



INDEPENDENT  
MARKET  
OPERATOR



## **Service Provider Agreement**

Independent Market Operator of Western Australia

The Service Provider specified in the Details

## DETAILS

<b>Item 1 – Signature Date</b>	##	
<b>Item 2 – Parties</b>	<b>Independent Market Operator</b> (ABN 95 221 850 093) (IMO)	## (ABN ##) (Service Provider)
<b>Item 3 – IMO’s Representative and Service Provider’s Representative</b>	<b>IMO’s Representative</b> ##	<b>Service Provider’s Representative</b> ##
<b>Item 4 – Special Conditions</b> (clause 1.3)	N/A or Yes – see Schedule 2	
<b>Item 5 – Contract Term</b> (clause 3.2)	Commencement Date	##
	End Date	##
<b>Item 6 – Specified Personnel</b> (clause 4.3)	N/A or ##	
<b>Item 7 – Progress Meetings and Progress Reports</b> (clause 6)	Progress Meetings	N/A or ##
	Progress Reports	N/A or ##
	Content of Progress Reports	N/A or ##
<b>Item 8 – Fee</b> (clause 2.2)	##	
<b>Item 9 – Tax Invoices</b> (clauses 7.1 and 7.3)	Issue date	##
	Payment date	##
<b>Item 10 – Confidentiality Undertaking</b> (clause 9.7)	N/A or Required – see Annexure 1	
<b>Item 11 – Liability</b> (clause 11.1)	##% of Fee	
<b>Item 12 – Insurance</b> (clause 13.2)	Professional Indemnity	\$5,000,000
	Public and Products Liability	\$5,000,000
	Workers Compensation	\$50,000,000
<b>Item 13 – Address for Service of Notices</b> (clause 19.1)	<b>IMO</b>	<b>Service Provider</b>
	Attention: ##	Attention: ##
	Address: Level 17 197 St Georges Terrace Perth WA 6000	Address: ##
	Facsimile: +61 8 9254 4399	Facsimile: ##
	Email: ##@imowa.com.au	Email: ##

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## BACKGROUND

The Service Provider has agreed to provide the Services to the IMO during the Contract Term in accordance with this Agreement.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### Definitions

1.1 The following definitions apply unless the context requires otherwise:

**Adjustment Note** has the same meaning as in the GST Act.

**Agreed Expense** means an expense that is:

- (a) approved by the IMO's Representative before it is incurred; and
- (b) incurred by, or on behalf of, the Service Provider for the purpose of providing Services in accordance with this Agreement.

**Auditor General** means the office of Auditor General for Western Australia established under the Auditor General Act 2006 (WA), and includes any other person that may, from time to time, carry out the functions of that office.

**Business Day** means any day except a Saturday, Sunday or a public holiday in Perth, Western Australia.

**Claim** means a claim that a party has, or may have, against the other party in connection with this Agreement, and includes:

- (a) any allegation, debt, penalty or fine (except to the extent that it is contrary to public policy or law);
- (b) any cause of action, liability, claim, proceeding, suit or demand of any nature (however arising; whatever its nature or description; and regardless of whether it is present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise); or
- (c) any order or adverse judgment (at law).

**Commencement Date** means the commencement date specified in Item 5 of the Details.

**Confidential Information:**

- (a) means all confidential, non-public or proprietary information (including information given orally) that relates to, or that is derived from information that relates to:
  - (i) the IMO;
  - (ii) System Management;
  - (iii) a Market Participant;
  - (iv) a Gas Market Participant; or
  - (v) any other party with whom the IMO deals, or has previously dealt, in the ordinary course of the IMO's business,of which the Service Provider becomes aware in its capacity as, or for the purpose of becoming, the Service Provider;
- (b) includes information that relates to, or that is derived from information that relates to:
  - (i) information technology systems (including software and source code used in the IMO's and System Management's information technology systems);
  - (ii) the Wholesale Electricity Market; or
  - (iii) Gas Services Information; and
- (c) excludes information that:
  - (i) is or becomes public information other than as a direct or indirect result of any breach of this Agreement by the Service Provider; or
  - (ii) is lawfully obtained by the Service Provider from a source that is, as far as the Service Provider is aware, unconnected with the IMO and that, as far as the Service Provider is aware, has not been obtained in breach of, and is not otherwise subject to, any confidentiality obligation.

**Consequential Loss:**

- (a) means a Loss or Claim that:

- (i) relates to a consequential or indirect loss; and
- (ii) arises under, or in connection with, this Agreement (including under an indemnity), regardless of whether the Loss or Claim arises in contract or tort (including negligence), under statute, or on any other basis in law or equity;
- (b) includes (without limiting the meaning of “consequential or indirect loss” in paragraph (a)(i)):
  - (i) loss of profits;
  - (ii) loss of revenue;
  - (iii) loss of production;
  - (iv) loss of goodwill;
  - (v) loss of use; and
  - (vi) loss of business opportunity; and
- (c) excludes:
  - (i) loss arising from death or personal injury;
  - (ii) loss arising from any criminal acts or fraud on the part of:
    - (A) a party; or
    - (B) a party’s employees, officers, contractors, consultants, advisers and agents (or any of their employees, officers, contractors, consultants, advisers and agents);
  - (iii) loss arising from wilful misconduct on the part of:
    - (A) a party; or
    - (B) a party’s employees, officers, contractors, consultants, advisers and agents (or any of their employees, officers, contractors, consultants, advisers and agents); and
  - (iv) to the extent to which by law the parties cannot limit or contract out of a liability, that liability.

**Contract Term** means the period specified in clause 3.2.

**Copyright Act** means the Copyright Act 1968 (Cth).

**Corporations Act** means the Corporations Act 2001 (Cth).

**Default Event** means an event or circumstance specified in clause 14.1.

**Delegate** has the meaning given in clause 16.5.

**Deliverables** means the deliverables specified in Schedule 1.

**Details** means the Details section of this Agreement.

**Dispute** means any dispute, controversy, difference or claim arising out of, or in connection with, this Agreement or the subject matter of this Agreement, and includes any question relating to its formation, validity, interpretation, performance, breach and termination.

**Dispute Notice** means a notice given under clause 16.3.

**End Date** means the end date specified in Item 5 of the Details.

**Existing Material** means a work (as defined in the Copyright Act), a product or any other material, that satisfies all of the following criteria:

- (a) the work, product or other material:
  - (i) was created before the commencement of the Contract Term; or
  - (ii) will be created during the Contract Term outside the scope of this Agreement, including any subsequent modifications to the work, product or other material;
- (b) the Intellectual Property Rights in the work, product or other material are not owned by the IMO; and
- (c) the work, product or other material is required specifically for, or in connection with, the Services or Records.

**Fee** means the amount or the total amount (as applicable) specified in, and payable in the manner specified in, Item 8 of the Details.

**Gas Market Participant** has the same meaning as in the Gas Services Information Act 2012 (WA).

**Gas Services Information** means information relating to:

- (a) the Gas Bulletin Board that is operated and maintained by the IMO; and
- (b) the annual Gas Statement of Opportunities report that is prepared and published by the IMO, under the Gas Services Information Rules.

**Gas Services Information Rules** means the rules made under section 8 of the Gas Services Information Act 2012 (WA) and the Gas Services Information Regulations 2012 (WA).

**General Conditions** means all sections of this Agreement except for Schedule 2.

**GST** has the same meaning as in the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and, where the context permits, includes the Commissioner of Taxation's goods and services tax rulings and determinations, and any other written law dealing with GST applying for the time being in the State of Western Australia.

**IMO's Representative** means the person specified in Item 3 of the Details, or another person notified in writing by the IMO to the Service Provider from time to time for the purposes of this Agreement.

**Insolvency Event** means any of the following events or circumstances in relation to a body corporate:

- (a) **(winding up)** the calling of a meeting to consider a resolution to wind up the body corporate (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the body corporate) or where an order is made, or an application is made to a court for an order, that the body corporate be wound up other than where the order or application (as the case may be) is set aside or withdrawn within 14 days;
- (b) **(arrangements)** the entry by the body corporate into a compromise or arrangement with its creditors generally, including a deed of company arrangement;
- (c) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) in respect of the body corporate or to the whole or a substantial part of the property or assets of the body corporate and the action is not stayed, withdrawn or dismissed within 14 days;
- (d) **(security)** any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served against any asset or undertaking of the body corporate;
- (e) **(enforcement)** the process of any court or authority is invoked against the body corporate, or any asset or undertaking of the body corporate, to enforce any judgment or order for the payment of money or the recovery of any property;
- (f) **(insolvency)** the body corporate is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **(suspends payments)** the body corporate suspends or threatens to suspend payments of its debts as and when they become due;
- (h) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (i) **(deregistration)** being deregistered as a company or otherwise dissolved; or
- (j) **(analogous events)** anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (i) happens under the law of any applicable jurisdiction.

**Intellectual Property Rights** means:

- (a) patents, copyright, inventions, rights in circuit layouts, designs, trade marks and trade secrets; and
- (b) any application or right to apply for registration of any of those rights, but does not include Moral Rights.

**Loss** means a loss, cost, charge, fee, payment or liability suffered or incurred by a party in connection with this Agreement (however arising; whatever its nature or description; regardless of whether it is direct, indirect or consequential (including pure economic loss); and regardless of whether it is present or future, fixed or unascertained, actual or contingent).

**Market Participant** has the same meaning as in the Wholesale Electricity Market Rules.

**Moral Rights** has the same meaning as in the Copyright Act.

**Personnel** means all of the Service Provider's employees, officers, agents and sub-contractors who are engaged, or who were previously engaged, to provide the Services in accordance with this Agreement (regardless of whether or not they have been approved by the IMO).

**Privacy Act** means the Privacy Act 1988 (Cth).

**Privacy Commissioner** means the Privacy Commissioner or equivalent office holder (if any) appointed under the Australian Information Commissioner Act 2010 (Cth).

**Progress Meeting** means a meeting between the IMO's Representative and the Service Provider's Representative or their nominees (to be held at the frequency specified in Item 7 of the Details) for the purpose of reviewing work in progress, work yet to commence and other matters raised by the IMO in connection with the Services and this Agreement.

**Progress Report** means a report from the Service Provider to the IMO (to be provided at the frequency specified in Item 7 of the Details) that addresses the matters specified in Item 7 of the Details.

**Public Authority** has the same meaning as in the State Supply Commission Act 1991 (WA).

**Records** means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

**Service Provider's Representative** means the person specified in Item 3 of the Details, or another person notified in writing by the Service Provider to the IMO from time to time for the purposes of this Agreement.

**Services** means:

- (a) the services specified in Schedule 1; and
- (b) any other services that the IMO and the Service Provider agree are covered by this Agreement.

**Signature Date** means the date on which this Agreement is signed by the party signing last (as specified in Item 1 of the Details).

**Special Conditions** means the conditions (if any) specified in Schedule 2.

**Specified Personnel** means the Personnel specified in Item 6 of the Details, and includes substituted Personnel under clause 4.3.

**Supply** has the same meaning as in the GST Act.

**System Management** has the same meaning as in the Wholesale Electricity Market Rules.

**Tax Invoice** has the same meaning as in the GST Act.

**Taxable Supply** has the same meaning as in the GST Act.

**Wholesale Electricity Market** means the wholesale electricity market established under the Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WA) and administered by the IMO under the Wholesale Electricity Market Rules.

**Wholesale Electricity Market Rules** means the market rules made under Part 9 of the Electricity Industry Act 2004 (WA) and the Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WA).

## Interpretation

- 1.2 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
  - (b) a reference to a thing is a reference to the whole or any part of it, and a reference to a group of things or persons is a reference to any one or more of them;

- (c) a reference to a person includes a natural person, a Public Authority, a public body, a body corporate, an association or body of persons, or any other entity;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;
- (e) if the Service Provider consists of a partnership or joint venture, then:
  - (i) each person who comprises the Service Provider is deemed to agree to do all things necessary to enable the Service Provider to comply with its obligations under this Agreement;
  - (ii) an obligation imposed on the Service Provider under this Agreement is binding (jointly and severally) on each person who comprises the Service Provider;
  - (iii) the act of a person who (in part) comprises the Service Provider is binding (jointly and severally) on each other person who, together with the first person, comprises the Service Provider; and
  - (iv) a Default Event that affects a person who (in part) comprises the Service Provider constitutes a Default Event by the Service Provider;
- (f) an agreement, representation or warranty on the part of, or in favour of, two or more persons is binding on, or is for the benefit of, each of them (jointly and severally);
- (g) a reference to this Agreement or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the IMO or the Service Provider;
- (h) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, this Agreement;
- (i) all the provisions in any schedule, attachment or appendix to this Agreement are incorporated in, and form part of, this Agreement and are binding on the IMO and the Service Provider;
- (j) headings are included for convenience and do not affect the interpretation of this Agreement;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (l) a rule of construction does not apply to the disadvantage of the IMO or the Service Provider because that party was responsible for preparing this Agreement;
- (m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (n) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (o) a reference to writing includes all means of representing or reproducing words in visible form, including by electronic means;
- (p) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
- (q) a reference to a month is to a calendar month and a reference to a year is to a calendar year;
- (r) if a period of time is expressed from or after a specified day, then that day is not included in the period;
- (s) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
- (t) a reference to a monetary amount means that amount in Australian currency;
- (u) a reference to time is to Perth, Western Australia time; and
- (v) where the context permits or requires, reference to the Service Provider includes Personnel.

### **Order of precedence**

- 1.3 In this Agreement, if there is any inconsistency between the General Conditions and the Special Conditions, then the Special Conditions prevail over the General Conditions to the extent of the inconsistency.

## **2 ENGAGEMENT**

- 2.1 The Service Provider agrees to provide the Services to the IMO during the Contract Term in accordance with this Agreement.
- 2.2 The IMO agrees to pay the Service Provider the Fee and Agreed Expenses for Services provided in accordance with this Agreement.

### **3 CONTRACT TERM**

#### **Duration of this Agreement**

- 3.1 This Agreement commences on the Signature Date and (subject to earlier termination of this Agreement under clause 14) expires on the last day of the Contract Term.
- 3.2 The Contract Term:
- (a) commences on the Commencement Date; and
  - (b) (subject to earlier termination of this Agreement under clause 14.2 or 14.6) ends on the End Date.

#### **Prior Services**

- 3.3 If the Signature Date is later than the Commencement Date, then all Services provided by the Service Provider to the IMO between the Commencement Date and the Signature Date are taken to have been provided by the Service Provider under this Agreement.

### **4 SERVICE PROVIDER'S OBLIGATIONS**

#### **General requirements**

- 4.1 The Service Provider must:
- (a) use its reasonable endeavours to carry out its obligations and responsibilities by the dates specified in this Agreement;
  - (b) fully cooperate with the IMO to ensure timely progress and fulfilment of its obligations and responsibilities under this Agreement;
  - (c) work co-operatively and harmoniously with other contractors and consultants that are engaged by the IMO from time to time where this is necessary to ensure the integrated and efficient conduct of the IMO's operations;
  - (d) ensure that the Specified Personnel (if any) provide the Services;
  - (e) comply with all reasonable directions given by the IMO in relation to the Services;
  - (f) act reasonably and in good faith with respect to matters that relate to this Agreement; and
  - (g) ensure that all Personnel have the necessary skill and experience to provide the Services, having regard to the professional standard of skill, care and diligence that would normally be expected of a reputable and competent person providing similar services.

#### **Timetable**

- 4.2 The Service Provider must provide the Services (including the Deliverables) by the dates specified in this Agreement. If the Service Provider becomes aware that it may not be able to provide the Services or Deliverables by the dates specified in this Agreement, then it must promptly notify the IMO under clause 15.1.

#### **Specified Personnel**

- 4.3 If any Specified Personnel become unavailable to provide the Services, the Service Provider must notify the IMO as soon as practicable and nominate an equivalent number of substitute Specified Personnel with the necessary skill and experience to provide the Services. The IMO must approve substitute Specified Personnel before they commence in their role.

#### **Replacement of Personnel**

- 4.4 The Service Provider must replace any Personnel if requested to do so by the IMO, acting reasonably.

#### **Responsibility for Personnel's conduct**

- 4.5 The Service Provider must ensure that Personnel (regardless of whether they are still employed or engaged by the Service Provider) do not do or omit to do anything that:
- (a) if done or omitted to be done by the Service Provider, would be a breach of the Service Provider's obligations under this Agreement or an obligation of confidence owed to the IMO; or
  - (b) may cause any Personnel to be in breach of the undertaking (if required) specified in clause 9.7.

- 4.6 During the Contact Term, the Service Provider must disclose (and must continue to disclose) full details of criminal convictions and pending criminal charges against it or any Personnel as soon as practicable after becoming aware of the criminal convictions or the pending criminal charges. For the avoidance of doubt, this clause 4.6 does not require the Service Provider to provide information to the IMO in a form or in a manner that would cause the Service Provider to breach its obligations under the Privacy Act.

## **5 COMPLIANCE WITH IMO POLICIES AND PROCEDURES**

### **IMO policies and procedures**

- 5.1 The Service Provider must behave, and must ensure that Personnel behave, in an appropriate and a fit and proper manner at all times.
- 5.2 Without limiting the generality of clause 5.1, the Service Provider must ensure that Personnel are aware of, and comply with, the following matters when attending the IMO's premises or using the IMO's facilities for the purposes of providing Services or carrying out any of the Service Provider's other obligations under, or in connection with, this Agreement:
- (a) the IMO's reasonable directions, including the requirement for Personnel to attend induction training when attending the IMO's premises for the first time;
  - (b) the IMO's documented policies and procedures (as notified by the IMO from time to time), including those relating to occupational health and safety, security, internet usage, email policy, harassment and bullying; and
  - (c) all applicable Commonwealth, State and local government laws, regulations and procedures, including those relating to occupational health and safety.

### **Data security**

- 5.3 The Service Provider must comply with, and must ensure that Personnel comply with:
- (a) the IMO's data security requirements in respect of access to, and use of, data (as notified by the IMO from time to time); and
  - (b) any applicable obligations with respect to data security under Commonwealth, State or Territory legislation.
- 5.4 Without limiting the generality of clause 5.3, the Service Provider must:
- (a) ensure that only Personnel with an appropriate level of security clearance (as determined in accordance with the IMO's data security requirements) have access to, and use of, the IMO's data;
  - (b) use reasonable endeavours to ensure that no unauthorised person (including unauthorised Personnel) has access to, and use of, the IMO's data; and
  - (c) notify the IMO immediately after becoming aware of any contravention of the IMO's data security requirements, and comply with the IMO's reasonable directions in relation to the management of that contravention.

## **6 MEETINGS AND REPORTS**

### **Meetings**

- 6.1 Unless otherwise agreed, the Service Provider must attend Progress Meetings and any other meetings that the IMO requires from time to time in connection with the Services and this Agreement.

### **Reports**

- 6.2 Unless otherwise agreed, the Service Provider must provide Progress Reports and any other reports that the IMO requires from time to time in connection with the Services and this Agreement.

## **7 PAYMENT AND INVOICING**

### **Preparation of Tax Invoice**

- 7.1 The Service Provider must provide a Tax Invoice to the IMO within the period specified in Item 9 of the Details.
- 7.2 The Tax Invoice must:

- (a) be addressed to the IMO and identify this Agreement;
- (b) comply with clause 18 and any other applicable taxation requirements;
- (c) specify a total amount that, when aggregated with the total amounts specified in all previous Tax Invoices, does not exceed the Fee and Agreed Expenses; and
- (d) contain, or be accompanied by, sufficient detail to enable the IMO, acting reasonably, to identify:
  - (i) each Service provided;
  - (ii) when the Service was provided and (if relevant) accepted by the IMO; and
  - (iii) the amount claimed (by reference to the Fee) for each Service provided to the IMO during the period covered by the Tax Invoice; and
  - (iv) the amount claimed (by reference to Agreed Expenses).

#### **Timing for payment**

- 7.3 Subject to clause 7.4, the IMO must pay a Tax Invoice within the period specified in Item 9 of the Details if:
- (a) the Tax Invoice complies with clause 7.1; and
  - (b) the IMO is satisfied that:
    - (i) the Services have been properly provided by the Service Provider in accordance with this Agreement; and
    - (ii) the total amount claimed (by reference to the Fee and Agreed Expenses) is the correct amount payable by the IMO in accordance with this Agreement.
- 7.4 If the IMO disputes the whole or any part of the total amount claimed in a Tax Invoice, then:
- (a) the IMO must pay the undisputed amount (if any) within the period specified in Item 9 of the Details; and
  - (b) the IMO must give the Service Provider a Dispute Notice in respect of the disputed amount under clause 16.3.

#### **Expenses**

- 7.5 Subject to clause 7.6, the IMO is not liable for any expenses incurred by or on behalf of the Service Provider for the purpose of providing Services in accordance with this Agreement, including travel expenses, accommodation expenses or subsistence expenses.
- 7.6 The IMO is liable for Agreed Expenses to which clause 7.2(d)(iv) applies.

#### **Payment not evidence**

- 7.7 Payment of any Tax Invoice is payment on account only and is not evidence of an admission of liability.

### **8 REPRESENTATIONS AND WARRANTIES**

#### **By Service Provider**

- 8.1 Subject to clause 8.2, the Service Provider makes the following continuing representations and warranties for the benefit of the IMO:
- (a) the Service Provider has no conflict of interest arising out of, or in connection with, this Agreement;
  - (b) the Service Provider is properly authorised and has the power to enter into this Agreement and to perform its obligations under this Agreement;
  - (c) the Service Provider's obligations under this Agreement are valid, binding and enforceable against the Service Provider;
  - (d) all information provided by the Service Provider to the IMO in connection with this Agreement (including information regarding the Service Provider's financial condition or business) is true and correct;
  - (e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Service Provider that could have a materially adverse effect on the Service Provider's ability to provide the Services in accordance with this Agreement; and
  - (f) the Service Provider is not acting in a trustee capacity in relation to this Agreement.
- 8.2 Clause 8.1 does not apply to the extent that:
- (a) the Service Provider discloses a matter to the IMO in writing;

- (b) the Service Provider provides all relevant details to enable the IMO to make an informed decision about the matter disclosed; and
- (c) the IMO consents to, or otherwise approves, the matter disclosed.

#### **By IMO**

- 8.3 The IMO makes the following continuing representations and warranties for the benefit of the Service Provider:
- (a) the IMO is properly authorised and has the power to enter into this Agreement and to perform its obligations under this Agreement; and
  - (b) the IMO's obligations under this Agreement are valid, binding and enforceable against the IMO.

### **9 ACCESS AND CONFIDENTIALITY**

#### **Auditor General's access**

- 9.1 The Service Provider must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine:
- (a) the Service Provider's Records concerning this Agreement; and
  - (b) all information (in whatever form) provided by the Service Provider to the IMO under, or in connection with, this Agreement, including documents or data (however held, stored or recorded) consisting of drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, photographic recordings, audio recordings, audio visual recordings, and methods or systems of work created by the Service Provider for the purposes of, or in connection with, the Services.
- 9.2 For the avoidance of doubt, clause 9.1 does not require the Service Provider to create or maintain any record that it does not maintain in the ordinary course of its business or as required by law.

#### **Disclosure**

- 9.3 The Service Provider acknowledges and agrees that the IMO may disclose this Agreement (or any part of it) at any time during or after the Contract Term under a court order, or upon request by Parliament or any committee of Parliament, or if otherwise required by law.
- 9.4 Without limiting the generality of clause 9.3, the Service Provider acknowledges and agrees that the IMO may:
- (a) publish the name of the Service Provider and information relating to the Fee and Agreed Expenses; or
  - (b) cause this Agreement to be tabled in the Parliament of Western Australia.
- 9.5 The Service Provider must not commence any legal proceedings against the IMO in respect of any action taken by the IMO under clause 9.3 or clause 9.4.

#### **Confidentiality**

- 9.6 The Service Provider must keep Confidential Information confidential. Improper use or disclosure of Confidential Information will constitute a material breach for the purposes of clause 14.1(a).
- 9.7 The Service Provider must:
- (a) (if Item 10 of the Details specifies that a confidentiality undertaking is required) ensure that each Specified Personnel (and, if requested by the IMO, each Personnel) signs a confidentiality undertaking in favour of the IMO in the form set out in Annexure 1; and
  - (b) provide a copy of each signed undertaking to the IMO.
- 9.8 The Service Provider must not, and must ensure that Personnel do not, use Confidential Information or disclose Confidential Information to any person, except:
- (a) to the extent that the use or disclosure is necessary for the purposes of providing Services in accordance with this Agreement;
  - (b) as authorised in writing by the IMO;
  - (c) to the extent that the Confidential Information is or becomes public information other than as a direct or indirect result of any breach of this Agreement by the Service Provider;
  - (d) as required by any law, judicial or parliamentary body or governmental agency;

- (e) to the extent that disclosure to the Service Provider's professional advisers is necessary for the purposes of this Agreement (but only if the professional advisers agree to be bound by the confidentiality obligations imposed on the Service Provider under this clause 9.8).

#### **Destruction or return of Confidential Information**

- 9.9 Subject to clause 9.10, except to the extent that the Service Provider is required by law to retain any Records, the Contractor must destroy all Records containing Confidential Information or return them to the IMO (and must do so in accordance with any direction from the IMO) immediately after:
- (a) this Agreement expires in accordance with clause 3.1, or is terminated earlier under clause 14.2 or 14.6; or
  - (b) clause 9.10 ceases to apply.
- 9.10 The Service Provider may retain Confidential Information to the extent that:
- (a) the Service Provider maintains business continuity procedures that are reasonably acceptable to the IMO;
  - (b) it is reasonable and prudent for the Service Provider to retain the Confidential Information in accordance with its business continuity procedures;
  - (c) the Confidential Information is securely stored in back-up or archival media; and
  - (d) the Service Provider continues to comply with clauses 9.6 to 9.8 in relation to that Confidential Information.

#### **Publicity**

- 9.11 Unless the IMO gives its prior consent, or the Service Provider is required by law to do so, the Service Provider must not:
- (a) use this Agreement; or
  - (b) use the name or logo of:
    - (i) the IMO;
    - (ii) System Management;
    - (iii) a Market Participant;
    - (iv) a Gas Market Participant; or
    - (v) another party with whom the IMO deals, or has previously dealt, in the ordinary course of the IMO's business;
  - (c) refer to the Service Provider's association with the IMO that results from this Agreement; or
  - (d) make any statement concerning this Agreement, in any publication, advertisement or media release.
- 9.12 The IMO may (at its discretion) use this Agreement and the Service Provider's name and logo for reasonable promotional or publicity purposes. If the IMO uses this Agreement or the Service Provider's name or logo for reasonable promotional or publicity purposes, then the IMO must acknowledge the Service Provider's role to the extent that is reasonable in the circumstances.

#### **Privacy**

- 9.13 The Service Provider must comply with any applicable obligations under the Privacy Act (to the extent relevant to this Agreement).
- 9.14 The Service Provider must comply with:
- (a) other Commonwealth, State or Territory legislation relating to privacy (to the extent relevant to this Agreement);
  - (b) any directions made by a Privacy Commissioner (to the extent relevant to this Agreement);
  - (c) any privacy procedures specified in this Agreement; and
  - (d) any other reasonable direction given by the IMO in relation to privacy.
- 9.15 If the Service Provider is exempt from compliance with the Privacy Act and is not subject to an approved privacy code, then the Service Provider must comply with the Australian Privacy Principles specified in the Privacy Act (as if it were required to comply with the Privacy Act).

#### **Freedom of Information Act 1992**

- 9.16 The Service Provider acknowledges that this Agreement, and all information (in whatever form) provided by the Service Provider to the IMO under, or in connection with, this Agreement, is subject to the Freedom of Information Act 1992 (WA) and may be released to a member of the public under that Act.

## **10 INTELLECTUAL PROPERTY RIGHTS**

### **Ownership of Intellectual Property Rights in Deliverables**

10.1 The Intellectual Property Rights in the Deliverables will be owned by the IMO. The Service Provider automatically assigns the entire future Intellectual Property Rights in the Deliverables to the IMO upon their creation.

### **Existing Material – Licence**

10.2 Nothing in clause 10.1 affects the ownership of any Intellectual Property Rights in any Existing Material.

10.3 The Service Provider grants, and must ensure that any other owner of any Intellectual Property Rights in any Existing Material grants, to the IMO in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material during the remainder of the duration of the Intellectual Property Rights in that Existing Material.

10.4 If a third party owns Moral Rights in any Existing Material, then the Service Provider must obtain a written consent and waiver from the third party owner in relation to its Moral Rights to enable the IMO to use the Existing Material without regard to the third party's Moral Rights.

### **Representation and warranty**

10.5 The Service Provider represents and warrants that:

- (a) the Deliverables will not infringe the Intellectual Property Rights of any third party; and
- (b) all Personnel:
  - (i) who are employed or engaged solely for the purposes of this Agreement are employed or engaged under written agreements under which all Intellectual Property Rights in the Deliverables vest in the IMO on the creation of those Deliverables; and
  - (ii) who are not employed or engaged solely for the purposes of this Agreement are employed or engaged under written agreements under which all Intellectual Property Rights in any work (as defined in the Copyright Act), product or other material created by Personnel vest in the Service Provider on the creation of that work, product or other material.

### **Intellectual Property Rights indemnity**

10.6 The Service Provider must indemnify:

- (a) the IMO; and
- (b) the IMO's officers, employees and agents,

against all Losses (including, without limitation, legal costs and expenses) suffered or incurred by the IMO in connection with the Service Provider's failure to comply with this clause 10, including any breach of warranty under clause 10.5, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Service Provider.

## **11 LIABILITY**

### **Liability**

11.1 Subject to clause 11.2, except to the extent that liability cannot be limited or excluded by law:

- (a) the Service Provider's maximum liability to the IMO for events giving rise to liability arising from this Agreement is specified in Item 11 of the Details; and
- (b) neither party is liable to the other party for Consequential Loss.

11.2 Clause 11.1 does not apply in respect of liability for personal injury, including sickness and death.

### **Statutory limitation of liability not affected**

11.3 For the avoidance of doubt, this Agreement does not vary or exclude the operation of:

- (a) section 126 of the Electricity Industry Act 2004 (WA); or
- (b) Part 8 of the Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WA).

## 12 INDEMNITY

### Indemnity

- 12.1 Subject to clauses 11 and 12.2, the Service Provider must indemnify:
- (a) the IMO; and
  - (b) the IMO's officers, employees and agents,
- against all Losses (including, without limitation, legal costs and expenses) suffered or incurred by the IMO in connection with any action, suit, claim, demand or proceeding taken or made by any third party arising from or in connection with:
- (c) any breach of this Agreement by the Service Provider;
  - (d) any wilful, tortious or unlawful act or omission of the Service Provider or Personnel (to the extent relevant to this Agreement); or
  - (e) any breach of a State or Commonwealth law by the Service Provider or Personnel (to the extent relevant to this Agreement).

### Limit of indemnity

- 12.2 The Service Provider's liability under the indemnity in clause 12.1 will be reduced proportionally to the extent that any Losses suffered or incurred by the IMO are caused by the negligence of:
- (a) the IMO; or
  - (b) the IMO's officers, employees and agents.

### Cooperation

- 12.3 The IMO agrees to use its best endeavours to cooperate with the Service Provider (at the Service Provider's expense) in respect of the conduct of any defence, or the negotiation of any settlement, in relation to any third party action, suit, claim, demand or proceeding to which the indemnity under clause 12.1 applies.

## 13 INSURANCE

### Insurance requirements

- 13.1 The Service Provider must take out and maintain insurance (at its own expense) in relation to all insurable liabilities of the Service Provider under this Agreement.
- 13.2 Without limiting the generality of clause 13.1, the Service Provider must take out and maintain the following insurance policies (at its own expense) for the duration of this Agreement:
- (a) **Professional Indemnity insurance** (covering liability for breach of professional duty by the Service Provider or any Personnel) in respect of Services provided in connection with this Agreement for an amount that is greater than or equal to the amount specified in Item 12 of the Details (for any one claim and for all claims in the aggregate during any one period of insurance). The Service Provider must maintain the insurance policy for a period of at least six years after the expiration or termination of this Agreement, or alternatively must obtain six-year run-off cover. Unless otherwise agreed in writing by IMO, the insurance policy must not, by endorsement or otherwise, exclude or limit any cover that would be granted by the standard provisions of such policy but for such exclusion or limitation.
  - (b) **Public and Products Liability insurance** (covering liability for personal injury or property damage caused by the Service Provider or any Personnel) in respect of Services provided in connection with this Agreement for an amount that is greater than or equal to the amount specified in Item 12 of the Details (for any one occurrence and unlimited as to the number of occurrences during any one period of insurance). Unless otherwise agreed in writing by IMO, the insurance policy must not, by endorsement or otherwise, exclude or limit any cover that would be granted by the standard provisions of such policy but for such exclusion or limitation.
  - (c) **Workers' Compensation/Employers' Indemnity insurance** (as required by the Workers' Compensation and Injury Management Act 1981 (WA)) for an amount that is greater than or equal to the amount specified in Item 12 of the Details (for any one event). For the purposes of this clause 13.2(c), to the extent that the Workers' Compensation and Injury Management Act 1981 (WA) does not apply in respect of this Agreement, references to the Workers' Compensation and Injury Management Act are to be read as references to similar provisions

in Commonwealth, State or Territory legislation (to the extent that those provisions apply in respect of this Agreement).

#### **Reputable and Solvent Insurer**

- 13.3 The Service Provider must take out the insurance required under clause 13.2 with a reputable and solvent insurer that:
- (a) carries on insurance business in Australia;
  - (b) is authorised in Australia to operate as an insurance company; and
  - (c) is otherwise acceptable to the IMO.

#### **Evidence of insurance**

- 13.4 The Service Provider must give the IMO sufficient evidence of the insurance required under clause 13.2 (including, if requested, a copy of any policy or a summary of its material terms), and must provide a certificate of currency of insurance:
- (a) before the Commencement Date;
  - (b) within 14 days after renewal of each insurance policy specified in clause 13.2; and
  - (c) as otherwise requested by the IMO from time to time.

### **14 DEFAULT AND TERMINATION**

#### **Default Events**

- 14.1 Any one or more of the following is a Default Event:
- (a) without limiting clauses 14.1(c) to (i), the Service Provider commits a material breach of this Agreement that, in the IMO's opinion, is not capable of being remedied;
  - (b) the Service Provider breaches any other term of this Agreement, and the breach is not remedied to the IMO's satisfaction within 14 days after the IMO serves a notice on the Service Provider requiring the breach to be remedied;
  - (c) the Service Provider makes a representation or warranty under clause 8.1 that is incorrect or misleading;
  - (d) an Insolvency Event occurs in respect of the Service Provider or a related body corporate (as defined in the Corporations Act);
  - (e) the Service Provider ceases to carry on business;
  - (f) the Service Provider fails to disclose a conflict of interest under clause 17.2;
  - (g) the Service Provider (or any Personnel) conducts itself in a manner that, in the IMO's opinion, brings, or could have the effect of bringing, the IMO into disrepute;
  - (h) an event occurs that, in the IMO's opinion, has had or will have a material adverse effect on:
    - (i) the Service Provider's financial condition or business; or
    - (ii) the Service Provider's ability to perform and comply with its obligations under this Agreement; and
  - (i) there is a change in ownership of more than 25% of the issued voting shares in the Service Provider (compared to the corresponding percentage as at the date of this Agreement), or there is a change in control of the Service Provider; the change occurs without the IMO's prior consent; and, in the IMO's opinion, the change has had or will have a material adverse effect on the Service Provider's ability to perform and comply with its obligations under this Agreement.

#### **Termination**

- 14.2 If a Default Event occurs, then the IMO may immediately terminate this Agreement by giving written notice to the Service Provider.
- 14.3 If the IMO commits a material breach of this Agreement that, in the Service Provider's opinion (acting reasonably), is not capable of being remedied, then the Service Provider may immediately terminate this Agreement by giving written notice to the IMO.

#### **Consequences of termination for Default Event**

- 14.4 Subject to clause 14.5, termination of this Agreement under clause 14.2 will not affect any rights, remedies or actions that either party may have against the other party and which may have arisen before the date of termination.

- 14.5 Upon termination, the Service Provider:
- (a) must submit a Tax Invoice to the IMO for Services provided up to the date of the notice given under clause 14.2;
  - (b) is not entitled to any compensation or payment (including, without limitation, any payment in relation to any remaining period of this Agreement after the date of the notice given under clause 14.2); and
  - (c) must fulfil any obligations under this Agreement which are expressly stated to survive the termination of the engagement of the Service Provider.

#### **Termination for convenience**

- 14.6 The IMO may, at any time and without cause, terminate this Agreement in whole or in part with immediate effect by giving notice to the Service Provider. The Service Provider must immediately comply with any directions given in the notice (and any directions given subsequently by the IMO) and must do all that is possible to mitigate its losses arising from the termination of this Agreement.

#### **Consequences of termination for convenience**

- 14.7 If the IMO terminates this Agreement under clause 14.6, then the IMO will compensate the Service Provider in respect of any liabilities or expenses (excluding Consequential Loss) that are substantiated and properly incurred by the Service Provider under this Agreement up to the date of termination, to the extent that those liabilities or expenses do not arise from any default of the Service Provider and cannot be mitigated. Unless specified to the contrary in the Details, no further compensation will be payable in the event of termination under clause 14.6.

### **15 DELAY**

- 15.1 If the Service Provider becomes aware that it may not be able to carry out an obligation by the date specified in this Agreement, then it must promptly notify the IMO. The notice must specify:
- (a) the cause of the delay; and
  - (b) the steps being taken by the Service Provider to mitigate the delay.

### **16 DISPUTE RESOLUTION**

#### **Further steps required before proceedings**

- 16.1 Subject to clause 16.2, a party must not commence litigation in relation to a Dispute under, or in connection with, this Agreement unless that party has complied with this clause 16.

#### **Urgent interlocutory relief**

- 16.2 A party may seek an urgent interlocutory injunction from a court of competent jurisdiction in relation to a Dispute under, or in connection with, this Agreement.

#### **Activation of dispute resolution process**

- 16.3 If a party claims that a Dispute has arisen, then it must give the other party a Dispute Notice.
- 16.4 A Dispute Notice must specify:
- (a) the nature of the Dispute and the circumstances giving rise to the Dispute; and
  - (b) the party's proposed resolution of the Dispute.

#### **Referral to Delegates**

- 16.5 The parties must meet within five Business Days after the date of the Dispute Notice, and must use their best endeavours to agree to a resolution of the Dispute. Each party must ensure that it is represented by a delegate with authority to resolve the dispute (**Delegate**).

#### **Referral to chief executive officers**

- 16.6 If the Delegates do not resolve the Dispute within 10 Business Days after the date of the Dispute Notice, then each party must refer the Dispute to its chief executive officer or another authorised representative (who must be in a senior management position). The parties' representatives (to whom the Dispute is referred under this clause 16.6) must meet within 20 Business Days after the date of the Dispute Notice, and must use their best endeavours to agree to a resolution of the Dispute.

### **Referral to independent expert**

- 16.7 If the parties' representatives (to whom the Dispute is referred under clause 16.6) do not resolve the Dispute within 30 Business Days after the date of the Dispute Notice, then the parties must refer the Dispute to an independent expert for determination in accordance with the Institute of Arbitrators & Mediators Australia Expert Determination Rules.
- 16.8 Unless otherwise agreed:
- (a) each party must pay its own costs in connection with the expert determination process; and
  - (b) each party must pay the costs of the expert determination process (including any nomination fee payable to the Institute of Arbitrators & Mediators Australia and any fee payable to the expert) in equal shares.

### **Performance of obligations pending resolution of a Dispute**

- 16.9 The parties must continue to perform their obligations under this Agreement despite the existence of a Dispute.
- 16.10 If the Dispute relates to payment, then the Service Provider must continue to perform its obligations under this Agreement, and the IMO will continue to pay the Service Provider any undisputed amounts.

## **17 CONFLICTS OF INTEREST**

- 17.1 The Service Provider represents and warrants that it is not aware of any actual or potential conflict of interest that could reasonably be expected to prevent it from performing its obligations under this Agreement fully and effectively.
- 17.2 The Service Provider must disclose to the IMO any actual or potential conflict of interest as soon as practicable after becoming aware of it.
- 17.3 The Service Provider must take steps to remove the actual or potential conflict of interest, and must advise the IMO of those steps, within 30 days after disclosing the conflict under clause 17.2.

## **18 GST**

### **Recovery of GST**

- 18.1 Subject to clauses 18.2 and 18.3, if GST is or will be imposed on a Supply made by a party under or in connection with this Agreement (including costs required to be reimbursed or indemnified under this Agreement), then (to the extent that the consideration specified for that Supply under this Agreement does not expressly include an amount in respect of GST on the Supply) the supplier may:
- (a) increase the consideration specified for the Supply under this Agreement by the amount of that GST; or
  - (b) otherwise recover the amount of that GST from the recipient.

### **Invoices required**

- 18.2 The supplier must issue a Tax Invoice or Adjustment Note to the recipient in respect of an amount of GST imposed on a Supply.

### **Reimbursements**

- 18.3 If:
- (a) a party is entitled to be reimbursed or indemnified by the other party under this Agreement;
  - (b) the reimbursement or indemnity relates to a cost or expense incurred in connection with this Agreement; and
  - (c) the party that is entitled to be reimbursed or indemnified may claim an input tax credit in respect of the GST component of the cost or expense,
- then the amount of a reimbursement or indemnity payment must not include an amount in respect of GST.

### **Value of Taxable Supplies**

- 18.4 If the consideration for a Taxable Supply under this Agreement is not, or is not expressed as, an amount of money, then the supplier must issue a Tax Invoice to the recipient for the Supply based on the GST-inclusive market value of the consideration, as determined by the supplier in good faith.
- 18.5 If a party disputes the GST-inclusive market value of the consideration, as determined by the supplier under clause 18.4, then the disputing party may give the other party a Dispute Notice.

### **Invoice**

- 18.6 This Agreement is not an invoice for the purposes of the GST Act.

## **19 NOTICES**

### **Form and delivery**

- 19.1 Unless otherwise agreed, a notice or other communication is only given or made to a party under this Agreement if it is:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
  - (b) delivered, posted, faxed or emailed to that party at the address, fax number or email address stated in Item 13 of the Details or at such other address, fax number or email address as notified by that party to the sender.

### **Receipt**

- 19.2 Unless otherwise agreed, a notice or other communication is taken to be given or made to a party under this Agreement at the following time:
- (a) if it is delivered, on delivery;
  - (b) if it is posted, three Business Days after it is posted (or, if sent from one country to another, seven Business Days after it is posted);
  - (c) if it is faxed, as soon as the sender receives an error-free transmission report from the sender's fax; or
  - (d) if it is emailed, when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email) provided that the sender does not receive an automated message that the email has not been delivered, whichever happens first,
- but if the delivery, receipt or transmission is after 5:00pm on a Business Day or is not on a Business Day, the notice is taken to be received at 9:00am on the next Business Day.

## **20 SET-OFF**

### **Set-off right**

- 20.1 The IMO may set off or deduct any amount claimed by the IMO under or in connection with this Agreement from amounts owing by the IMO to the Service Provider under this Agreement or any other agreement between the IMO and the Service Provider.

## **21 GENERAL**

### **Non-exclusivity of services**

- 21.1 The Service Provider acknowledges and agrees that the IMO may acquire services (including but not limited to the Services) from any party including the Service Provider.

### **Assignment and subcontracting by Service Provider**

- 21.2 The Service Provider must not assign, transfer, novate or encumber its rights or obligations under this Agreement, or declare itself a trustee in relation to this Agreement, unless it obtains the IMO's prior consent.
- 21.3 The Service Provider must not sub-contract any of its obligations under this Agreement unless it obtains the IMO's Representative's prior approval. The IMO's Representative may (at its discretion) approve a sub-contract with or without conditions, including requiring any sub-contractors to sign a confidentiality undertaking in favour of the IMO in the form set out in Annexure 1.

- 21.4 The IMO's approval to a sub-contract does not relieve the Service Provider of any of its obligations under this Agreement and the Service Provider remains responsible for all obligations, services and functions performed by any subcontractors.

#### **Assignment and subcontracting by IMO**

- 21.5 The IMO may assign this Agreement:
- (a) to any person if required by law to do so; or
  - (b) subject to clause 21.6, to a person that performs similar functions to the IMO's functions.
- 21.6 The IMO must ensure that the proposed assignee enters into a deed of assignment with the Service Provider in terms that are reasonably satisfactory to the Service Provider.
- 21.7 The IMO may, at any time, engage the services of an independent consultant to assist it in performing its obligations under this Agreement or assessing the Service Provider's compliance with its obligations under this Agreement. The Service Provider must provide all reasonable co-operation to the independent consultant.

#### **Waiver**

- 21.8 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

#### **Variation**

- 21.9 This Agreement, including the schedules, can only be varied by written agreement between the parties.

#### **Further co-operation**

- 21.10 Each party must do anything (including executing a document) that another party reasonably requires to give full effect to this Agreement.

#### **IMO's approvals and consent**

- 21.11 If the IMO's consent or approval is required under this Agreement, then the IMO may (at its discretion):
- (a) give that consent or approval (with or without conditions); or
  - (b) not give that consent or approval.
- 21.12 A consent or approval given under clause 21.11(a) is not valid unless given in writing by the IMO.

#### **Remedies cumulative**

- 21.13 A party's rights, powers and remedies under this Agreement are in addition to the rights, powers or remedies provided by law.

#### **Indemnities**

- 21.14 Any indemnities in this Agreement are continuing obligations, independent from the parties' other obligations under this Agreement, and continue to apply after the expiry or termination of this Agreement. It is not necessary for a party to incur any expense or make any payment before enforcing a right of indemnity under this Agreement.

#### **Severability**

- 21.15 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, then that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 21.16 If the removal of a clause or part of a clause under clause 21.15 materially alters the commercial allocation of benefit and risk (or the management of risk) under this Agreement, then the parties must

negotiate in good faith to amend or modify the terms of the Agreement as may be necessary or desirable, having regard to the original terms of the bargain and the prevailing circumstances.

**Relationship of the parties**

21.17 This Agreement does not create a partnership, agency, fiduciary or any other relationship between the parties, other than the relationship of contracting parties. No party is liable for an act or omission of another party, except to the extent set out in this Agreement.

**No merger**

21.18 The warranties, undertakings and indemnities in this Agreement do not merge on the expiry or termination of this Agreement.

**Counterparts**

21.19 This Agreement may be executed in counterparts.

**Entire agreement**

21.20 This Agreement contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party (or a director, officer, agent or employee of that party), before this Agreement was executed.

**Survival**

21.21 Any indemnity or any obligation of confidence under this Agreement is independent of, and survives termination of, this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement, including clauses 1, 4.1(f), 5.3, 5.4, 9, 10, 11, 12, 14.4, 14.5, 14.7, 20.1, 21.7, 21.14 and 21.22.

**Governing law and jurisdiction**

21.22 This Agreement is governed by the law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts.

**Executed as an agreement**

**SIGNED** on behalf of  
**INDEPENDENT MARKET OPERATOR**  
**(ABN 95 221 850 093)**  
by

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Allan Dawson – Chief Executive Officer  
Name and position of Authorised  
Person

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**SIGNED** on behalf of  
**## (ABN ##)**  
in accordance with section 127 of the  
Corporations Act 2001 (Cth) by

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

\_\_\_\_\_  
Name of Director

*\*delete if not applicable*

\_\_\_\_\_  
Signature of \*Director/\*Secretary

\_\_\_\_\_  
Name of \*Director/\*Secretary

## **SCHEDULE 1 – SERVICES AND DELIVERABLES (clause 4.2)**

### **1.1 Services**

<b>Services</b>	<b>Description</b>
##	##

### **1.2 Deliverables**

<b>Deliverable</b>	<b>Due date</b>
##	##

**SCHEDULE 2 – SPECIAL CONDITIONS** (clause 1.3)

## or No Special Conditions

**ANNEXURE 1 – CONFIDENTIALITY UNDERTAKING** (clause 9.7)

**Date:** \_\_\_\_\_

**To:** **Independent Market Operator** (ABN 95 221 850 093) of Level 17, 197 St Georges Terrace, Perth WA 6000 (**IMO**)

I, # name #, of # address # **AGREE THAT:**

**Confidentiality**

1. I have been shown a copy of the Service Provider Agreement between the IMO and Service Provider (**Service Provider**), and understand the nature of the Service Provider’s obligations to the IMO.
2. I acknowledge and agree that:
  - (a) the IMO holds and deals with confidential, non-public and proprietary information, including information about:
    - (i) the IMO;
    - (ii) System Management;
    - (iii) Market Participants;
    - (iv) Gas Market Participants; and
    - (v) other parties with whom the IMO deals, or has previously dealt, in the ordinary course of the IMO’s business;
  - (b) the IMO is concerned that such information is not improperly used or disclosed contrary to the Service Provider Agreement or any laws; and
  - (c) improper use or disclosure of such information will constitute a material breach for the purposes of clause 14.1(a) of the Service Provider Agreement.
3. I will not, without the IMO’s prior consent, disclose any Confidential Information to anyone else.
4. I will not use any Confidential Information for any purpose other than the proper performance of the Service Provider Agreement.
5. If I am uncertain as to whether any information is Confidential Information, I will treat it as Confidential Information, unless the IMO advises me that the information is not Confidential Information.

**General**

6. Clause 1 of the Service Provider Agreement applies to this document.

**EXECUTED** as a Deed Poll in the presence of

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Date

} \_\_\_\_\_  
Signature