person's appointment. If that person has or may have any interest or duty which conflicts with their proposed appointment as Expert, that person may not be appointed.
- (e) **(Powers and duties)**: The Expert will determine the procedures for the conduct of the Dispute, subject to the requirements of procedural fairness and this Contract. The Expert will have the power to:
  - (1) inform himself or herself independently as to the facts and (if necessary) technical matters to which the Dispute relates;
  - (2) receive written submissions and sworn and unsworn written statements and to photocopy documents and to act upon the same;
  - (3) consult with such other professionally qualified persons as he or she, in his or her absolute discretion thinks fit; and
  - (4) take such measures as he or she thinks fit to expedite the completion of the Dispute.
- (f) **(Expert not arbitrator)**: The Expert will act as an independent expert and not as an arbitrator or mediator. The provisions of the *Commercial Arbitration Act 2012* (WA) will not apply to the Expert, his or her determination, or the determination procedure.
- (g) **(Determination final and binding)**: The Expert's determination will be final and binding on the Parties except in the case of manifest error or fraud.
- (h) **(Expert to provide written reasons)**: The Expert's determination will be made in writing with reasons as soon as practicable after the date that the Expert is appointed.
- (i) **(Costs)**: The costs in relation to a determination by the Expert will be dealt with as follows:
  - (1) the Parties will each bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Expert (including costs incurred in respect of counsel, witnesses, and employees retained by a Party); and
  - (2) the costs of the Expert will be borne equally by the Parties, unless the Expert determines a different allocation of costs due to the fact that

either Party has acted unreasonably in relation to the matter to be determined or point of difference.

## 29.7 Proceedings for urgent relief

Nothing in this clause 29 prevents proceedings being commenced for urgent injunctive or declaratory relief in respect of a Dispute.

## 30 Assignment by User

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The User may only Assign its Access Rights:

- (a) with the prior written consent of Horizon Power Pilbara Network (such consent not to be unreasonably withheld or delayed); and
- (b) on the same terms and conditions as set out in this Contract, including any exemptions to the Technical Requirements associated with those Access Rights set out in Part 3 of Schedule 3.

## 31 Change in Control of User

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- (a) Any Change in Control of the User requires the prior written consent of Horizon Power Pilbara Network (such consent not to be unreasonably withheld or delayed).
- (b) If the User fails to obtain consent under clause 31(a) to a Change in Control, Horizon Power Pilbara Network may terminate this Contract by written notice with immediate effect.
- (c) The Parties acknowledge and agree that it would be unreasonable for Horizon Power Pilbara Network to withhold consent to a Change in Control where the holding company of the User following the Change in Control has:
  - (1) a long term credit rating which is not less than that of the holding company of the User immediately prior to such Change in Control; and
  - (2) sufficient technical resources to ensure the User is capable of performing its obligations under this Contract.

## 32 Electricity Industry Change

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- (a) If:
  - (1) at any time during the Term an Electricity Industry Change is proposed by the Western Australian government or a Governmental Agency (excluding any Party to this Contract who is a Governmental Agency) (**Proposal**); and
  - (2) as a result of the Proposal, in the opinion of either Party (acting reasonably), it will no longer be possible for a Party to continue performing any term of this Contract in full or the allocation of risk

agreed by the Parties under this Contract will materially change due to the Proposal,

then either Party may give the other notice, containing particulars of the Proposal and requiring the other Party to discuss the means by which this Contract might be varied, if the Proposal becomes effective, to continue to give effect to the intent, and agreed risk allocation, of this Contract (**Discussions Notice**).

- (b) Within 20 Business Days of the date of a Discussions Notice, the Parties must meet and negotiate in good faith (but having regard to their own commercial interests) with a view to determining a means of varying the provisions of this Contract in order that the intention and agreed risk allocation of this Contract (construed as a whole) may be preserved.
- (c) If the Parties are unable to agree the variations to this Contract contemplated in clause 32(b) within 120 Business Days of the Discussions Notice, then either Party may refer the matter to an Expert to determine the minimum necessary amendments to this Contract to enable this Contract to continue to give effect to the intention of the Parties, and agreed risk allocation of this Contract, if the Proposal becomes effective.
- (d) Subject to clause 32(e), any amendments agreed between the Parties pursuant to clause 32(b) or determined by an Expert will not take effect unless and until the Proposal becomes effective.
- (e) If at any time after the issue of a Discussions Notice in respect of a Proposal (and before the Electricity Industry Change becomes effective) the particulars of a Proposal are altered in such a way as to materially change the impact of the Electricity Industry Change that is the subject of the Proposal on the ability of either Party to perform its obligations under this Contract, then unless agreed otherwise by the Parties:
  - (1) that Discussions Notice, and any amendments agreed between the Parties pursuant to clause 32(b) or determined by an Expert in response to that Discussions Notice will be of no effect; and
  - (2) either Party may give a new Discussions Notice in relation to that Proposal or any other Proposal in existence.
- (f) Nothing in this Contract is intended to prevent either of the User or Horizon Power Pilbara Network from exercising any rights it may have at Law pertaining to third party access regulation with respect to the coverage and economic regulation of the Network.

## 33 Corporate restructuring of Horizon Power Pilbara Network

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### 33.1 If Horizon Power Pilbara Network is restructured

If Horizon Power Pilbara Network is restructured under government policy:

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

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

### **33.2 User's consent not required**

A restructure, transfer or assignment under clause 33.1 does not require the User's approval or consent.

## **34 Confidentiality**

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### **34.1 Confidential information**

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

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

### **34.2 When information is not confidential**

Clause 34.1 does not apply to information which, without breach of this Contract or other breach of confidence:

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

### **34.3 Prohibited disclosure**

Subject to clause 34.4, an Information Recipient must not disclose or allow to be disclosed any Confidential Information to a Third Party Recipient.

### **34.4 Permitted disclosure**

- (a) An Information Recipient may disclose or allow to be disclosed any Confidential Information to a Third Party Recipient in the following circumstances:

- (1) with written consent of the Information Provider;
- (2) to employees, legal advisers, auditors or other consultants or Related Bodies Corporate of the Party requiring information for the purposes of this Contract or for the purposes of providing professional advice in relation to this Contract;
- (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;
- (4) to other interested parties in the circumstances described in clause 34.6;
- (5) to the Authority, Arbitrator or, for the purposes of any review of the Code, the minister responsible for administering the Act and that minister's delegates;
- (6) if required by Law or by an authority (including the System Operator) which has jurisdiction over a Party or any of its Related Bodies Corporate;
- (7) if required by the rules of a stock exchange which has jurisdiction over a Party or any of its Related Bodies Corporate; or
- (8) if required:
  - (A) for the purposes of prosecuting or defending a Dispute;
  - (B) in connection with legal proceedings related to this Contract; or
  - (C) for the purposes of an Access Dispute under the Code.
- (b) The User may disclose or allow to be disclosed a copy of this Contract to a Controller with whom the User will enter, or has entered into, a contract as required by clause 8.
- (c) Horizon Power Pilbara Network may disclose or allow to be disclosed any Confidential Information to the Department of Finance, the minister responsible for administering the Act and that minister's department, the minister responsible for administering the *Electricity Corporations Act 2005* (WA) and that minister's department, the Coordinator of Energy, or the Director of Energy Safety.
- (d) Nothing in clause 34.4 limits Horizon Power Pilbara Network's obligations to comply with Chapter 8 of the Code and the Ring Fencing Rules.

### 34.5 Third party disclosure

An Information Recipient disclosing information under clause 34.4 must:

- (a) use all reasonable endeavours to ensure that a Third Party Recipient does not disclose the Confidential Information except in the circumstances permitted by clause 34.4;
- (b) notify the Third Party Recipient that it has a duty of confidence to the Information Provider in respect of the Confidential Information; and
- (c) except to the extent that the Third Party Recipient is under an existing enforceable legal obligation to maintain the confidence of the Confidential Information as contemplated in clause 34.5(b), procure a written confidentiality undertaking from the Third Party Recipient consistent with this clause 34.

### **34.6 Disclosure to other interested parties**

The Parties agree that the following Confidential Information, may be disclosed by an Information Recipient without being in breach of the prohibition in clause 34.3 in the following circumstances:

- (a) disclosure by either Party to a Controller of Facilities and Equipment or a Connection Point (or both, as applicable), of information relating to the Controller's rights, obligations and interests in respect of those Facilities and Equipment or that Connection Point (or both, as applicable); and
- (b) disclosure by either Party to the User's Customers of:
  - (1) any information relating to a Curtailment affecting those Customers;
  - (2) any information relating to the occurrence of a Force Majeure Event that affects the provision of a Service under this Contract and which impacts (or will impact) such Customers;
  - (3) Metering Data in respect of any Connection Point which is relevant to that Customer; and
  - (4) any information relating to Charges or other amounts payable under this Contract in respect of any Connection Point which is relevant to that Customer.

### **34.7 No unauthorised copying**

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

### **34.8 Secure storage**

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

### **34.9 Return of materials**

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

### **34.10 Remedies**

Each Party acknowledges and agrees that any breach or threatened breach of this clause 34 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 urgent injunctive relief under clause 29.7, or compel specific performance of this clause 34 in respect of any such breach or threatened breach.

### 34.11 Freedom of information

The User acknowledges that Horizon Power Pilbara Network is subject to the *Freedom of Information Act 1992* (WA) and that this Contract or documents relating to this Contract may become subject of an application under that Act, and access to them may need to be given to a third party in accordance with that Act. Horizon Power Pilbara Network has no liability to the User whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).

### 34.12 Survival of obligations

- (a) This clause 34 survives the termination or expiry of this Contract, and remains enforceable for a period of 7 years from the date of such termination or expiry.
- (b) Any person who ceases to be a Party to this Contract continues to be bound by this clause 34.

## 35 Ring fencing

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The Parties acknowledge and agree that:

- (a) Horizon Power Pilbara Network is a vertically integrated service provider, consisting of both a Network Business and an Other Business;
- (b) this Contract relates to the business and functions of the Network Business and the User must deal with the Network Business in relation to the implementation of this Contract; and
- (c) a court or tribunal, in considering whether:
  - (1) representations made by Workers of the Other Business can or ought to be attributed to the Network Business, or vice versa;
  - (2) a notice or other information given to a Worker of the Other Business has been communicated, or should be deemed to have been communicated, to the Network Business, or vice versa; or
  - (3) a contract entered into between the Parties relating to the functions and business of the Other Business does, or ought to express or imply an intention to vary this Contract, or vice versa,
 must have fair and reasonable regard to the separation of the Network Business and Other Business and the Ring Fencing Rules.

## 36 Notices

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### 36.1 Requirements for Communications

Except as provided in clause 36.2, or where given under the electronic communications protocol in Schedule 7, a Communication must be:

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

- (b) delivered or sent to the address of the addressee as specified in Schedule 6 by one or more of the following means:
  - (1) hand delivery;
  - (2) priority post (airmail if posted to or from a place outside Australia);
  - (3) courier service for hand delivery; or
  - (4) Electronically to the email address of the addressee.

### **36.2 Operational and urgent Communication**

Where this Contract expressly provides, and where the Parties agree in writing, Communications:

- (a) of a day to day operational nature; or
- (b) given in an operational Emergency,

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

### **36.3 Communication takes effect**

A Communication takes effect from the later of:

- (a) the time it is received (or deemed to have been received under clause 36.4, where applicable); and
- (b) any later time specified in the Communication.

### **36.4 Deemed receipt**

For the purposes of this Contract:

- (a) a Communication delivered by hand to the address of a Party (including where a reputable courier service is used for that purpose) is deemed to be received if it is handed (with or without acknowledgment of delivery) to any person at the address who, in the reasonable judgement of the person making the delivery (upon making appropriate enquiries):
  - (1) appears to be; and
  - (2) represents himself or herself as,
 a representative of the Party to whom the Communication is addressed;
- (b) a Communication which is posted is deemed to be received by the Party to whom the Communication is addressed:
  - (1) 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
  - (2) in any other case – 3 Business Days after the day of posting; and
- (c) a Communication sent Electronically:
  - (1) under the electronic communications protocol in Schedule 7 is deemed to be received by the party as specified in the electronic communications protocol in Schedule 7; and
  - (2) other than under the electronic communications protocol in Schedule 7, is deemed to have been received by the Party when such



Communication is deemed to have been received under the Communication Rules.

### **36.5 Change of address**

A Party may at any time, by notice given to the other Party, designate a different email or postal address for the purpose of this clause 36.

## **37 Miscellaneous**

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### **37.1 Compliance and lawful directions**

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

### **37.2 Variation**

- (a) Subject to clause 37.2(b) a purported agreement between Horizon Power Pilbara Network and the User to revoke, substitute or amend any provision of this Contract has no effect unless it is in writing.
- (b) Clause 37.2(a) does not prevent the User and Horizon Power Pilbara Network from agreeing by non-written means under clause 36.2 to revoke, substitute or amend any provision of this Contract in an Emergency provided that the non-written revocation, substitution or amendment applies only while the effects of the Emergency subsist.

### **37.3 No third party benefit**

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

### **37.4 Duty**

The User 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 User must produce this Contract to the Office of State Revenue for assessment.

### **37.5 Costs**

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

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any notice given or made; and
- (b) the performance of any action by that Party in compliance with any liability arising,

under this Contract, or any agreement or document executed or effected under this Contract, unless this Contract provides otherwise.

### **37.6 Waiver**

A provision of this Contract may only be waived by a Party giving written notice signed by a duly authorised representative to the other Party. No other conduct of a Party (including a failure to exercise, or delay in exercising, a right) operates as an election to waive the right or otherwise prevents the exercise of the right.

### **37.7 Entire agreement**

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

### **37.8 Severance**

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

### **37.9 Counterpart execution**

This Contract may be signed in any number of counterparts and all such signed counterparts, taken together, will be deemed to constitute one and the same instrument even though all Parties may not have signed each separate counterpart.

### **37.10 Further assurance**

Each Party agrees, at its own expense, on the request of another Party, to do everything reasonably necessary to give effect to this Contract and the transactions contemplated by it, including the execution of documents.

### **37.11 Authorised officers**

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

### **37.12 Merger**

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

### **37.13 Remedies**

- (a) Subject to clause 37.13(b), the rights, powers and remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Contract.

- (b) A Party may only terminate this Contract in circumstances permitted by express provisions of this Contract. Any rights to terminate this Contract at Law are excluded.

### **37.14 Governing Law**

- (a) This Contract and the transactions contemplated by this Contract are governed by the Law in force in Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and the Courts of appeal from them in respect of any proceedings arising out of or in connection with this Contract.

### **37.15 Indemnities**

Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination (for any reason) of this Contract.

### **37.16 Contract does not limit other powers and rights**

- (a) This Contract does not limit any power or right conferred on Horizon Power Pilbara Network or the User by any Law, including the Act, the *Energy Operators (Powers) Act 1979* (WA), the Code and the Pilbara Network Rules.
- (b) Notwithstanding anything to the contrary in this Contract, the User acknowledges and agrees that Horizon Power Pilbara Network has a number of obligations arising at Law, including under the Act, the *Energy Operators (Powers) Act 1979* (WA), the Code and the Pilbara Network Rules. No action taken by Horizon Power Pilbara Network for the purposes of complying with its obligations at Law will constitute a breach of this Contract.

# Schedule 1

## Dictionary

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

Column 1	Column 2
<b>Access Contract</b>	has the meaning given to 'access contract' in the Code.
<b>Access Dispute</b>	has the meaning given to 'access dispute' in the Code.
<b>Access Offer</b>	has the meaning given to 'access offer' in the Code.
<b>Access Rights</b>	all or part of the User's rights under this Contract to obtain a Covered Service.
<b>Accounting Period</b>	one month.
<b>Act</b>	the <i>Electricity Industry Act 2004</i> (WA).
<b>Affected Obligation</b>	has the meaning given to it in clause 24.1.
<b>Affected Person</b>	has the meaning given to it in clause 24.1.
<b>Affected Service</b>	has the meaning given to it in clause 9.4.
<b>Affected Service Period</b>	has the meaning given to it in clause 9.4.
<b>Application</b>	has the meaning given to 'access application' in the Code.
<b>Assignment</b>	includes an assignment or Novation.

Column 1	Column 2
<b>Augmentation</b>	in relation to the Network, an increase in the capability of the Network to provide Covered Services, including by the development, construction, acquisition or commissioning of new Network Assets.
<b>Authorised Officer</b>	the authorised officer of a Party as specified in Schedule 6 to whom any Communication may be given.
<b>Authority</b>	the Economic Regulation Authority established by the <i>Economic Regulation Authority Act 2003 (WA)</i> .
<b>Arbitrator</b>	has the meaning given to 'arbitrator' in the Code.
<b>Bidirectional Service</b>	a Covered Service provided by Horizon Power Pilbara Network at a Connection Point under which the User may transfer electricity into and out of the Network at the Connection Point.
<b>Business Day</b>	a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.
<b>CEO Meeting</b>	has the meaning given to it in clause 29.3.
<b>Change in Control</b>	any event or circumstance resulting in a change in the ultimate shareholding or ownership of the User, subject to noting that a Change in Control will not arise in respect of the transfer or issue of marketable securities which are, or are to be (shortly after the time of transfer or issue) listed on a recognised stock exchange.
<b>Charge</b>	<p>for a Service for an Accounting Period, the aggregate of the amounts payable by the User to Horizon Power Pilbara Network:</p> <ol style="list-style-type: none"> <li>1 for the Service, calculated by applying the Tariff for the Service, during the Accounting Period; and</li> <li>2 for electricity transferred into, or out of, the Network by or on behalf of the User in excess of the Contracted Capacity, calculated in accordance with clause 9.2.</li> </ol>
<b>Claim</b>	any claim, demand, action or proceedings of any nature whatsoever, whether actual or threatened.
<b>CMD</b>	Contract Maximum Demand.

Column 1	Column 2
<b>Code</b>	the <i>Pilbara Networks Access Code 2021</i> .
<b>Commencement Date</b>	<ol style="list-style-type: none"> <li>1 the date on which all Conditions Precedents have been satisfied or waived in accordance with clause 2; or</li> <li>2 where there are no Conditions Precedent, the Execution Date.</li> </ol>
<b>Communication</b>	a notice, approval, consent or other communication given or made under this Contract.
<b>Communication Rules</b>	the Communication Rules referred to in Horizon Power's Model Service Level Agreement, as published by Horizon Power on its website from time to time.
<b>Conditions Precedent</b>	the conditions precedent specified in Part 2 of Schedule 2.
<b>Confidential Information</b>	information which is confidential under clause 34.1.
<b>Connection-only Access Contract</b>	<p>at the option of Horizon Power Pilbara Network:</p> <ol style="list-style-type: none"> <li>1 a contract containing provisions materially equivalent to those in this Contract; or</li> <li>2 some other agreement in writing to be bound by provisions materially equivalent to such terms and conditions of this Contract satisfactory to Horizon Power Pilbara Network, but omitting clauses 4 to 13 of this Contract.</li> </ol>
<b>Connection Point</b>	a 'connection point' (as defined in the Code) in the Connection Point Database.
<b>Connection Point Database</b>	<ol style="list-style-type: none"> <li>1 Part 1 of Schedule 3;</li> <li>2 any other database containing information relating to this Contract of the type set out in Part 1 of Schedule 3, and maintained by Horizon Power Pilbara Network (including the Metering Database, irrespective of whether the User is a Metering Code Participant); or</li> <li>3 any combination of paragraphs 1 and 2.</li> </ol>
<b>Connection Works</b>	has the meaning given to the term "Works" in the Connection Works Agreement, being the works to be performed by Horizon Power

Column 1	Column 2
	Pilbara Network under the Connection Works Agreement in order to connect the Facilities and Equipment to the Network.
<b>Connection Works Agreement</b>	the agreement of that name, to be entered into between the Parties on or around the date of this Contract, and pursuant to which Horizon Power Pilbara Network will perform the Connection Works.
<b>Constraint Direction</b>	has the meaning given to 'constraint direction' in the Pilbara Network Rules.
<b>Constraint Rule</b>	has the meaning given to 'constraint rule' in the Pilbara Network Rules.
<b>Constraint Solution</b>	<ol style="list-style-type: none"> <li>1 a method by which the output of Generating Plant or Consuming Plant (or both, as applicable) is able to be automatically or remotely (or both) limited, including through the installation of: <ol style="list-style-type: none"> <li>(a) specific protection devices that limit Generation or Consumption (or both, as applicable) in specific network circumstances, including Run-Back Equipment; or</li> <li>(b) high speed protection devices that trip Generation or Consumption (or both, as applicable) at the same time as a contingency event occurs;</li> </ol> </li> <li>2 a direction by Horizon Power Pilbara Network to the User to limit the Generation or Consumption (or both, as applicable) of Facilities and Equipment, irrespective of whether that limit is: <ol style="list-style-type: none"> <li>(a) a continuous limit that applies at all times or during seasons of a year;</li> <li>(b) determined on a day-before basis allowing for it to be implemented through day-before dispatch plans;</li> <li>(c) determined in Horizon Power Pilbara Network's SCADA system and implemented through an electronic "limit" signal; or</li> <li>(d) implemented in specific network circumstances on a pre-contingent or post-contingent basis; or</li> </ol> </li> <li>3 any combination of paragraphs 1 and 2.</li> </ol>
<b>Constraint Works</b>	works to remove or reduce a limit in the Network giving rise to a requirement for a Network constraint, as contemplated by rule 264 of the Pilbara Network Rules.
<b>Consume</b>	has the meaning given to 'consume' in the Code.

Column 1	Column 2
<b>Consumer</b>	has the meaning given to 'consumer' in the Code.
<b>Consuming Plant</b>	in relation to a Connection Point, all equipment involved in Consuming electricity.
<b>Consumption</b>	for a Connection Point, the amount of electricity Consumed at the Connection Point, and is measured in Watt-hours.
<b>Contract</b>	this agreement between Horizon Power Pilbara Network and the User, including each of its Schedules.
<b>Contract Year</b>	<ol style="list-style-type: none"> <li>1 in respect of the first Contract Year, a period commencing on the Execution Date, and ending on 30 June;</li> <li>2 in respect of each subsequent Contract Year other than the final Contract Year, a period of 12 months commencing each 1 July; and</li> <li>3 in respect of the last Contract Year, a period commencing on 1 July and ending on the Termination Date.</li> </ol>
<b>Contracted Capacity</b>	<p>for a Connection Point, the maximum rate at which the User is permitted to transfer electricity to or from the Network (as applicable) at the Connection Point, being either:</p> <ol style="list-style-type: none"> <li>1 the rate specified in the Connection Point Database from time to time (being the DSOC or CMD, or both, as applicable);</li> <li>2 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 Reference Service or Non-Reference Service (as applicable) for that Connection Point; or</li> <li>3 if no rate is specified in the Connection Point Database or in the Eligibility Criteria for the Reference Service or Non-Reference Service (as applicable) for that Connection Point, the maximum rate of electricity permitted to be transferred through the Connection Point under the Technical Requirements,</li> </ol> <p>and is measured in Watts or Volt-Amps.</p>
<b>Contribution</b>	any contribution made under the Contribution Policy.
<b>Contributions Policy</b>	the 'contributions policy' (as defined in the Code) published on Horizon Power Pilbara Network's website from time to time.
<b>Controller</b>	in respect of:



Column 1	Column 2
	<ol style="list-style-type: none"> <li>1 Facilities and Equipment, a person who owns, operates or controls the Facilities and Equipment; and</li> <li>2 a Connection Point, a person who owns, operates or controls the Generating Plant or Consuming Plant at the Connection Point,</li> </ol> <p>and includes the Controller's Workers and Visitors.</p>
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Covered Service</b>	has the meaning given to 'covered service' in the Code and includes a Bidirectional Service.
<b>CPI or Consumer Price Index</b>	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 Horizon Power Pilbara Network 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.
<b>Curtail</b>	curtailing or interrupting the whole or part of a Service.
<b>Curtailment</b>	includes a whole or partial curtailment or whole or partial interruption of a Service.
<b>Customer</b>	has the meaning given to 'customer' in the Act.
<b>Customer Transfer Code</b>	the <i>Electricity Industry (Customer Transfer) Code 2016</i> , 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.
<b>De-energise</b>	in respect of a Connection Point, to operate, modify or remove switching or other equipment to prevent the transfer of electricity through the Connection Point.
<b>Default</b>	in relation to a Party, has the meaning given to it in clause 27.1.

Column 1	Column 2
<b>Department of Finance</b>	the Government of Western Australia department from time to time responsible for the Treasury and the Public Utilities Office functions.
<b>Disconnect</b>	in respect of a Connection Point, physically detach Network Assets from assets owned by another person at the Connection Point.
<b>Discussions Notice</b>	has the meaning given to it in clause 32(a).
<b>Dispute</b>	<p>any dispute or difference concerning:</p> <ol style="list-style-type: none"> <li>1 the construction of; or</li> <li>2 anything contained in or arising out of; or</li> <li>3 the rights, obligations, duties or liabilities of a Party under, this Contract, but excludes:</li> <li>4 an Access Dispute; or</li> <li>5 a Price List Dispute.</li> </ol>
<b>DSOC</b>	Declared Send Out Capacity.
<b>Due Date</b>	for a Tax Invoice issued under clause 10.1 or 10.2, the date 1 month after the Party to whom it is addressed receives the Tax Invoice.
<b>Electricity Industry Change</b>	<ol style="list-style-type: none"> <li>1 a change in, or repeal of, the Act or the Code which affects the manner in which Horizon Power Pilbara Network provides the Services under this Contract, or otherwise affects the risk allocation agreed between the Parties as at the Execution Date; or</li> <li>2 without limiting paragraph 1, a change in, repeal of or introduction of a Law that directly or indirectly results in a change to the electricity supply industry of which the Network forms part and that directly affects the Network or the system operations or network operations associated with the Network, including, for example, the establishment or restructure of any electricity market,</li> </ol> <p>but excludes a Change in Control.</p>
<b>Electronically</b>	in relation to a Communication, 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.

Column 1	Column 2
<b>Eligibility Criteria</b>	for a: <ol style="list-style-type: none"> <li>1 Reference Service, the 'Eligibility Criteria' stipulated in Reference Service document published on Horizon Power Pilbara Network's website from time to time; or</li> <li>2 Non-Reference Service, the 'Eligibility Criteria' stipulated in the Non-Reference Service in Schedule 9.</li> </ol>
<b>Embedded Generating Unit</b>	has the meaning given to it in the Technical Rules.
<b>Emergency</b>	any accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance.
<b>Emergency Disconnection</b>	has the meaning given to it in clause 25.7(b).
<b>End Date</b>	for a Connection Point, the date specified as such in the Connection Point Database for the Connection Point.
<b>Entry Service</b>	a Covered Service provided by Horizon Power Pilbara Network at a Connection Point under which the User may transfer electricity into the Network at the Connection Point.
<b>Essential System Services Regime</b>	the regime administered by the System Operator in accordance with the Pilbara Network Rules, and pursuant to which services (including frequency control services and spinning reserve services) required to achieve the objectives in rule 198 of the Pilbara Network Rules in order to: <ol style="list-style-type: none"> <li>1 maintain security and reliability;</li> <li>2 facilitate orderly trading in electricity; and</li> <li>3 ensure that electricity supplies are of acceptable quality, are procured, provided and settled.</li> </ol>
<b>Essential System Services Regime Charge</b>	has the meaning given to it in clause 9.3(c).
<b>Execution Date</b>	the date of execution of this Contract by the last Party to do so.

Column 1	Column 2
<b>Exit Point</b>	has the meaning given to 'exit point' in the Code.
<b>Exit Service</b>	a Covered Service provided by Horizon Power Pilbara Network at a Connection Point under which the User may transfer electricity out of the Network at the Connection Point.
<b>Expert</b>	an independent expert appointed under clause 29.6.
<b>Facilities and Equipment</b>	in relation to a Connection Point, means the apparatus, equipment, plant and buildings used for, or in connection with, Generating, Consuming or transporting electricity at the Connection Point, and includes Generating Plant and Consuming Plant.
<b>Force Majeure Event</b>	<p>in respect of a Party, an event or circumstance beyond the Party's control, and which the Party, acting as a Reasonable and Prudent Person, is not able to prevent or overcome, including (where the foregoing conditions are satisfied):</p> <ol style="list-style-type: none"> <li>1 any act of God, lightning, earthquake, storm, cyclone, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster;</li> <li>2 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;</li> <li>3 any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the Execution Date;</li> <li>4 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);</li> <li>5 any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or any other authority;</li> <li>6 any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances;</li> <li>7 any significant plant or equipment failure which could not have been avoided by the exercise of Good Electricity Industry Practice;</li> <li>8 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</li> </ol>

Column 1	Column 2
	9 accidents, weather and acts of third parties (such as Generators or Consumers) that affect the quality, frequency and continuity of the supply of electricity.
<b>FM Period</b>	the period of suspension of the Affected Obligation pursuant to clause 24.1
<b>Generate</b>	to produce electricity.
<b>Generating Plant</b>	in relation to a Connection Point, all equipment involved in Generating electricity.
<b>Generation</b>	for a Connection Point, the amount of electricity Generated at the Connection Point, and is measured in Watt-hours.
<b>Generator</b>	a person who Generates electricity.
<b>Good Electricity Industry Practice</b>	has the meaning given to 'good electricity industry practice' in the Code.
<b>Governmental Agency</b>	any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, government minister, agency or entity.
<b>GST</b>	goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the GST Act or otherwise.
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Guest Party</b>	has the meaning given to it in clause 18.1.
<b>Host Party</b>	has the meaning given to it in clause 18.1.
<b>Horizon Power Pilbara Network Maximum Liability Amount</b>	1 in respect of each Contract Year \$5 million in the aggregate (pro-rated for each Contract Year that is less than 12 months); and

Column 1	Column 2
	<p>2 in respect of any single Claim by the User, or a Customer of the User, that arises as a direct result of the wrongful disconnection of a Connection Point under this Contract, \$50,000.</p>
<b>Horizon Power Pilbara Network's Default</b>	an event of Default by Horizon Power Pilbara Network.
<b>Horizon Power Technical Rules</b>	that part of Horizon Power's technical rules that apply to the Network, as modified by Horizon Power Pilbara Network from time to time, including any derogations agreed to by Horizon Power Pilbara Network in writing and specified in Part 3 of Schedule 3, but excluding the Technical Rules.
<b>Indemnified Party</b>	has the meaning given to it in clause 22.1(a) or 22.6 (as applicable).
<b>Indemnifying Party</b>	has the meaning given to it in clause 22.1(a) or 22.6 (as applicable).
<b>Indirect Damage</b>	<p>1 any Loss not arising naturally according to the usual course of things;</p> <p>2 loss of power, generation, production or business;</p> <p>3 loss of goodwill or damage to reputation;</p> <p>4 punitive, exemplary or special damages;</p> <p>5 payment of liquidated sums (other than liquidated sums under this Contract);</p> <p>6 loss of revenue or profit, or the opportunity to earn revenue or profit; and</p> <p>7 loss of savings or anticipated savings.</p>
<b>Information Provider</b>	in relation to Confidential Information, the party providing the information.
<b>Information Recipient</b>	in relation to Confidential Information, the recipient of the information.
<b>Insolvency Event</b>	<p>in respect of a Party, any one or more of:</p> <p>1 the Party is insolvent within the meaning of section 95A of the Corporations Act;</p> <p>2 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;</p>

**Column 1****Column 2**

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	<ul style="list-style-type: none"><li>3 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;</li><li>4 a receiver or a receiver and manager of the undertaking or any material part thereof of that Party being appointed;</li><li>5 that Party proposing to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors;</li><li>6 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;</li><li>7 that Party failing (as defined by section 459F of the Corporations Act) to comply with a statutory demand;</li><li>8 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;</li><li>9 an application being made to a court for an order in respect of that Party under part 2F.1 of the Corporations Act;</li><li>10 an event referred to in section 459C(2) of the Corporations Act occurring in respect of that Party; or</li><li>11 anything analogous or having a substantially similar effect to any of the events specified above occurring under the Law of any applicable jurisdiction.</li></ul>
<b>Interconnected Network Service Provider</b>	in respect of an Interconnector, the Network Service Provider for the electricity network connected to that Interconnector that is not Horizon Power Pilbara Network.
<b>Interconnector</b>	has the meaning given to 'interconnector' in the Pilbara Network Rules.
<b>Law</b>	"written laws" and "statutory instruments" as defined in the Code (including the Technical Rules), orders given or made under a written law or statutory instrument as so defined or by a government agency or authority, Codes of Practice and Australian Standards deemed applicable under a written law and rules of the general law including the common law and equity.
<b>Legacy Right</b>	has the meaning given to 'legacy right' in rule 249 of the Pilbara Network Rules.
<b>Limit Advice</b>	has the meaning given to 'limit advice' in the Pilbara Network Rules.

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Column 1	Column 2
<b>Loss</b>	any loss, cost, expense, damage, fine or liability of any kind.
<b>Loss Factor</b>	has the meaning given to 'loss factor' in the Pilbara Network Rules.
<b>Maintain</b>	includes (as necessary and as applicable) calibrate, test, verify, renew, replace, repair and update, and <b>Maintenance</b> has a corresponding meaning.
<b>Meter</b>	has the meaning given to 'meter' in the Metering Code.
<b>Metering Code</b>	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 Model Service Level Agreement, metering data agency agreement, communications rules, metrology procedure, mandatory link criteria and registration process developed under that code.
<b>Metering Code Participant</b>	has the meaning given to 'Code participant' in the Metering Code.
<b>Metering Data</b>	has the meaning given to 'data' in the Metering Code.
<b>Metering Database</b>	the metering database operated by Horizon Power Pilbara Network under the Metering Code.
<b>Metering Equipment</b>	a Meter or Meters and associated equipment (including communications equipment) complying with the Metering Code (where applicable) used to measure and record the transfer of electricity to or from the Network (as applicable) at a Connection Point in real time, which may include the measurement of the rate of transfer and the quantity and quality of the transferred electricity.
<b>Model Service Level Agreement</b>	has the meaning given to 'service level agreement' in the Metering Code.
<b>Network</b>	has the meaning given to 'Horizon Power coastal network' in the Code.
<b>Network Assets</b>	in relation to the Network, the apparatus, equipment, plant and buildings used to provide or in connection with providing Covered Services on the Network.



Column 1	Column 2
<b>Network Business</b>	has the same meaning given to 'network business' in the Code.
<b>Network Service Provider</b>	has the same meaning given to 'NSP' in the Code.
<b>NMI or National Market Identifier</b>	the unique identifier assigned to the Connection Point.
<b>Nominating Body</b>	has the meaning given to it in clause 29.6.
<b>Non-Reference Service</b>	has the meaning given to 'non-reference service' in the Code.
<b>Non-Reference Service Point</b>	a Connection Point for which under this Contract Horizon Power Pilbara Network provides, or is to provide, a Non-Reference Service.
<b>Novate and Novation</b>	<p>to substitute, with the consent of all Parties to this Contract and with effect on and from a date nominated as the effective date of the novation, an assignee for the User as a party to this Contract, with the result that:</p> <ol style="list-style-type: none"> <li>1 all rights and obligations of the User under this Contract become rights and obligations of the assignee as if the assignee had been named in this Contract in place of the User; and</li> <li>2 the User is released from any obligations under this Contract arising on or after the effective date of the novation, but remains liable for any default by it in the performance of those obligations prior to the effective date of the novation.</li> </ol>
<b>Other Business</b>	has the meaning given to 'other business' in the Code.
<b>Other Network Users</b>	other 'users' (as that term is defined in the Code) of the Network.
<b>Party</b>	Horizon Power or the User, as applicable, and <b>Parties</b> means both of them.
<b>Payment Error</b>	<ol style="list-style-type: none"> <li>1 any underpayment or overpayment by a Party of any amount in respect of a Tax Invoice; or</li> <li>2 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</li> </ol>

Column 1	Column 2
	invoice or a Tax Invoice being prepared on the basis of data which is later established to have been inaccurate).
<b>Permanent Reconfiguration</b>	<ol style="list-style-type: none"> <li>1 a permanent physical change (including a change to the zone substation applicable to a Connection Point and a change to the distance from the applicable zone substation to a Connection Point); or</li> <li>2 a change to the pricing zone applicable to a Connection Point.</li> </ol>
<b>Pilbara Network Rules</b>	has the meaning given to 'Pilbara networks rules' in the Code.
<b>Possession</b>	includes custody, control, and an immediate right to possession, custody, or control.
<b>Power System</b>	has the meaning given to 'power system' in the Pilbara Network Rules.
<b>Prescribed Rate</b>	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.
<b>Price List</b>	the 'price list' (as defined in the Code) published on Horizon Power's website from time to time.
<b>Price List Dispute</b>	a dispute as described in section 61(2) of the Code.
<b>Proposal</b>	has the meaning given to it in clause 32(a)(1).
<b>Reasonable and Prudent Person</b>	a person acting in good faith and, where applicable, in accordance with Good Electricity Industry Practice.
<b>Receipt Date</b>	has the meaning given to it in clause 29.2(b).
<b>Reference Service</b>	a 'reference service' (as defined in the Code) specified in the Reference Service document published on Horizon Power's website from time to time.

Column 1	Column 2
<b>Reference Service Point</b>	a Connection Point for which under this Contract Horizon Power Pilbara Network provides, or is to provide, a Reference Service.
<b>Related Body Corporate</b>	has the meaning given to 'Related Body Corporate' in section 50 of the Corporations Act.
<b>Representatives' Meeting</b>	has the meaning given to it in clause 29.2(b).
<b>Ring Fencing Rules</b>	the ring fencing rules required by section 133 of the Code.
<b>Run-Back Equipment</b>	generation management equipment, which: <ol style="list-style-type: none"> <li>1 meets the specifications specified by Horizon Power Pilbara Network;</li> <li>2 is controlled, at all times, by Horizon Power Pilbara Network; and</li> <li>3 will enable Horizon Power Pilbara Network to automatically and remotely Curtail Services at the Connection Point.</li> </ol>
<b>Service</b>	a service to be provided under this Contract in respect of a Connection Point as specified in the Connection Point Database, being either a Reference Service or a Non-Reference Service.
<b>Small Customer</b>	a customer (as defined in the <i>Electricity Industry Act 2004</i> (WA)) consuming not more than 160 MWh of electricity per annum.
<b>Start Date</b>	for a Connection Point, the date specified as such in the Connection Point Database for the Connection Point.
<b>System Operator</b>	has the meaning given to 'Pilbara ISO' in the Act.
<b>Tariff</b>	for a Service, the tariff determined in accordance with clause 9.1 for that Service.
<b>Tax Invoice</b>	has the meaning given to 'Tax Invoice' in the GST Act.
<b>Technical Requirements</b>	1 the Horizon Power Technical Rules; and

Column 1	Column 2
	2 the Technical Rules.
<b>Technical Rules</b>	the Pilbara Harmonised Technical Rules, applying to the Network under the Pilbara Network Rules, as modified in accordance with the Code, including any derogations agreed to by Horizon Power Pilbara Network in writing and specified in Part 3 of Schedule 3.
<b>Temporary Access Contribution</b>	a 'temporary access contribution' under section 129N(1) of the Act, in respect of which Horizon Power Pilbara Network has added an amount to the target revenue for the Network for the purposes of section 48 of the Code.
<b>Term</b>	has the meaning given in clause 3.
<b>Termination Date</b>	the date specified in Part 1 of Schedule 2.
<b>Third Party Recipient</b>	any person to whom the Information Recipient discloses Confidential Information, or allows Confidential Information to be disclosed.
<b>Trading Interval</b>	has the meaning given to 'trading interval' in the Pilbara Network Rules.
<b>Undisputed Portion</b>	for the purposes of a Tax Invoice issued under 10.2(b) has the meaning given to it in clause 10.2(d) and, in all other cases, the portion of the amount set out in a Tax Invoice that is not in Dispute.
<b>User Access Guide</b>	Horizon Power Pilbara Network's User Access Guide, published in accordance with the Code.
<b>User Maximum Liability Amount</b>	<p>in respect of each Contract Year, the lesser of:</p> <ol style="list-style-type: none"> <li>1 an amount equal to \$50 million in the aggregate (pro-rated for each Contract Year that is less than 12 months); and</li> <li>2 the sum of: <ol style="list-style-type: none"> <li>(a) for each Connection Point at which Generation Plant (other than wind or solar powered generation) is connected at a voltage of 66 kV and above, \$22 million in the aggregate (pro-rated for each Contract Year that is less than 12 months);</li> <li>(b) for each Connection Point at which wind or solar powered Generation Plant is connected at a voltage of 66 kV or</li> </ol> </li> </ol>

**Column 1****Column 2**

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	<p>above, \$11 million in the aggregate (pro-rated for each Contract Year that is less than 12 months);</p> <p>(c) for each Connection Point at which Generation Plant is connected at a voltage below 66 kV, \$1.2 million in the aggregate (pro-rated for each Contract Year that is less than 12 months)</p> <p>(d) for each Connection Point at which Consuming Plant is connected at a voltage of 66 kV and above, \$6 million in the aggregate (pro-rated for each Contract Year that is less than 12 months); and</p> <p>(e) for every 100 Connection Points at which Consuming Plant is connected at a voltage below 66 kV, \$1.2 million in the aggregate (pro-rated for each Contract Year that is less than 12 months).</p>
<b>User's Default</b>	an event of Default by the User.
<b>User's Premises</b>	the land on which the Facilities and Equipment are located.
<b>Visitors</b>	the customers, invitees, licensees and visitors of a Party or a Controller, as the case requires.
<b>WA Electrical Requirements</b>	the WA Electrical requirements issued under regulation 49 of the <i>Electricity (Licensing) Regulations 1991</i> (WA), as updated from time to time.
<b>Wilful Default</b>	<p>a deliberate and purposeful act or omission carried out with:</p> <ol style="list-style-type: none"><li>1 a calculated regard for the consequences of the act or omission; or</li><li>2 a reckless or wilful disregard for the consequences of the act or omission,</li></ol> <p>but does not include any error of judgement, mistake, act or omission, whether negligent or not, which is made in good faith.</p>
<b>Workers</b>	the directors, officers, servants, employees, agents and contractors of a Party or a Controller, as the case requires.
<b>Works</b>	has the meaning given to it in the Contributions Policy.

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## Schedule 2

### Access contract information

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#### Part 1 Term

Termination Date: [insert]

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#### Part 2 Conditions Precedent

{Note: Referred to in clause 2.3.}

Ref	Condition Precedent	Responsible Party	Due Date
1.	All Connection Points have been commissioned and energised in accordance with the requirements of the Technical Requirements, and are otherwise compliant with the Technical Requirements (including all supporting procedures), such that Horizon Power Pilbara Network is able to provide the Services at each Connection Point. <b>[Drafting Note: This CP should be deleted in its entirety in circumstances where the access application made by the User/Applicant does not include an application for a connection service, and no new connection point is required to be established.]</b>	Horizon Power Pilbara Network and the User	[insert]
2.	The Essential System Services Regime has commenced in full, and the System Operator is performing the function contemplated by the Pilbara Network Rules insofar as that function relates to energy balancing and settlement, and the procurement of frequency control and spinning reserve. <b>[Drafting Note: HP has included with condition precedent given the tight timeframe within which it is proposed that coverage of the Pilbara Networks, and the performance of the essential system services function by the ISO, is intended to commence. To the extent the essential system services regime contemplated by the PNR is not live and functioning, Horizon Power will be unable to provide Services to the User.]</b>	N/A	[insert]
3.	Approval of Horizon Power Pilbara Network's entry into this Contract has been received from the	Horizon Power Pilbara Network	[insert]

Minister of Energy under section 68 of the *Electricity Corporations Act 2005* (WA).

4.	Horizon Power Pilbara Network has received the approval of its board to enter into this Contract.	Horizon Power Pilbara Network	<b>[insert]</b>
5.	All Power System models and studies required by the Technical Requirements to be completed in order to enable Horizon Power Pilbara Network to provide the Services, have been completed to Horizon Power Pilbara Network's satisfaction.	User	<b>[insert]</b>
6.	Both Horizon Power Pilbara Network and the User have executed the Connection Works Agreement on terms and conditions acceptable to both Parties, and the satisfaction or waiver of all conditions precedent to that agreement. <b>[Drafting Note: This CP should be deleted in its entirety in circumstances where the access application made by the User/Applicant does not require complex Connection Works (such that a Connection Works Agreement Is not required).]</b>	Horizon Power Pilbara Network and the User	<b>[insert]</b>
7.	The Connection Works achieve <b>[Practical Completion]</b> under the Connection Works Agreement. <b>[Drafting Note: This CP should be deleted in its entirety in circumstances where the access application made by the User/Applicant does not require complex Connection Works (such that a Connection Works Agreement Is not required).]</b>	Horizon Power Pilbara Network and the User	<b>[insert]</b>

## Schedule 3

### Details of connection points

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#### Part 1 Commercial Details

##### 1 Connection Point 1 Title

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**Address of Premises**

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**Name and contact details of  
Controller(s) (where the User is not  
the Controller of the Connection  
Point)**

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**NMI**

---

**Service**

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**Start Date**

---

**End Date**

---

**CMD (kW/ kVA) (if applicable)**

---

**DSOC (kW/ kVA) (if applicable)**

---

**Size of Generator (if applicable)**

---

**Make and model of Generator (if  
applicable)**

---

**Substation (if applicable)**

---

**Substation distance (if applicable)**

---



**Power Transfer Limit (kW)**

---

**Operating Restriction (if applicable)**

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## Part 2 Technical Details

{Note: referred to in clause 16(a)}

#	Connection Point	Description of Facilities and Equipment
1		

{Note: attach plans, drawings and other documentation as necessary to fulfil the requirements of clause 16(a).}

## Part 3 Agreed exemptions from Technical Requirements

{Note: referred to in clause 16(a)(2)}

#	Connection Point	Reference	Description of requirement	Description of Derogation
1				

# Schedule 4

## Works and contributions

---

**{Note: Referred to in clause 26.}**

1     [Connection Point Title / NMI]

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[Contribution provisions]

---

2     [Connection Point Title / NMI]

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[Contribution provisions]

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## Schedule 5

### Insurances

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**{Note: Referred to in clause 23.}**

- (a) The User must effect and maintain, commencing from the Commencement Date the following policies of insurance:
- (1) public and products liability of:
    - (A) public liability insurance for a limit of not less than \$50 million per claim, and unlimited in the aggregate; and
    - (B) products liability insurance for a limit of not less \$50 million per claim and in the aggregate, refreshed annually,  
covering the User's liability to Horizon Power Pilbara Network 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. The policy must:
      - (C) be endorsed to include liability arising out of the use of unregistered motor vehicles (including any tool, equipment, machinery or plant) whilst being operated or used by the User in relation to this Contract;
      - (D) list Horizon Power Pilbara Network as an additional insured with the relevant insurer waiving all rights of subrogation against Horizon Power Pilbara Network, and there must not be any obligation for Horizon Power Pilbara Network to contribute to a premium; and
      - (E) 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;
  - (2) workers' compensation insurance against any claim in respect of any personal injury to or death of any person employed or engaged by the User, including employer's liability at common law, with a limit of cover in respect of any one occurrence at least equal to \$50 million in accordance with the *Workers' Compensation and Injury Management Act 1981* (WA) or other applicable legislation. The insurance must:
    - (A) be in the name of the User; and
    - (B) to the extent permitted by Law, extend to indemnify Horizon Power Pilbara Network as principal, or owner or occupier, against any liability which it may incur to such employees or persons engaged in relation to this Contract under both statute and common law; and
  - (3) motor vehicle and plant and equipment third party liability insurance for all legal liability for loss or damage to property and personal injury caused by or attributable to the use of a motor vehicle in the performance of the Services or any Works under this Contract, for a

limit of \$20 million per claim and unlimited in the aggregate of all claims made.

- (b) The policies of insurance under Schedule 5 Part 1(a) must be with an insurer authorised under the *Insurance Act 1973* (Cth) holding the equivalent of Standard and Poor A- security rating.

# Schedule 6

## Notices

**{Note: Referred to in clauses 36 and 37.11(a).}**

**Part 1    User**

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

**Part 2    Horizon Power Pilbara Network**

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

## Schedule 7

### Electronic Communications Protocol

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{Note: Referred to in clause 36.}

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

Column 1	Column 2
<b>Addressee</b>	the person to whose Email Address an email is sent.
<b>Automated Response Message</b>	<p>an email (<b>Reply Email</b>) sent automatically upon receipt of an email (<b>Original Email</b>), where the Reply Email is sent from an Addressee's Information System to the Originator of the Original Email, acknowledging that the Original Email has been received by the Addressee's Information System and containing:</p> <ol style="list-style-type: none"><li>1 the name of the Originator of the Original Email;</li><li>2 at least the time, date and subject title of the Original Email;</li><li>3 the name of the Addressee of the Original Email; and</li><li>4 the date and time the Original Email was received by the Addressee's Information System (which in the absence of evidence to the contrary is taken to be the creation date of the Reply Email).</li></ol>
<b>Data</b>	includes the whole or part of a computer program within the meaning of the <i>Copyright Act 1968</i> (Cth).
<b>Email</b>	a communication of Information by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP protocol.
<b>Email Address</b>	the address nominated in Schedule 6, being an address which is a combination of a personal identifier and a machine/network identifier, which are together capable of being resolved by computer networks transmitting email using the TCP/IP protocol, so that email is transmitted to the person providing that email address.
<b>Information</b>	information in the form of Data, text, images or sound.
<b>Information System</b>	a system for generating, sending, receiving, storing or otherwise processing emails.

Column 1	Column 2
<b>Originator</b>	the person who sends an email to an Addressee.
<b>Place of Business</b>	a place of business nominated under Schedule 6 and in relation to a government, a government authority or a non-profit body, includes a place where any operations or activities are carried out by that government, authority or body.
<b>Purported Originator</b>	the person on the face of the email who appears to be, or purports to be the Originator, including by purported compliance with clause 4 of this Schedule.

## 1 Application to invoicing

Where the Parties have agreed under clause 10.1(d) regarding the issuing of Tax Invoices other than in accordance with clause 10.1(a) the procedure set out in this Schedule does not apply to invoicing under this Contract, and the alternative agreed procedure will apply in its place.

## 2 Parties to establish email Addresses

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



### 3 Requirement for Automated Response Message

---

- (a) An email is neither given nor received under this Contract until the Originator receives the Addressee's Automated Response Message for the email.
- (b) It is the Originator's responsibility for each attempted email to verify that it receives an Automated Response Message, and if it does not receive an Automated Response Message arrange either for:
  - (1) retransmission of the email; or
  - (2) communication of the Information by an alternative medium (but this clause 3(b) does not limit the Addressee's responsibilities under clause 4 of this Schedule).
- (c) If the Originator receives an Automated Response Message for an email, then (unless the Addressee proves otherwise) for the purposes of this Contract the:
  - (1) Originator has sent; and
  - (2) Addressee has received,the email at the date and time shown in the Automated Response Message.
- (d) It is the Addressee's responsibility for each email for which the Addressee's Information System generates an Automated Response Message to:
  - (1) read the email and the Information it contains, and if applicable communicate it to the appropriate Worker within the Addressee's organisation; and
  - (2) if necessary, notify the Originator of any difficulty in opening, reading, de-compressing or otherwise accessing (in a form reasonably readable) any Information contained in the email,and if it appears to the Addressee that the Addressee was not the intended or correct recipient of the Information in the email, communicate this fact to the Originator.

### 4 Location

---

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

### 5 Attribution of emails and reliance

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Except to the extent that:

- (a) the Purported Originator of an email and the Addressee of the email agree otherwise; or
  - (b) the Purported Originator of an email proves otherwise,
- the Addressee of an email in respect of which an Automated Response Message has been given may assume for all purposes under this Contract that the:
- (c) Purported Originator of the email is the Originator of the email; and

- (d) email was sent by, or with the knowledge and express authority of, the Purported Originator.

## 6 Signatures

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

## 7 Information format

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

## Schedule 8

### Form of guarantee

---

This deed poll of guarantee and indemnity  
is made on **[insert date]** by the following party:

**[insert name of Guarantor]**  
ABN **[insert ABN of Guarantor]**  
of **[insert address of Guarantor]**  
(Guarantor)

in favour of:

**Regional Power Corporation**

ABN 57 955 011 697

a statutory body established under section 4(1)(d) of the Electricity Corporations Act 2005  
(WA)

of 1 Stovehill Road, Karratha, WA 6714

(**Horizon Power Pilbara Network**)

#### Recitals

- A. On or about the date of this deed, Horizon Power Pilbara Network entered into an Access Contract (**Contract**) with **[insert name and ABN of User]** (**User**).
- B. Pursuant to clause 12.1(a) of the Contract, if Horizon Power Pilbara Network considers in accordance with the Contract that there is a material risk that the User will be unable to meet its obligations under the Contract, then Horizon Power Pilbara Network may require the User to provide security.
- C. Under clause 12.1(a) of the Contract, Horizon Power Pilbara Network has required the User to provide security, and has agreed under clause 12.2(a)(3) of the Contract that such security may be provided in the form of a parent company guarantee.
- D. In light of the foregoing, it is a requirement of 12.1(a) of the Contract that the Guarantor enter into, execute and deliver this deed.

This deed witnesses that in consideration of Horizon Power Pilbara Network accepting this deed in satisfaction of the User's obligations under 12.1(a) of the Contract, the Guarantor agrees:

### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed:

- (a) '**Contract**' has the meaning given in the Recitals;
- (b) '**Notice**' has the meaning given in clause 13.1 of this deed;
- (c) '**Recitals**' means the recitals set out at the beginning of this deed;

- (d) **'User'** has the meaning given in the Recitals; and
- (e) unless the context otherwise requires, a word or phrase defined in the Contract has the same meaning as in the Contract.

## **1.2 Interpretation**

In this deed (including the Recitals), unless a contrary intention appears:

- (a) headings and under linings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association or other body corporate;
- (e) reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (f) all prices and sums of money and all payments made under this deed are in Australian currency;
- (g) a reference to the word "including" means "including without limitation" and references to "includes" means "includes without limitation"; and
- (h) a reference to a document (including this deed) is that document as varied, amended, novated, ratified or replaced from time to time.

## **2. Guarantee**

The Guarantor unconditionally and irrevocably guarantees to Horizon Power Pilbara Network the due and punctual performance of the User's obligations including:

- (a) the discharge of the obligations and liabilities of the User under the Contract; and
- (b) the payment of all debts and monetary liabilities of the User to Horizon Power Pilbara Network under the Contract.

## **3. Guarantor to perform**

If, in Horizon Power Pilbara Network's opinion, the User fails to perform any of the User's obligations or discharge any of the User's liabilities under the Contract, the Guarantor must forthwith:

- (a) upon receipt of Notice from Horizon Power Pilbara Network requiring it to do so, perform those obligations or discharge those liabilities (as the case may be) and thereafter continue to perform those obligations and discharge those liabilities (as the case may be) until the termination of the Contract by the effluxion of time or otherwise; and
- (b) upon demand, pay to Horizon Power Pilbara Network all Losses suffered or incurred by Horizon Power Pilbara Network arising from or connected with the User's failure to perform any of the obligations of the User under the Contract or to discharge any of the User's liabilities under the Contract.

#### **4. Indemnity**

The Guarantor indemnifies Horizon Power Pilbara Network against all Claims and Losses that Horizon Power Pilbara Network may suffer or incur arising from or in connection with the Contract by reason of:

- (a) any Default under, breach of, or failure to perform or observe any of the terms and conditions of the Contract by the User; or
- (b) the User being wound up (except for the purpose of reconstruction or amalgamation the terms of which have previously been approved by Horizon Power Pilbara Network) or suffering an Insolvency Event.

#### **5. Payments**

- (a) All payments which the Guarantor is required to make under this deed must be made without any set-off, counterclaim, condition or deduction and must be made by the Guarantor on demand by Horizon Power Pilbara Network.
- (b) Horizon Power Pilbara Network must not make a demand on the Guarantor under clause 3(b) of this deed unless Horizon Power Pilbara Network has taken steps to recover the payment from the User under the Contract.

#### **6. Certificate**

A certificate signed by an authorised representative of Horizon Power Pilbara Network, or any person authorised in writing by an authorised representative of Horizon Power Pilbara Network, stating the amount payable under this deed is prima facie evidence of that amount.

#### **7. Representations and warranties**

- (a) The Guarantor represents and warrants that:
  - (i) it has full power and authority to enter into and perform its obligations under this deed;
  - (ii) it has taken all necessary action to authorise the execution, delivery and performance of this deed;
  - (iii) this deed constitutes legal, valid and binding obligations;
  - (iv) each of its representations and warranties contained in this deed is true, correct and not misleading when made or repeated or regarded as made or repeated; and
  - (v) all information provided to Horizon Power Pilbara Network by or on behalf of the Guarantor is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading.
- (b) The representations and warranties in this clause 7 survive the execution of this deed.

#### **8. Continuing obligation**

The guarantee and indemnity contained in this deed are continuing obligations of the Guarantor, despite any settlement of account or the occurrence of any other thing and remains in full force and effect until all the User's obligations under the Contract have been performed.

## **9. Liability**

In no circumstances will the liability of the Guarantor be greater than the aggregate liability of the User under the Contract.

## **10. Independent obligation**

The guarantee and indemnity contained in this deed are separate and independent obligations of the Guarantor and neither limits the generality of the other.

## **11. Nature of Guarantor's obligations**

### **11.1 Principal obligations**

The obligations of the Guarantor under this deed in respect of the Contract are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have that effect, including:

- (a) the grant to any person of any time, concession, waiver, covenant not to sue or other indulgence or release;
- (b) any arrangement made between Horizon Power Pilbara Network and the User;
- (c) any alteration, amendment or variation of the Contract or any schedule or annexure of the Contract; or
- (d) any assignment, novation, assumption or transfer of, or other dealing with, any rights or obligations under the Contract or any schedule or annexure of the Contract.

### **11.2 Application of clause 11.1**

Clause 11.1 applies irrespective of the consent or knowledge, or lack of consent or knowledge, of Horizon Power Pilbara Network, the Guarantor or any other person or any event described in clause 11.1 or of any rule of Law to the contrary.

## **12. Costs and expenses**

The Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this deed and the enforcement or protection or attempted enforcement or protection of any rights or powers of Horizon Power Pilbara Network under this deed, including any legal costs and expenses and any professional consultants' fees in respect of any of the above on a full indemnity basis.

## **13. Notices**

### **13.1 How and where Notices may be sent**

A notice or other communication including a demand (**Notice**) under this deed must be in writing and delivered by hand or sent by pre-paid post to a party to this deed at the address for that party specified in clause 13.4 or as otherwise specified by a party by Notice.

### **13.2 Notices sent by company**

A Notice sent by a company must be signed by a duly authorised officer or representative of the sender.

### **13.3 When Notices are taken to have been given and received**

For the purposes of this deed:

- (a) a Notice 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 judgement of the person making the delivery (upon making appropriate enquiries):
  - (i) appears to be; and
  - (ii) represents himself or herself as,  
a representative of the party to whom the Notice is addressed;
- (b) a Notice which is posted is deemed to be received by the party to whom the Notice is addressed:
  - (i) where the Notice is sent from outside the country of the address to which it is sent – 10 Business Days after the day of posting; and
  - (ii) in any other case – 3 Business Days after the day of posting; and
- (c) a Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

### **13.4 Contact details**

Any Notice must be addressed as below:

- (a) Guarantor
  - Address: **[insert details]**
  - Attention: **[insert details]**
- (b) Horizon Power Pilbara Network
  - Address: **[insert details]**
  - Attention: **[insert details]**

## **14. General**

### **14.1 Governing Law and jurisdiction**

This deed is governed by the Laws of Western Australia and the Guarantor irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### **14.2 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this deed which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

#### **14.3 Waivers**

Waiver of any right, power, authority, discretion or remedy arising upon default under this deed must be in writing and signed by the party granting the waiver.

#### **14.4 Cumulative rights**

The rights, powers and remedies provided in this deed are cumulative and are not exclusive of any rights, powers or remedies provided by Law.

#### **14.5 Guarantee benefits successors**

The Guarantor acknowledges and agrees that:

- (a) this deed continues in force for the benefit of any person to whom Horizon Power Pilbara Network's interest under the Contract is assigned or transferred (including by way of security) by any means including the operation of a written law; and
- (b) Horizon Power Pilbara Network may grant security over the benefit of this deed to its financiers providing financing for the works in connection with a Connection Point or the Services under the Contract and such financiers may enforce it.

#### **14.6 Freedom of information**

The Guarantor acknowledges that Horizon Power Pilbara Network is subject to the *Freedom of Information Act 1992* (WA) and that this deed or documents relating to this deed may become the subject of an application under that Act and access to them may need to be given to a third party in accordance with that Act. Horizon Power Pilbara Network has no liability to the Guarantor whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).

#### **14.7 Counterparts**

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.



Execution Date: \_\_\_\_\_

Executed as a deed poll

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Signed, sealed and delivered by:

**Guarantor**

The common seal of

**Guarantor**

is fixed to this document in the presence of

*sign here ►*

*sign here ►*

\_\_\_\_\_  
Company Secretary/Director

*print name*

*print name*

\_\_\_\_\_

*sign here ►*

*sign here ►*

\_\_\_\_\_  
Director

*print name*

*print name*

\_\_\_\_\_

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## Schedule 9

### Non-Reference Service

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## Signing page

Executed as an agreement

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### Horizon Power Pilbara Network

**[Drafting Note: Appropriate Horizon Power execution clause to be inserted depending on value and term of the Contract.]**

### User

**Executed** for and on behalf of by  
**[Name of Party & ABN/ACN/  
ARBN]** in accordance with section  
127(1) of the *Corporations Act  
2001 (Cth)*

by

sign here ► \_\_\_\_\_  
Signature of Director

sign here ► \_\_\_\_\_  
Signature of Director/Company Secretary

print name \_\_\_\_\_

print name \_\_\_\_\_