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ELECTRICITY INDUSTRY ACT 2004

ELECTRICITY NETWORKS ACCESS CODE 2004

Approval by Minister

I, ERIC RIPPER, Minister for Energy for the State of Western Australia, under section 104(1) of the *Electricity Industry Act 2004* hereby establish the Electricity Networks Access Code contained in this document.

In accordance with section 41 of the *Interpretation Act 1984*, this Code comes into operation on the day of its publication in the Gazette.

ERIC RIPPER

Dated at Perth this 29th day of November 2004.

ELECTRICITY INDUSTRY ACT 2004

ELECTRICITY NETWORKS ACCESS CODE 2004

Contents

Introduction

Chapter 1 – Introductory

Citation
Commencement
Definitions
Interpretation

Chapter 2 – General Principles

Code objective
Code objective with other objectives, requirements and factors etc
Freedom to contract
Service provider to use reasonable endeavours to provide access to covered services
Requirement to undertake augmentations and funding of augmentations

Chapter 3 – Coverage

Subchapter 3.1 – Covered networks
SWIS is covered
Other networks may be covered

Subchapter 3.2 – Criteria for coverage
Minister's decision on coverage
Coverage criteria
Factors the Minister must have regard to

Subchapter 3.3 – Coverage process
Applications for coverage
Invitation for submissions and issues paper
First round public submissions
Draft coverage decision by the Minister
Second round public submissions
Final coverage decision by Minister
Final coverage decision has effect
Late submissions
Reasons
Service provider agrees to network coverage
Extensions of time under this Chapter

Subchapter 3.4 – Revocation of coverage
Revocation of coverage

Subchapter 3.5 – Miscellaneous
Advertising
Publishing
Automatic coverage of augmentations
Notification of network modification

Chapter 4 – Access Arrangements: Approval and Review

Subchapter 4.1 – Approval process

Submission of first access arrangement
Access arrangement information
Invitation for submissions and issues paper
First round public submissions
Draft decision by Authority
Second round public submissions
Revised proposed access arrangement
Final decision by Authority
Amended proposed access arrangement
Further final decision by Authority
Authority drafting and approving own access arrangement if further final decision is to not approve
Access arrangement start date

Subchapter 4.2 – Criteria for approval

Reasons
Criteria for approval of a proposed access arrangement
Factors the Authority must have regard to
Information to be provided by Authority if it requires change to price control or pricing methods
Access arrangement must not override prior contractual rights
Conditional approval – price lists

Subchapter 4.3 – Revision and review

Trigger events
Revision of price control or pricing methods during the term of an access arrangement
Revision of access arrangement if Appendix 2, Appendix 3 or Appendix 4 are amended
Review of access arrangement

Subchapter 4.4 – Miscellaneous

Late submissions
No confidentiality for certain documents
Authority drafting and approving own access arrangement if no access arrangement submitted
Interim access arrangement in the event of delay
Extensions of time under this Chapter 4
Suspension of deadlines when Authority obtains information
Suspension of deadlines for judicial proceedings

Chapter 5 – Access Arrangement: Content

Required contents of an access arrangement
Reference services
Standard access contract for each reference service
Service standards for each reference service
Applications and queuing policy
Capital contributions policy
Transfer and relocation policy
Efficiency and innovation benchmarks
Supplementary matters
Revisions submission
Trigger events

Chapter 6 – Price Control

Subchapter 6.1 – Target revenue

Form of price control
Form of price control for first access arrangement
Price control objectives
Target revenue may be adjusted for unforeseen events
Target revenue may be adjusted for technical rule changes
'Investment adjustment mechanism' defined
Requirement for an investment adjustment mechanism
'Gain sharing mechanism' defined
Requirement for a gain sharing mechanism
Objectives for gain sharing mechanism
'Surplus' defined

Prior surpluses may be retained
Determining the above-benchmark surplus
Determining the increase to the target revenue
'Service standards adjustment mechanism' defined
Requirement for service standards adjustment mechanism
Authority may make a determination of excluded services for a covered network

Subchapter 6.2 – Calculation of Service Provider's Costs

When this Subchapter 6.2 applies
Non-capital costs
Capital-related costs
Determining the capital base
Capital base for the start of the first access arrangement period
Capital base for the start of subsequent access arrangement periods
Capital base must not include forecast new facilities investment
New facilities investment test
Capital base not to include investment in respect of which a capital contribution is provided
Recoverable portion
Speculative investment
Redundant capital
Calculating weighted average cost of capital
Authority may make a determination of a methodology for calculation of weighted average cost of capital
Depreciation

Subchapter 6.3 – Service provider may seek approval for costs

Approval for new facilities investment
Approval for non-capital costs

Chapter 7 – Pricing methods

'Pricing methods' defined
Form of pricing methods
Objectives of pricing methods – Primary objectives
Objectives of pricing methods – Other objectives
Objectives of pricing methods – Reconciling primary and other objectives
Tariff components
Postage stamp charges in certain cases
'Equivalent tariff' defined
Prudent discounts
Discounts for distributed generating plant
Access arrangement must detail policies regarding discounts

Chapter 8 – Price lists

Approval of price lists if required
Publication of price lists if approval not required

Chapter 9 – Regulatory Test

Subchapter 9.1 – Introductory

Objectives of this Chapter 9
No major augmentation without regulatory test determination
'Regulatory test' defined
'Committed' defined
Authority may make a determination that an augmentation is or is not a major augmentation
Service provider must make information available

Subchapter 9.2 – Regulatory test process

Regulatory test as part of access arrangement approval process
Regulatory test not as part of access arrangement approval process
Regulatory test may be expedited, otherwise modified or waived
Vexatious etc alternative options

Subchapter 9.3 – Anti-avoidance provisions

Anti-avoidance provisions

Chapter 10 – Dispute Resolution

Subchapter 10.1 – Introduction
Commercial Arbitration Act 1985 does not apply
Procedural rules

Subchapter 10.2 – Access Disputes
Notification of a dispute
Other parties joining
Conciliation and reference to arbitration
Authority not required to conciliate
Expedited hearing of disputes under applications and queuing policy
Factors which the arbitrator must have regard to
The arbitration
Arbitrated tariff to be guided by access arrangement and price list
Arbitrated tariffs for reference services
Arbitrated terms for reference services
Arbitrated tariffs for non-reference services
Award by the arbitrator
Restrictions on access awards
Arbitrated award requiring augmentation of network
Effect of awards
Costs of arbitration

Subchapter 10.3 – Application of the regulatory test in an arbitration
Arbitrator must make proposed award if award would require major augmentation
Service provider must consult and submit major augmentation report
Service provider's costs of compliance, if applicant withdraws
Authority must publish determination regarding major augmentation report
Arbitrator must have regard to Authority's determination

Subchapter 10.4 – Contractual Disputes
Jurisdiction of arbitrator
Procedural rules

Chapter 11 – Service standards

Service provider must comply with service standards
Authority to monitor service standards
Penalties for breach of service standards

Chapter 12 – Technical Rules

Objectives of the technical rules
Persons bound by technical rules
Technical rules prevail over contract
Networks which must have technical rules
Approval process for technical rules – Non-covered network
Approval process for technical rules – Covered network
Have regard to current regulation in case of deadlock
Commencement of technical rules
Technical rules committee
Recommendations from the technical rules committee
Authority may observe the technical rules committee
Scope and content of technical rules
Person applies to service provider for exemption from technical rules
Service provider applies to Authority for authorisation to grant exemption from technical rules
Amendments to technical rules
Notification of changes to technical laws
Review of technical rules
Coordination with other service providers in an interconnected system

Chapter 13 – Ringfencing

Service provider must comply with ringfencing objectives and rules
Application of ringfencing objectives and rules to integrated providers
'Ringfenced business' defined
Other business must have deemed access contract

Associate contracts
Amendments to associate contracts and deemed access contracts
Ringfencing objectives
Factors the Authority must have regard to
Authority may approve ringfencing rules
Ringfencing rules and compliance procedures are not confidential
Additional ringfencing rules for an integrated provider
Service provider to procure compliance by its associates
Commencement time for ringfencing rules
Exemptions from ringfencing requirements
Compliance monitoring and compliance reporting
Breach of ringfencing requirements
Service provider to provide information to Authority and arbitrator

Chapter 14 – Administration and Miscellaneous

Service provider to provide information on access arrangements
Data collection regarding target revenue
Public register
Register of interested persons
Protection for the Authority
Treatment of confidential information
How this Code applies to multiple service providers
How this Code applies to successor service providers
Authority may seek advice
CPI adjustment
General process for public consultation

Chapter 15 – Transitional

Minister may make determinations
Access arrangements for SWIS to be compatible with market
Access arrangements to be compatible with changes to contestability

Appendix 1 – Flowchart of access arrangement approval process

Appendix 2 – Model Applications and Queuing Policy

Sub-appendix 2.1 – Interpretation
Definitions and Interpretation
Transition of prior applications
Negotiations in good faith
Classes of applications

Sub-appendix 2.2 – The application
Informal communications
Confidentiality
Costs of processing application
Lead times for applications
Access application
Errors or omissions in an application
Additional information

Sub-appendix 2.3 – Capacity increase notices and customer transfer requests
Capacity increase notice
Lodgement fees for capacity increase notices
Lead times for capacity increase notices
Form of capacity increase notices
Additional information
Customer transfer requests

Sub-appendix 2.4 – The Queue
Queuing rules apply only when there are competing applications
Queuing rules determine priority of applications
More than one queue
First come first served principle
Bypass

Applications in relation to tender projects etc
Reserve capacity auctions for SWIS
Processing of applications not affected
Exercising an option not affected
Priority of withdrawn applications
Provision of information about position in queue

Sub-appendix 2.5 – Amendment and withdrawal of application
Amendment to application
Amending application to address necessary augmentation
Priority of amended applications
Withdrawal of application
Applications do not expire

Sub-appendix 2.6 – Processing the application and making the access offer
Service provider must be expeditious and diligent
Conditions precedent permitted in access contract
Conditions precedent and determination of spare capacity
Security
Initial response
Preliminary assessment
Progress reporting
Service provider must make access offer
Extension of time to perform obligations
Terms of access offer – If application requests reference service
Terms of access offer – If application requests non-reference service
Arbitrator's powers preserved
Access offer is not a contract
Applicant's options on receipt of an access offer
If applicant accepts access offer

Appendix 3 – Model Standard Access Contract
Parties
Background

Part A – Interpretation and introduction
Definitions and interpretation
Interpretation
Duration
There must be both a capacity contract and a technical compliance contract
When the parts of this contract apply

Part B – Capacity Provisions
Provision and use
Contracted capacity
Contracted maximum demand and declared sent-out capacity
Variation to contracted capacity
Relocation
Customer transfer
Provisions of access arrangement on supplementary matters apply
Curtailment
Title to electricity
Designated controllers
Tariff and charges
Invoicing and payment
Security

Part C – Technical Compliance Provisions
Good electricity industry practice
Cooperation
Directions from system operator
User must provide information
Technical rules
Actions of third parties causing user to breach technical rules
Tariff and charges
Invoicing and payment
Security

Part D – Common Provisions
Service provider must comply with service standards
Representations and warranties
Liability and indemnity
Insurances
Force majeure
Default
Termination
Access to premises
Disputes
Set off
Assignment by user
Corporate restructuring of service provider
Confidentiality
Ring fencing
Notices
Miscellaneous

Appendix 4 – Model Capital Contributions Policy

Sub-appendix 4.1 - Introductory
Definitions and interpretation
Application of this capital contributions policy

Sub-appendix 4.2 - Capital contributions
Capital contribution
Reasonable rate of return
Manner of contribution
Provision of capital contribution in kind
Provision of capital contribution by financial payment
Rebates and recoupment

Sub-appendix 4.3 – Non- capital contributions
Non-capital contribution
Manner of contribution

Appendix 5 – Procedural Rules for Arbitration
Application
Definitions
Informality and expedition
Arbitrator may request information
Hearing to be in private
Right to representation
Procedure
Particular powers of arbitrator
Determinations
Contempt
Disclosure of information
Power to take evidence on oath or affirmation
Failing to attend as a witness
Failing to answer questions etc.
Intimidation etc.
Party may request arbitrator to treat material as confidential
Costs
Appeal to Court
Copies of decisions to be given to the Authority
Effect of appointment of new arbitrator on evidence previously given and awards and determinations previously made
Decision of the Arbitrator

Appendix 6 – Matters to be Addressed by Technical Rules

Appendix 7 – General process for public consultation
Application of this Appendix 7
Where the decision maker is not the Authority

Issues paper
Submissions from the service provider
First round public submissions
Draft decision by the Decision Maker
Second round public submissions (if applicable)
Final decision by decision maker
Publication of submissions
Late submissions

Introduction

{This Code is made by the Minister under Part 8 of the *Electricity Industry Act* 2004 (**"Act"**).

The Code may be amended from time to time in accordance with the procedure set out in sections 108 to 110 of the Act and must be reviewed every 5 years under section 111 of the Act.

The Code aims to be, where appropriate given conditions prevailing in Western Australia:

- consistent with the National Electricity Code and National Gas Code; and
- capable of certification as an effective *access* regime under Part IIIA of the *Trade Practices Act 1974*.

This Code establishes a framework for third party *access* to electricity transmission and distribution *networks* with the objective of promoting the economically efficient investment in, and operation and use of, *networks* and *services* of *networks* in Western Australia in order to promote competition in markets upstream and downstream of the *network*s.

Regulations made under section 118 of the Act may prescribe penalties for failure to comply with certain provisions of this Code.}

ELECTRICITY INDUSTRY ACT 2004

ELECTRICITY NETWORKS ACCESS CODE 2004

Chapter 1 – Introductory

Citation

1.1 This Code may be cited as the Electricity Networks Access Code 2004.

Commencement

1.2 This Code comes into operation on the date on which this Code is published in the Gazette.

Definitions

1.3 In this Code, unless the contrary intention appears:

"above-benchmark surplus" has the meaning given to it in section 6.25 as limited by section 6.26.

"access", in relation to services, has a meaning corresponding with the meaning that it has when used in that context in the *Trade Practices Act 1974* of the Commonwealth.

"access application" means an application lodged with a *service provider* under an *access arrangement* to establish or modify an *access contract* and includes any additional information provided by the *applicant* in relation to the application.

"access arrangement" means an arrangement for *access* to a *covered network* that has been *approved* by the *Authority* under this Code.

"access arrangement information", in relation to an *access arrangement*, means the information submitted by the *service provider* under section 4.1 as described in sections 4.2 and 4.3, as amended from time to time, and is not part of the *access arrangement*.

"access arrangement period", in relation to an *access arrangement*, means a period:

(a) between the *access arrangement start date* and the first *revisions commencement date*; or

(b) between a *revisions commencement date* and the next *revisions commencement date*.

"access arrangement start date" means the day on which an *access arrangement* (other than an *interim access arrangement*) takes effect, and is determined in accordance with 4.26.

{Note: See definition of **"review"** for *access arrangement review*.}

"access contract" has the same meaning as 'access agreement' does in Part 8 of the Act, and under section 13.4(d) includes a *deemed access contract.*

{Note: At the time this Code was made, the definition in section 103 of the Act was:

' **"access agreement"** means an agreement under the Code between a network service provider and another person (a "network user") for that person to have access to services. '}

"access dispute" means a dispute, in connection with an *access application*, between the *applicant* and the *service provider*, including a dispute in relation to:

(a) whether the *applicant* or the *service provider* has complied with, or the manner in which the *applicant* or the *service provider* has purported to comply with, the *applications and queuing policy*; and

(b) the terms and conditions, including *service standards*, on which the *applicant* should be permitted to acquire *covered services* from the *service provider*; and

(c) whether an *augmentation* is required to provide *covered services* sought by the *applicant* and the terms and conditions applying to any such *augmentation*; and

(d) whether the *service provider* should grant the *applicant* an exemption to the *technical rules* under section 12.34; and

(e) the arrangements which will apply in respect of a *supplementary matter* connected with the *access application*.

"access rights" means all or part of a *user's* rights under a contract for *services* to obtain a *covered service*.

"additional revenue", when used in 6.41, has the meaning given to it in section 6.42.

"advertise" means:

(a) where the Minister is required to *advertise* a thing — that the Minister must place an advertisement in a newspaper which has circulation throughout the State which states that the thing has been placed on an internet website which is under the *Coordinator's* control; and

(b) where the *Authority* is required to *advertise* a thing — that it must place an advertisement in a newspaper which has circulation throughout the State which states that the thing has been placed on the *public register.*

"alternate pricing provisions" has the meaning given to it in section 4.33.

"alternative option costs" has the meaning given to it in section 6.41.

"alternative options", in relation to a *major augmentation*, means alternatives to part or all of the *major augmentation*, including demand-side management and *generation* solutions (such as *distributed generation*), either instead of or in combination with *network augmentation*.

"amended proposed access arrangement" means an amended *proposed access arrangement* submitted by a *service provider* to the *Authority* under section 4.19.

"amended proposed revisions" are amended *proposed revisions* submitted by a *service provider* to the *Authority* under section 4.19 (as modified under section 4.52).

"anticipated incremental revenue" for a *new facility* means:

(a) the present value (calculated at the *rate of return* over a reasonable period) of the increased *tariff* income reasonably anticipated to arise from the increased sale of *covered services* on the *network* to one or

more *users* (where "increased sale of *covered services*" means sale of *covered services* which would not have occurred had the *new facility* not been commissioned),

minus

(b) the present value (calculated at the *rate of return* over the same period) of the best reasonable forecast of the increase in *non-capital costs* directly attributable to the increased sale of the *covered services* (being the *covered services* referred to in the expression "increased sale of *covered services*" in paragraph (a) of this definition),

where the **"rate of return"** is a rate of return determined by the *Authority* in accordance with the *Code objective* and in a manner consistent with Chapter 6, which may (but does not have to) be the rate of return most recently approved by the *Authority* for use in the *price control* for the *covered network* under Chapter 6.

"applicant" means a person (who may be a *user*) who has lodged an *access application* under the *access arrangement* for a *covered network* to establish or modify an *access contract*, and includes a prospective *applicant*.

"applications and queuing policy" means a policy in an *access arrangement* setting out the *access application* process under section 5.1(g).

"approval" of a *proposed access arrangement* or *proposed revisions* means approval by the *Authority* under Chapter 4.

"approved total costs", in relation to *covered services* provided by a *service provider* by means of a *covered network* for a period of time, means:

(a) those *capital-related costs* which satisfy the *new facilities investment test*; and

(b) those *non-capital costs* which satisfy the test in (as applicable) section 6.40 or 6.41.

"arbitrator" has the meaning given to that term in section 61 of the *Gas Pipelines Access (Western Australia) Act 1998*.

"associate", in relation to a person and subject to section 13.2, has the meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 14, 16(2) and 17 of that Act were repealed, except that a person will not be considered to be an associate of a *service provider* solely because that person proposes to enter, or has entered, into a contract, arrangement or understanding with the *service provider* for the provision of a *covered service*.

{Note: Reference must be made to the *Corporations Act 2001* (Cth) to determine whether one person is an associate of another person. At the *Code commencement date*, the following are examples of persons who are associates of a body corporate under the *Corporations Act 2001* (Cth):

- a director or secretary of the body corporate; and
- a *related body corporate* of the body corporate; and
- another body corporate that can control or influence the composition of the board or the conduct of the affairs of a body corporate.}

"associate contract" means any contract, arrangement or understanding by which a *service provider* provides *covered services* to an *associate* or a *related body corporate.*

"average cost of service provision", in relation to a *user* or group of *users*, a *covered service* and a specified period of time, means that part of *approved total costs* that is associated with providing the *covered service* to the *user* or group of *users*, during the period of time.

"augmentation", in relation to a *covered network*, means an increase in the capability of the *covered network* to provide *covered services*, including by the development, construction, acquisition or commissioning of new *network assets.*

"Authority" means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003.*

"bare transfer", when used in sections 5.18 to 5.24, refers to a *transfer* of a *user's access rights*, under a *transfer and relocation policy*, in which the *user's* obligations under the *contract* for *services*, and all other terms of the *contract* for *services*, remain in full force and effect after the *transfer*.

"business day" means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.

"capital base" for a *covered network* means the value of the *network assets* that are used to provide *covered services* on the *covered network* determined under sections 6.44 to 6.63.

"capital contribution" means a contribution made, or to be made, by a *user* in respect of an *augmentation*.

"capital contributions policy" means a policy in an *access arrangement* under section 5.1(h) dealing with *capital contributions* by *users* in respect of *augmentations*.

"capital-related costs", in relation to *covered services* provided by a *service provider* by means of a *covered network* for a period of time, means:

(a) a return on the *capital base* of the *covered network*; and

(b) depreciation of the *capital base* of the *covered network.*

"Chapter 9 objectives" has the meaning given to it in section 9.1.

"charge", for a *user* for a *covered service*, means the amount that is payable by the *user* to the *service provider* for the *covered service*, calculated by applying the *tariff* for the *covered service*.

"Code change" means an amendment to Appendix 2, Appendix 3 or Appendix 4 of this Code after the start of an *access arrangement period.*

"Code commencement date" means the date on which this Code is published in the Gazette.

"Code objective" has the meaning given to it in section 2.1.

"commercially sensitive information" means all confidential or commercially sensitive information in relation to an *applicant*, *user* or *consumer* which is developed by or comes into the possession of a *service provider* including a *ringfenced business's* past, present and future dealings with the *applicant*, *user* or *consumer*.

"committed", in relation to a proposed *major augmentation,* has the meaning given to it in section 9.5 as limited by section 9.6.

"common service" means a *covered service* that is ancillary to the provision of one or more of *entry services*, *exit services* and network use of system services that ensures the reliability of a *network* or otherwise provides benefits to *users* of the *network*, the costs of which cannot reasonably be allocated to one or more particular *users* and so needs to be allocated across all *users*.

"competing applications" exist where the provision of the *covered service* sought in one *access application* may impede the *service provider's* ability to provide a *covered service* sought in one or more other *access applications.*

"confidential material" means *relevant material* which the *disclosing person* advises the *recipient* is of a confidential or commercially sensitive nature.

"connect" means to form a physical link to or through a *network*.

"connection assets", for a *connection point*, means all of the *network assets* that are used only in order to provide *covered services* at the *connection point*.

"connection point" means a point on a *covered network* identified in an *access contract* as an *entry point* or *exit point*.

"connection service" means the right to *connect facilities and equipment* at a *connection point*.

{Note: A *connection service* is the right to physically connect to the network, and will regulate technical compliance etc. It is not the same thing as an *entry service* or *exit service*, which are the right to transfer electricity.}

"consume" means to consume electricity.

"consumer" means a person who consumes electricity.

{Note: A *consumer* may also be a *user*, if it acquires a *covered service* from a *service provider*.}

"contestable", in relation to a *consumer*, means a *consumer* whose *load* exceeds the threshold for contestability prescribed under section 93 of the *Electricity Corporation Act 1994* or another enactment.

"contractual dispute" means a dispute between a *service provider* and a *user* that is not an *access dispute* and is referred to the *arbitrator* under a contract for *services*.

"contributing user" means a *user* that is or may be required to make a *capital contribution* in respect of a *required augmentation*.

"Coordinator" means the Coordinator of Energy referred to in section 4 of the *Energy Coordination Act 1994*.

"coverage applicant" means a person who lodges a *coverage application.*

"coverage application" means an application under section 3.8 requesting that the whole or part of a *network* be *covered.*

"coverage decision", for a *coverage application* for a *network*, means either or both of the *draft coverage decision* under section 3.17 by the Minister and the *final coverage decision* under section 3.21 by the Minister.

"covered", with regard to a *network*, means that the *service provider* of the *network* is subject to section 4.1.

"covered network" means a *network* that is *covered*.

"covered service" means a *service* in relation to the *transportation* of electricity provided by means of a *covered network*, including:

(a) a *connection service*; or

(b) an *entry service* or *exit service*; or

(c) a network use of system service; or

(d) a *common service*; or

(e) a *service* ancillary to a *service* listed in paragraphs (a) to (d) above,

but does not include an *excluded service*.

{Note: This Code uses the expression *covered service* to describe what is sometimes called a 'regulated service'. It can be distinguished from an *excluded service*.

Covered services subdivide into *reference services* and *non-reference services*.}

"CPI" means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities most recently published by the Australian Bureau of Statistics or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as the *Authority* may reasonably

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 as defined in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

"CPI adjusted" has the meaning given to it in section 14.26.

"customer transfer code" means a code made under section 39(1) or section 39(2a) of the Act in respect of the matter referred to in section 39(2)(b) of the Act.

"deadlock", in Chapter 12, means circumstances in which the members of a *technical rules committee* cannot reach consensus on an aspect of model *technical rules* or on a matter on which the *technical rules committee* has been requested to, or one or more of its members wishes to, provide advice to the *Authority*.

"decision maker", in Appendix 7, means a person who, under this Code, is obliged or chooses to consult the public under Appendix 7 on a *matter for consultation.*

"deemed access contract" means the full terms and conditions of the arrangement by which a *network business* is to provide *covered services* to an *other business*.

"designated date" means the date by which a *service provider* must submit *proposed revisions* to the *Authority* after a *trigger event* has occurred and is either:

(a) specified in the *access arrangement*; or

(b) able to be determined, after the *trigger event* has occurred, using a method specified in the *access arrangement.*

"Director of Energy Safety" means the Director of Energy Safety appointed under section 5 of the *Energy Coordination Act 1994*.

"disclosing person" means a person who provides *relevant material* to a *recipient* under the Code.

"discount" means a discount referred to in section 7.9 or 7.10, as the case may be.

"distributed generating plant" means a *generating plant* with an *entry point* to a *network* at a nominal voltage of less than 66 kV and no *entry point* to a *network* at a nominal voltage of 66 kV or higher.

"distribution system" means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of less than 66 kV.

"DORC" has the meaning given to it in section 6.46.

"draft coverage decision", for a *coverage application* for a *network*, means a draft decision under section 3.17 by the Minister on the *coverage application* that the *network* be *covered* or not be *covered*.

"draft decision" means a draft decision by the *Authority* under section 4.12 either to *approve* a *service provider's proposed access arrangement* or to not *approve* the *proposed access arrangement*.

"draft revocation decision", for a *revocation application* for a *network*, means a draft decision under section 3.17 (as modified under section 3.31) by the Minister on a *revocation application* that a *network* be *covered* or not be *covered*.

"efficiency and innovation benchmarks" means efficiency and innovation benchmarks in an *access arrangement* under section 5.1(j).

"efficiently minimising costs", in relation to a *service provider*, means the *service provider* incurring no more costs than would be incurred by a prudent *service provider*, acting efficiently, in accordance with *good electricity industry practice*, seeking to achieve the lowest sustainable cost of delivering *covered services* and without reducing *service standards* below the *service standard benchmarks* set for each *covered service* in the *access arrangement* or *access contract*.

"electronic form", in relation to the *public register*, means that the *public register* is kept on an internet website which is accessible to the public and from which information may be downloaded.

"entry point" means a point on a *covered network* identified as such in an *access contract* at which, subject to the *access contract*, electricity is more likely to be transferred into the *network* than transferred out of the *network*.

"entry service" means a *covered service* provided by a *service provider* at an *entry point* under which the *user* may transfer electricity into the *network* at the *entry point*.

"excluded service" means a *service* in relation to the *transportation* of electricity provided by means of a *covered network*, including:

(a) a *connection service*; or

(b) an *entry service* or *exit service*; or

(c) a network use of system service; or

(d) a *common service*, or

(e) a *service* ancillary to the *services* listed in paragraphs (a) to (d) above,

which meets the following criteria:

(f) the supply of the *service* is subject to effective competition; and

(g) the cost of the *service* is able to be excluded from consideration for *price control* purposes without departing from the *Code objective*.

"exclusive license" means an exclusive license granted under regulations made under section 26(1) of the Act.

"exclusivity right" means a contractual right which by its terms either:

(a) expressly prevents a *service provider* supplying *covered services* to persons who are not parties to the contract; or

(b) expressly places a limitation on the *service provider's* ability to supply *covered services* to persons who are not parties to the contract,

but does not include a *user's* contractual right to obtain a certain volume of *covered services*.

"exit point" means a point on a *covered network* identified as such in an *access contract* at which, subject to the *access contract*, electricity is more likely to be transferred out of the *network* than transferred into the *network*.

"exit service" means a *covered service* provided by a *service provider* at an *exit point* under which the *user* may transfer electricity out of the *network* at the *exit point*.

"facilities and equipment", in relation to a *connection point*, means the apparatus, equipment, plant and buildings used for or in connection with *generating*, *consuming* and *transporting* electricity at the *connection point*.

"final coverage decision", for a *coverage application* for a *network*, means a final decision under section 3.21 by the Minister on the *coverage application* that the *network* be *covered* or not be *covered*.

"final decision" means a final decision by the *Authority* under section 4.17 either to *approve* the *service provider's proposed access arrangement* or to not *approve* the *service provider's proposed access arrangement*.

"final report" means a final report provided by the Chair of the *technical rules committee* to the *Authority* under section 12.11(b)(ii) setting out the *technical rules committee's* progress in performing its functions under section 12.23, and in the case of *deadlock*, advice in accordance with section 12.25.

"final revocation decision", for a *revocation application* for a *network*, means a final decision by the Minister on a *revocation application* under section 3.21 (as modified under section 3.31 that a *network* be *covered* or not be *covered*.

"first access arrangement", for a *covered network*, means the first *access arrangement approved* (or if no *access arrangement* has been *approved*, to be *approved*) for the *covered network* under this Code.

"first access arrangement period", for a *covered network*, means the *access arrangement period* for the *first access arrangement*.

"force majeure", operating on a person, means a fact or circumstance beyond the person's control and which a *reasonable and prudent person* would not be able to prevent or overcome.

"forecast new facilities investment", for a *covered network*, means the capital costs forecast to be incurred in developing, constructing and acquiring new *network assets* for the *covered network*.

"further final decision" means, where the *Authority's final decision* is to not *approve* the *service provider's proposed access arrangement*, the further final decision of the *Authority* under section 4.21 either to *approve* the *service provider's amended proposed access arrangement* or to not to *approve* the *service provider's amended proposed access arrangement*.

"gain sharing mechanism" is defined in section 6.19.

"generate" means to produce electricity.

"generating plant", in relation to a *connection point*, means all equipment involved in *generating* electricity.

"generator" means a person who *generates* electricity.

"good electricity industry practice" means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable *written laws* and *statutory instruments* and applicable recognised codes, standards and guidelines.

"incoming user" has the meaning given to it in section 5.7(f).

"incremental cost of service provision", in relation to a *user* or group of *users*, a *covered service* and a specified period of time, means that part of *approved total costs* that would be avoided by the *service provider* during the specified period of time if it were not to provide the *covered service* to the *user* or group of *users.*

"information package" means an information package established and *maintained* by a *service provider* in relation to *covered network* which complies with section 14.1.

"integrated provider" means:

(a) Western Power Corporation; and

(b) a *service provider* which, under section 13.31, has been given an exemption from section 13.11(a).

"interconnected network", in relation to a *network*, means another *network* which is part of the same *interconnected system* as the first *network*.

"interconnected system" means an electricity system comprising two or more *networks* interconnected with each other, and in relation to a particular *network* means an *interconnected system* of which the *network* is a part.

"interested person", for a *network*, means a person who is registered under section 14.8 in respect of that *network*.

"interim access arrangement", for a *covered network*, means an *access arrangement* drafted and *approved* by the *Authority* under section 4.59.

"interim access arrangement period", for an *interim access arrangement*, means the period from the date of *approval* of the *interim access arrangement* until the *access arrangement start date* for the *covered network*.

"investment adjustment mechanism" has the meaning given to it in section 6.13.

"investment difference" has the meaning given to it in section 6.13.

"judicial proceedings" has the meaning given to it in section 4.69.

"load" means the amount of electrical power transferred out of a *network* at a *connection point* at a specified time.

"maintain" includes (as necessary and as applicable) renew, replace or update.

"major augmentation" means an *augmentation* for which the *new facilities investment* for the *shared assets*:

(a) exceeds $5 million (*CPI adjusted*), where the *network assets* comprising the *augmentation* are, or are to be, part of a *distribution system*; and

(b) exceeds $15 million (*CPI adjusted*), where the *network assets* comprising the *augmentation* are, or are to be, part of:

(i) a *transmission system*; or

(ii) both a *distribution system* and a *transmission system*.

"major augmentation proposal" means a proposal in respect of one or more *proposed major augmentations* submitted by a *service provider* under sections 9.10 and 9.11, or under sections 9.15 and 9.16, as applicable.

"major augmentation report" has the meaning given to it in section 10.41(b).

"marketing staff" means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents:

(a) who are *senior staff*; or

(b) involved only in technical, administrative, accounting or service functions.

"matter for consultation" means a document, determination or decision that under this Code is required to be or may be the subject of public consultation under Appendix 7.

"model applications and queuing policy" means the model applications and queuing policy in Appendix 2.

"model capital contributions policy" means the model capital contributions policy in Appendix 4.

"model standard access contract" means the model standard access contract in Appendix 3.

"modified test" means one or more modified tests set out in an *access arrangement* for the purposes of section 6.52(b)(i)B in respect of *new facilities investment* below one or more *test application thresholds.*

"net benefit" means a net benefit (measured in present value terms to the extent that it is possible to do so) to those who *generate*, *transport* and *consume* electricity in (as the case may be):

(a) the *covered network*; or

(b) the *covered network* and any *interconnected system*.

"net benefit after considering alternative options" is defined in section 9.4.

"network" has the meaning given to **"network infrastructure facilities"** in the Act.

{Note: At the time this Code was made, the definition in section 103 of the Act was:

' **"network infrastructure facilities"** means:

(a) the electrical equipment that is used only in order to transfer electricity to or from an electricity network at the relevant point of connection including any transformers or switchgear at the relevant point of connection or which is installed to support or to provide backup to that electrical equipment as is necessary for that transfer; and

(b) the wires, apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity,

which together are operated by a person (a "network service provider") for the purpose of transporting electricity from generators to other electricity networks or to consumers. '}

"network assets", in relation to a *network*, means the apparatus, equipment, plant and buildings used to provide or in connection with providing *covered services* on the *network*, which assets are either *connection assets* or *shared assets*.

"network business" means the part of an *integrated provider's* business and functions which are responsible for the operation and maintenance of a *covered network* and the provision of *covered services* by means of the *covered network.*

"network modification", when used in sections 3.36 to 3.37, means, in respect of a *covered network*, either:

(a) the commissioning of an *augmentation* to the *covered network*; or

(b) a disposal or decommissioning of *network assets* of the *covered network*.

"network persons", means the *service provider*, *applicants*, *users* and *controllers* of a *covered network* where the *service provider* of the *covered network* has applied to the *Authority* for an exemption from one or more requirements of the *technical rules* applying to the *covered network*.

"new facilities investment", for a *new facility*, means the capital costs incurred in developing, constructing and acquiring the *new facility*.

"new facilities investment test", in respect of a *covered network*, means the test set out in section 6.52.

"new facility" means any capital asset developed, constructed or acquired to enable the *service provider* to provide *covered services* including assets required for the purpose of facilitating competition in retail markets for electricity.

"non-capital costs", in relation to *covered services* provided by a *service provider* by means of a *covered network* for a period of time, means all costs incurred in providing the *covered services* for the period of time which are not *capital-related costs*, including those operating, *maintenance* and administrative costs which are not *capital-related costs*.

"non-covered network" means a *network* that is not a *covered network*.

"non-reference service" means a *covered service* that is not a *reference service*.

"notification threshold" has the meaning given to it in section 3.37.

"ODV" has the meaning given to it in section 6.46.

"other business" means the part or parts of an *integrated provider's* business which are not the *network business*, and includes any part or parts of the *integrated*

provider's business and functions which acquire *covered services* from the *network business*.

"other service provider", in relation to a *service provider* that operates a *network* in an *interconnected system,* has the meaning given to it in section 12.59.

"outgoing user" has the meaning given to it in section 5.7(f).

"participant", when used in sections 14.16 to 14.21, has the meaning given in section 14.17.

"preliminary report" means a preliminary report provided by the Chair of the *technical rules committee* to the *Authority* under section 12.11(b)(i) setting out the *technical rules committee's* progress in performing its functions under section 12.23, and in the case of *deadlock*, advice in accordance with section 12.25.

"price control" means the provisions in an *access arrangement* under section 5.1(d) and Chapter 6 which determine *target revenue*.

{Note: *Price control* can consist of direct or indirect limits, and consists of a limit on the **level** of *tariffs* through the control of overall revenue. The **structure** of *tariffs* is dealt with by the *pricing methods* in Chapter 7.}

"price control methodology" means a methodology included in an *access arrangement* as part of *price control.*

{Examples of the things that might comprise *price control methodologies* are: the means for determining a suitable return on investment; the means of forecasting *load*; and calculation of the X factor if CPI-X is used.}

"price list" means the schedule of *reference tariffs* in effect in an *access arrangement* under section 5.1(f) and Chapter 8 for a *covered network*.

"price list information" means a document which sets out information which would reasonably be required to enable the *Authority*, *users* and *applicants* to:

(a) understand how the *service provider* derived the elements of the proposed *price list*; and

(b) assess the compliance of the proposed *price list* with the *access arrangement.*

"pricing methods" means the structure of *reference tariffs* in an *access arrangement* as defined in section 7.1.

"pricing years" for an *access arrangement* are periods of no longer than one year, the start and end dates of which are set out in the *access arrangement*, which together account for the entire *access arrangement period* and in respect of which a *price list* must be submitted to the *Authority* under either section 8.1 or 8.7.

"proceedings", when used in Chapter 10 and Appendix 5, means any proceedings before the *arbitrator* under this Code whether final or interlocutory, and includes any application in connection with and at any stage of proceedings, and includes the making of an award.

"processing" an *access application* means the performance of all requirements under an *applications and queuing policy* necessary for the making of an *access offer* including engaging in discussions, preparing an initial response and carrying out a preliminary assessment and making an *access offer*.

"proposed access arrangement" means a proposed *access arrangement* that has been submitted by a *service provider* with the *Authority* for *approval* under this *Code*, but which has not been *approved*.

"proposed award", in respect of an arbitration under Chapter 10 which is subject to Subchapter 10.3, means a document provided to the parties to the arbitration under section 10.40(a) which describes in reasonable detail the nature of the *major*

augmentation that the *arbitrator* anticipates it will require the *service provider* to undertake in its award.

"proposed major augmentation" means a *major augmentation* detailed in a *major augmentation proposal* under section 9.11(a) or 9.16(a), as applicable.

"proposed revisions" means proposed revisions to an *access arrangement* that, under section 4.37 or 4.48, have been submitted by a *service provider* to the *Authority* for *approval* under Chapter 4.

"public register" means the register established and *maintained* by the *Authority* under section 14.5.

"publish" means:

(a) where the Minister is required to *publish* a thing — that the Minister must:

(i) provide the thing to the *Coordinator*; and

(ii) procure the *Coordinator* to place the thing on an internet website which is under the *Coordinator's* control;

and

(b) where the *Authority* is required to *publish* a thing — that the *Authority* must:

(i) place the thing on the *public register*; and

(ii) send a notice to each person listed on the *register of interested persons maintained* under section 14.8 in respect of the *network* to which the thing relates advising the person that the thing has been placed on the *public register*.

"queuing dispute" has the meaning given to it in section 10.13.

"reasonable and prudent person" means a person acting in good faith and in accordance with *good electricity industry practice*.

"reasons", in relation to a decision or other determination, means a statement of the decision-maker's reasons for deciding including, as applicable:

(a) findings on material questions of fact relied on by the decision-maker in reaching the decision;

(b) reference to the evidence on which findings of fact are based; and

(c) identification of the steps in the decision-making process, explanation of the link between the findings of fact and the final decision and a description of the role of policy or guidelines in the decision-making process.

"recipient" means, the Minister, *Authority* or a *service provider*, as applicable, when provided with *relevant material*.

"recoverable portion", for *new facilities investment* for a *covered network*, has the meaning given to it in section 6.57.

"redundant capital", for a *covered network*, means an amount determined under section 6.61 to be removed from the *capital base* of the *covered network.*

"reference service" means a *covered service* designated as a reference service in an *access arrangement* under section 5.1(a) for which there is a *reference tariff*, a *standard access contract* and *service standard benchmarks*.

"reference tariff" means the tariff specified in a *price list* for a *reference service*.

{Note: Under section 10.20 an *arbitrator's* award cannot require an *applicant* to pay more than the *reference tariff* for a *reference service*, or the *service provider* to accept less than the *reference tariff* for a *reference service*.}

"register of interested persons" means the register or registers *maintained* by the *Authority* under section 14.8.

"regulatory test" is defined in section 9.3.

"related body corporate" and **"related company"**, in relation to a body corporate, mean a body corporate that is related to the first-mentioned body corporate under the *Corporations Act 2001* of the Commonwealth.

"related business" means the business of *generating*, purchasing or selling electricity, but does not include *generating*, purchasing or selling electricity to the extent necessary:

(a) for the safe and reliable operation of a *covered network*; or

(b) to enable a *service provider* to provide balancing and ancillary services in connection with a *covered network*; or

(c) to comply with an obligation under Part 9 of the Act.

{Note: Part 9 of the Act deals with the wholesale market.}

"relevant material" means information or a document provided to a *recipient* under the Code.

"relocation" means a relocation of capacity from one *connection point* in a *user's access contract* to another *connection point* the *user's access contract* under a *transfer and relocation policy*.

"required augmentation" means an *augmentation* to a *covered network* that needs to be undertaken in order for the *service provider* to provide the *covered services* sought by an *applicant*.

"review" of an *access arrangement* means the process set out in sections 4.46 to 4.52

"revisions commencement date" means a date on which revisions to an *access arrangement* which have been *approved* by the *Authority* commence under section 4.26 (as modified under section 4.52).

"revisions submission date" is the date specified in an *access arrangement* under section 5.29(a) as the date by which the *service provider* must submit its *proposed revisions* to the *access arrangement* to the *Authority* under section 4.48.

"revocation applicant" means a person who applies to the Minister for the Minister to revoke *coverage* of a *covered network* as described in section 3.30.

"revocation application" means an application for revocation of *coverage* made under section 3.7 (as modified under section 3.31).

"revocation decision", for a *revocation application* for a *network*, means either or both of the *draft revocation decision* under section 3.17 (as modified under section 3.31) by the Minister and the *final revocation decision* under section 3.21 by the Minister.

"ringfenced business" is defined in section 13.3.

"ringfencing compliance procedures" means procedures established and maintained by a *service provider* as required by section 13.37(a) to ensure and monitor a *service providers* compliance with section 13.1.

"ringfencing objectives" means the objectives in section 13.11 (as added to under section 13.23 if applicable).

"ringfencing rules" means rules drafted and approved by the *Authority* under section 13.14 as varied from time to time under section 13.18.

"senior staff" means servants, consultants, independent contractors or agents involved strategic decision making, including directors and the executive officer or officers to whom *marketing staff* report either directly or indirectly.

"service" means a *covered service* or an *excluded service*.

"service provider", in relation to a *network*, means a person who owns or operates the *network*.

"service standard benchmarks" means the benchmarks for *service standards* for a *reference service* in an *access arrangement* under section 5.1(c).

"service standard performance report" means a report provided by a *service provider* to the *Authority* under section 11.3.

"service standards" means either or both of the technical standard, and reliability, of delivered electricity.

"service standards adjustment mechanism" has the meaning given to it in section 6.29.

"shared assets" mean those *network assets* which are not *connection assets*.

"specific criterion" means an objective, requirement or factor specified in this Code in relation to a thing (including the making of any decision or the doing, or not doing, of any act), and **"specific criteria"** means any two or more such objectives, requirements or factors specified under this Code in relation to such a thing, whether or not all specified in one provision.

"speculative investment amount", for a *new facility* (if any), is determined under section 6.58.

"stand-alone cost of service provision", in relation to a *user* or group of *users*, a *covered service* and a specified period of time, means that part of *approved total costs* that the *service provider* would incur in providing the *covered service* to the *user* or group of *users*, for the period of time if the *covered service* was the sole *covered service* provided by the *service provider* and the *user* or group of *users* was the sole *user* or group of *users* supplied by the *service provider* during the specified period of time.

"standard access contract" means the terms and conditions for a *reference service* in an *access arrangement* under section 5.1(b).

"standard tariff exit point", in section 7.7, means an *exit point* in respect of which the contracted maximum demand under a contract for *services* is less than 1 MVA.

"standard tariff user", in section 7.7, means a *user* who transfers electricity out of a *network* at a *standard tariff exit point*.

"statutory instruments" means all relevant instruments made under a *written law* including all directions, notices, orders and other instruments given or made under a *written law* and includes, as existing from time to time:

(a) orders made under section 8 of the Act; and

(b) licences granted, renewed or transferred under section 19 of the Act; and

(c) standard form contracts approved under section 51 of the Act; and

(d) orders made under section 55(7) of the Act; and

(e) approved policies as defined in section 62 of the Act; and

(f) last resort supply plans approved under section 73 of the Act as amended under sections 74 and 75 of the Act; and

(g) market rules as defined in section 121(1) of the Act.

"submission deadline", in relation to a *service provider's* submission of a *proposed access arrangement* for a *covered network*, means the date which is six months after the *network* becomes *covered.*

"supplementary matter" has the meaning given to it in section 5.27 and *supplementary matters* must be dealt with in an *access arrangement* under section 5.1(k).

"surplus", for a *covered network* for an *access arrangement period*, arises when the conditions described in section 6.23 are satisfied.

"SWIS" means the "South West interconnected system" as defined in the Act.

{Note: Some parts of the SWIS are owned by the Western Power Corporation and some are privately owned.

As at the date of this Code the definition in the Act was:

' the interconnected transmission and distribution systems, generating works and associated works –

(a) located in the South West of the State and extending generally between Kalbarri, Albany and Kalgoorlie; and

(b) into which electricity is supplied by –

(i) one or more of the electricity generation plants at Kwinana, Muja, Collie and Pinjar; or

(ii) any prescribed electricity generation plant. '}

"target revenue", for a *covered network* for an *access arrangement period*, is determined in accordance with section 6.4(a).

"target revisions commencement date" is the date specified in an *access arrangement* under section 5.29(b) as the target date for the *revisions commencement date*.

"tariff", for a *covered service*, means the criteria that determine the *charge* that is payable by a *user* to the *service provider*.

"technical rules", for a *network*, means the technical rules (if any) in effect for the *network* under Chapter 12.

"technical rules committee", in relation to a *network* or *interconnected system*, means the current committee, if any, established under section 12.16 for the *network* or *interconnected system*.

"technical rules start date" for the *technical rules* for a *network* is the date on which the *technical rules* take effect and is specified by the *Authority* under section 12.15.

"test application threshold", for a *modified test* in an *access arrangement*, means the threshold for *new facilities investment* below which the *modified test* applies.

"transfer" refers to a transfer of a *user's access rights* to another person and includes an assignment or novation of *access rights* under a *transfer and relocation policy*.

"transfer and relocation policy" means a policy in an *access arrangement* under section 5.1(i) which specifies a *user's* rights to *transfer* its *access rights* to another person and *relocate* capacity from one *connection point* in its *access contract* to another *connection point* in its *access contract*.

"transmission system" means any apparatus, equipment, plant or buildings used, or to be used, for, or in connection with, the transportation of electricity at nominal voltages of 66 kV or higher.

"transport" includes transmit and distribute.

"trigger event" is a set of one or more circumstances specified in an *access arrangement* under section 5.1(l)(ii), the occurrence of which requires a *service provider* to submit *proposed revisions* to the *Authority* under section 4.37.

"user" means a person, including a *generator* or a *consumer*, who is party to an contract for services with a *service provider*, and under section 13.4(e) includes an *other business* as a party to a *deemed access contract*.

"weighted average cost of capital", in relation to a *covered network*, is expressed as a percentage and means a weighted average of the cost of debt and the cost of equity as calculated under section 6.64.

"workers" of a person means the directors, officers, servants, employees, agents, sub-contractors and consultants of the person.

"written law" means:

(a) all Western Australian Acts and all Western Australian subsidiary legislation for the time being in force; and

(b) all Commonwealth Acts and all Commonwealth subsidiary legislation for the time being in force, where the term "subsidiary legislation" has the meaning given to it under the *Interpretation Act 1984*, if "Commonwealth Act" were substituted for "written law".

Interpretation

1.4 This Code is a written law under the *Electricity Industry Act 2004*, and unless the contrary intention is apparent the *Interpretation Act 1984* applies to it.

1.5 In this Code, unless the contrary intention is apparent:

(a) **"including"** and similar expressions are not words of limitation; and

(b) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and

(c) a reference to a *law* includes any amendment or re-enactment of it that is for the time being in force, and includes all *laws* made under it from time to time; and

(d) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or expressions may be defined in section 1.3 or elsewhere, and in interpreting this Code the fact that italic typeface has or has not been applied to a word or expression is to be disregarded, to avoid doubt, nothing in this section 1.5(d) limits the application of section 1.3; and

(e) where information in this Code is set out in braces (namely "{" and "}"), whether or not preceded by the expression "Note", "Outline" or "Example", the information:

(i) is provided for information only and does not form part of this Code; and

(ii) is to be disregarded in interpreting this Code; and

(iii) might not reflect amendments to this Code or other documents or *written laws*,

and

(f) a reference to:

(i) this Code includes any Appendix to this Code; and

(ii) a section, Chapter or Appendix is a reference to a section of, Chapter of or Appendix to this Code, and

(iii) a clause is a reference to a clause in an Appendix to this Code;

and

(g) without limiting section 1.4:

(i) where In this Code the word “may” is used in conferring a power, such word shall be interpreted to imply that the power may be exercised or not, at discretion;

(ii) where in this Code the word “must” is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

Chapter 2 – General Principles

Code objective

2.1 The objective of this Code (**"Code objective"**) is to promote the economically efficient:

(a) investment in; and

(b) operation of and use of,

networks and *services* of *networks* in Western Australia in order to promote competition in markets upstream and downstream of the *network*s.

{Note: This Code sets out more specific objectives that also apply in relation to the performance of certain functions under the Code, for example, section 6.4 sets out objectives for the *price control* in an *access arrangement*.}

2.2 The Minister, the *Authority* and the *arbitrator* must have regard to the *Code objective* when performing a function under this Code whether or not the provision refers expressly to the *Code objective*.

Code objective with other objectives, requirements and factors etc

2.3 Where this Code specifies one or more *specific criteria* in relation to a thing (including the making of any decision or the doing, or not doing, of any act), then:

(a) subject to section 2.3(b), the *specific criteria* and the *Code objective* all apply in relation to the thing; and

(b) subject to section 2.4, to the extent that a *specific criterion* and the *Code objective* conflict in relation to the thing, then:

(i) the *specific criterion* prevails over the *Code objective* in relation to the thing; and

(ii) to the extent that the *specific criterion* conflicts with one or more other *specific criteria* in relation to the thing, the *Code objective* applies in determining how the *specific criteria* can best be reconciled and which of them should prevail.

2.4 If the *Code objective* is specified in a provision of this Code as a *specific criterion*, then the *Code objective* is to be treated as being also a *specific criterion* for the purposes of section 2.3, but to the extent that the *Code objective* conflicts with one or more other *specific criteria* the *Code objective* prevails.

Freedom to contract

2.5 Nothing in this Code except:

(a) an *applications and queuing policy* in an *access arrangement*; and

(b) the *ringfencing objectives* and any *ringfencing rules* approved for a *network* by the *Authority* under Chapter 13; and

(c) any applicable *technical rules*,

limits:

(d) the *services* a *service provider* may agree to provide to a *user* or *applicant*; or

(e) the terms for, or connected with, the provision of *services* which may be agreed between a *service provider* and a *user* or *applicant*; or

(f) the *covered services* which may be the subject of an *access dispute* or award under Chapter 10; or

(g) the terms for, or connected with, the provision of *covered services* which may be the subject of an *access dispute* or award under Chapter 10.

2.6 Nothing in this Code or an *access arrangement* prevails over or modifies the provisions of any contract for *services* provided by means of a *network*, except for:

(a) if an *access arrangement* is in effect for the *network* — the *applications and queuing policy;* and

(b) the *ringfencing objectives*, to the extent that they apply to the *network*, and any *ringfencing rules* in effect for the *network*; and

(c) any provisions of the *technical rules* which by this Code are expressed to prevail over such a contract; and

{Note: See section 12.5.}

(d) subject to section 10.32(a), an *award* by the *arbitrator*.

Service provider to use reasonable endeavours to provide access to covered services

2.7 A *service provider* for a *covered network* must use all reasonable endeavours to accommodate an *applicant's*:

(a) requirement to obtain *covered services*; and

(b) requirements in connection with the negotiation of an *access contract*.

2.8 Without limiting section 2.7, a *service provider* must:

(a) comply with the *access arrangement* for its *covered network* and must expeditiously and diligently *process access applications*; and

(b) negotiate in good faith with an *applicant* regarding the terms for an *access contract*; and

(c) to the extent reasonably practicable in accordance with *good electricity industry practice*, permit an *applicant* to acquire a *covered service* containing only those elements of the *covered service* which the *applicant* wishes to acquire; and

(d) to the extent reasonably practicable, specify a separate *tariff* for an element of a *covered service* if requested by an *applicant*, which *tariff* must be determined in accordance with sections 10.23 and 10.24; and

(e) when forming a view as to whether all or part of any proposed *new facilities investment* meets the *new facilities investment test*, form that view as a *reasonable and prudent person*.

Requirement to undertake augmentations and funding of augmentations

2.9 If a *service provider* will need to undertake an *augmentation* (**"required augmentation"**) in order to provide a *covered service* sought in an *access application* then:

(a) if all of the *forecast new facilities investment* for the *required augmentation* meets the *new facilities investment test*, the *service provider* must undertake and fund the *augmentation*; and

(b) if only part or none of the *forecast new facilities investment* for the *required augmentation* meets the *new facilities investment test* and the *applicant*

provides the *capital contribution* for the *required augmentation* determined under the *capital contributions policy*, the *service provider* must undertake the *required augmentation* and fund the part which meets the *new facilities investment test*; and

(c) if only part or none of the *forecast new facilities investment* for the *required augmentation* meets the *new facilities investment test* and the *applicant* does not provide the *capital contribution* for the *required augmentation* determined under the *capital contributions policy*, then this Code does not compel the *service provider* to undertake or fund the *required augmentation*.

Chapter 3 – Coverage

Subchapter 3.1 – Covered networks

SWIS is covered

3.1 The portions of the *SWIS* which are owned by Western Power Corporation are a *covered network* from the *Code commencement date*, unless *coverage* has subsequently been revoked under section 3.30.

Other networks may be covered

3.2 A *network* other than the *covered network* that is *covered* under section 3.1 may become *covered* after the *Code commencement date* where a person make a *coverage application* in respect of the *network* and the Minister decides under section 3.3(a) that the *network* should be *covered*.

Subchapter 3.2 – Criteria for coverage

Minister's decision on coverage

3.3 Subject to section 3.12Minister must make a *final coverage decision* or *draft coverage decision* which must be either:

(a) that the *network* be *covered*; or

(b) that the *network* not be *covered*.

3.4 If a *coverage decision* is that a *network* be *covered*, the *coverage decision* may *cover* the *network* to a greater or lesser extent than requested in the *coverage application* if, having regard to the part of the *network* that is necessary to provide *covered services* that *applicants* may seek, the Minister considers that doing so is consistent with the *Code objective*.

Coverage criteria

3.5 A *coverage decision* must be that a *network* be *covered* if the Minister determines an affirmative answer to each of the following questions:

(a) Would *access* (or increased *access*) to *covered services* provided by means of the *network* promote a material increase in competition in at least one market (whether or not in Western Australia) other than the market for the *covered services* provided by means of the *network*?

(b) Would it be uneconomic for anyone to develop another *network* to provide the *covered services* provided by means of the *network*?

(c) Would *access* (or increased *access*) to the *covered services* provided by means of the *network* not be contrary to the public interest?

Factors the Minister must have regard to

3.6 The Minister must when exercising the Minister's functions under this Chapter 3 have regard to the geographical location of the *network* and the extent (if any) to which the *network* is interconnected with other *networks.*

3.7 Section 3.6 does not limit the factors to which the Minister may have regard.

Subchapter 3.3 – Coverage process

Applications for coverage

3.8 A *coverage applicant* may make a *coverage application* to the Minister requesting that the whole or any part of a *network* be *covered*.

3.9 A *coverage applicant* may withdraw its *coverage application* by notice to the Minister at any time before the Minister makes a *final coverage decision*.

3.10 A *coverage application* must be made in accordance with any guidelines which may be developed and *published* by the Minister concerning the form and content of *coverage applications* and specifying the amount of any fee to be paid on the making of a *coverage application*.

3.11 Within 10 *business days* after receipt of the *coverage application* inform the *service provider* and each other person known to the Minister whom the Minister believes has a sufficient interest in the matter that the Minister has received the *coverage application*.

3.12 Minister may dismiss a *coverage application* if the Minister receives a *coverage application* which the Minister considers to have been made on trivial or vexatious grounds, then, without further consideration, the Minister must dismiss the *coverage application.*

Invitation for submissions and issues paper

3.13 The Minister must *publish* and *advertise*:

(a) a *coverage application*, stating how copies of the *coverage application* may be obtained; and

(b) an invitation for submissions on the *coverage application*,

as soon as practicable and in any event within 10 *business days* after the *coverage application* is received by the Minister.

3.14 The Minister may produce and *publish* an issues paper examining the issues raised in connection with a *coverage application* within 20 *business days* after the invitation for submissions on the *coverage application* is *advertised* under section 3.13(b).

3.15 The Minister must arrange to provide a copy of a *coverage application* to any person who requests a copy within 5 *business days* after the person makes the request and pays any reasonable fee required by the Minister.

First round public submissions

3.16 A person may make a submission to the Minister on a *coverage application* within the later of:

(a) 15 *business days* after an invitation for submissions on the *coverage application* is *advertised* under section 3.13(b); and

(b) 10 *business days* after an issues paper is *published* in respect of the *coverage application* under section 3.14

Draft coverage decision by the Minister

3.17 Subject to section 3.24, the Minister must consider any submissions made under section 3.16 on a *coverage application* and must make a *draft coverage decision* either:

(a) that the *network* be *covered*; or

(b) that the *network* not be *covered*.

3.18 The Minister must, within 15 *business days* (but not earlier than 10 *business days*) after the due date for submissions under section 3.16, *publish* and *advertise* the *draft coverage decision* and provide a copy of the *draft coverage decision* and *reasons* to the *coverage applicant* and the *service provider*.

3.19 The Minister must *publish* and *advertise* an invitation for submissions on a *draft coverage decision* at the same time as the Minister *publishes* the *draft coverage decision*.

Second round public submissions

3.20 A person may make a submission to the Minister on a *draft coverage decision* within 15 *business days* after the invitation for submissions on the *draft coverage decision* is *advertised* under section 3.19.

Final coverage decision by Minister

3.21 Subject to section 3.24, the Minister must consider any submissions made under section 3.20 on a *draft coverage decision* and must make a *final coverage decision* either:

(a) that the *network* be *covered*; or

(b) that the *network* not be *covered*.

3.22 The Minister must, within 15 *business days* (but not earlier than 10 *business days*) after the due date for submissions under section 3.20, *publish* and *advertise* the *final coverage decision* and provide a copy of the *final coverage decision* and *reasons* to the *coverage applicant* and the *service provider*.

Final coverage decision has effect

3.23 The Minister must specify a date in the *final coverage decision* on which the *final coverage decision* will have effect, which date must not be earlier than 10 *business days* after the day the *final coverage decision* is made.

Late submissions

3.24 The Minister may consider any submission received pursuant to an invitation for submissions after the time for making the submission has expired.

Reasons

3.25 At the time of *advertising* and *publishing* a *coverage decision* the Minister must also *advertise* and *publish* the *reasons* for the *coverage decision*.

Service provider agrees to network coverage

3.26 At any time prior to the Minister making a *final coverage decision* for a *network*, the *service provider* may notify the Minister that it agrees to *coverage* of the *network* to the same extent as specified in the *coverage application*, in which case the Minister may then make a *final coverage decision* that the *network* be *covered* to the same extent as specified in the *coverage application* and if the Minister does so:

(a) the Minister is not required to consider the matters set out in sections 3.5 to 3.6; and

(b) the Minister is not required to comply with the process in sections 3.13 to 3.22.

Extensions of time under this Chapter

3.27 Subject to section 3.28, the Minister may extend any deadline, or provide for stages in the making of a *coverage decision* in addition to those provided for, in this Chapter 3, but only if, and only to the extent that, the Minister first determines that:

(a) a longer period of time is essential for due consideration of all the matters under consideration or satisfactory performance of the relevant obligation, or both; and

(b) the Minister has taken all reasonable steps to fully utilise the times and processes provided for in this Chapter 3.

3.28 The Minister:

(a) must not exercise the power in section 3.27 to extend any deadline unless, before the day on which the time would otherwise have expired, the Minister *advertises* and *publishes* the Minister's decision to extend the deadline; and

(b) may (subject to section 3.29) exercise the power in section 3.27 to extend a deadline on more than one occasion but the total time for the extension of a deadline cannot exceed the period originally specified in this Chapter 3 for the relevant deadline.

3.29 The Minister must not extend the deadline specified in section 3.15.

Subchapter 3.4 – Revocation of coverage

Revocation of coverage

3.30 A *covered network* ceases to be *covered* if a *revocation applicant* makes a *revocation application* to the Minister for *coverage* of the *covered network* to be revoked and the Minister makes a *final revocation decision* that the *network* not be *covered*.

3.31 The process for the Minister to decide on revocation of *coverage* is the same as the process for a decision on *coverage* outlined in sections 3.9 to 3.29, with appropriate modifications including replacing a reference to:

(a) "*coverage application*" with a reference to "*revocation application*"; and

(b) "*coverage decision*" with a reference to "*revocation decision*"; and

(c) "*draft coverage decision*" with a reference to *draft revocation decision*; and

(d) "*final coverage decision*" with a reference to "*final revocation decision*"; and

(e) "*coverage*" with a reference to "revocation of *coverage*"; and

(f) "*coverage applicant*" with a reference to "*revocation applicant*".

Subchapter 3.5 – Miscellaneous

Advertising

3.32 Where the Minister is required to *advertise* a thing under this Chapter 3, the *advertisement* must contain a description of the *network* the subject of the *advertisement*.

Publishing

3.33 The Minister must *publish* all submissions made in connection with a *coverage application* or *revocation application*.

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}

Automatic coverage of augmentations

3.34 An *augmentation* of a *covered network* is part of the *covered network* from the time the *augmentation* is commissioned.

3.35 Section 3.34 does not limit section 3.30.

Notification of network modification

3.36 A *service provider* must:

(a) as soon as practicable after a *network modification* which meets the *notification threshold* has occurred, notify the *Authority* of the details of the *network modification*; and

(b) within 30 *business days* after receiving a request from the *Authority*, and within 30 *business days* after the end of a year, provide the *Authority* with an updated description of the *covered network*, identifying all significant *network modifications* (whether or not they meet the *notification threshold*) that have occurred since the last description,

and the *Authority* must promptly after notification amend the description of the *covered network* on the *public register* to reflect the *network modification* or *network modifications*.

{Note: The *Authority* is required to establish and *maintain* a *public register* under section 14.5.}

3.37 For the purposes of section 3.36, the *notification threshold* for a *network modification* is:

(a) for an *augmentation* — an *augmentation* requiring *new facilities investment* of more than $15 million (*CPI adjusted*); or

(b) for a disposal or decommissioning — a disposal or decommissioning involving *network assets* that are valued by the *service provider* as a *reasonable and prudent person* at more than $15 million (*CPI adjusted*).

Chapter 4 – Access Arrangements: Approval and Review

Subchapter 4.1 – Approval process

{Note: Appendix 1 contains a flowchart which provides an outline of the *access arrangement approval* process.}

Submission of first access arrangement

4.1 The service provider of a covered network must submit a proposed access arrangement and access arrangement information to the Authority by the submission deadline.

{Note: Sections 14.16 to 14.21 apply where there are two service providers for a *covered network*, for example because one person owns it and another operates it.}

{Note: If a *service provider* does not submit a *proposed access arrangement* for the *first access arrangement period* by the *submission deadline* sections 4.55 to 4.58 will apply.}

{Note: A *service provider* that submits an *access arrangement* and *access arrangement information* under section 4.1 must also submit proposed *technical rules* under Chapter 12 to be processed in parallel with the *access arrangement*.}

Access arrangement information

4.2 *Access arrangement information* must enable the *Authority*, *users* and *applicants* to:

(a) understand how the *service provider* derived the elements of the *proposed access arrangement*; and

(b) form an opinion as to whether the *proposed access arrangement* complies with the Code.

4.3 *Access arrangement information* must include:

(a) information detailing and supporting the *price control* in the *access arrangement*; and

(b) information detailing and supporting the *pricing methods* in the *access arrangement*; and

(c) if applicable, information detailing and supporting the measurement of the components of *approved total costs* in the *access arrangement*; and

(d) information detailing and supporting the *service provider's* system capacity and volume assumptions.

4.4 If a *service provider* submits a revised *proposed access arrangement* under section 4.16 or an *amended proposed access arrangement* under section 4.19, the *service provider* must at the same time submit appropriately amended *access arrangement information*.

4.5 The *Authority* may from time to time *publish* guidelines setting out in further detail what information must be included in *access arrangement information* in order for the *access arrangement information* to comply with sections 4.2 and 4.3, either generally or in relation to a particular matter or circumstance.

4.6 Subject to sections 4.2 and 4.3, *access arrangement information* submitted more than three months after guidelines are *published* under section 4.4 must comply with the guidelines.

4.7 The *Authority* may waive the requirement for a *service provider* to comply with one or more guidelines *published* under section 4.4 if it is satisfied that doing so will better achieve the *Code objective*.

4.8 The *Authority* may, to the extent necessary to make *access arrangement information* comply with sections 4.2 and 4.3, require the *service provider* to amend and resubmit *access arrangement information* to the *Authority* within a reasonable time specified by the *Authority*, which time must not exceed 5 *business days*.

Invitation for submissions and issues paper

4.9 The *Authority* must *publish* and *advertise*:

(a) a *proposed access arrangement*; and

(b) an invitation for submissions on the *proposed access arrangement*,

as soon as practicable and in any event within 5 *business days* after the *proposed access arrangement* is submitted to the *Authority*.

4.10 The *Authority* may produce and *publish* an issues paper examining the issues raised in connection with the *proposed access arrangement* within 20 *business days* after the invitation for submissions on the *proposed access arrangement* is *advertised* under section 4.9(b).

First round public submissions

4.11 A person may make a submission to the *Authority* on the *proposed access arrangement* within the later of:

(a) 30 *business days* after the invitation for submissions on the *proposed access arrangement* is *advertised* under section 4.9(b); and

(b) 10 *business days* after an issues paper is *published* in respect of the *proposed access arrangement* under section 4.10.

{Note: Under section 14.5(d)(iii), the *Authority* must place each submission made under section 4.11 on the *public register*.}

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}

Draft decision by Authority

4.12 Subject to section 4.27, the *Authority* must consider any submissions made under section 4.11 on a *proposed access arrangement* and must make a *draft decision* either:

(a) to *approve* the *proposed access arrangement*; or

(b) to not *approve* the *proposed access arrangement*, in which case the Authority must in its reasons provide details of the amendments required to the *proposed access arrangement* before the *Authority* will *approve* it.

4.13 The *Authority* must, within 42 *business days* after the due date for submissions under section 4.11, *publish* and *advertise* the *draft decision*.

4.14 The *Authority* must *publish* and *advertise* an invitation for submissions on a *draft decision* at the same time as it *publishes* the *draft decision*.

Second round public submissions

4.15 A person may make a submission to the *Authority* on a *draft decision* within 20 *business days* after the invitation for submissions on the *draft decision* is *published* under section 4.14.

{Note: Under section 14.5(d)(iii), the *Authority* must place each submission made under section 4.15 on the *public register*.}

{Note: A person may state that a submission or part of a submission is confidential in which case sections 14.12 to 14.15 apply.}

Revised proposed access arrangement

4.16 The *service provider's* submission on a *draft decision* under section 4.15 may include a revised *proposed access arrangement*, and if so a reference in this Code to a "*proposed access arrangement*" is to be read as though it was a reference to a "revised *proposed access arrangement*".

Final decision by Authority

4.17 Subject to section 4.27, the *Authority* must consider any submissions made under section 4.15 on the *draft decision* and must make a *final decision* either:

(a) to *approve* the *proposed access arrangement*; or

(b) to not *approve* the *proposed access arrangement*, in which case the *Authority* must in its *reasons* for the *final decision* provide details of the amendments required to the *proposed access arrangement* before the *Authority* will *approve* it.

4.18 The *Authority* must, within 30 *business days* after the due date for submissions under section 4.15, *publish* and *advertise* the *final decision*.

Amended proposed access arrangement

4.19 If the *Authority's final decision* is to not *approve* the *proposed access arrangement*, then the *service provider* may submit an *amended proposed access arrangement* to the *Authority* within 20 *business days* after the *final decision* is *published* and the *Authority* must *publish* and *advertise* the *amended proposed access arrangement*.

4.20 If a *service provider* submits an *amended proposed access arrangement* to the Authority under section 4.19, then, unless the contrary intention is apparent, a reference in this Code to a "*proposed access arrangement*" is to be read as though it was a reference to an "*amended proposed access arrangement*".

Further final decision by Authority

4.21 If the *Authority's final decision* is to not *approve* a *proposed access arrangement*, then, subject to section 4.23, the *Authority* must make, *publish* and *advertise* a *further final decision* either:

(a) to *approve*; or

(b) to not *approve*,

the *amended proposed access arrangement* or (if the *service provider* did not submit an *amended proposed access arrangement*) the *proposed access arrangement*.

4.22 The time for complying with section 4.21 is:

(a) if the *service provider* submits an *amended proposed access arrangement* — within 15 *business days* after it is submitted; and

(b) otherwise — within 25 *business days* after the *final decision* is *published*.

4.23 If the *Authority's final decision* is to not *approve* a *proposed access arrangement* and the *service provider* submits an *amended proposed access arrangement* and either:

(a) the *amended proposed access arrangement* implements the amendments required under section 4.17(b); or

(b) the *amended proposed access arrangement* does not implement the amendments required under section 4.17(b) but otherwise (in the *Authority's* view) adequately addresses the matters which prompted the *Authority* to require the amendments,

then the *Authority's further final decision* must be to *approve* the *amended proposed access arrangement* unless:

(c) *approving* the *amended proposed access arrangement* would be inconsistent with the *Code objective*; and

(d) the *Authority* determines that the advantages of not *approving* the *amended proposed access arrangement* outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.

Authority drafting and approving own access arrangement if further final decision is to not approve

4.24 If the *Authority's further final decision* is not to *approve* a *service provider's access arrangement*, then the *Authority* must draft, *approve*, *publish* and *advertise* its own *access arrangement*, which must be:

(a) based on the *amended proposed access arrangement* or (if the *service provider* did not submit an *amended proposed access arrangement*) the *proposed access arrangement*; and

(b) amended from the basis in section 4.24(a) only to the extent necessary to satisfy the criteria for *approval* in section 4.28.

4.25 The *Authority* must comply with section 4.24 within 20 *business days* after a *further final decision* is *published*.

Access arrangement start date

4.26 When the *Authority*:

(a) makes a *final decision* or *further final decision* to *approve* a *proposed access arrangement*; or

(b) *approves* its own *access arrangement* under section 4.24,

the *Authority* must specify an *access arrangement start date* which must:

(c) be consistent with the *Code objective*; and

(d) be at least 20 *business days* after the *final decision*, *further final decision* or the *Authority's* own *access arrangement* under section 4.24 is *published*.

Subchapter 4.2 – Criteria for approval

Reasons

4.27 Where the *Authority* makes a *draft decision*, *final decision* or *further final decision*, the *Authority* must provide and *publish reasons* for the *draft decision*, *final decision* or *further final decision*.

Criteria for approval of a proposed access arrangement

4.28 Subject to section 4.32, when making a *draft decision*, *final decision* or *further final decision*, the *Authority* must determine whether a *proposed access arrangement* meets the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable) and:

(a) if the *Authority* considers that:

(i) the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable) are satisfied — it must *approve* the *proposed access arrangement*; and

(ii) the *Code objective* or a requirement set out in Chapter 5 (or Chapter 9, if applicable) is not satisfied — it must not *approve* the *proposed access arrangement*;

and

(b) to avoid doubt, if the *Authority* considers that the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable) are satisfied, it must not refuse to *approve* the *proposed access arrangement* on the ground that another form of *access arrangement* might better or more effectively satisfy the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable).

{Note: The effect of section 4.28 is to make the *Authority's* decision in relation to a *proposed access arrangement* a "pass or fail" assessment. The intention is that, if a *proposed access arrangement* meets the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable), the *Authority* should not refuse to *approve* it simply because the *Authority* considers that some other form of *access arrangement* might be even better, or more effective, at meeting the *Code objective* and the requirements set out in Chapter 5 (and Chapter 9, if applicable).}

4.29 The *Authority*:

(a) must not *approve* a *proposed access arrangement* which omits something listed in section 5.1; and

(b) may in its discretion *approve* a *proposed access arrangement* containing something not listed in section 5.1; and

(c) must not refuse to *approve* a *proposed access arrangement* on the ground that it omits something not listed in section 5.1.

Factors the Authority must have regard to

4.30 In determining whether to *approve* a *proposed access arrangement*, the *Authority* must have regard to following:

(a) the geographical location of the *network* and the extent (if any) to which the *network* is interconnected with other *networks*; and

(b) contractual obligations of the *service provider* or other persons (or both) already using the *network*; and

(c) the operational and technical requirements necessary for the safe and reliable operation of the *network*; and

(d) to the extent relevant — *written laws* and *statutory instruments*.

4.31 Section 4.30 does not limit the factors the *Authority* may have regard to.

4.32 The *Authority* must not *approve* a *proposed access arrangement* which would, if *approved*, require the *service provider* or another person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.

Information to be provided by Authority if it requires change to price control or pricing methods

4.33 If the *Authority*:

(a) makes a *draft decision* or *final decision* to not *approve* a *proposed access arrangement* which requires amendments to the *price control* or *pricing methods* in the *proposed access arrangement*; or

(b) *approves* its own *access arrangement* under section 4.24 or 4.55 containing *price control* or *pricing methods* which differ from those in the *proposed access arrangement*,

(with the *price control* or *pricing methods* as required to be amended, or as *approved*, respectively, being called in this section the **"alternative pricing provisions"**) then the *Authority's reasons* for the relevant decision must:

(c) provide a detailed description of the *alternative pricing provisions*; and

(d) give *reasons* for the *Authority's* choice of *alternative pricing provisions*; and

(e) provide sufficient information and data to enable the *service provider* to replicate the *Authority's* work in selecting and developing the *alternative pricing provisions*.

Access arrangement must not override prior contractual rights

4.34 Subject to section 4.35, the *Authority* must not *approve* a *proposed access arrangement* which would, if *approved*, have the effect of depriving a person of a contractual right that existed prior to the earlier of the *submission deadline* for the *proposed access arrangement* and the date on which the *proposed access arrangement* was submitted.

4.35 Section 4.34 does not apply to protect an *exclusivity right* which arose on or after 30 March 1995.

Conditional approval – price lists

4.36 The *Authority* must, as a condition of *approval* of a *proposed access arrangement*, require a *service provider* to submit each *price list* under the *access arrangement* to the *Authority* under section 8.1 for *approval*, if:

(a) the *service provider* requests such a condition; or

(b) the *Authority* considers that the submission of *price lists* under the *access arrangement* to the *Authority* under section 8.1 for *approval* would improve the operation of the *access arrangement*.

Subchapter 4.3 – Revision and review

Trigger events

4.37 If an *access arrangement*:

(a) specifies one or more *trigger events*; and

(b) the conditions of a *trigger event* are satisfied,

then:

(c) as soon as practicable, the *service provider* must notify the *Authority* that the conditions of the *trigger event* are satisfied; and

(d) the *service provider* must submit *proposed revisions* to the *Authority* by the *designated date*; and

(e) the *Authority* must consider the *proposed revisions* in accordance with sections 4.46 to 4.52.

Revision of price control or pricing methods during the term of an access arrangement

4.38 The *Authority* may by notice to a *service provider* vary the *price control* or *pricing methods* in an *access arrangement* before the next *revisions commencement date*, but only if the *Authority* determines that:

(a) its *approval* of the *access arrangement* was based on materially false, misleading or deceptive information provided to it by the *service provider*, and the *Authority* considers that the impact of the materially false, misleading or deceptive information is of a sufficient magnitude to warrant making the variation before the end of the *access arrangement period*; or

(b) either:

(i) its *approval* of the *access arrangement* contains a material error or was based on materially false, misleading or deceptive information provided to it by a person other than the *service provider*; or

(ii) significant unforeseen developments have occurred that are:

A. outside the control of the *service provider*; and

B. not something that the *service provider*, acting in accordance with *good electricity industry practice*, should have been able to prevent or overcome,

and the impact of the error, materially false, misleading or deceptive information or unforeseen developments is so substantial that the *Authority* considers that the advantages of making the variation before the end of the *access arrangement period* outweigh the disadvantages, having regard to the impact of the variation on regulatory certainty.

4.39 Before giving a notice under section 4.38, the *Authority* must consult the public in accordance with Appendix 7.

4.40 The *Authority* must *publish* a notice given under section 4.38.

Revision of access arrangement if Appendix 2, Appendix 3 or Appendix 4 are amended

4.41 Subject to section 4.42, if there is a *Code change*, the *Authority* may by notice to a *service provider* vary its *access arrangement* in one or more of the following ways:

(a) if the *access arrangement* incorporates some or all of the terms of the *model applications and queuing policy* — vary the *access arrangement* to incorporate any relevant amendments to Appendix 2 made by the *Code change*; or

(b) if the *access arrangement* incorporates some or all of the terms of the *model standard access contract* — vary the *access arrangement* to incorporate any relevant amendments to Appendix 3 made by the *Code change*; or

(c) if the *access arrangement* incorporates some or all of the terms of the *model capital contributions policy* — vary the *access arrangement* to incorporate any relevant amendments to Appendix 4 made by the *Code change*.

4.42 Before giving a notice under section 4.41, the *Authority* must determine whether the advantages of varying the *access arrangement* under section 4.41 outweigh the disadvantages, in particular the disadvantages associated with decreased regulatory certainty and increased regulatory cost and delay.

4.43 The *Authority*:

(a) may consult the public under Appendix 7; and

(b) must consult the *service provider*,

before giving a notice under section 4.41.

4.44 The *Authority* must *publish* a notice given under section 4.41.

4.45 Nothing in section 4.41 limits the matters which may be specified as *trigger events* in an *access arrangement*.

Review of access arrangement

4.46 An *access arrangement* continues in effect from the *access arrangement start date* until the *network* ceases to be a *covered network*.

{Note: The revision of an *access arrangement* does not create a new *access arrangement* but operates as an amendment to the *access arrangement.* Accordingly, in a subsequent *access arrangement period* the original *access arrangement* continues to have effect, but in a revised form.}

4.47 An *access arrangement* may only be amended in accordance with this Chapter 4.

4.48 The *service provider* of a *covered network* must submit *proposed revisions* and revised *access arrangement information* to the *Authority* by the *revisions submissions date* specified in the *access arrangement.*

4.49 If a *service provider* has failed to submit *proposed revisions* to the *Authority* by the *revisions submissions date* then the *Authority* may *publish* a notice stating that if, by a specified time, the *service provider* has not submitted *proposed revisions* to the *Authority*, the *Authority* will draft, *approve*, *publish* and *advertise* its own *proposed revisions* for the *covered network*.

4.50 If a *service provider* has not submitted *proposed revisions* to the *Authority* by the time specified in a notice under section 4.49, the *Authority* may draft, *approve*, *publish* and *advertise* its own *proposed revisions* for the *covered network*.

4.51 The *Authority* must consult the public under Appendix 7 before *approving* its own *proposed revisions* under section 4.50.

4.52 Sections 4.2 to 4.23 and 4.26 to 4.36 apply to the *Authority's* consideration of *proposed revisions* submitted by a *service provider* under section 4.48 with appropriate modifications including replacing a reference to:

(a) *"proposed access arrangement"* with a reference to "*proposed revisions"*; and

(b) *"amended proposed access arrangement"* with a reference to *"amended proposed revisions"*; and

(c) "*access arrangement start date*" with a reference to *"revisions commencement date"*.

Subchapter 4.4 – Miscellaneous

Late submissions

4.53 The *Authority* may consider any submission made pursuant to an invitation for submissions after the time for making the submission has expired.

No confidentiality for certain documents

4.54 Where this Code requires the *Authority* to *publish* or *advertise*:

(a) a *proposed access arrangement*, a revised *proposed access arrangement*, an *amended proposed access arrangement* or an *access arrangement*; or

(b) *proposed revisions*; or

(c) access arrangement information,

(each of which is a **"relevant document"**) then the *Authority* must *publish* or *advertise*, as applicable, a *relevant document* despite any claim of confidentiality made to the *Authority* in respect of the *relevant document*.

Authority drafting and approving own access arrangement if no access arrangement submitted

4.55 If, for the *first access arrangement period*, a *service provider* has failed to submit a *proposed access arrangement* to the *Authority* by the *submission deadline* then the *Authority* must *publish* a notice stating that if, within 20 *business days* the *service provider* has not submitted a *proposed access arrangement* to the *Authority*, the *Authority* will draft, *approve*, *publish* and *advertise* its own *access arrangement* for the *covered network*.

4.56 If a *service provider* has not submitted a *proposed access arrangement* to the *Authority* within 20 *business days* of the *publishing* of a notice under section 4.55, the *Authority* must, within 12 months after the *submission deadline*, draft, *approve*, *publish* and *advertise* its own *access arrangement* for the *covered network*.

4.57 The *Authority* must consult the public under Appendix 7 before drafting, *approving*, *publishing* and *advertising* its own *access arrangement* under section 4.56.

4.58 If the *Authority* drafts, *approves*, *publishes* and *advertises* its own *access arrangement* for a *covered network* under section 4.56, it must also draft, *approve* and *publish access arrangement information* for the *covered network*.

Interim access arrangement in the event of delay

4.59 If, for the *first access arrangement period*:

(a) a *service provider* has submitted a *proposed access arrangement*; but

(b) by 12 months after the *submission deadline* no *access arrangement* has been *approved* under this Chapter 4,

then, as soon as practicable and in any event within 18 months after the *submission deadline*, the *Authority* must draft, *approve*, *publish* and *advertise* an **"interim access arrangement"** to take effect for the *interim access arrangement period*.

4.60 Unless a *user* requests otherwise, an *access contract* entered into under an *interim access arrangement* is deemed to provide that at the end of the *interim access arrangement period*:

(a) the *tariff* payable under the *access contract* is varied from the end of the *interim access arrangement period* to be the *tariff* payable for an equivalent *service* under the *access arrangement*; and

(b) the difference between:

(i) the *charges* paid between the commencement date of the *access contract* and the end of the *interim access arrangement period* based on the *access contract tariffs*; and

(ii) the *charges* that would have been payable under the *access contract* had the *access arrangement* been in effect during the *interim access arrangement period* and the *access arrangement tariffs* had applied to the *access contract* (which are to be calculated using the *user's* actual use of *services* during the period, without allowing for any possible variation in the *user's* use of *services* arising from the different *tariffs*),

must be treated as an underpayment or overpayment, as appropriate, under the *access contract* and must be paid by or paid to, as applicable, the *user*.

4.61 For the purposes of section 4.60:

(a) the date of underpayment or overpayment, as appropriate, is deemed to be the *approval* date of the subsequent *access arrangement*; and

(b) either party may give notice to the other of an underpayment or overpayment under the *access contract* and section 4.60.

4.62 To assist with the determination of:

(a) the underpayment or overpayment amount under section 4.60(b); and

(b) the *access contract* variation under section 4.60(a),

the *Authority* must not *approve* an *access arrangement* which does not:

(c) designate, for each *reference service* under the *interim access arrangement*, an equivalent *covered service* in the *access arrangement*; and

(d) specify a *tariff* for each equivalent *covered service* designated under section 4.62(c); and

(e) provide for suitable provisions to deal with the underpayment or overpayment, as appropriate, under section 4.60.

4.63 Nothing in section 4.62 obliges a *service provider* to, after the end of the *interim access arrangement period*, enter into an *access contract* to provide, or to provide at a particular *tariff*, a *covered service* which was a *reference service* under an *interim access arrangement* but is not a *reference service* under the *access arrangement*.

Extensions of time under this Chapter 4

4.64 Subject to sections 4.65 to 4.67, the *Authority* may extend any deadline specified in section 4.66 but only if, and only to the extent that, the *Authority* first determines as a *reasonable and prudent person* that:

(a) a longer period of time is essential for due consideration of all the matters under consideration or satisfactory performance of the relevant obligation, or both; and

(b) the *Authority* or the *service provider*, as applicable, has taken all reasonable steps to fully utilise the times and processes provided for in this Chapter 4; and

(c) in the case of an extension under:

(i) section 4.66(a)(i) — the *service provider* has made substantial progress in the preparation of its *proposed access arrangement*; and

(ii) section 4.66(a)(ii) — the *service provider* has made further substantial progress in the preparation of its *proposed access arrangement* since the extension under section 4.66(a)(i); and

(iii) section 4.66(n) — it is reasonably likely that the *service provider's proposed access arrangement* submitted under section 4.1 will be *approved* within the additional period of time under section 4.66(n).

4.65 The *Authority*:

(a) must not exercise the power in section 4.64 to extend any deadline unless, before the day on which the time would otherwise have expired, it *publishes* notice of, and *reasons* for, its decision to extend the deadline; and

(b) may (subject to section 4.66) exercise the power in section 4.64 to extend a deadline specified in section 4.66 on more than one occasion for each deadline.

4.66 The *Authority* must not extend a deadline beyond the limit (which for each deadline applies to the aggregate of all extensions of that deadline under section 4.64) specified below:

(a) subject to sections 4.64(c)(i) and 4.64(c)(ii), the *submission deadline* referred to in section 4.1:

(i) may, be extended by up to an additional 60 *business days*; and

(ii) then, may be extended by no more than a further 60 *business days*;

and

(b) the deadline of 5 *business days* in section 4.9 may be extended by no more than an additional 5 *business days*; and

(c) the deadline of 20 *business days* in section 4.10 may be extended by no more than an additional 20 *business days*; and

(d) the deadline of 30 *business days* in section 4.11(a) may be extended by no more than an additional 30 *business days*; and

(e) the deadline of 10 *business days* in section 4.11(b) may be extended by no more than an additional 10 *business days*; and

(f) the deadline of 42 *business days* in section 4.13 may be extended by no more than an additional 42 *business days*; and

(g) the deadline of 20 *business days* in section 4.15 may be extended by no more than an additional 20 *business days*; and

(h) the deadline of 30 *business days* in section 4.18 may be extended by no more than an additional 30 *business days*; and

(i) the deadline of 20 *business days* in section 4.19 may be extended by no more than an additional 20 *business days*; and

(j) the deadline of 15 *business days* in section 4.22(a) may be extended by no more than an additional 15 *business days*; and

(k) the deadline of 25 *business days* in section 4.22(b) may be extended by no more than an additional 25 *business days*; and

(l) the deadline of 20 *business days* in section 4.25 may be extended by no more than an additional 20 *business days*; and

(m) the deadline of 12 months in section 4.56 may be extended by no more than an additional 6 months; and

(n) subject to section 4.64(c)(iii), the deadline of 18 months in section 4.59 may be extended by no more than an additional 3 months.

4.67 Despite sections 4.64 to 4.66, at any time, the *Authority*, in its discretion and whether or not any other extension has been granted:

(a) may extend the deadline of 42 *business days* in section 4.13 by a period of 10 *business days*; and

(b) may extend the deadline of 30 *business days* in section 4.18 by a period of 10 *business days*.

Suspension of deadlines when Authority obtains information

4.68 Despite anything else in this Code, if the *Authority* exercises its power to obtain information and documents under section 51 of the *Economic Regulation Authority Act 2003* in respect of an *access arrangement*, then :

(a) the *Authority* may, by *publishing* a notice, suspend the operation of the deadline for the issue of a *draft decision* under section 4.12, a *final decision*

under section 4.17 or an *interim access arrangement* under section 4.59, if the *Authority* considers that such a suspension is essential for due consideration of all the matters relevant to the decision; and

(b) if the *Authority* suspends a deadline under section 4.68(a) — time ceases to run in respect of the relevant deadline until the suspension is ended by the *Authority publishing* a notice, which it must *publish* no later than 10 *business days* after it receives the information or documents but may *publish* at any earlier time.

Suspension of deadlines for judicial proceedings

4.69 Despite anything else in this Code, if judicial proceedings commence with respect to an *access arrangement* or a matter of interpretation or application of this Code which is likely to affect the *approval* of an *access arrangement* (**"judicial proceedings"**), then:

(a) the *Authority* may, by *publishing* a notice, suspend the operation of the deadline for the issue of a *draft decision* under section 4.12, a *final decision* under section 4.17 or a *further final decision* under section 4.21, if the *Authority* considers that it is essential that the *judicial proceedings* be resolved in order for the *Authority* in its *draft decision*, *final decision* or *further final decision*, as applicable, to give due consideration to the matters raised in the *judicial proceedings*; and

(b) if the *Authority* suspends a deadline under section 4.69(a) — time ceases to run in respect of the relevant deadline until the suspension is ended by the *Authority publishing* a notice, which it must *publish* no later than 10 *business days* after the *judicial proceedings* have been determined or discontinued but may *publish* at any earlier time.

Chapter 5 – Access Arrangement: Content

Required contents of an access arrangement

5.1 An access arrangement must:

(a) specify one or more *reference services* under section 5.2; and

(b) include a *standard access contract* under sections 5.3 to 5.5 for each *reference service*; and

{Note: An *access arrangement* may contain a single *standard access contract* in which the majority of terms and conditions apply to all *reference services* and the other terms and conditions apply only to specified *reference services*.}

(c) include *service standard benchmarks* under section 5.6 for each *reference service*; and

(d) include *price control* under Chapter 6; and

(e) include *pricing methods* under Chapter 7; and

(f) include a current *price list* under Chapter 8 a description of the *pricing years* for the *access arrangement*; and

(g) include an *applications and queuing policy* under sections 5.7 to 5.11; and

(h) include a *capital contributions policy* under sections 5.12 to 5.17; and

(i) include a *transfer and relocation policy* under sections 5.18 to 5.24; and

(j) if required under section 5.25, include *efficiency and innovation benchmarks* under section 5.26; and

(k) include provisions dealing with *supplementary matters* under sections 5.27 and 5.28; and

(l) include provisions dealing with:

(i) the submission of *proposed revisions* under sections 5.29 to 5.33; and

(ii) *trigger events* under sections 5.34 to 5.36.

{Note: At the same time as an *access arrangement* is submitted, *access arrangement information* must be submitted under section 4.1 and *technical rules* must be submitted under section 12.10. Neither the *access arrangement information* nor the *technical rules* are part of the *access arrangement*.}

Reference services

5.2 An *access arrangement* must:

(a) specify at least one *reference service*; and

(b) specify a *reference service* for each *covered service* that is likely to be sought by either or both of:

(i) a significant number of *users* and *applicants*; or

(ii) a substantial proportion of the market for *services* in the *covered network*;

and

(c) to the extent reasonably practicable, specify *reference services* in such a manner that a *user* or *applicant* is able to acquire by way of one or more *reference services* only those elements of a *covered service* that the *user* or *applicant* wishes to acquire; and

(d) for the *covered network* that is *covered* under section 3.1 — specify one or more *reference services* such that there is both:

(i) a *reference service* which enables a *user* or *applicant* to acquire an *entry service* at a *connection point* without a need to acquire a corresponding *exit service* at another *connection point*; and

(ii) a *reference service* which enables a *user* or *applicant* to acquire an *exit service* at a *connection point* without a need to acquire a corresponding *entry service* at another *connection point.*

Standard access contract for each reference service

5.3 A *standard access contract* must be:

(a) reasonable; and

(b) sufficiently detailed and complete to:

(i) form the basis of a commercially workable *access contract*; and

(ii) enable a *user* or *applicant* to determine the value represented by the *reference service* at the *reference tariff*.

5.4 A *standard access contract* may:

(a) be based in whole or in part upon the *model standard access contract*, in which case, to the extent that it is based on the *model standard access contract*, any matter which in the *model standard access contract* is left to be completed in the *access arrangement*, must be completed in a manner consistent with:

(i) any instructions in relation to the matter contained in the *model standard access contract*; and

(ii) section 5.3;

(iii) the *Code objective*;

and

(b) be formulated without any reference to the *model standard access contract* and is not required to reproduce, in whole or in part, the *model standard access contract.*

{Note: The intention of this section 5.4(b) is to ensure that the *service provider* is free to formulate its own *standard access contract* which complies with section 5.3 but is not based on the *model standard access contract*.}

5.5 The *Authority*:

(a) must determine that a *standard access contract* is consistent with section 5.3 and the *Code objective* to the extent that it reproduces without material omission or variation the *model standard access contract*; and

(b) otherwise must have regard to the *model standard access contract* in determining whether the *standard access contract* is consistent with section 5.3 and the *Code objective*.

Service standards for each reference service

5.6 A *service standard benchmark* for a *reference service* must be:

(a) reasonable; and

(b) sufficiently detailed and complete to enable a *user* or *applicant* to determine the value represented by the *reference service* at the *reference tariff*.

Applications and queuing policy

5.7 An *applications and queuing policy* must:

(a) to the extent reasonably practicable, accommodate the interests of the *service provider* and of *users* and *applicants*; and

(b) be sufficiently detailed to enable *users* and *applicants* to understand in advance how the *applications and queuing policy* will operate; and

(c) set out a reasonable timeline for the commencement, progressing and finalisation of *access contract* negotiations between the *service provider* and an *applicant*, and oblige the *service provider* and *applicants* to use reasonable endeavours to adhere to the timeline; and

(d) oblige the *service provider*, subject to any reasonable confidentiality requirements in respect of *competing applications*, to provide to an *applicant* all commercial and technical information reasonably requested by the *applicant* to enable the *applicant* to apply for, and engage in effective negotiation with the *service provider* regarding, the terms for an *access contract* for a *covered service* including:

(i) information in respect of the availability of *covered services* on the *covered network*; and

(ii) if an *augmentation* will be required to provide the *covered services* sought:

A. operational and technical details of the *required augmentation*; and

B. commercial information regarding the likely cost of the *required augmentation*;

and

(e) set out the procedure for determining the priority that an *applicant* has, as against another *applicant*, to obtain *access* to *covered services*, where the *applicants' access applications* are *competing applications*; and

(f) to the extent that *contestable consumers* are *connected* at *exit points* on the *covered network*, contain provisions dealing with the transfer of capacity associated with a *contestable consumer* from the *user* currently supplying the *contestable consumer* (**"outgoing user"**) to another *user* or an *applicant* (**"incoming user"**) which, to the extent that it is applicable, are consistent with and facilitate the operation of any *customer transfer code*; and

(g) establish arrangements to enable a *user* who is:

(i) a 'supplier of last resort' as defined in section 67 of the Act to comply with its obligations under Part 5 of the Act; and

(ii) a 'default supplier' under regulations made in respect of section 59 of the Act to comply with its obligations under section 59 of the Act and the regulations; and

(h) facilitate the operation of Part 9 of the Act, any enactment under Part 9 of the Act and the 'market rules' as defined in section 121(1) of the Act; and

(i) if applicable, contain provisions setting out how *access applications* (or other requests for *access* to the *covered network*) lodged before the start of the relevant *access arrangement period* are to be dealt with.

{Note: For the *first access arrangement period* section 5.7(i) would apply in respect of *access applications* or requests for *access* lodged under any prior *access* regime such as the regimes established under the *Electricity Transmission Regulations 1996* (WA) and *Electricity Distribution Regulations 1997* (WA). For subsequent *access arrangement periods* it would apply in respect of *access applications* lodged in a prior *access arrangement period*.}

5.8 The paragraphs of section 5.7 do not limit each other.

5.9 Under section 5.7(e), the *applications and queuing policy* may:

(a) provide that if there are *competing applications*, then priority between the *access applications* is to be determined by reference to the time at which the *access applications* were lodged with the *service provider*, but if so the *applications and queuing policy* must:

(i) provide for departures from that principle where necessary to achieve the *Code objective*; and

(ii) contain provisions entitling an *applicant*, subject to compliance with any reasonable conditions, to:

A. current information regarding its position in the queue; and

B. information in reasonable detail regarding the aggregated capacity requirements sought in *competing applications* ahead of its *access application* in the queue; and

C. information in reasonable detail regarding the likely time at which the *access application* will be satisfied;

and

(b) oblige the *service provider*, if it is of the opinion that an *access application* relates to a particular project or development:

(i) which is the subject of an invitation to tender; and

(ii) in respect of which other *access applications* have been lodged with the *service provider,*

(**"project applications"**) to, treat the *project applications*, for the purposes of determining their priority, as if each of them had been lodged on the date that the *service provider* becomes aware that the invitation to tender was announced.

5.10 An *applications and queuing policy* may:

(a) be based in whole or in part upon the *model applications and queuing policy*, in which case, to the extent that it is based on the *model applications and queuing policy*, any matter which in the *model applications and queuing policy* is left to be completed in the *access arrangement*, must be completed in a manner consistent with:

(i) any instructions in relation to the matter contained in the *model applications and queuing policy*; and

(ii) sections 5.7 to 5.9;

(iii) the *Code objective*;

and

(b) be formulated without any reference to the *model applications and queuing policy* and is not required to reproduce, in whole or in part, the *model applications and queuing policy*.

{Note: The intention of this section 5.10(b) is to ensure that the *service provider* is free to formulate its own *applications and queuing policy* which complies with sections 5.7 to 5.9 but is not based on the *model applications and queuing policy*.}

5.11 The *Authority*:

(a) must determine that an *applications and queuing policy* is consistent with sections 5.7 to 5.9 and the *Code objective* to the extent that it reproduces without material omission or variation the *model applications and queuing policy*; and

(b) otherwise must have regard to the *model applications and queuing policy* in determining whether the *applications and queuing policy* is consistent with sections 5.7 to 5.9 and the *Code objective*.

Capital contributions policy

5.12 The objectives for a *capital contributions policy* must be that:

(a) in respect of a *required augmentation*, it strikes a balance between the interests of:

(i) the *contributing user*; and

(ii) other *users*; and

(iii) *consumers*;

and

(b) it does not constitute an inappropriate barrier to entry.

5.13 A *capital contributions policy* must facilitate the operation of this Code, including:

(a) section 2.9; and

(b) the *new facilities investment test*; and

(c) the *regulatory test*.

5.14 A *capital contributions policy* must not require a *user* to make a *capital contribution* in respect of any part of *new facilities investment* which meets the *new facilities investment test*.

5.15 A *capital contributions policy* must set out:

(a) the circumstances in which a *contributing user* may be required to make a *capital contribution* in respect of a *required augmentation*; and

(b) the method for calculating any *capital contribution* a *contributing user* may be required to make towards the *required augmentation*; and

(c) for any *capital contribution*:

(i) the terms on which a *contributing user* must make the *capital contribution*; or

(ii) a description of how the terms on which a *contributing user* must make the *capital contribution* are to be determined.

5.16 A *capital contributions policy* may:

(a) be based in whole or in part upon the *model capital contributions policy*, in which case, to the extent that it is based on the *model capital contributions policy*, any matter which in the *model capital contributions policy* is left to be

completed in the *access arrangement*, must be completed in a manner consistent with:

(i) any instructions in relation to the matter contained in the *model capital contributions policy*; and

(ii) sections 5.12 to 5.15; and

(iii) the *Code objective*;

and

(b) be formulated without any reference to the *model capital contributions policy* and is not required to reproduce, in whole or in part, the *model capital contributions policy*.

{Note: The intention of this section 5.16(b) is to ensure that the *service provider* is free to formulate its own *capital contributions policy* which complies with sections 5.12 to 5.15 but is not based on the *model capital contributions policy*.}

5.17 The *Authority*:

(a) must determine that a *capital contributions policy* is consistent with sections 5.12 to 5.15 and the *Code objective* to the extent that it reproduces without material omission or variation the *model capital contributions policy*; and

(b) otherwise must have regard to the *model capital contributions policy* in determining whether the *capital contributions policy* is consistent with sections 5.12 to 5.15 and the *Code objective*.

Transfer and relocation policy

5.18 A *transfer and relocation policy*:

(a) must permit a *user* to make a *bare transfer* without the *service provider's* consent; and

(b) may require that a *transferee* under a *bare transfer* notify the *service provider* of the nature of the *transferred access rights* before using them, but must not otherwise require notification or disclosure in respect of a *bare transfer*.

5.19 For a *transfer* other than a *bare transfer*, a *transfer and relocation policy*:

(a) must oblige the *service provider* to permit a *user* to *transfer* its *access rights* and, subject to section 5.20, may make a *transfer* subject to the *service provider's* prior consent and such conditions as the *service provider* may impose; and

(b) subject to section 5.20, may specify circumstances in which consent will or will not be given, and conditions which will be imposed, under section 5.19(a).

5.20 Under a *transfer and relocation policy*, for a *transfer* other than a *bare transfer*, a *service provider*:

(a) may withhold its consent to a *transfer* only on reasonable commercial or technical grounds; and

(b) may impose conditions in respect of a *transfer* only to the extent that they are reasonable on commercial and technical grounds.

5.21 A *transfer and relocation policy*:

(a) must permit a *user* to relocate capacity at a *connection point* in its *access contract* to another *connection point* in its *access contract*, (a **"relocation"**) and, subject to section 5.22, may make a *relocation* subject to the *service provider's* prior consent and such conditions as the *service provider* may impose; and

(b) subject to section 5.22, may specify in advance circumstances in which consent will or will not be given, and conditions which will be imposed, under section 5.21(a).

5.22 Under a *transfer and relocation policy*, for a *relocation* a *service provider*:

(a) must withhold its consent where consenting to a *relocation* would impede the ability of the *service provider* to provide a *covered service* that is sought in an *access application*; and

(b) may withhold its consent to a *relocation* only on reasonable commercial or technical grounds; and

(c) may impose conditions in respect of a *relocation* only to the extent that they are reasonable on commercial and technical grounds.

5.23 An example of a thing that would be reasonable for the purposes of sections 5.20 and 5.22 is the *service provider* specifying that, as a condition of its agreement to a *transfer* or *relocation*, the *service provider* must receive at least the same amount of revenue as it would have received before the *transfer* or *relocation*, or more revenue if *tariffs* at the destination point are higher.

5.24 Section 5.23 does not limit the things that would be reasonable for the purposes of sections 5.20 and 5.22.

Efficiency and innovation benchmarks

5.25 An *access arrangement* which contains a *gain sharing mechanism* must, and an *access arrangement* which does not contain a *gain sharing mechanism* may, contain *efficiency and innovation benchmarks*.

5.26 *Efficiency and innovation benchmarks* must:

(a) if the *access arrangement* contains a *gain sharing mechanism*, be sufficiently detailed and complete to permit the *Authority* to make a determination under section 6.25 at the next *access arrangement review*; and

(b) provide an objective standard for assessing the *service provider's* efficiency and innovation during the *access arrangement period*; and

(c) be reasonable.

Supplementary matters

5.27 Each of the following matters is a **"supplementary matter"**:

(a) balancing; and

(b) line losses; and

(c) metering; and

(d) ancillary services; and

(e) stand-by; and

(f) trading; and

(g) settlement; and

(h) any other matter in respect of which arrangements must exist between a *user* and a *service provider* to enable the efficient operation of the *covered network* and to facilitate *access* to *services*, in accordance with the *Code objective*.

5.28 An *access arrangement* must deal with a *supplementary matter* in a manner which:

(a) to the extent that the *supplementary matter* is dealt with in:

(i) an enactment under Part 9 of the Act; or

(ii) the 'market rules' as defined in section 121(1) of the Act,

applying to the *covered network* — is consistent with and facilitates the treatment of the *supplementary matter* in the enactment or market rules; and

(b) to the extent that the *supplementary matter* is dealt with:

(i) in a *written law* other than as contemplated under section 5.28(a); and

(ii) in a manner which is not inconsistent with the requirement under section 5.28(a) to the extent that it applies to the *covered network*,

is consistent with and facilitates the treatment of the *supplementary matter* in the *written law*; and

(c) otherwise — in accordance with the *technical rules* applying to the *covered network* and the *Code objective*.

Revisions submission

5.29 An *access arrangement* must specify:

(a) a *revisions submission date*; and

(b) a *target revisions commencement date*.

5.30 For the *first access arrangement*:

(a) the *revisions submission date* must be at least 6 months before the *target revisions commencement date* under section 5.30(b); and

(b) the *target revisions commencement date* must be no more than 3 years after the *access arrangement start date*.

5.31 Subject to section 5.32, for *access arrangements* other than the *first access arrangement*:

(a) the *revisions submission date* must be at least 6 months before the *target revisions commencement date*; and

(b) the *target revisions commencement date* must be 5 years after the start of the *access arrangement period*, unless a different date is proposed by the *service provider* and the different date is consistent with the *Code objective*.

5.32 The *Authority*:

(a) in determining whether an *access arrangement period* of longer than 5 years is consistent with the *Code objective* must have regard to:

(i) the likely advantages of the *approval* (including by way of reduced regulatory costs); and

(ii) the likely disadvantages of the *approval*;

and

(b) if it determines that an *access arrangement period* of longer than 5 years is consistent with the *Code objective*, must consider whether to require under section 5.34 that the *access arrangement* include one or more *trigger events*.

5.33 Section 5.32(a) does not limit the matters to which the *Authority* may have regard.

Trigger events

5.34 If it is consistent with the *Code objective* an *access arrangement* may specify one or more *trigger events*.

5.35 To avoid doubt, under section 5.34, an *access arrangement* may specify a *trigger event* which was not proposed by the *service provider*.

5.36 Before determining whether a *trigger event* is consistent with the *Code objective* the *Authority* must consider:

(a) whether the advantages of including the *trigger event* outweigh the disadvantages of doing so, in particular the disadvantages associated with decreased regulatory certainty; and

(b) whether the *trigger event* should be balanced by one or more other *trigger events*.

{Example: The *service provider* may wish to include a *trigger event* allowing it to reopen the *access arrangement* if actual *covered service* consumption is more than x% below forecast. However, if the *Authority* were minded to allow such a *trigger event*, it may also require the inclusion of a complementary *trigger event* requiring the *service provider* to reopen the *access arrangement* if *covered service* consumption is more than y% above forecast.}

Chapter 6 – Price Control

Subchapter 6.1 – Target revenue

Form of price control

6.1 Subject to section 6.3, an *access arrangement* may contain any form of *price control* provided it meets the objectives set out in section 6.4 and otherwise complies with this Chapter 6.

6.2 Without limiting the forms of *price control* that may be adopted, *price control* may set *target revenue*:

(a) by reference to the *service provider's approved total costs*; or

{Note: This includes "revenue cap" *price controls* based on controlling total revenue, average revenue or revenue yield and "price cap" *price controls* based on cost of service.}

(b) by setting *tariffs* with reference to:

(i) *tariffs* in previous *access arrangement periods*; and

(ii) changes to costs and productivity growth in the electricity industry;

{Note: This includes "price cap" *price controls* based on controlling the weighted average of *tariffs* or individual *tariffs*.}

or

(c) using a combination of the methods described in sections 6.2(a) and 6.2(b).

Form of price control for first access arrangement

6.3 The *first access arrangement* must contain the form of *price control* described in section 6.2(a).

Price control objectives

6.4 The *price control* in an *access arrangement* must have the objectives of:

(a) giving the *service provider* an opportunity to earn revenue (**"target revenue"**) for the *access arrangement period* from the provision of *covered services* as follows:

(i) an amount that meets the forward-looking and efficient costs of providing *covered services*, including a return on investment commensurate with the commercial risks involved;

plus:

(ii) for *access arrangements* other than the *first access arrangement*, an amount in excess of the revenue referred to in section 6.4(a)(i), to the extent necessary to reward the *service provider* for efficiency gains and innovation beyond the *efficiency and innovation benchmarks* in a previous *access arrangement*;

{Note: The presence of section 6.4(a)(ii) provides incentive to a *service provider* during an *access arrangement period* to pursue efficiency gains and innovation beyond the

efficiency and innovation benchmarks in the access arrangement, because the *service provider* may be rewarded in the calculation of the *target revenue* for subsequent *access arrangement periods*.}

plus:

(iii) an amount (if any) determined under section 6.6;

plus:

(iv) an amount (if any) determined under section 6.9;

plus:

(v) an amount (if any) determined under an *investment adjustment mechanism* (see sections 6.13 to 6.18);

plus:

(vi) an amount (if any) determined under a *service standards adjustment mechanism* (see sections 6.29 to 6.32);

and

(b) enabling a *user* to predict the likely annual changes in *target revenue* during the *access arrangement period*; and

(c) avoiding price shocks (that is, sudden material *tariff* adjustments between succeeding years).

6.5 The amount determined in seeking to achieve the objective specified in section 6.4(a)(i) is a target, not a ceiling or a floor.

Target revenue may be adjusted for unforeseen events

6.6 If:

(a) during the previous *access arrangement period*, a *service provider* incurred *capital-related costs* or *non-capital costs* as a result of a *force majeure* event; and

(b) the *service provider* was unable to, or is unlikely to be able to, recover some or all of the costs (**"unrecovered costs"**) under its insurance policies; and

(c) at the time of the *force majeure event* the *service provider* had insurance to the standard of a *reasonable and prudent person* (as to the insurers and the type and level of insurance),

then subject to section 6.8 an amount may be added to the *target revenue* for the *covered network* for the next *access arrangement period* in respect of the *unrecovered costs*.

6.7 Nothing in section 6.6 requires the amount added under section 6.6 in respect of *unrecovered costs* to be equal to the amount of *unrecovered costs*.

6.8 An amount must not be added under section 6.6 in respect of *capital-related costs* or *non-capital costs*, to the extent that they exceed the costs which would have been incurred by a *service provider efficiently minimising costs*.

Target revenue may be adjusted for technical rule changes

6.9 If, during the previous *access arrangement period*, the *technical rules* for the *covered network* were amended under section 12.53 with the result that the *service provider*, in complying with the amended *technical rules*:

(a) incurred *capital-related costs* or *non-capital costs*:

(i) for which no allowance was made in the *access arrangement*; and

(ii) which the *service provider* could not have reasonably foreseen at the time of the *approv*al of the previous *access arrangement*;

and

(b) did not incur *capital-related costs* or *non-capital costs* for which allowance was made in the *access arrangement*,

then subject to sections 6.10 to 6.12 an amount may be added to the *target revenue* for the *covered network* for the next *access arrangement period* in respect of the costs.

6.10 The amount (if any) to be added under section 6.9(a) must be positive, and the amount (if any) to be added under section 6.9(b) must be negative.

6.11 A positive amount must not be added under section 6.9(a) in respect of *capital-related costs* or *non-capital costs*, to the extent that they exceed the costs which would have been incurred by a *service provider efficiently minimising costs*.

6.12 A negative amount added under section 6.9(b) must have regard to the savings that would have been made by a *service provider efficiently minimising costs* even if the service provider did not actually achieve that level of savings.

'Investment adjustment mechanism' defined

6.13 An **"investment adjustment mechanism"** is a mechanism in an *access arrangement* detailing how any *investment difference* for the *access arrangement period* is to be treated by the *Authority* at the next *access arrangement review*.

6.14 In sections 6.13 and 6.16, **"investment difference"** for an *access arrangement period* is to be determined at the end of the *access arrangement period* by comparing:

(a) the nature (including amount and timing) of actual *new facilities investment* which occurred during the access arrangement period;

with

(b) the nature (including amount and timing) of *forecast new facilities investment* which at the start of the *access arrangement period* was forecast to occur during the *access arrangement period*.

Requirement for an investment adjustment mechanism

6.15 If an *access arrangement* uses the form of *price control* described in section 6.2(a), then the *access arrangement* must contain an *investment adjustment mechanism*.

6.16 Without limiting the types of *investment adjustment mechanism* which may be contained in an *access arrangement*, an *investment adjustment mechanism* may provide that:

(a) adjustments are to be made to the *target revenue* for the next *access arrangement* in respect of the full extent of any *investment difference*; or

(b) no adjustment is to be made to the *target revenue* for the next *access arrangement* in respect of any *investment difference*.

6.17 An *investment adjustment mechanism* must be:

(a) sufficiently detailed and complete to enable the *Authority* to apply the *investment adjustment mechanism* at the next *access arrangement review*; and

(b) without limiting this Code, consistent with the *gain sharing mechanism* (if any) in the *access arrangement*;

(c) consistent with the *Code objective*.

6.18 An *investment adjustment mechanism* in an *access arrangement* applies at the next *access arrangement review*.

'Gain sharing mechanism' defined

6.19 A **"gain sharing mechanism"** is a mechanism:

(a) in an *access arrangement* which the *Authority* must apply at the next *access arrangement review* to determine an amount to be included in the *target revenue* for one or more of the following *access arrangement periods*; and

(b) which operates as set out in sections 6.20 to 6.28.

Requirement for a gain sharing mechanism

6.20 An *access arrangement* must contain a *gain sharing mechanism* unless the *Authority* determines that a *gain sharing mechanism* is not necessary to achieve the objective in section 6.4(a)(ii).

Objectives for gain sharing mechanism

6.21 A *gain sharing mechanism* must have the objective of:

(a) achieving an equitable allocation over time between *users* and the *service provider* of innovation and efficiency gains in excess of *efficiency and innovation benchmarks*; and

(b) being objective, transparent, easy to administer and replicable from one *access arrangement* to the next; and

(c) giving the *service provider* an incentive to reduce costs or otherwise improve productivity in a way that is neutral in its effect on the timing of such initiatives.

{For example, a *service provider* should not have an artificial incentive to defer an innovation until after an *access arrangement review*.}

6.22 A *gain sharing mechanism* must be sufficiently detailed and complete to enable the *Authority* to apply the *gain sharing mechanism* at the next *access arrangement review*, including by prescribing the basis on which returns are to be determined for the purposes of section 6.23.

'Surplus' defined

6.23 A **"surplus"** has arisen to the extent that:

(a) returns actually achieved by the *service provider* from the sale of *covered services* during the previous *access arrangement period*;

exceeded:

(b) the level of returns from the sale of *covered services* which at the start of the *access arrangement period* was forecast to occur during the *access arrangement period*.

Prior surpluses may be retained

6.24 Subject to the provisions of any *investment adjustment mechanism*, the *service provider* may retain all of the *surplus* achieved in the previous *access arrangement period*, and accordingly, the *Authority* must not make an adjustment in order to recover the *surplus* achieved in the previous *access arrangement period* when approving the *price control* in a subsequent *access arrangement*.

Determining the above-benchmark surplus

6.25 Subject to section 6.26, the *Authority* must determine how much (if any) of the *surplus* results from efficiency gains or innovation by the *service provider* in excess of the *efficiency and innovation benchmarks* in the previous *access arrangement* (**"above-benchmark surplus"**).

6.26 An *above-benchmark surplus* does not exist to the extent that a *service provider* achieved efficiency gains or innovation in excess of the *efficiency and innovation benchmarks* during the previous *access arrangement period* by failing to comply with section 11.1.

{Note: Section 11.1 requires a *service provider* to maintain a *service standard* at least equivalent to the *service standard benchmarks* set out in the *access arrangement* or *access contract*.}

Determining the increase to the target revenue

6.27 The *Authority* must apply the *gain sharing mechanism* to determine how much (if anything) is to be added to the *target revenue* for one or more coming *access arrangement periods* under section 6.4(a)(ii) in order to enable the *service provider* to continue to share in the benefits of the efficiency gains or innovations which gave rise to the *surplus*.

6.28 If the *Authority* makes a determination under section 6.27 to add an amount to the *target revenue* in more than one *access arrangement period*, that determination binds the *Authority* when undertaking the *access arrangement review* at the beginning of each such *access arrangement period*.

'Service standards adjustment mechanism' defined

6.29 A **"service standards adjustment mechanism"** is a mechanism in an *access arrangement* detailing how the *service provider's* performance during the *access arrangement period* against the *service standard benchmarks* is to be treated by the *Authority* at the next *access arrangement review*.

Requirement for service standards adjustment mechanism

6.30 An *access arrangement* must contain a *service standards adjustment mechanism*.

6.31 A *service standards adjustment mechanism* must be:

(a) sufficiently detailed and complete to enable the *Authority* to apply the *service standards adjustment mechanism* at the next *access arrangement review*; and

(b) consistent with the *Code objective*.

6.32 A *service standards adjustment mechanism* in an *access arrangement* applies at the next *access arrangement review*.

Authority may make a determination of excluded services for a covered network

6.33 The *Authority* may from time to time make and *publish* a determination (which subject to section 6.37 has effect for a specified *covered network*) of which *service*s being provided by means of the *covered network* are *excluded services*.

6.34 If a determination has effect under section 6.33, the determination is binding in respect of the *approval* or *review* of *price control* in an *access arrangement* for the *covered network*.

6.35 Without limiting section 6.33, a *service provider* may at any time request the *Authority* to determine under section 6.33 that one or more *services* provided by means of the *service provider's covered network* are *excluded services*.

6.36 Before making a determination under section 6.33, the *Authority* must consult the public in accordance with Appendix 7.

6.37 A determination under section 6.33:

(a) may be revoked or amended by a further determination under section 6.33; and

(b) has effect until revoked by a further determination; and

(c) does not have effect in relation to the *approval* or *review*, as applicable, of an *access arrangement* if the determination is *published* less than 3 months before the *submission deadline* (as extended under section 4.66(a)) or *revisions submission date*, as applicable.

{Note: The intention of section 6.37(c) is to ensure that the goalposts are not set or shifted too late in the process.}

Subchapter 6.2 – Calculation of Service Provider's Costs

When this Subchapter 6.2 applies

6.38 The following provisions, namely:

(a) sections 6.40 to 6.42 (*non-capital costs*); and

(b) sections 6.43 to 6.70 (*capital-related costs*),

apply in relation to an *access arrangement* only to the extent that, in determining *target revenue*, it is necessary to calculate part or all of the relevant component of the *service provider's approved total costs*.

6.39 Nothing in section 6.38:

(a) limits the operation of a section of this Code or a provision of an *access arrangement* which refers to a provision of this Subchapter 6.2 for a purpose other than calculating the *service provider's approved total costs*; or

(b) requires an *access arrangement* to determine *target revenue* in a manner which requires the calculation of, or of any component of, the *service provider's approved total costs.*

{Note: Each element of the *price control*, as with each other component of an *access arrangement*, must be proposed by a *service provider* in its *proposed access arrangement* submitted under section 4.1. Under section 4.28, the *Authority* must *approve* the *access arrangement*, including the *price control*, if the *Authority* considers that it meets the applicable objectives.}

Non-capital costs

6.40 Subject to section 6.41, the *non-capital costs* component of *approved total costs* for a *covered network* must include only those *non-capital costs* which would be incurred by a *service provider efficiently minimising costs*.

6.41 Where, in order to maximise the *net benefit after considering alternative options*, a *service provider* pursues an *alternative option* in order to provide *covered services*, the *non-capital costs* component of *approved total costs for a covered network* may include *non-capital costs* incurred in relation to the *alternative option* (**"alternative option costs"**) if:

(a) the *alternative option costs* do not exceed the amount of *alternative option costs* that would be incurred by a *service provider efficiently minimising costs*; and

(b) at least one of the following conditions is satisfied:

(i) the *additional revenue* for the *alternative option* is expected to at least recover the *alternative option costs*; or

(ii) the *alternative option* provides a *net benefit* in the *covered network* over a reasonable period of time that justifies higher *reference tariffs*; or

(iii) the *alternative option* is necessary to maintain the safety or reliability of the *covered network* or its ability to provide contracted *covered services*.

{Note: The *service provider* may adopt an *alternative option* either due to the operation of the *regulatory test*, or due to the *service provider's* own processes in advance of the *regulatory test*.}

6.42 For the purposes of section 6.41(b)(i) **"additional revenue"** for an *alternative option* means:

(a) the present value (calculated at the *rate of return* over a reasonable period) of the increased *tariff* income reasonably anticipated to arise from the increased sale of *covered services* on the *network* to one or more *users* (where "increased sale of *covered services*" means sale of *covered services* which would not have occurred had the *alternative option* not been undertaken);

minus

(b) the present value (calculated at the *rate of return* over the same period) of the best reasonable forecast of the increase in *non-capital costs* (other than *alternative option costs*) directly attributable to the increased sale of the *covered services* (being the *covered services* referred to in the expression "increased sale of *covered services*" in section 6.42(a)),

where the **"rate of return"** is a rate of return determined by the *Authority* in accordance with the *Code objective* and in a manner consistent with this Chapter 6, which may be the rate of return most recently approved by the *Authority* for use in the *price control* for the *covered network* under this Chapter 6.

Capital-related costs

6.43 The *capital-related costs* component of *approved total costs* for a covered network must be calculated by:

(a) determining a *capital base* under sections 6.44 to 6.63; and

(b) calculating a return on the *capital base* of the *covered network* by applying the *weighted average cost of capital* calculated under section 6.64 to the *capital base*; and

(c) calculating the depreciation of the *capital base* under section 6.70.

Determining the capital base

6.44 The *capital base* for the *covered network*:

(a) must be determined at the start of each *access arrangement period*; and

(b) may be determined from time to time by the *service provider* during an *access arrangement period*.

6.45 If the *service provider* determines the *capital base* under section 6.44(b) during an *access arrangement period*, then:

(a) the determination does not affect a subsequent determination under section 6.44(a); and

(b) the determination does not affect the *target revenue* or the determination of *tariffs* for the *access arrangement period*.

Capital base for the start of the first access arrangement period

6.46 For the start of the *first access arrangement period*, the *capital base* for a *covered network* must be determined using one of the following asset valuation methodologies:

(a) depreciated optimised replacement cost (**"DORC"**); or

(b) optimised deprival value (**"ODV"**).

6.47 If under section 6.46 the *ODV* asset valuation methodology is used to determine the *capital base* at the start of the *first access arrangement period* for the *covered network* that is *covered* under section 3.1, the valuation must utilise, to the extent possible, any ministerial valuation under section 119 of the Act of the *network assets* which comprise the *covered network*.

{Note: Under section 119 of the Act the Minister may commission a *DORC* valuation of existing *network* facilities, and if the Minister does so, in certain circumstances, the valuation provided to the Minister is taken to be the DORC valuation of the facilities.}

Capital base for the start of subsequent access arrangement periods

6.48 For the start of each *access arrangement period* other than the *first access arrangement period,* the *capital base* for a *covered network* must be determined in a manner which is consistent with the *Code objective*.

{Note: A number of options are available in relation to the determination of the *capital base* at the start of an *access arrangement period*, including:

- rolling forward the *capital base* from the previous *access arrangement period* applying benchmark indexation such as the consumer price index or an asset specific index, plus *new facilities investment* incurred during the previous *access arrangement period*, less depreciation and *redundant capital* etc; and
- valuation or revaluation of the *capital base* using an appropriate methodology such as the Depreciated Optimised Replacement Cost or Optimised Deprival Value methodology.}

Capital base must not include forecast new facilities investment

6.49 Subject to section 6.50, the *capital base* for a *covered network* must not include any amount in respect of *forecast new facilities investment*.

6.50 For the start of each *access arrangement period*, the *capital base* for a *covered network* may include *forecast new facilities investment* which:

(a) has not yet occurred but is forecast to occur before the *access arrangement start date*; and

(b) at the time of inclusion is reasonably expected to meet the *new facilities investment test* when made.

{Note: *Forecast new facilities investment* in a *proposed access arrangement* may actually have occurred by the time of the *access arrangement start date*. Under section 6.50, such *new facilities investment* may be included in the *capital base* for a *covered network*.}

6.51 For the purposes of section 6.4(a)(i) and subject to section 6.49, the forward-looking and efficient costs of providing *covered services* may include costs in relation to *forecast new facilities investment* for the *access arrangement period* which is reasonably expected to meet the *new facilities investment test* when the *forecast new facilities investment* is forecast to be made.

New facilities investment test

6.52 *New facilities investment* may be added to the *capital base* if:

(a) the *new facilities investment* does not exceed the amount that would be invested by a *service provider efficiently minimising costs*, having regard, without limitation, to:

(i) whether the *new facility* exhibits economies of scale or scope and the increments in which capacity can be added; and

(ii) whether the lowest sustainable cost of providing the *covered services* forecast to be sold over a reasonable period may require the installation of a *new facility* with capacity sufficient to meet the forecast sales;

and

(b) one or more of the following conditions is satisfied:

(i) either:

A. the *anticipated incremental revenue* for the *new facility* is expected to at least recover the *new facilities investment*; or

B. if a *modified test* has been approved under section 6.53 and the *new facilities investment* is below the *test application threshold* – the *modified test* is satisfied;

or

(ii) the *new facility* provides a *net benefit* in the *covered network* over a reasonable period of time that justifies the approval of higher *reference tariffs*; or

(iii) the *new facility* is necessary to maintain the safety or reliability of the *covered network* or its ability to provide contracted *covered services*.

6.53 The *Authority* may, in an *access arrangement*, *approve* a **"modified test"** for the purposes of section 6.52(b)(i)B to apply to a *covered network* in respect of *new facilities investment* below the *test application threshold* where:

(a) the *service provider* has proposed a *modified test* to apply in respect of *new facilities investment* below a proposed *test application threshold*; and

(b) the *Authority* determines that *approving* the *access arrangement* with the proposed *modified test*:

(i) would be efficient in that the advantages of approving the *proposed modified test* would outweigh the disadvantages; and

(ii) would promote the achievement of the *Code objective*.

6.54 In making a determination under section 6.52 the *Authority* must have regard to whether the *new facilities investment* was required by a *written law* or a *statutory instrument*.

6.55 Section 6.54 does not limit the matters to which regard must or may be had in making a determination under section 6.52.

Capital base not to include investment in respect of which a capital contribution is provided

6.56 No amount may be added to the *capital base* in respect of any *new facilities investment* for which a *capital contribution* has been, or is to be, provided to the *service provider*.

Recoverable portion

6.57 If only part of any *new facilities investment* satisfies the *new facilities investment test*, that part (**"recoverable portion"**) may be added to the *capital base*.

Speculative investment

6.58 The **"speculative investment amount"** (if any) for a *new facility* at any time is equal to:

(a) the *new facilities investment*;

minus

(b) any *recoverable portion*;

minus:

(c) any amount for which a *capital contribution* has been, or is to be, provided to the *service provider*;

minus:

(d) any part of the *speculative investment amount* for the *new facility* previously added to the *capital base* under section 6.60.

6.59 If the calculation in section 6.58 produces a negative result, the *speculative investment amount* is zero.

6.60 If:

(a) a *speculative investment amount* was created for a *new facility* at a time; and

(b) a determination is being made under section 6.44 at a later time,

then any part of the *speculative investment amount* which satisfies the *new facilities investment test* at the later time may be added to the *capital base.*

{Note: Reasons for the investment satisfying the *new facilities investment test* at the *later time* could include a change in the type or volume of *covered services* provided using the *new facility* from the circumstances prevailing at the *original time*.}

Redundant capital

6.61 Subject to section 6.62, the *Authority* may in relation to a determination under section 6.44(a) require an amount (**"redundant capital"**) to be removed from the *capital base* to the extent (if any) necessary to ensure that *network assets* which have ceased to contribute in any material way to the provision of *covered services* are not included in the *capital base*.

6.62 Before requiring a removal under section 6.61, the *Authority* must have regard to:

(a) whether the *service provider* was *efficiently minimising costs* when it developed, constructed or acquired the *network assets*; and

(b) the uncertainty such a removal may cause and the effect which any such uncertainty may have on the *service provider*, *users* and *applicants*; and

(c) whether the cause of the *network assets* ceasing to contribute in any material way to the provision of *covered services* was the application of a *written law* or a *statutory instrument*; and

(d) whether the *service provider* was compelled to develop, construct or acquire the *network assets*:

(i) by an award by the *arbitrator*; or

(ii) because of the application of a *written law* or a *statutory instrument*; and

(e) whether the depreciation of the *network assets* should be accelerated instead of or in addition to a *redundant capital* amount being removed from the *capital base* under section 6.61.

6.63 If the *Authority* requires a removal under section 6.61, then when making other determinations under this Chapter 6 the *Authority* may have regard to the removal.

{Examples of such other determinations include approving a *weighted average cost of capital* and assessing the economic life of assets.}

Calculating weighted average cost of capital

6.64 An *access arrangement* must set out the *weighted average cost of capital* for a *covered network*, which:

(a) if a determination has effect under section 6.65:

(i) for the *first access arrangement* for the *covered network* that is *covered* under section 3.1 — may use any methodology (which may be formulated without any reference to the determination under section 6.65) but, in determining whether the methodology used is consistent with this Chapter 6 and the *Code* objective, regard must be had to the determination under section 6.65; and

(ii) otherwise — must use the methodology in the determination under section 6.65 unless the *service provider* can demonstrate that an *access arrangement* containing an alternative methodology would better achieve the objectives set out in section 6.4 and the *Code objective*,

and

(b) if a determination does not have effect under section 6.65 – must be calculated in a manner consistent with section 6.66.

Authority may make a determination of a methodology for calculation of weighted average cost of capital

6.65 The *Authority* may from time to time make and *publish* a determination (which subject to section 6.68 has effect for all *covered networks* under this Code) of the preferred methodology for calculating the *weighted average cost of capital* in *access arrangements*.

6.66 A determination under section 6.65:

(a) must represent an effective means of achieving the *Code objective* and the objectives in section 6.4; and

(b) must be based on an accepted financial model such as the Capital Asset Pricing Model.

6.67 Before making a determination under section 6.65, the *Authority* must consult the public in accordance with Appendix 7.

6.68 A determination under section 6.65:

(a) may be revoked or amended by a further determination under section 6.65; and

(b) has effect for the period specified in the determination, which must not be more than 5 years, unless earlier revoked by a further determination; and

(c) subject to section 6.69, does not have effect in relation to the *approval* or *review*, as applicable, of an *access arrangement* if the determination is *published* less than 6 months before the *submission deadline* (as extended under section 4.66(a)) or *revisions submission date*, as applicable.

{Note: The intention of section 6.68(c) is to ensure that the goalposts are not set or shifted too late in the process.}

6.69 For the *covered network* that is *covered* under section 3.1, a determination under section 6.65 has effect in relation to the *approval* of the *first access arrangement* if it is *published* at least 3 months before the *submission deadline*.

Depreciation

6.70 An *access arrangement* must provide for the depreciation of the *network assets* comprising the *capital base*, including the economic lives of each *network asset* or group of *network assets*, the depreciation method to be applied to each *network asset* or group of *network assets* and the circumstances in which the depreciation of a *network asset* may be accelerated.

Subchapter 6.3 – Service provider may seek approval for costs

Approval for new facilities investment

6.71 A *service provider* may at any time apply to the *Authority* for the *Authority* to determine whether:

(a) actual *new facilities investment* made by the *service provider* meets the *new facilities investment test*; or

(b) *forecast new facilities investment* proposed by the *service provider* will meet the *new facilities investment test*.

6.72 If an application is made to the *Authority* under section 6.71, then subject to section 6.75 the *Authority* must make and *publish* a determination (subject to such conditions as the *Authority* may consider appropriate) within a reasonable time.

6.73 Before making a determination under section 6.72, the *Authority* must consult the public in accordance with Appendix 7.

6.74 The effect of a determination under section 6.72 is to bind the *Authority* when it *approves proposed revisions*, but in the case of *forecast new facilities investment* under section 6.71(b) the *Authority* is only bound if the *new facilities investment* has proceeded as proposed.

6.75 The *Authority*:

(a) must make a determination under section 6.72 if the actual or forecast *new facilities investment* is equal to or greater than the amount of $15 million (*CPI adjusted*); and

(b) may make a determination under section 6.72 if the actual or forecast *new facilities investment* is less than the amount of $15 million (*CPI adjusted*).

Approval for non-capital costs

6.76 A *service provider* may at any time apply to the *Authority* for the *Authority* to determine whether:

(a) actual *non-capital costs* incurred by the *service provider* meet the requirements of section 6.40; or

(b) forecast *non-capital costs* proposed to be incurred by the *service provider* will meet the requirements of section 6.40.

6.77 If an application is made to the *Authority* under section 6.76, then subject to section 6.80 the *Authority* must make and *publish* a determination (subject to such conditions as the *Authority* may consider appropriate) within a reasonable time.

6.78 Before making any determination under section 6.77, the *Authority* must consult the public in accordance with Appendix 7.

6.79 The effect of a determination under section 6.77 is to bind the *Authority* when it *approves proposed revisions*, but in the case of forecast *non-capital costs* under section 6.76(b) the *Authority* is only bound if the *non-capital costs* were incurred as proposed.

6.80 The *Authority*:

(a) must make a determination under section 6.77 if the actual or forecast *non-capital costs* are equal to or greater than the amount of $1.5 million (*CPI adjusted*); and

(b) may make a determination under section 6.77 if the actual or forecast *non-capital costs* are less than the amount of $1.5 million (*CPI adjusted*).

Chapter 7 – Pricing methods

'Pricing methods' defined

7.1 In this Code **"pricing methods"** means the structure of *reference tariffs* included in an *access arrangement* under this Chapter 7, which determines how *target revenue* is allocated across and within *reference services*.

Form of pricing methods

7.2 An *access arrangement* may contain any *pricing methods* provided they collectively meet the objectives set out in sections 7.3 and 7.4 and otherwise comply with this Chapter 7.

{Examples:

- The *pricing methods* may result in *tariffs* which distinguish between:
  - voltage levels; and
  - classes of *users*.
- The *pricing methods* may result in *tariffs* which relate to specific *connection points*, and may result in *tariffs* which involve a combination of fixed and variable amounts related to one or more of the following elements:
  - demand levels (maximum kW or kVA per period);
  - energy quantities involved (kWh or kVAh per period); and
  - time of use.
- If the *pricing methods* use quantities in determining *tariffs*, they may use minimum, maximum or actual quantities.}

Objectives of pricing methods – Primary objectives

7.3 Subject to sections 7.5 and 7.7, the *pricing methods* in an *access arrangement* must have the objectives that:

(a) *reference tariffs* recover the forward-looking efficient costs of providing *reference services*; and

(b) the *reference tariff* applying to a *user*:

(i) at the lower bound, is equal to, or exceeds, the *incremental cost of service provision*; and

(ii) at the upper bound, is equal to, or is less than, the *stand-alone cost of service provision*.

{Notes:

1. The objective in section 7.3(a) refers to charges paid by an individual *user*. However in practice *reference tariffs* will be set, and *access arrangements* will be assessed, by aggregating together groups of similar *users*.
2. One implication of section 7.3(b)(i) is that the *charges* paid by *users* should increase as the *network* becomes constrained, reflecting the increased *incremental cost of service provision*.
3. The *charge* paid by a *user* in respect of a *reference service* will normally reflect the *average cost of service provision*}

Objectives of pricing methods – Other objectives

7.4 Subject to sections 7.5 and 7.7, the *pricing methods* in an *access arrangement* must have the objectives that:

(a) the *charges* paid by different *users* of a *reference service* differ only to the extent necessary to reflect differences in the *average cost of service provision* to the *users*; and

{Examples of factors which may result in the charges paid by different users of a *reference service* differing from each other, include:

- the quantities of *reference service* supplied or to be supplied; or
- a *user's* time pattern of *network* usage; or
- the technical characteristics or requirements of the *facilities and equipment* at the relevant *connection point*; or
- the nature of the plant or equipment required to provide the *reference service*; or
- the periods for which the *reference service* is to be supplied; or
- subject to section 7.7, a *user's* location.}

(b) the structure of *reference tariffs* so far as is consistent with the *Code objective* accommodates the reasonable requirements of *users* collectively; and

{Example: *Users* may prefer more of the *average cost of service provision* to be recovered using *tariff* components that vary with usage or demand than might otherwise be the case under section 7.6.}

(c) the structure of *reference tariffs* enables a user to predict the likely annual changes in *reference tariffs* during the *access arrangement period*; and

(d) the structure of *reference tariffs* avoids price shocks (that is, sudden material *tariff* adjustments between succeeding years).

{Note: Price adjustments between succeeding years could include *tariff* rebalancing to achieve greater cost reflectivity of individual *tariffs*. The mechanisms to avoid price shocks could include a phased approach or other measures to assist in the management of adjustment costs.}

Objectives of pricing methods – Reconciling primary and other objectives

7.5 To the extent that the objectives in section 7.3 conflict with the objectives in section 7.4 in respect of *pricing methods* in a *proposed access arrangement*, the *Authority*, when determining whether the *pricing methods* are consistent with this Chapter 7, must reconcile the conflict, or determine which objective is to prevail, having regard to the *Code objective* but where necessary permitting the objectives in section 7.3 to prevail over the objectives in section 7.4.

Tariff components

7.6 Unless an *access arrangement* containing alternative *pricing methods* would better achieve the *Code objective*, for a *reference service*:

(a) the *incremental cost of service provision* should be recovered by *tariff* components that vary with usage or demand; and

(b) any amount in excess of the *incremental cost of service provision* should be recovered by *tariff* components that do not vary with usage or demand.

Postage stamp charges in certain cases

7.7 The *tariff* applying to a *standard tariff user* in respect of a *standard tariff exit point* must not differ from the *tariff* applying to any other *standard tariff user* in respect of a *standard tariff exit point* as a result of differences in the geographic locations of the *standard tariff exit points*.

'Equivalent tariff' defined

7.8 In sections 7.9 and 7.10, **"equivalent tariff"** means:

(a) for a *reference service* — the *reference tariff*; and

(b) for a *non-reference service* — the *tariff* that it is reasonably likely would have been set as the *reference tariff* had the *non-reference service* been a *reference service*.

Prudent discounts

7.9 A *service provider* may propose in its *access arrangement* to discriminate between *users* in its pricing of *services* to the extent that it is necessary to do so to aid economic efficiency, including:

(a) by entering into an agreement with a *user* to apply a *discount* to the *equivalent tariff* to be paid by the *user* for a *covered service*; and

(b) then, recovering the amount of the *discount* from other *users* of *reference services* through *reference tariffs*.

Discounts for distributed generating plant

7.10 If a *user* seeks to *connect distributed generating plant* to a *covered network*, a *service provider* must reflect in the *user's tariff*, by way of a *discount*, a share of any reductions in either or both of the *service provider's capital-related costs* or *non-capital costs* which arise as a result of the *entry point* for *distributed generating plant* being located in a particular part of the *covered network* by:

(a) entering into an agreement with a *user* to apply a *discount* to the *equivalent tariff* to be paid by the *user* for a *covered service*; and

(b) then, recovering the amount of the *discount* from other *users* of *reference services* through *reference tariffs*.

Access arrangement must detail policies regarding discounts

7.11 An *access arrangement* must contain a detailed policy setting out how the *service provider* will implement:

(a) if the *service provider* so chooses – section 7.9; and

(b) section 7.10,

including a detailed mechanism for determining when a *user* will be entitled to receive a *discount* and for calculating the *discount* to which the *user* will be entitled.

Chapter 8 – Price lists

Approval of price lists if required

8.1 If a *service provider's access arrangement* requires it to submit *price lists* to the *Authority* for approval, the *service provider* must, at least 45 *business days* before the start of each *pricing year* (except for the first *pricing year*), submit to the *Authority*:

(a) a proposed *price list* to apply for the next *pricing year*; and

(b) *price list information*.

8.2 If the *Authority* considers that a *service provider's* proposed *price list* complies with:

(a) the *price control* in the *service provider's access arrangement*;and

(b) the *pricing methods* in the *service provider's access arrangement*,

then the *Authority* must:

(c) approve and *publish* the *service provider's* proposed *price list* which has effect from a date specified by the *Authority*; and

(d) *publish* the *service provider's price list information*.

8.3 The *Authority* must not approve a *service provider's* proposed *price list* if the proposed *price list* does not comply with sections 8.2(a) and 8.2(b), and must notify the *service provider* that it does not approve the proposed *price list* and provide *reasons*.

8.4 If a *service provider* is notified under section 8.3 that the Authority does not approve a proposed *price list* submitted by the *service provider*, the *service provider* may at any time submit a revised proposed *price list* to the *Authority*.

8.5 If the *Authority*:

(a) notifies a *service provider* under section 8.3 that it does not approve a proposed *price list* submitted by the *service provider* and

(b) has not approved a revised proposed *price list*

then the *price list* most recently in effect continues in effect until the *Authority* approves a revised proposed *price list* submitted by the *service provider* under section 8.4.

8.6 If the *Authority* has not notified a *service provider* that it does not approve a proposed *price list* within 15 *business days* after receiving either:

(a) the proposed *price list*; or

(b) any further information the *Authority* has requested in relation to the proposed *price list*,

(whichever is later), then the *Authority* is to be taken to have approved the *price list*.

Publication of price lists if approval not required

8.7 If a *service provider's access arrangement* does not require it to submit *price lists* to the *Authority* for approval, the *service provider* must, at least 25 *business days* before the start of each *pricing year* (except for the first *pricing year*), submit to the *Authority* a copy of:

(a) a *price list* to apply in respect of the next *pricing year* which complies with:

(i) the *price control* in the *service provider's access arrangement*;and

(ii) the *pricing methods* in the *service provider's access arrangement*; and

(b) *price list information*.

8.8 Where a *service provider* submits a *price list* and *price list information* to the *Authority* under section 8.7, the *Authority* must *publish* the *price list* and *price list information*.

Chapter 9 – Regulatory Test

{Note: The *regulatory test* applies only to proposed *major augmentations*. It applies to a proposed *major augmentation* whether the *service provider* proposes to undertake the proposed *major augmentation*:

(a) in order to provide *covered services*, but not specifically in relation any particular project; or

(b) in relation to a project involving the *generation* of or *consumption* of electricity.

The *regulatory test* cannot require a project involving the *generation* or *consumption* of electricity to be located in a particular place or to be altered in any other way. The *regulatory test* can only affect what *network augmentations* are undertaken in order to accommodate the project.}

Subchapter 9.1 – Introductory

Objectives of this Chapter 9

9.1 The objectives of this Chapter 9 (**"Chapter 9 objectives"**) are:

(a) to ensure that before a *service provider commits* to a proposed *major augmentation* to a *covered network*, the *major augmentation* is properly assessed to determine whether it maximises the *net benefit after considering alternative options*; and

(b) to provide an incentive to a *service provider*, when considering *augmentation* to a *covered network*, to select the option (which may involve a *major augmentation* or may involve not proceeding with an *augmentation* at all) which maximises the *net benefit after considering alternative options*; and

(c) to minimise:

(i) delay to projects and other developments; and

(ii) administrative and regulatory costs; and

(iii) any other barriers to the entry of *generators* and *consumers* into the electricity market,

arising from the application of the *regulatory test*.

No major augmentation without regulatory test determination

9.2 A *service provider* must not *commit* to a *major augmentation* before the *Authority* determines, or is deemed to determine, under section 9.13 or 9.18, as applicable, that the test in section 9.14 or 9.20, as applicable, is satisfied.

'Regulatory test' defined

9.3 The **"regulatory test"** is an assessment under this Chapter 9 of whether a proposed *major augmentation* to a *covered network* maximises the *net benefit after considering alternative options*.

9.4 A **"net benefit after considering alternative options"** means a net benefit (measured in present value terms to the extent that it is possible to do so) to those who *generate*, *transport* and *consume* electricity in the *covered network* and any *interconnected system*, having regard to all reasonable *alternative options*, including the likelihood of each *alternative option* proceeding.

'Committed' defined

9.5 Subject to section 9.6, a *service provider* has **"committed"** to a *major augmentation* when the *service provider*, intending to undertake the *major augmentation*, begins to put its intention into effect by doing an act which is more than merely preparatory to undertaking the *major augmentation*, including by:

(a) making a substantial financial commitment in respect of the *major augmentation*, such as committing to:

(i) a significant obligation which is legally binding; or

(ii) an obligation which would have significant commercial repercussions if cancelled, discontinued or dishonoured;

or

(b) commencing, or procuring the commencement of, construction of the *major augmentation*.

9.6 A *service provider* will not be considered to have *committed* to undertaking a *major augmentation* merely because the *service provider* has:

(a) undertaken preparatory system or other studies in respect of the *major augmentation*; or

(b) engaged in preparatory planning, design or costing activities in respect of the *major augmentation*; or

(c) obtained an approval in respect of the *major augmentation*, unless the approval comes within the description in section 9.5(a) or 9.5(b).

Authority may make a determination that an augmentation is or is not a major augmentation

9.7 A *service provider* may request the *Authority*, as part of or prior to a decision under sections 9.13 or 9.18 (as applicable), having regard to the *forecast new facilities investment* for a proposed *augmentation*, to determine whether or not the proposed *augmentation* is a *major augmentation*.

9.8 A determination by the *Authority* under section 9.7 is conclusive evidence of whether the proposed *augmentation* is a *major augmentation*.

Service provider must make information available

9.9 A *service provider* must use its reasonable endeavours to ensure that it makes sufficient information available in a timely manner in respect of a proposed *major augmentation* to maximise the opportunity for potential *alternative options* to be viable.

Subchapter 9.2 – Regulatory test process

Regulatory test as part of access arrangement approval process

9.10 A *service provider* may submit a *major augmentation proposal* as part of its *proposed access arrangement*, in which case sections 9.11 to 9.14 apply.

9.11 A *major augmentation proposal* submitted under section 9.10:

(a) must describe in detail each *major augmentation* to which the *major augmentation proposal* relates; and

(b) must state that, in the *service provider's* view, each *proposed major augmentation* maximises the *net benefit after considering alternative options*; and

(c) may be amended in a revised *proposed access arrangement* submitted under section 4.16.

9.12 The invitation under section 4.9 for submissions on the *proposed access arrangement* must invite submissions on the *service provider's* statement under section 9.11(b), including submissions on reasonable *alternative options* to each *proposed major augmentation*.

9.13 The *Authority's final decision* under section 4.17 and, if applicable, its *further final decision* under section 4.21 must state whether the test in section 9.14 is satisfied or is not satisfied.

9.14 The test in this section 9.14 is satisfied if the *Authority* is satisfied that:

(a) the *service provider's* statement under section 9.11(b) is defensible; and

(b) the *service provider* has applied the *regulatory test* properly to each *proposed major augmentation*:

(i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and

(ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the *major augmentation* and for *alternative options*;

Regulatory test not as part of access arrangement approval process

9.15 A *service provider* may submit a *major augmentation proposal* other than as part of the *access arrangement approval* process, in which case sections 9.16 to 9.22 apply.

9.16 A *major augmentation proposal* submitted under section 9.15:

(a) must describe in detail each *major augmentation* to which the *major augmentation proposal* relates; and

(b) must state that, in the *service provider's* view, each *proposed major augmentation* maximises the *net benefit after considering alternative options*; and

(c) must demonstrate that the *service provider* has conducted a consultation process in respect of each *proposed major augmentation* which:

(i) included public consultation under Appendix 7; and

(ii) gave all *interested persons* a reasonable opportunity to state their views and to propose *alternative options* to the *proposed major augmentations*, and that the *service provider* had regard to those views and *alternative options*; and

(iii) involved the *service provider* giving reasonable consideration to any information obtained under sections 9.16(c)(i) and 9.16(c)(ii) when forming its view under section 9.16(b);

and

(d) must comply with the current requirements *published* under section 9.17.

(e) may include a request that the *Authority* give prior approval under section 6.72 in respect of the *new facilities investment* for one or more *proposed major augmentations*.

9.17 The *Authority* must *publish*, and may from time to time *publish* variations to, its requirements for a *major augmentation proposal* submitted under section 9.16, which requirements must be directed to ensuring that the *Authority* receives sufficient information in a suitable form to enable it to efficiently and effectively apply the test in section 9.20.

9.18 The *Authority* must in respect of a *major augmentation proposal* submitted under section 9.15 make and *publish* a determination whether the test in section 9.20 is satisfied or is not satisfied, and must do so:

(a) if the *Authority* has consulted the public under section 9.19 — within 45 *business days*; and

(b) otherwise — within 25 *business days*,

after receiving the *major augmentation proposal*.

9.19 The *Authority* may consult the public under Appendix 7 before making a determination under section 9.18.

9.20 The test in this section 9.20 is satisfied if the *Authority* is satisfied that:

(a) the *service provider's* statement under section 9.16(b) is defensible; and

(b) the *service provider* has applied the *regulatory test* properly to each *proposed major augmentation*:

(i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and

(ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the *major augmentation* and for *alternative options*;

and

(c) the consultation process conducted by the *service provider* meets the criteria in section 9.16(c).

9.21 If the *Authority* is unable to determine whether the test set out in section 9.20 is satisfied or is not satisfied because the *service provider* has not provided adequate information (despite the *Authority* having notified the *service provider* of this fact and given the *service provider* a reasonable opportunity, having regard to the time periods specified in section 9.18, to provide adequate information), then the *Authority* may determine that the test in section 9.20 is not satisfied.

9.22 If the *Authority* has not *published* a determination under section 9.18 within the time limits specified in that section, then the *Authority* is deemed to have determined that the test in section 9.20 is satisfied.

Regulatory test may be expedited, otherwise modified or waived

9.23 If the *Authority* forms the view that the application of the *regulatory test* under sections 9.10 to 9.14 or sections 9.15 to 9.22 in respect of a proposed *major augmentation* would be contrary to the *Chapter 9 objectives*, including because:

(a) there are no, or it is unlikely that there are any, viable *alternative options* to the proposed *major augmentation*; or

(b) the nature of the proposed *major augmentation* is such that significant advance planning is required and no *alternative options* exist; or

(c) the nature of the proposed *major augmentation*, or part of it, is such that it should be submitted to the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004*, or

(d) the nature of the funding of the *proposed major augmentation* means that the *proposed major augmentation* will not cause a net cost (measured in present value terms to the extent that it is possible to do so) to those who *generate*, *transport* and *consume* electricity in the *covered network* and any *interconnected system*,

then the *Authority* may, by *publishing* a notice:

(e) expedite or otherwise modify the application of the *regulatory test* in respect of the *major augmentation* to the extent the *Authority* considers necessary to meet the *Chapter 9 objectives*; or

(f) waive the application of the *regulatory test* in respect of the *major augmentation* if the *Authority* considers it necessary to do so to meet the *Chapter 9 objectives*.

9.24 Without limiting the circumstances in which the *Authority* may publish a notice under section 9.23, if a person requests the *Authority* to form a view under section 9.23 in respect of a *proposed major augmentation* which is described to the *Authority* in reasonable detail then the *Authority* must as soon as practicable form a view and either:

(a) *publish* a notice under section 9.23; or

(b) notify the person that the *Authority* does not propose to *publish* a notice under section 9.23.

Vexatious etc alternative options

9.25 Neither the *service provider* nor the *Authority* is required by this Chapter 9 to have regard to an *alternative option* which is misconceived or is proposed on vexatious grounds.

Subchapter 9.3 – Anti-avoidance provisions

Anti-avoidance provisions

9.26 Section 9.27 applies if the *Authority* determines that a *service provider* has engaged in conduct with the purpose of avoiding or frustrating the objective in section 9.1(a).

9.27 The *Authority* may by notice to the *service provider* deem:

(a) any two or more *augmentations* to constitute a single *augmentation*; or

(b) any *augmentation* to constitute any two or more *augmentations*; or

(c) any activity which has been attributed to an *augmentation* to be attributed to a different *augmentation*; or

(d) any combination of sections 9.27(a), 9.27(b), or 9.27(c),

in which case the deeming has conclusive effect for the purposes of this Chapter 9.

9.28 A notice under section 9.27 must set out *reasons* for the *Authority's* decision under section 9.27.

9.29 A deeming under section 9.27 may:

(a) relate to two or more *augmentations* whether or not they occur at the same time; and

(b) relate to one or more *augmentations* whether or not they have been completed; and

(c) specify the time at which a deemed thing occurred or will occur.

9.30 To avoid doubt, each reference in sections 9.27 and 9.29 to "augmentation" includes a *major augmentation* and an *augmentation* previously deemed under sections 9.27 and 9.29.

Chapter 10 – Dispute Resolution

Subchapter 10.1 – Introduction

Commercial Arbitration Act 1985 does not apply

10.1 A *proceeding* under this Chapter 10 is not an arbitration within the meaning of the *Commercial Arbitration Act 1985*.

Procedural rules

10.2 Appendix 5 applies in respect of an *access dispute*.

Subchapter 10.2 – Access Disputes

Notification of a dispute

10.3 An *applicant* or a *service provider* may notify the *Authority* in writing that an *access dispute* exists.

10.4 On receiving a notification under section 10.3, the *Authority* must give notice in writing of the *access dispute* to the other parties to the dispute.

10.5 An *applicant* or *service provider* who has given notice of an *access dispute* under section 10.3 may withdraw notification of the *access dispute* at any time by written notice to the *Authority* and all other parties to the *access dispute*.

10.6 If the notification of an *access dispute* is withdrawn under section 10.5, it is taken for the purposes of this Chapter 10 to never have been given.

Other parties joining

10.7 A person, other than a party to a *dispute*, may apply to the *arbitrator* to join and be heard in the *proceedings*.

10.8 The *arbitrator*:

(a) must allow a person applying under section 10.7 to join the *proceedings* if the person is affected by the proceedings unless the *arbitrator* determines that doing otherwise is necessary to justly dispose of the issues in the *proceedings;* and

(b) may make such orders concerning the joinder as the *arbitrator* considers appropriate.

10.9 The *arbitrator* may on its own initiative:

(a) direct a party to a *dispute* to provide it with sufficient information to enable it to identify other persons who might wish to apply under section 10.7 to join and be heard in the *proceedings*;

{Note: This may include information as to any (or any other) *applicants* and details of each *applicant's access application*.}

(b) notify any person identified by it under section 10.9(a) that the *dispute* exists and the parties to the *dispute*.

10.10 The parties to a *dispute* must promptly comply with a direction under section 10.9(a).

Conciliation and reference to arbitration

10.11 On receiving a request to refer an *access dispute* to arbitration, the *Authority* must:

(a) subject to section 10.12 and if the parties to the dispute agree, attempt to settle the dispute by conciliation; or

(b) if the *Authority* does not attempt to settle the dispute by conciliation or conciliation fails to settle the dispute, refer the dispute to the *arbitrator*.

Authority not required to conciliate

10.12 The *Authority* is not obliged to attempt to settle the dispute by conciliation if the *Authority* is satisfied, on the application of a party to the *access dispute*, that there are good reasons why the dispute should not be settled by conciliation.

Expedited hearing of disputes under applications and queuing policy

10.13 Section 10.14 applies in respect of an *access dispute* (**"queuing dispute"**) relating to an interim or procedural matter under an *applications and queuing policy*, in respect of which either:

(a) the *service provider* and the *applicant* agree in writing to have the matter heard as a *queuing dispute*;

(b) where the *arbitrator* determines (on application by either party) that a speedy resolution of the *queuing dispute* may permit the *access application* to be further progressed and an *access offer* made without the parties having to resort to a lengthy, full-scale *access dispute*.

10.14 Unless the *arbitrator* considers that the *Code objective* or the just resolution of the *queuing dispute* require a *queuing dispute* to be dealt with in another way, when hearing a *queuing dispute*:

(a) the parties are to be restricted to one round of written submissions and one round of written submissions in reply (which may not be amended except by leave of the *arbitrator*); and

(b) the hearing is to be conducted without legal representation (but parties may obtain legal advice in preparing the written submission); and

(c) the *arbitrator* is to treat the objective of informality and expedition as paramount; and

(d) the *arbitrator* and the parties must endeavour to ensure that the *queuing dispute* is determined within 10 *business days* after notice of the *queuing dispute* is given.

Factors which the arbitrator must have regard to

10.15 In exercising its functions under this Chapter 10 the *arbitrator* must have regard to:

{Note: Section 2.2 requires the arbitrator to have regard to the Code objective when exercising its functions under this Chapter 10.}

(a) the geographical location of the *network* and the extent (if any) to which the *network* is interconnected with other *networks*; and

(b) contractual obligations of the *service provider* or other persons already using the *covered network* (or both); and

(c) the operational and technical requirements necessary for the safe and reliable operation of the *covered network*.

10.16 Section 10.15 does not limit the matters to which the *arbitrator* may have regard.

The arbitration

10.17 The *arbitrator* must make a decision on the matters the subject of the *access dispute* following the procedure prescribed in Appendix 5.

10.18 The *arbitrator* may at any time terminate an arbitration (without making a decision) if the *arbitrator* considers that:

(a) the subject matter of the *access dispute* is trivial, misconceived or lacking in substance; or

(b) the notification of the *access dispute* was vexatious; or

(c) the party who notified the *access dispute* has not negotiated in good faith or has notified the *access dispute* prematurely or unreasonably.

Arbitrated tariff to be guided by access arrangement and price list

10.19 Subject to section 10.20, if an *access dispute* relates to the *tariff* that should apply to a *covered service*, the *arbitrator* must set the *tariff* payable by the *applicant* under the award having regard to the *access arrangement* and *price list* and Chapter 7.

Arbitrated tariffs for reference services

10.20 If an *access dispute* relates to the *tariff* that should apply to a *reference service*, then an award must not:

(a) require the *applicant* to pay more than the *reference tariff* for the *reference service*, or

(b) require the *service provider* to accept less than the *reference tariff* for the *reference service*.

Arbitrated terms for reference services

10.21 Subject to section 10.22, the *arbitrator* must not make an award specifying the terms of an *access contract* for a *reference service* that is inconsistent with the *standard access contract* for the *reference service* set out in the *service provider's access arrangement*.

10.22 The *arbitrator* must, in an award specifying the terms of an *access contract* for a *reference service*, deal with each matter which in the *standard access contract* for the *reference service* in the *access arrangement* is left to be agreed by the parties or determined by the *arbitrator* in a manner which:

(a) has regard to the factors contained in section 10.15; and

(b) is consistent with:

(i) any instructions about the matter contained in the *access arrangement*; and

(ii) the *Code objective*.

Arbitrated tariffs for non-reference services

10.23 Where the *arbitrator* is setting the *tariff* payable by the *applicant* for a *non-reference service*, the award should endeavour to achieve the following objectives:

(a) when the awarded *tariff* is compared with the *reference tariff* for a comparable *reference service* (if any):

(i) if the *non-reference service* involves the provision of *services* to a higher standard, the differential between the awarded *tariff* and the *reference tariff* should reflect the increase in the *service provider's incremental cost of service provision* as a result of the provision of *services* to that higher standard;

and

(ii) if the *non-reference service* involves the provision of *services* to a lower standard, the differential between the awarded *tariff* and the *reference tariff* should reflect the amount of the *service provider's* avoided cost of *service* provision as a result of the provision of *services* to that lower standard;

and

(b) subject to the *discount* provisions in the *service provider's access arrangement*, other *users* should not pay individual *reference tariffs* for *reference services* that are higher as a result of the differential referred to in section 10.23(a).

10.24 Where the *arbitrator* is awarding the *tariff* payable by the *applicant* for a *non-reference service*, the award must have regard to Chapter 7 and the *service provider's access arrangement* including the *standard access contract* contained in the *service provider's access arrangement*.

10.25 Section 10.24 does not limit the matters to which the *arbitrator* must or may have regard.

Award by the arbitrator

10.26 The *arbitrator* must make a written award on *access* to the *network* by the *applicant*.

10.27 The award referred to in section 10.26:

(a) must deal with the matter that was the basis for the notification of the dispute; and

(b) may, subject to section 10.28, deal with any other matter which a party has requested the *arbitrator* to deal with that the *arbitrator* considers expedient to justly dispose of any *proceedings* before it.

10.28 The *arbitrator* cannot make an award under section 10.26 that deals with a matter that is, by agreement between the parties, no longer a matter which is in dispute.

10.29 Without limiting the generality of section 10.24 and subject to section 10.32, the award may, without limitation, do any one or more of the following:

(a) specify the manner in which a party must comply with the *applications and queuing policy*; or

(b) deal with the costs, timing or performance of functions in relation to the planning, designing, constructing, acquiring and commissioning of a proposed *augmentation*, and may require a party to undertake any such function in a specified manner; or

(c) require the *service provider* to provide *access* to a *covered service* requested by the *applicant*; or

(d) subject to section 10.35, require the *applicant* to accept, and pay for, *access* to a *service*; or

(e) specify the terms of the *access contract* including the *discount* to the *reference tariff* to which the *user* is entitled (if any); or

(f) require the *service provider* to *augment* the *network*; or

(g) specify the extent to which the award overrides an earlier award or *access contract*.

10.30 Before making an award, the *arbitrator* must give a draft award to the parties to the arbitration and may have regard to representations that any of them may make on the proposed award.

10.31 When the *arbitrator* makes an award, the *arbitrator* must give the parties to the arbitration written *reasons* for the award.

Restrictions on access awards

10.32 The *arbitrator* cannot make an award that:

(a) would impede the right of a *user* under an *access contract* to obtain *services* unless the *user* agrees or the *arbitrator* is satisfied that the *user* is or will be compensated on just terms for in respect of the impeded right; or

(b) is inconsistent with the *access arrangement* for the *covered network*; or

(c) requires the *service provider* to provide *access* to a *service* designated as an *excluded service* in the *access arrangement*; or

(d) affects an area of the State that is the subject of the *exclusive license* of another *service provider*; or

(e) requires the *service provider* or another person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.

Arbitrated award requiring augmentation of network

10.33 The *arbitrator* may make an award that would have the effect of requiring the *service provider* to *augment* the *network* only where the *arbitrator* is satisfied that:

(a) the *augmentation* is technically and economically feasible and consistent with the safe and reliable operation of the *network*; and

(b) in the case of a *major augmentation*, sections 10.40 to 10.43 have been complied with.

Effect of awards

10.34 Subject to section 10.35, an award is binding on the parties to the arbitration in which it is made.

10.35 An *applicant* may, within 5 *business days* after an award is made which orders the parties to enter into an *access contract*, elect not to enter into an *access contract* as specified by the award by giving written notice of the election to the *arbitrator* and the *service provider*, in which case (subject to any *applications and queuing policy* provisions about lapse of *access applications* due to passage of time) the *applicant's access application* remains in effect.

10.36 Unless the *applicant* elects not to be bound by an award in accordance with section 10.35, if the award orders the parties to enter into an *access contract* then the *service provider* and *applicant* must enter into an *access contract* in the form specified in the award within 15 *business days* after it is made.

Costs of arbitration

10.37 Subject to sections 10.38 and 10.39, the costs of an arbitration (including the fees and costs of the *arbitrator*, if the parties are required to pay the fees and costs) are to be determined in the discretion of the *arbitrator* who may:

(a) direct to and by whom and in what manner the whole or any part of the costs is to be paid; and

(b) fix or settle the amount of costs to be so paid or any part of the costs; and

(c) award costs to be fixed or settled as between party and party or as between solicitor and client; and

(d) award costs by reference to the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2002* as amended or substituted from time to time.

10.38 The costs of complying with Subchapter 10.3 are to be borne equally by the parties unless the *arbitrator* considers there are compelling reasons to order otherwise.

10.39 If an award is made substantially in the form sought by an *applicant*, and the *applicant* elects under section 10.35 not to be bound by the award, then the fees and costs of the *arbitrator*, to the extent the parties are required to pay the fees and costs, are to be borne by the *applicant* unless the *arbitrator* considers there are compelling reasons to order otherwise.

Subchapter 10.3 – Application of the regulatory test in an arbitration

Arbitrator must make proposed award if award would require major augmentation

10.40 Before making an award under section 10.33 that would require a *service provider* to undertake a *major augmentation*, the *arbitrator* must:

(a) make and provide to the parties to the dispute a *proposed award*; and

(b) direct the *service provider* to apply the process outlined in section 10.41 in relation to the *major augmentation* in the *proposed award* and specify a time by which the *service provider* must complete each step in the process.

Service provider must consult and submit major augmentation report

10.41 The *service provider* must, within the time specified by the *arbitrator*:

(a) conduct a consultation process in respect of the *major augmentation* in the *proposed award* which complies with section 9.16(c); and

(b) then, submit a *major augmentation report* to the *Authority* that:

(i) demonstrates compliance with section 10.41(a); and

(ii) states whether, in the *service provider's* view, the *major augmentation* in the *proposed award* maximises the *net benefit after considering alternative options*.

10.42 The *service provider* must use its best endeavours to ensure that there are no unnecessary or unreasonable costs or delays in complying with section 10.41.

Service provider's costs of compliance, if applicant withdraws

10.43 If an *applicant* withdraws its notice of an *access dispute* under section 10.5 and the *service provider*:

(a) has complied with sections 10.41 and 10.42; or

(b) is in the process of complying with section 10.41 and 10.42,

then the *applicant* must indemnify the *service provider* for the *service provider's* costs of complying with sections 10.41 and 10.42 up to the date that the *service provider* receives the withdrawal notice.

Authority must publish determination regarding major augmentation report

10.44 The *Authority* must in respect of a *major augmentation report* make and *publish* a determination whether the test in section 10.46 is satisfied or is not satisfied, and must do so:

(a) if the *Authority* has consulted the public under section 10.45 — within 45 *business days*; and

(b) otherwise — within 25 *business days*,

after receiving the *major augmentation proposal*.

10.45 The *Authority* may consult the public under Appendix 7 before making a determination under section 10.44.

10.46 The test in this section 10.46 is satisfied if the *Authority* is satisfied that:

(a) the *service provider's* statement under section 10.41(b)(ii) is defensible; and

(b) the *service provider* has applied the *regulatory test* properly to the *major augmentation* in the *proposed award*:

(i) using reasonable market development scenarios which incorporate varying levels of demand growth at relevant places; and

(ii) using reasonable timings, and testing alternative timings, for project commissioning dates and construction timetables for the *major augmentation* and for *alternative options*;

and

(c) the consultation process conducted by the *service provider* under section 10.41(a) meets the criteria in section 9.16(c).

10.47 The *Authority* must make a determination under section 10.44 on the basis of all the material before it and must have regard to, but is not bound by, the *service provider's* view under section 10.41(b)(ii).

10.48 The *Authority* must give the *arbitrator* and the parties to the dispute a copy of its determination under section 10.44.

10.49 If the *Authority* is unable to make a determination under section 10.44 because the *service provider* has not provided adequate information (despite the *Authority's* having notified the *service provider* of this fact and given the *service provider* a reasonable opportunity, having regard to the time periods specified in section 10.44, to provide adequate information), then the *Authority*:

(a) must notify the *arbitrator* and the parties to the dispute of the fact and provide a description of the circumstances; and

(b) is not required to make a determination under section 10.44 in relation to the *major augmentation* in the *proposed award*.

Arbitrator must have regard to Authority's determination

10.50 In determining whether to make an award that would have the effect of requiring the *service provider* to undertake the *major augmentation* described in the *proposed award* or an *augmentation* of a different nature (whether a *major augmentation* or not) the *arbitrator* must have regard to, but is not bound by, the *Authority's* determination under section 10.44.

10.51 For the purposes of section 10.50, without limiting the matters to which the *arbitrator* must or may have regard, the *arbitrator* may have regard to the manner in which the *service provider* complied with sections 10.41 and 10.42.

Subchapter 10.4 – Contractual Disputes

Jurisdiction of arbitrator

10.52 The *arbitrator* has jurisdiction to hear a *contractual dispute.*

Procedural rules

10.53 Except to the extent that the *access contract* provides otherwise, sections 10.3 to 10.6 and Appendix 5 apply to the *arbitrator's* hearing of a *contractual dispute*, with appropriate modifications including the substitution of "contractual dispute" for all references to "*access dispute*".

Chapter 11 – Service standards

Service provider must comply with service standards

11.1 A service provider must provide reference services at a service standard at least equivalent to the service standard benchmarks set out in the access arrangement and must provide non-reference services to a service standard at least equivalent to the service standard in the access contract.

Authority to monitor service standards

11.2 The *Authority* must monitor and, at least once each year, *publish* a *service provider's* actual *service standard* performance against the *service standard benchmarks*.

11.3 The *Authority* may, acting reasonably, request a **"service standard performance report"** from a *service provider* for the purposes of monitoring the *service provider's* actual *service standard* performance and the *service provider* must provide the *Authority* with a *service standard performance report* within the time specified by the *Authority* in its request, which time must not be less than 20 *business days*.

11.4 In a request under section 11.3 the *Authority* may specify:

(a) a period of time which must be covered in the *service standard performance report*; and

(b) criteria to be addressed in the *service standard performance report*; and

(c) the format required for the *service standard performance report*,

and the *service provider* must comply with the *Authority's* specifications.

11.5 The *Authority* may from time to time, for the purposes of monitoring a *service provider's* actual *service standard* performance:

(a) consult with *users* of the *service provider's network*; and

(b) *advertise* a request for submissions from *consumers* supplied using the *network*.

Penalties for breach of service standards

11.6 If a *service provider* does not comply with section 11.1, then in order to minimise the likelihood of the *service provider* being excessively penalised for its failure to comply with section 11.1, the *Authority* must have regard to:

(a) any remedies awarded (or likely to be awarded) against the *service provider* under contracts for *services* in relation to the act or omission which resulted in the *service provider* not complying with section 11.1; and

(b) the *service standards adjustment mechanism*,

before determining whether to impose a civil penalty under regulations made under section 118(2) of the Act.

Chapter 12 – Technical Rules

Objectives of the technical rules

12.1 The objectives for *technical rules* are that they:

(a) are reasonable; and

(b) do not impose inappropriate barriers to entry to a market; and

(c) are consistent with *good electricity industry practice*; and

(d) are consistent with relevant *written laws* and *statutory instruments*.

12.2 The *Authority* must not approve *technical rules* for a *network* unless it determines that the *technical rules*:

(a) if the *network* is part of an *interconnected system* — work in an integrated fashion with the *technical rules* governing all *interconnected networks*; and

(b) reasonably accommodate the interconnection of further *networks* in the future.

12.3 The *Authority* must not approve *technical rules* for a *network* which would, if approved, require the *service provider* or another person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.

Persons bound by technical rules

12.4 Subject to any exemptions granted under sections 12.34 and 12.41, the *service provider* and *users* of a *network* must comply with the *technical rules*.

Technical rules prevail over contract

12.5 If the provisions of a contract for *services* provided by means of a *network* are inconsistent with the *technical rules* for the *network*, then the contract is by force of this section amended from time to time to the extent necessary to comply with the *technical rules* except to the extent that an exemption to the *technical rules*, granted under section 12.34 or 12.41, affects the contract.

Networks which must have technical rules

12.6 Subject to this Chapter 12, the following *networks* must have *technical rules*:

(a) a *covered network*; and

(b) a *non-covered network* that is part of an *interconnected system* which contains one or more *covered networks*.

{Note: Thus, the following *networks* will not have *technical rules*:

- a *non-covered network* that is part of an *interconnected system* which contains only *non-covered networks*; and
- a *non-covered network* that is not part of an *interconnected system*.}

Approval process for technical rules – Non-covered network

12.7 The *service provider* of a *non-covered network* that is obliged by section 12.6(b) to have *technical rules* must, within 6 months of *technical rules* being approved for a *covered network* in the *interconnected system*, either:

(a) give notice to the *Authority* that it wishes to adopt the *technical rules* for another *network* in the *interconnected system* — in which case it is deemed to have submitted proposed *technical rules* to the *Authority* in the form of those *technical rules*; or

(b) submit proposed *technical rules* with the *Authority*.

12.8 The *Authority* may at its discretion extend the time period under section 12.7 by up to 3 months.

12.9 Before approving proposed *technical rules* submitted by a *service provider* under section 12.7, the *Authority* must consult the public in accordance with Appendix 7.

Approval process for technical rules – Covered network

12.10 The *service provider* of a *covered network* must, at the same time as the *service provider* submits its *first access arrangement* under section 4.1, submit proposed *technical rules* to the *Authority*.

12.11 The approval process for *technical rules* submitted by the *service provider* of a *covered network* under section 12.10 is as follows:

(a) subject to this section 12.10, the *technical rules* are, to the extent possible, to be processed in parallel with the *access arrangement*; and

(b) the Chair of the *technical rules committee* must:

(i) within 20 *business days* before the last day by which the *Authority* must make its *draft decision* under section 4.12 — provide a *preliminary report* to the *Authority*; and

(ii) within 30 *business days* before the last day by which the *Authority* must make its *final decision* under section 4.17 — provide a *final report* to the *Authority*;

and

(c) the *Authority* must within 15 *business days* after it makes a *draft decision* on the *proposed access arrangement* under section 4.12 *publish* draft *technical rules* which:

(i) if the *service provider's* proposed *technical rules* comply with this Chapter 12 and the *Code objective* — must be the *service provider's* proposed *technical rules*; and

(ii) otherwise — must be drafted by the *Authority* and based on the *service provider's* proposed *technical rules* and amended only to the extent necessary to comply with this Chapter 12 and the *Code objective*,

and at the same time the *Authority* must *publish* an invitation for submissions on the draft *technical rules*; and

(d) a person may make a submission to the *Authority* on the draft *technical rules* within 15 *business days* after the invitation is *published* under section 12.11(c); and

(e) the *Authority* must consider any submissions on the draft *technical rules* made under section 12.11(d) and must, at the same time as it approves an *access arrangement* under section 4.17, section 4.21 or section 4.24, as applicable, approve and *publish* final *technical rules* which must be based on the draft *technical rules* and amended only to the extent necessary to comply with this Chapter 12 and the *Code objective*.

12.12 If the *Authority* drafts and approves an *interim access arrangement* under section 4.59 for a *covered network*:

(a) the *Authority* must not draft, approve, or *publish technical rules* for the *covered network*; and

(b) any existing technical regulation continues to apply to the *covered network* until such time as an *access arrangement* is subsequently *approved* under Chapter 4.

12.13 If the *Authority* drafts and *approves* its own *access arrangement* under section 4.55 for a *covered network*, when the *Authority* consults the public under Appendix 7, the *Authority* must:

(a) if it makes a draft decision under Appendix 7:

(i) draft and *publish* draft *technical rules* at the same time as it makes its draft decision; and

(ii) *publish* an invitation for submissions on the draft *technical rules* at the same time that it *publishes* an invitation for submissions on its draft decision under Appendix 7;

and

(b) consider any submissions and draft, approve and *publish* final *technical rules* at the same time it makes and *publishes* its final decision under Appendix 7.

Have regard to current regulation in case of deadlock

12.14 Where:

(a) the *Authority* is required under this Chapter 12 to draft or approve *technical rules* for a *network*; and

(b) the *technical rules committee* is in *deadlock* in relation to a matter on which it is required to provide advice to the *Authority*,

then the *Authority*, when drafting and approving *technical rules* for the *network*, must have regard to whether the current treatment of the matter referred to in section 12.14(b) under another instrument should be replicated in the *technical rules* but may permit replication only to the extent that the treatment of that matter in that instrument is not contrary to the *Code objective*.

Commencement of technical rules

12.15 When the *Authority* approves *technical rules* for a *network*, it must specify a *technical rules start date* for the *technical rules*, which must be:

(a) consistent with the *Code objective*; and

(b) at least 30 *business days* after the approval is *published*.

Technical rules committee

12.16 Subject to this Chapter 12, the *Authority* may, at any time and from time to time, establish a *technical rules committee* for a *network* or an *interconnected system*.

12.17 The *Authority* must establish a *technical rules committee* for a *covered network* or the *interconnected system* of which the *covered network* is a part to perform the functions described in section 12.23 for the first *technical rules* for a *covered network*:

(a) if the *covered network* is part of an *interconnected system*; or

(b) if the *service provider* of the *covered network* requests the *Authority* to establish a *technical rules committee* for the *covered network* or *interconnected system*.

12.18 A *technical rules committee* established under section 12.17 must be established in sufficient time for the *technical rules committee* to perform the functions described in section 12.23 for the first *technical rules* for the *covered network*.

12.19 A *technical rules committee*:

(a) must consist of at least:

(i) for a *network*:

A. a representative of the *service provider*; and

B. a representative from each other *service provider* of any *interconnected network* (if applicable); and

C. at least one person representing *users* of the *network*; and

D. a representative of the *Coordinator*;

and

(ii) for an *interconnected system*:

A. a representative of the *service provider* for each *network* in the *interconnected system*; and

B. at least one person representing *users* of the *networks* in the *interconnected system*; and

C. a representative of the *Coordinator*;

and

(b) may consist of any other person that the *Authority* considers appropriate,

and a person on a *technical rules committee* is a **"member"** of the technical rules committee.

12.20 The Chair of a *technical rules committee* is the person who, at that time, is the member of the *technical rules committee* that is the representative of the *Coordinator* under section 12.19(a)(i)D or 12.19(a)(ii)C.

12.21 Any communication to the *Authority* from a *technical rules committee* must be provided to the *Authority* by the Chair of the *technical rules committee* and not by any other member.

12.22 A person who is represented on, or is a *member* of, a *technical rules committee* is not precluded from making submissions to the *Authority* in relation to proposed *technical rules* in a capacity other than as a person who is represented on, or is a *member* of, the *technical rules committee.*

12.23 A *technical rules committee*, in performing its functions under section 12.11(b) and if otherwise requested:

(a) may develop model technical rules; and

(b) must advise the *Authority* on the approval of proposed *technical rules*; and

(c) must, when requested by the *Authority*, advise the *Authority* on any matter connected with proposed *technical rules* or *technical rules*; and

(d) must, when requested by the *Authority*, conduct a review of the operation of:

(i) *technical rules* or a part of *technical rules*; or

(ii) this Chapter 12 or a part of this Chapter 12,

and advise the *Authority* of the outcome of the review.

12.24 A *technical rules committee* must perform the functions described in section 12.23 in accordance with the objectives in section 12.1.

12.25 In the case of *deadlock,* the Chair of the *technical rules committee* must advise the *Authority* of:

(a) the details of the *deadlock*; and

(b) the position held by each *member* of the *technical rules committee* on the matter the subject of the *deadlock*.

12.26 If the *Authority* is advised of a *deadlock* under section 12.25, it must form a view on the matter the subject of the *deadlock* and advise the *technical rules committee* of its view, and the *technical rules committee* must proceed on the basis of the view advised to it.

12.27 The *Authority* may:

(a) from time to time, provide directions to a *technical rules committee* in relation to:

(i) the procedures it must follow in performing its functions; and

(ii) the manner in which it must perform its functions;

and

(b) dissolve a *technical rules committee* after the first *technical rules* have been approved for the *network*, or each *network* in the *interconnected system*, as applicable.

Recommendations from the technical rules committee

12.28 The *Authority* must have regard to any model *technical rules* developed and advice provided by the *technical rules committee* under section 12.23:

(a) in deciding whether to approve or not approve proposed *technical rules* for a *network*; and

(b) in drafting its own *technical rules* for a *network*.

12.29 Section 12.28 does not limit the matters to which the *Authority* must or may have regard.

Authority may observe the technical rules committee

12.30 Subject to section 12.31, the *Authority* may appoint a representative to observe any aspect of the operation of the *technical rules committee*, including by:

(a) attending any meeting of the *technical rules committee*; and

(b) inspecting any documents (including working papers) provided to or by the *technical rules committee* in the performance of its functions.

12.31 A representative of the *Authority* under section 12.30 must not participate in any decision making process of the *technical rules committee.*

Scope and content of technical rules

12.32 Unless a different form of *technical rules* will better achieve the *Code objective* or the objectives set out in section 12.1, the *technical rules* must address the matters listed in Appendix 6.

Person applies to service provider for exemption from technical rules

12.33 A *user*, *applicant* or *controller* may apply to a *service provider* for an exemption from one or more requirements of *technical rules*.

12.34 A *service provider* must as soon as practicable determine an application under section 12.33:

(a) as a *reasonable and prudent person* on reasonable technical and operational grounds; and

(b) having regard to the effect the proposed exemption will, if granted, have on the *service providers* and *users* of the *network* and any *interconnected network*,

and must grant the exemption if the *service provider* determines that in all the circumstances the disadvantages of requiring the person applying for the exemption to comply with the requirement are likely to exceed the advantages.

12.35 An exemption under section 12.34:

(a) may be granted for a specified period or indefinitely; and

(b) may be subject to any reasonable conditions the *service provider* considers fit, in which case the person granted the exemption must comply with the conditions, or may be unconditional; and

(c) may be varied or revoked by the *service provider* after reasonable notice to the person granted the exemption.

12.36 A *service provider* must notify a person applying for an exemption of its determination under section 12.33 as soon as practicable after making the determination.

12.37 A person may apply to a *service provider* for an exemption granted to a person under section 12.34 to be revoked and the *service provider* must consider the application and within a reasonable time advise the person of the *service provider's* determination in relation to the application.

12.38 A *service provider* must provide to the *Authority* a notice giving details of any grant, revocation or variation of an exemption under section 12.34 or 12.35(c) and the *Authority* must place the notice on the *public register*.

12.39 Without limiting the generality of the type of exemptions that may be granted under section 12.34, exemptions to *technical rules* may be transitional in nature and may include provisions allowing a person time to comply with the *technical rules*.

Service provider applies to Authority for authorisation to grant exemption from technical rules

12.40 A *service provider* may apply to the *Authority* for an exemption from one or more requirements of *technical rules* for the *service provider* and all *applicants*, *users* and *controllers* of the *covered network* (**"network persons"**).

12.41 The *Authority* must as soon as practicable determine an application under section 12.40:

(a) as a *reasonable and prudent person* on reasonable technical and operational grounds; and

(b) having regard to the effect the proposed exemption will, if granted, have on the *service providers* and *users* of the *network* and any *interconnected network*,

and must grant the exemption if the *Authority* determines that in all the circumstances the disadvantages of requiring the *network persons* to comply with the requirement are likely to exceed the advantages.

12.42 The *Authority* may refer a *service provider's* application under section 12.40 to the *technical rules committee* and request the *technical rules committee*'s advice on the application and must, subject to complying with the time limit under section 12.44, have regard to the advice of the *technical rules committee* in making its determination under section 12.41.

12.43 An exemption under section 12.41:

(a) may be granted for a specified period or indefinitely; and

(b) may be subject to any reasonable conditions the *service provider* considers fit, in which case the *network persons* must comply with the conditions, or may be unconditional; and

(c) may be varied or revoked by the *service provider* after reasonable notice to the *network persons*.

12.44 The *Authority* must notify the *service provider* of its determination under section 12.41:

(a) where the *Authority* has consulted the public in accordance with Appendix 7 — within 45 *business days* of receiving the application under section 12.40; or

(b) where the *Authority* has not consulted the public in accordance with Appendix 7 — within 25 *business* of receiving the application under section 12.40.

12.45 A person may apply to the *Authority* for an exemption granted in respect of a *network* under section 12.41 to be revoked and the *Authority* must consider the application and within a reasonable time advise the person of the *Authority's* determination in relation to the application.

12.46 Before granting, varying or revoking an exemption under section 12.41, the *Authority* may consult the public in accordance with Appendix 7.

12.47 The *Authority* must *publish* a notice giving details of any grant, revocation or variation of an exemption under section 12.41.

12.48 Without limiting the generality of the type of exemptions that may be granted under section 12.41, exemptions to *technical rules* may be transitional in nature and may include provisions allowing *network persons* time to comply with *technical rules*.

12.49 If the *Authority* grants an exemption under section 12.41, then the *arbitrator* may have regard to the waiver in making an award in any *access dispute* relating to the *network.*

Amendments to technical rules

12.50 A proposal to amend *technical rules* may be submitted to the *Authority* at any time:

(a) by the *service provider*; or

(b) by the Chair of the *technical rules committee*; or

(c) by a *service provider* of an *interconnected network,*

and must be placed on the *public register*.

12.51 The *Authority*, by *publishing* a notice, may reject a proposal to amend *technical rules* if, in the *Authority's* opinion, the proposal:

(a) is misconceived or lacking in substance; or

(b) has been made on trivial or vexatious grounds.

12.52 At any time before the review under section 12.56 commences, the *Authority* may decide to defer consideration of a proposal to amend the *technical rules* for the *covered network* that is *covered* under section 3.1 until the review if, in the *Authority's* opinion, deferring consideration of the proposal would better achieve the *Code objective*.

12.53 As soon as practicable, the *Authority* must consider whether any amendments to *technical rules* proposed under section 12.50 are consistent with this Chapter 12 and the *Code objective*, having regard to any exemptions granted under sections 12.34 and 12.41, and then either:

(a) approve; or

(b) not approve,

the proposed amendments by *publishing* a notice of its decision, and if the decision was to approve the proposed amendments, the date on which the amendments commence.

12.54 If the *Authority* considers a proposed amendment to *technical rules* to be substantial, the *Authority*:

(a) must consult the public in accordance with Appendix 7 before making a decision to approve or not approve the proposed amendment; and

(b) must approve the proposed amendment only if it considers that the amendment will not have a material adverse effect on the *service provider* or a *user*.

Notification of changes to technical laws

12.55 If a representative of the *Coordinator* notifies the *Authority* of a material change to a relevant *written law* or *statutory instrument* which the *Coordinator's* representative considers may affect the operation of *technical rules* for one or more *networks* (**"material change"**), then the *Authority* must refer the *material change* to one or more appropriately constituted *technical rules committees* for advice which must be provided to the *Authority* in a reasonable time and may include a proposal to amend the *technical rules* for one or more *networks* under section 12.50.

Review of technical rules

12.56 The *Authority* must cause a review of the *technical rules* for the *covered network* that is *covered* under section 3.1 to be carried out approximately 6 months before the *target revisions commencement date* in the *first access arrangement* for the *covered network*.

12.57 The purpose of the review under section 12.56 is:

(a) to assess the effectiveness of the *technical rules* in achieving the objectives in section 12.1 and the *Code objective*; and

(b) to consider any proposals to amend the *technical rules* which have been deferred under section 12.52.

12.58 The *Authority* may carry out the review under section 12.56 in the manner it considers best achieves the *Code objective*.

Coordination with other service providers in an interconnected system

12.59 A *service provider* that operates a *network* in an *interconnected system* must cooperate with a *service provider* of an *interconnected network* (**"other service provider"**) to the standard of a *reasonable and prudent person*.

12.60 In complying with section 12.59, a *service provider* must:

(a) cooperate with an *other service provider* who is *processing* an *access application* to enable the *other service provider* to *process* the *access application* expeditiously; and

(b) liaise as necessary with *other service providers* in relation to:

(i) matters covered by *technical rules* for *interconnected networks*; and

(ii) the planning and development of *interconnected networks*.

Chapter 13 – Ringfencing

Service provider must comply with ringfencing objectives and rules

13.1 Except to the extent that the *Authority* grants an exemption under section 13.31, a *service provider* must, in relation to a *covered network*:

(a) comply with the *ringfencing objectives*; and

(b) if *ringfencing rules* apply to the *covered network* – comply with the *ringfencing rules*.

Application of ringfencing objectives and rules to integrated providers

13.2 If the *service provider* for a *covered network* is an *integrated provider*, a reference in this Chapter 13 to an **"associate"** of the *service provider* or of its *network business* includes any *other business* of the *service provider*.

'Ringfenced business' defined

13.3 In this Chapter 13, **"ringfenced business"** means:

(a) for an *integrated provider* — the *network business*; or

(b) for any other *service provider* — the *service provider*.

Other business must have deemed access contract

13.4 If:

(a) a *service provider* for a *covered network* is an *integrated provider*; and

(b) the *network business* provides one or more *covered services* to an *other business*,

then:

(c) by 3 months after the *access arrangement start date*, the *network business* and the *other business* must record in writing the full terms and conditions of the arrangement by which the *network business* is to provide the *covered services* to the *other business* (**"deemed access contract"**); and

(d) unless the contrary intention appears, a reference in this Code to *access contract* includes a *deemed access contract* under section 13.4(c); and

(e) unless the contrary intention appears, a reference in this Code to *user* includes the *other business* under a *deemed access contract* under section 13.4(c).

Associate contracts

13.5 Without limiting section 13.4 a *service provider* must, by 3 months after the *access arrangement start date*, record in writing the full terms and conditions of any contract, arrangement or understanding by which it provides *covered services* to an *associate* (**"associate contract"**).

Amendments to associate contracts and deemed access contracts

13.6 If an *associate contract* or a *deemed access contract* is amended by agreement between the parties or otherwise varied or terminated, the *service provider* must within 5 *business days* notify the *Authority* that the *associate contract* or a *deemed access contract* has been amended, varied or terminated.

13.7 A *service provider* must, if requested by the *Authority*, provide an *associate contract* or a *deemed access contract* to the *Authority* within the time specified by the *Authority*.

13.8 The *Authority* must, if it considers that an *associate contract* or a *deemed access contract*:

(a) is contrary to the *Code objective*; or

(b) may have been entered into for the purpose of preventing or hindering *access* by any person to *services*,

require a *service provider*, by notice, to ensure that the *ringfenced business* provides *covered services* to the *associate* on terms and conditions which are not contrary to the *Code objective* and do not have the purpose of preventing or hindering *access* by any person to *services*, and may, without limiting the *Authority's* powers and subject to section 13.9, specify the terms and conditions for the provision of *covered services* by the *ringfenced business* to the *associate*.

13.9 In specifying the terms and conditions for the provision of *covered services* by a *ringfenced business* to an *associate* under section 13.8, *the Authority* must not specify any more changes to the existing terms and conditions than are necessary to ensure that the terms and conditions are not contrary to the *Code objective* and do not prevent or hinder *access* by any person to *services*.

13.10 The *Authority* may consult the public in accordance with Appendix 7 before imposing a requirement under sections 13.8.

Ringfencing objectives

13.11 The *ringfencing objectives*, in relation to a *service provider* of a *covered network*, are that:

(a) the *ringfenced business* must not carry on a *related business*; and

(b) subject to section 13.11(d), only *marketing staff* of the *ringfenced business* may have access to or possession of, or make use of, *commercially sensitive information*; and

(c) subject to section 13.11(d) and any *written law* including this Code, and except to the extent that the information comes into the public domain otherwise than by disclosure by the *service provider*, *commercially sensitive information*:

(i) must be used only for the purpose for which that information was developed or provided; and

(ii) must not be disclosed to any person (including any servant, consultant, independent contractor or agent of any *associate* of the *ringfenced business*) without the prior consent of the person who provided it or to whom it relates; and

(d) *commercially sensitive information* may be disclosed to and used by the *service provider's senior staff* but:

(i) only to the minimum extent necessary from time to time for good corporate governance; and

(ii) where possible only in summary or aggregated form or otherwise in a form that minimises the disclosure of any commercially sensitive or confidential details; and

(iii) for use only in relation to the *ringfenced business* and only for the purpose for which it was developed or provided,

(e) any goods or services that the *ringfenced business* provides to, or receives from, any *associate* of the *ringfenced business* must be provided or received

on terms that would be reasonable if the parties were dealing at arm's length; and

(f) any goods or services that the *ringfenced business* provides to, or receives from, a third party operating in competition with an *associate* of the *ringfenced business* must be provided or received on a basis that does not competitively or financially disadvantage the third party, relative to the *associate*; and

(g) the *service provider's accounts and records* relating to its *covered network* must be kept in a way that:

(i) provides a comprehensive view of the *ringfenced business's* legal and equitable rights and liabilities in relation to the *covered network*; and

(ii) provides a true and fair view of:

A. the *network business* as distinct from any *other business* carried on by the *service provider* or any *associate* of the *service provider*; and

B. income derived from, and expenditure relating to, the *covered network*; and

C. the *service provider's* assets and liabilities so far as they relate to the *covered network*;

and

(iii) provides sufficient information to enable the *price control* and *pricing methods*, and these *ringfencing objectives* and any applicable *ringfencing rules*, to be applied in a reasonable manner; and

(iv) enables all revenue received by the *service provider* from the provision of goods or services to an *associate* of the *ringfenced business* to be separately identified; and

(v) enables all expenditure by the *service provider* on goods or services provided by an *associate* of the *ringfenced business* to be separately identified; and

(h) the *service provider*, when entering into service agreements, including asset management agreements, ensures that the terms and conditions of each agreement facilitates the implementation of these *ringfencing objectives* and any *ringfencing rules*.

Factors the Authority must have regard to

13.12 In exercising its functions under this Chapter 13 the *Authority* must have regard to the geographical location of the *covered network* and the extent (if any) to which it is interconnected with other *networks*.

13.13 Section 13.12 does not limit the matters to which the *Authority* must or may have regard.

Authority may approve ringfencing rules

13.14 The *Authority*:

(a) may at any time; and

(b) must for a *covered network* if it determines that the *ringfencing objectives* are not being achieved for the *covered network*,

draft and approve *ringfencing rules*, for the purpose of ensuring that the *ringfencing objectives* are achieved.

13.15 Without limiting section 13.14, a *service provider* may submit *ringfencing rules* to the *Authority* for approval.

13.16 *Ringfencing rules* may be expressed to apply to:

(a) one or more specified *covered network*s; or

(b) all *covered networks* in a specified geographical area or *interconnected system*; or

(c) any other specified class or classes of *covered networks*,

in each case with or without specified exceptions.

13.17 The *Authority* must not approve *ringfencing rules* which would, if approved, require a *service provider* or other person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.

13.18 The *Authority* may at any time revoke or vary any *ringfencing rules*.

13.19 Subject to section 13.20, before approving, revoking or varying *ringfencing rules*, the *Authority* must consult the public in accordance with Appendix 7.

13.20 The *Authority* may at any time correct clerical mistakes, or errors arising from accidental slips or omissions, in any *ringfencing rules* without consulting the public in accordance with Appendix 7 if it considers that doing so will not unduly prejudice a person.

13.21 The *Authority* must place on the *public register* a copy of any approved, revoked or varied *ringfencing rules*.

Ringfencing rules and compliance procedures are not confidential

13.22 *Ringfencing rules* and *ringfencing compliance procedures* :

(a) are not *confidential material* for the purposes of this Code; and

(b) must not be claimed by the *service provider* to be, and are not, confidential in any way.

Additional ringfencing rules for an integrated provider

13.23 *Ringfencing rules* which apply to an *integrated provider* may:

(a) add to the *ringfencing objectives* for the *integrated provider*; and

(b) deal with any matter the *Authority* considers necessary or convenient to:

(i) achieve the *Code objective* or the *ringfencing objectives*; or

(ii) maintain the confidence of those who *generate*, *transport* or *consume* electricity that the *Code objective* or the *ringfencing objectives* are being achieved;

and

(c) without limiting section 13.23(b), require the physical separation of all or part of the *network business's* offices, equipment or *marketing staff* from those of any *other business*.

13.24 Section 13.23 does not limit sections 13.14 to 13.21.

Service provider to procure compliance by its associates

13.25 *Ringfencing rules* which apply to a *covered network* may require a *service provider* to procure an *associate* of the *ringfenced business* to comply with any one or more of:

(a) the *ringfencing objectives*; and

(b) any applicable *ringfencing rules*; and

(c) the *ringfencing compliance procedures*.

13.26 Without limiting section 13.25, *ringfencing rules* which apply to a *covered network* may require a *service provider* to procure any *associate* of the *ringfenced business*

that undertakes activities for the *ringfenced business* in relation to the *network* under service agreements, including asset management agreements:

(a) to establish and *maintain* a separate set of accounts in respect of the activities undertaken for the *ringfenced business* in relation to the *network*; and

(b) to allocate any costs that are shared between an activity for which accounts are kept under section 13.26(a) and another activity according to a methodology for allocating costs that is transparent; and

(c) to provide the accounts established and *maintained* under section 13.26(a) to the *Authority* at the *Authority's* request.

Commencement time for ringfencing rules

13.27 An approval, variation or revocation of *ringfencing rules* may be expressed to take effect immediately or at one or more specified times.

13.28 If no time is specified, an approval, variation or revocation of the *ringfencing rules* takes effect 3 months after it is placed on the *public register*.

Exemptions from ringfencing requirements

13.29 The *Authority* must not grant Western Power Corporation an exemption from this Chapter 13.

13.30 A *service provider* may apply to the *Authority* for an exemption from a provision of the *ringfencing objectives* or the *ringfencing rules* in respect of the *covered network*.

13.31 Subject to section 13.29, the *Authority* may grant a *service provider* an exemption from a provision of the *ringfencing objectives* or the *ringfencing rules* in respect of a *covered network* if the *Authority* determines in all the circumstances that the disadvantages of requiring the *service provider* to comply with the provision are likely to exceed the advantages.

13.32 An exemption under section 13.31:

(a) may be granted for a specified period or indefinitely;

(b) may be unconditional or subject to any conditions the *Authority* considers fit in which case the *service provider* must comply with the conditions; and

(c) may be varied or revoked by the *Authority* after reasonable notice to the *service provider*.

13.33 A person may apply to the *Authority* for an exemption granted to a *service provider* under section 13.31 to be revoked and the *Authority* must consider the application and within a reasonable time advise the person of the *Authority's* determination in relation to the application.

13.34 Before granting, varying or revoking an exemption under section 13.31, the *Authority* must consult the public under Appendix 7.

13.35 The *Authority* must *publish* details of any grant, revocation or variation of an exemption under section 13.31.

13.36 Without limiting the generality of the type of exemptions that may be granted under section 13.31, exemptions to *ringfencing rules* may be transitional in nature and may include provisions allowing a *service provider* time to comply with *ringfencing objectives* or *ringfencing rules*, which time must be as short as the *Authority* considers to be reasonably practicable.

Compliance monitoring and compliance reporting

13.37 A *service provider* must:

(a) establish, *maintain* and implement effective procedures (**"ringfencing compliance procedures"**) to ensure and monitor its compliance with section 13.1; and

(b) when requested by the *Authority*, provide a copy of its *ringfencing compliance procedures* to the *Authority*; and

(c) at reasonable intervals determined by the *Authority* from time to time, assess its compliance with, and the effectiveness of, its *ringfencing compliance procedures*, and its compliance with section 13.1, and provide a report to the *Authority* regarding the assessment.

{Note: Information provided under section 13.37(c) will be one of the factors considered by the *Authority* under section 13.14(b).}

13.38 The *Authority* must place the *service provider's ringfencing compliance procedures* on the *public register*.

13.39 No act or omission by the *Authority* concerning the adequacy or effectiveness of a *service provider's ringfencing compliance procedures* affects the *service provider's* obligations under section 13.1.

13.40 Nothing in any *ringfencing compliance procedures* limits section 13.1 or 13.14.

13.41 The *Authority* may from time to time *publish* guidelines setting out model *ringfencing compliance procedures* and model reporting procedures in relation to *ringfencing compliance procedures*.

Breach of ringfencing requirements

13.42 A *service provider* must report to the *Authority* details of any breach of section 13.1 immediately upon becoming aware of the breach.

13.43 A person who considers that a *service provider* has breached section 13.1 may provide details of the breach to the *Authority*.

13.44 On receipt of details under sections 13.42 or 13.43 the *Authority* must, and any other time on its own initiative the *Authority* may, consider whether to make a determination under section 13.14(b).

Service provider to provide information to Authority and arbitrator

13.45 The *service provider* of a *covered network* must comply with any request by the *Authority* or the *arbitrator* to inspect or make copies of the *service provider's* accounts and records for the *covered network*.

Chapter 14 – Administration and Miscellaneous

Service provider to provide information on access arrangements

14.1 A service provider of a covered network must establish and maintain an information package in relation to the covered network which includes:

(a) the *access arrangement* and *access arrangement information* for the *covered network*, or if there is no *access arrangement*, any *proposed access arrangement* for the *covered network*; and

(b) any *price list* in effect for the *covered network*; and

(c) any notices in respect of the *covered network* or the *access arrangement* provided to the *Authority* under this Code or the *access arrangement*; and

(d) references to any issues papers or decisions and *reasons published* by the *Authority* or the Minister in respect of the *covered network*, with details of where those papers or decisions may be accessed.

14.2 A *service provider* of a *covered network* must, if requested by a *user* or an *applicant*, provide a copy of the *information package* for the *covered network* to the *user* or *applicant* within 10 *business days* of the request, subject to the *user* or *applicant* paying any reasonable fee requested by the *service provider* for copying the *information package*.

14.3 A *service provider* must on an annual basis determine as a *reasonable and prudent person* the spare capacity, if any, in that part of the *covered network* which is a *transmission system* and must either:

(a) specify the spare capacity in a register which is available for inspection by *users* and *applicants* on reasonable terms; or

(b) make available on payment of a reasonable fee a report on the spare capacity.

Data collection regarding target revenue

14.4 A *service provider* must in accordance with *good electricity industry practice*:

(a) throughout an *access arrangement period* collect and *maintain* data on any variables used in the *access arrangement* or *access arrangement information* in connection with cost allocations for the derivation of *target revenue*; and

(b) make that information available to the *Authority* on reasonable request.

Public register

14.5 The *Authority* must establish and *maintain* a *public register* and place on that register:

(a) this Code; and

(b) a listing of the *covered networks*; and

(c) a description of each *covered network*; and

(d) for each *covered network*:

(i) each *proposed access arrangement* and *proposed revisions* submitted to the *Authority*; and

(ii) each *access arrangement information* and amended *access arrangement information* submitted to the *Authority*; and

(iii) each submission received in relation to an *access arrangement*, *proposed revisions* to an *access arrangement*, *access arrangement information*, *price lists* and *price list information*; and

(iv) each *draft decision*, *final decision* and *further final decision* made by the *Authority* or Board under this Code; and

(v) the current *access arrangement* and *access arrangement information*;

and

(e) anything else that is required under this Code to be placed on the *public register*.

14.6 The *public register* must be *maintained* in *electronic form* and:

(a) may be kept solely in *electronic form* if the *Authority*:

(i) *maintains* and makes available at its premises a means of accessing the *public register* in *electronic form*; and

(ii) provides a copy of any item on the *public register* to any person on request and the payment of a reasonable fee; and

(b) otherwise — must be *maintained* in both *electronic form* and hard copy form and the *Authority*:

(i) must make the hard copy *public register* available for inspection during ordinary business hours on *business days* at its principal place of business; and

(ii) must provide a copy of any item on the *public register* to any person on request and the payment of a reasonable fee.

14.7 Without limiting section 14.6, the *Authority* is required to make available for inspection during ordinary business hours on *business days* at its principal place of business copies of:

(a) this Code as amended from time to time; and

(b) each amendment made to this Code.

Register of interested persons

14.8 The *Authority* must *maintain* a *register of interested persons* for each *network* (or, at the *Authority's* discretion, all *networks*) to be used by the *Authority* in the performance of its functions under this Code, including in connection with public consultation under Appendix 7.

14.9 The *Authority* must endeavour to *maintain* the currency of the *register of interested persons* by periodically advertising in newspapers, industry journals and in any other form of media which it considers appropriate.

14.10 Where the *Authority* is required to send a notice to each person listed on the *register of interested persons* in respect of a *network*, the *Authority* may send the notice electronically and if a person listed on the *register of interested persons* has not provided an electronic address to the *Authority* or if the electronic address provided is not current or is not functioning, the *Authority* is not required to send the person the notice.

Protection for the Authority

14.11 The *Authority* is not liable for any loss or damage to third parties resulting from or in connection with the *public register* or *register of interested persons*, including but not limited to loss or damage resulting from:

(a) errors or omissions in the *public register* or *register of interested persons*; or

(b) failure to *maintain* the currency of the *public register* or *register of interested persons*; or

(c) failure of electronic notices where the *Authority publishes* a thing.

Treatment of confidential information

14.12 Subject to section 14.13, where a *disclosing person* provides *relevant material* to a *recipient* in accordance with this Code, the *disclosing person* may, at the time at which the *relevant material* is provided, give notice to the *recipient* that the *relevant material* or part of the *relevant material* is *confidential material.*

14.13 A *disclosing person*:

(a) may give notice to the *recipient* that *relevant material* is *confidential material* only if the *relevant material* is in fact *confidential material*, and where only a part or parts of the *relevant material* is *confidential material*, the *disclosing person* may give notice only in respect of those parts; and

(b) must in a notice under section 14.12 specify in reasonable detail the basis upon which the *disclosing person* makes the claim that the *relevant material* is *confidential material*.

14.14 The *recipient* must not disclose, *advertise* or *publish* any *confidential material* to any person (other than a *worker* of the recipient who is bound by an adequate confidentiality undertaking), unless the *recipient* is of the opinion:

(a) that the disclosure of the *confidential material* would not cause detriment to the *disclosing person* or another person; or

(b) that, although the disclosure of the *confidential material* may cause detriment to the *disclosing person* or another person, either:

(i) the public benefit in disclosing it outweighs the detriment; or

(ii) the recipient is:

A. expressly required by this Code to disclose it despite any claim of confidentiality; or

B. is required by another *written law* or *statutory instrument* to disclose it.

14.15 For the purposes of section 14.14, a disclosure cannot cause detriment to a person if the thing disclosed is already in the public domain (other than by disclosure by the *recipient* in breach of section 14.14).

How this Code applies to multiple service providers

14.16 These sections 14.16 to 14.21 apply if there is more than one *service provider* in connection with a *network*, including if:

(a) the *network* is owned or operated by two or more persons as a joint venture or partnership; or

(b) the *network* is owned and operated by different persons; or

(c) a *network* is legally owned by a person or persons on trust for others.

14.17 In such a case each *service provider* in connection with the *network* is referred to in these sections 14.16 to 14.21 as a *participant*.

14.18 If this Code requires or permits something to be done by the *service provider*, that thing may be done by one of the *participant*s on behalf of all the *participant*s, provided that each *participant* complies with this Code.

{Note: For example, a *proposed access arrangement* may be submitted under section 4.1 by one *participant* on behalf of all *participant*s.}

14.19 If a provision of this Code refers to the *service provider* bearing any costs, the provision applies as if the provision referred to any of the *participant*s bearing any costs.

14.20 If a provision of this Code, other than Chapter 13, refers to the *service provider* doing something, the provision applies as if the provision referred to one or more of the *participant*s doing the thing on behalf of all the *participant*s.

14.21 If:

(a) there is more than one *service provider* in connection with a *network*; and

(b) one is the owner and another is the operator; and

(c) responsibility for complying with the obligations imposed by this Code on the *service provider* is allocated among them by their *access arrangements* or their *access arrangement*,

then each *service provider* is responsible for complying with the obligations allocated to it.

How this Code applies to successor service providers

14.22 If a person becomes a *service provider* in relation to a *covered network*, for example, if:

(a) the person purchases a *covered network*; or

(b) a license is cancelled under section 35 of the Act and the assets, rights and interests of the former licensee vest in the person under regulations under section 35(4) of the Act,

then,

(c) the *network* remains a *covered network*;

(d) any *access arrangement approved* under this Code continues to apply to the *network* concerned despite the change in *service provider* and binds the person in the same way it bound other *service provider*s immediately before the person became a *service provider* with respect to the *network* concerned; and

(e) any arbitration *award* made under the Code continues to apply to the *network* concerned despite the change in *service provider* and binds the person in the same way it bound other *service provider*s immediately before the person became a *service provider* with respect to the *network* concerned.

Authority may seek advice

14.23 The *Authority* in the performance of a function under this Code may seek advice from the *Director of Energy Safety* on matters relating to the performance of that function, for which purpose the *Director of Energy Safety* is to be treated as a *worker* of the *Authority*.

14.24 The *Director of Energy Safety*:

(a) has the function of providing advice under section 14.23; and

(b) is not obliged to provide advice under section 14.23.

14.25 Section 14.23 does not limit the *Authority's* power to seek advice from any person.

CPI adjustment

14.26 Where this Code refers to an amount being **"CPI adjusted"** then the *Authority* must:

(a) adjust the amount (including as previously *CPI adjusted*) from each 1 July, to reflect the change in *CPI* between the *CPI* published for the March quarter

immediately preceding the adjustment and the *CPI* published for the March quarter of the previous year; and

(b) *publish* the adjusted amount.

General process for public consultation

14.27 Appendix 7 has effect.

Chapter 15 – Transitional

Minister may make determinations

15.1 The Minister may determine, after consultation with affected parties, how any matter in progress immediately before the commencement of Part 8 of the Act is to be treated, after that commencement, for the purposes of the provisions of the Code.

15.2 The Minister must publish a determination made under section 15.1 in the Gazette.

Access arrangements for SWIS to be compatible with market

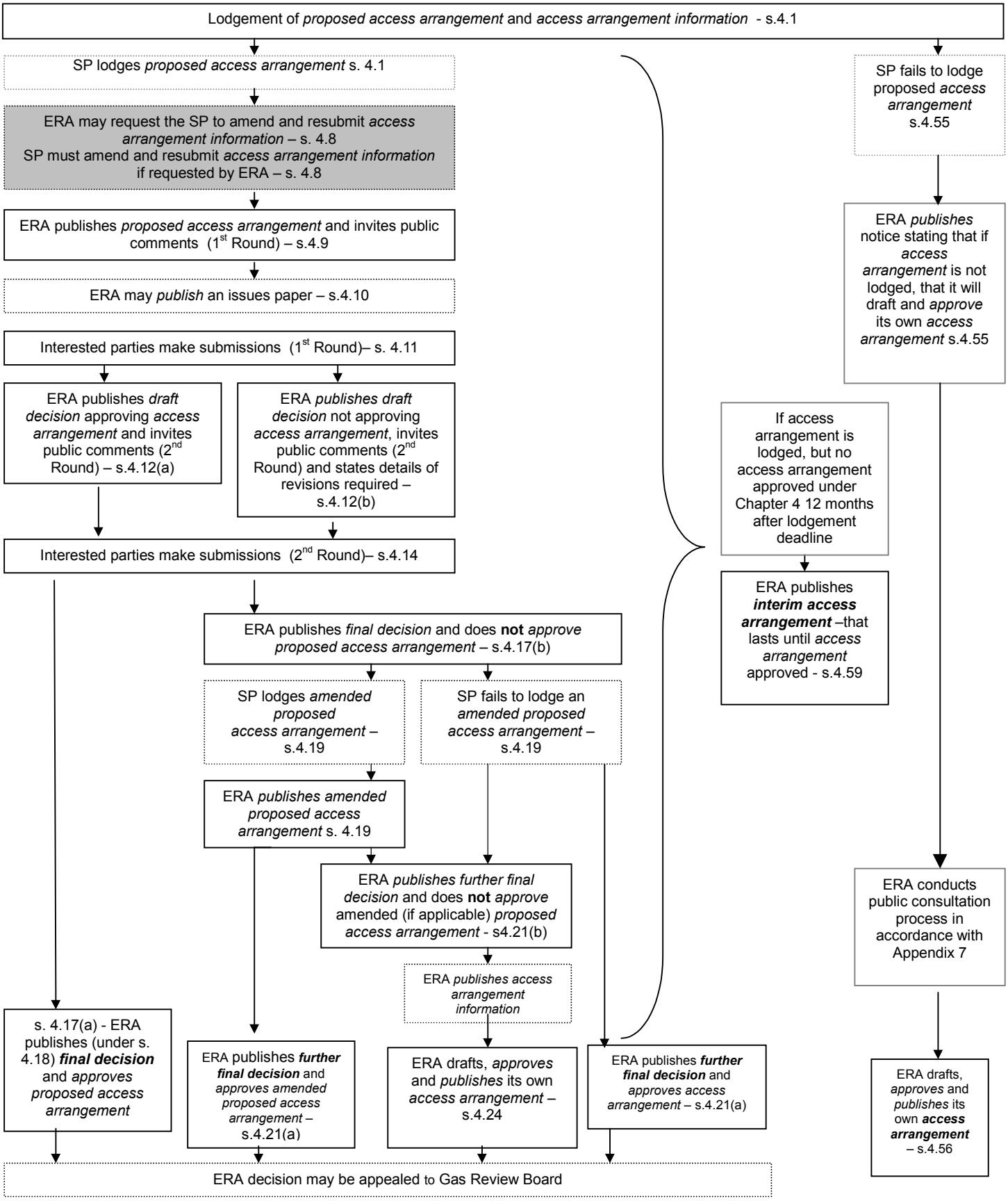
15.3 Without limiting sections 5.34 to 5.36, an *access arrangement* for a *covered network* which forms part of the *SWIS* may specify as *trigger events* one or more events or sets of circumstances in connection with the arrangements established under Part 9 of the Act.

Access arrangements to be compatible with changes to contestability

15.4 Without limiting sections 5.34 to 5.36, an *access arrangement* for a *covered network* may specify as *trigger events* one or more events or sets of circumstances in connection with changes to the thresholds for contestability with respect to electricity supply.

#479019

Appendix 1 – Flowchart of access arrangement approval process



Appendix 2 – Model Applications and Queuing Policy

{Outline: An *access arrangement* must include an *applications and queuing policy* (section 5.1). The *service provider* must submit for approval, in an *access arrangement*, an *applications and queuing policy*. This Appendix 2 sets out a model for such a policy. Under section 5.11, if the *service provider* adopts this model policy it can be assured that its *applications and queuing policy* will be consistent with sections 5.7 to 5.9 and the *Code objective*. Otherwise, under section 5.11(b) the *Authority* will use this model policy as a benchmark when assessing the *service provider's* proposed policy.}

This Appendix 2 leaves some matters to be completed when an *applications and queuing policy* is incorporated into an *access arrangement*. These matters are noted in square brackets, eg. "*[x]*".

The variable can be a simple absolute number or may follow a more sophisticated structure designed by the *service provider* to best suit the characteristics of its *covered network* and business. For example, if *[x]* is the time by which a *service provider* must make an *access offer* for a *class 1 application*, the *service provider* may specify that *[x]* is 5 *business days* where the *application* is in respect of between one and 100 existing *connection points* and *[x]* is 10 *business days* where the *application* is in respect of more than 100 *connection points*.

The variables proposed by a *service provider* are subject to approval by the *Authority* under Chapter 4, and (without limiting the *Authority's* discretion or duties) must be consistent with the *Code objective* and section 5.1(g).

Footnotes following each matter in square brackets contain instructions to the *Authority*. The footnotes form part of this *model applications and queuing policy* and, like these introductory notes, have legal effect.

Sub-appendix 2.1 – Interpretation

Definitions and Interpretation

A2.1 In this *applications and queuing policy*, unless the contrary intention is apparent:

"access contract" has the same meaning as "access agreement" does in Part 8 of the Act.

{Note: At the time this Code was made, the definition in section 103 of the *Act* was:

' **"access arrangement"** means an agreement under the Code between a network service provider and another person (a "network user") for that person to have access to services. '}

"access offer" means a form of *access contract* which complies with clause A2.103 or A2.105, as applicable, which has been *signed* by the *service provider* and is in such a form that it can, without anything else being required, become an *access contract* when *signed* by an *applicant*.

"Act" means the *Electricity Industry Act 2004*.

"applicant" means an applicant under this *applications and queuing policy* for an *access contract* and includes a prospective applicant.

"application" means an *access application* under this *applications and queuing policy* (as amended under this *applications and queuing policy*) and includes any additional information provided by the *applicant* in relation to the *access application*.

"application form" means the form referred to in clause A2.22 contained in a *service provider's access arrangement*.

"bypass", in relation to an *application* (**"bypassed application"**), means that the *first come first served* principle is not applied in respect of the bypassed *application*, so that an *application* with later *priority* receives an *access offer* before the *bypassed application.*

"capacity increase" means an increase in a *user's* capacity under an *access contract* in respect of a *connection point.*

"capacity increase notice" means a notice, under clause A2.30, provided by a *user* to a *service provider* in respect of a *user's* request for *capacity increase.*

"class 1 application" has the meaning given to it in clause A2.5.

"class 2 application" has the meaning given to it in clause A2.6.

"class 3 application" has the meaning given to it in clause A2.7.

{Note: See also the *capacity increase notice* under clause A2.30 and the *customer transfer request* under clause A2.34.}

"Code" means the *Electricity Networks Access Code 2004*.

"competing", in relation to two or more *applications*, means that the provision of the *covered service* sought in one *application* may impede the *service provider's* ability to provide the *covered services* that are sought in the other *applications.*

"confidential information" means information disclosed, by an *applicant* or a *disclosing person,* to the *service provider,* in or in connection with, an *application* or a *capacity increase notice* which the *disclosing person* (acting as a *reasonable and prudent person*) has identified as being commercially sensitive or confidential.

"contract commencement date" means the date on which an *access contract* commences.

"contract termination date" means the date of termination of an *access contract*.

"CPI" means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as the *service provider* may reasonably 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*.

"customer transfer code" means a code made under section 39(1) or section 39(2a) of the *Act* in respect of the matter referred to in section 39(2)(b) of the *Act*.

"customer transfer request":

(a) if "customer transfer request" is defined in the *customer transfer code* — has the meaning given to that term in the *customer transfer code*; and

(b) otherwise — means a request by an *incoming user* to the *service provider* to transfer an *outgoing user's access* rights and obligations in respect of a *contestable customer* to the *incoming user*.

"disclosing person", in relation to an *application* or a *capacity increase notice*, means a person who discloses *confidential information* to the *service provider* in, or in connection with, an *application* or a *capacity increase notice*, as applicable.

"dormant application" means an *application* that was lodged by the *applicant* on a date that is more than three years before the date on which the *service provider* is considering the *application* under clause A2.78 and in respect of which the *service provider* has not made an *access offer.*

"first come first served" means that an *applicant* with earlier *priority* receives an *access offer* before an *applicant* with later *priority.*

"GST" means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth or otherwise on a supply.

"initial response" means the initial response of the *service provider* to an *applicant* under clause A2.89 in relation to an *application*.

"law" means "written laws" and "statutory instruments" as defined in the Code and rules of the general law including the common law and equity.

"lodgement fee" means:

(a) for an *application* — the fee specified under clause A2.14; or

(b) for a *capacity increase notice* — the fee specified under clause A2.35.

"materially different", in relation to an amended *application*, includes an amended *application* which is materially different to the original *application* in respect of any one or more of the criteria specified in clause A2.75.

"maximum demand" means the highest amount of electrical power in respect of electricity transferred, or forecast to be transferred, over a specified period (half hour, day, week, month, season or year) at an *exit point*.

"preliminary assessment" means the preliminary assessment of the *service provider* to an *applicant* under clause A2.93 in relation to an *application*.

"priority", in relation to an *application*, means the priority that the *applicant* has, as against any other *applicant* with a *competing application,* to obtain *access* to *covered services*.

"project" means a project identified in a *tender notice.*

"project related application" means an *application* designated under clause A2.58 by the *service provider,* acting as a *reasonable and prudent person,* as a project-related *application*, provided that the *applicant* has not notified the *service provider* under clause A2.60 that the *application* is not a *project-related application*.

"proponent" means a person who gives a *tender notice* to the *service provider* in respect of a *project.*

"proposed controller" means a person who owns, operates or controls *facilities and equipment* at a *connection point* and who is specified by an *applicant* in an *application* in respect of a *connection point*.

"queue" means a *first come first served* queue described in clauses A2.47 to A2.48.

"queuing rules" means the principles described in clauses A2.46 to A2.48 that apply to determine the *priority* of an *application.*

"requested capacity" means, in respect of a *connection point*, the capacity requested to become contracted capacity under the *access contract* for which an *application* is made.

"services end date" means, in respect of a *connection point*, the date on which the *service provider* ends the provision of *services* to the *user* in respect of that *connection point*.

"services start date" means, in respect of a *connection point*, the date on which the *service provider* commences providing *services* to the *user* in respect of that *connection point*.

"signed" by the *service provider* or the *applicant* means duly signed or otherwise executed by or on behalf of all persons who comprise the *service provider* or the *applicant*, as the case may be.

"spare capacity" means the capacity, from time to time, of the *covered network* as configured at the time to provide *covered services* having regard to the *service provider's* contractual obligations in respect of the *covered network*.

"tender notice" means a notice given to the *service provider* under clause A2.56(a).

"transfer matters", in relation to a *customer transfer request*, has the meaning given to it in clause A2.43.

"workers" of a person means the directors, officers, servants, employees, agents, sub-contractors and consultants of the person.

A2.2 Unless the contrary intention is apparent, a term with a defined meaning in the *Code* has the same meaning in this *applications and queuing policy*.

A2.3 Unless the contrary intention is apparent:

(a) a rule of interpretation in the *Code*; and

(b) the *Interpretation Act 1984*,

apply to the interpretation of this *applications and queuing policy*.

Transition of prior applications

[x][1]

Negotiations in good faith

A2.4 The *service provider* must negotiate in good faith with an *applicant* regarding the terms for an *access contract* for a *covered service*.

Classes of applications

A2.5 A **"class 1 application"** is an *application*:

(a) by an *applicant* who is already a *user* of the *network*; and

(b) in respect of one or more existing *connection points*; and

(c) seeking only a *reference service* at the *reference tariff*; and

(d) which does not require any *augmentation*.

A2.6 A **"class 2 application"** is an *application*:

(a) by an *applicant* who is not already a *user* of the *network*; and

(b) which otherwise meets the requirements for a *class 1 application.*

A2.7 A **"class 3 application"** is an *application* which does not meet the requirements for a *class 1 application* or *class 2 application*.

{Note: See also the *capacity increase notice* under clause A2.30 and the *customer transfer request* under clause A2.34.}

A2.8 If an *application* is initially misclassified by a *service provider* in its notification under clause A2.89 (for example because it is initially thought that the *application* is not likely to require an *augmentation*, but one later proves necessary) or requires reclassification because it has been amended, then the *service provider* may reclassify it and the relevant clauses of this *applications and queuing policy* appropriate to its new classification apply as though the new classification had applied to the *application* from the date the *application* was originally lodged.

Sub-appendix 2.2 – The application

Informal communications

A2.9 Prior to lodging an *application* with a *service provider*, an *applicant* may contact the *service provider* to discuss the proposed *application*, including matters such as:

(a) what classification will likely apply to the proposed *application*;

(b) whether it is likely that there is sufficient *spare capacity* to provide the requested *covered service*s or whether an *augmentation* may be required to provide the *covered services*, including whether it is likely that any new *connection assets* will be required to provide the *covered service*s requested in the *application*; and

(c) if it is likely that an *augmentation* will be required — whether or not a *capital contribution* or *non-capital contribution* will likely be required from the *applicant* under the *capital contributions policy* and a good faith estimate of the approximate amount of the contribution; and

(d) if it is likely that an *augmentation* will be required — a good faith estimate of the likely time required for the planning, designing, approving, financing, construction and commissioning, as applicable, of any necessary *augmentations*; and

[1] Insert transition of prior applications provisions, if applicable. To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* See section 5.7(i) of the *Code.*

(e) what system or other studies are likely to be required in the *processing* of the *application*, whether the *service provider* is able to undertake the studies and the approximate costs of such studies,

and the *service provider* must engage in such discussions in good faith and use all reasonable endeavours to satisfactorily and promptly address any matters raised by the *applicant*.

A2.10 The discussions under clause A2.9 are not binding on a *service provider*, and the *service provider* is not liable for any error or omission that is made as a *reasonable and prudent person* in the discussions under clause A2.9.

Confidentiality

A2.11 Information which the *service provider* is required to disclose under clauses A2.68(a), A2.68(b) or A2.68(c) is not *confidential information*.

A2.12 The *service provider* must not disclose *confidential information* unless:

(a) the disclosure is made to the *Authority* on a confidential basis; or

(b) the disclosure is made to a *worker* of the *service provider* who is bound by an adequate confidentiality undertaking; or

(c) the disclosure is made with the consent of the *disclosing person*; or

(d) the disclosure is required or allowed by *law*, or by the *arbitrator* or another court or tribunal constituted by *law*; or

(e) the information has entered the public domain other than by breach of this clause A2.12; or

(f) the information could be inferred by a *reasonable and prudent person* from information already in the public domain.

Costs of processing application

A2.13 For an *application* other than a *class 3 application*, an *applicant* must pay to the *service provider* the *lodgement fee* prescribed in clause A2.14 for the *application* at the time it lodges the *application*.

A2.14 The *lodgement fee* is:

(a) for a *class 1 application* — $*[x]*[2]; and

(b) for a *class 2 application* — $*[x]*[3].

A2.15 For a *class 3 application*, an *applicant* must, when requested by the *service provider*, pay an amount to the *service provider* or a third party in respect of a reasonable cost incurred, or to be incurred within a reasonable timeframe, in *processing* the *application*.

A2.16 The total of the costs referred to in clause A2.15 must not exceed the reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, in accordance with *good electricity industry practice*, seeking to achieve the lowest practicable cost of *processing* the *application*.

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[2] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* The value inserted for variable *[x]* may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a *service provider* acting as a *reasonable and prudent person* seeking to achieve the lowest practicable cost of processing an *application* of the relevant class in relation to the relevant *network.*

[3] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* The value inserted for variable *[x]* may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, in accordance with *good electricity industry practice*, seeking to achieve the lowest practicable cost of processing an *application* of the relevant class in relation to the relevant *network.*

A2.17 The costs referred to in clause A2.15 must not include any costs of the *service provider* in relation to an *access dispute* (which are to be awarded by the *arbitrator* under Chapter 10).

A2.18 The *service provider* may adjust the amounts referred to in clauses A2.14(a) and A2.14(b) (including as previously adjusted) from each 1 July in accordance with section 14.26(a) of the Code and must provide a notice setting out the adjusted amounts to the *Authority*, and the *Authority* must place the notice on the *public register*.

A2.19 A dispute between an *applicant* and the *service provider* regarding a cost under clause A2.15 may be referred by either party to the *arbitrator* for determination, in which case the *arbitrator* may either affirm the amount or reduce it.

Lead times for applications

A2.20 An *applicant* must endeavour to lodge an *application* to the *service provider*:

(a) for a *class 1 application* — at least *[x]*[4] *business days* before the requested *services start date*; and

(b) for a *class 2 application* — at least *[x]*[5] *business days* before the requested *services start date*; and

(c) for a *class 3 application* — within a reasonable time before the requested *services start date*, having regard to the time required for planning, designing, approving, financing, constructing and commissioning of any necessary *augmentation*.

Access application

A2.21 The access *application* process is commenced by the *applicant* giving a written *application* to the *service provider* on the *application form* in the *service provider's access arrangement* using reasonable endeavours to accurately and completely address each item in the *application form*.

A2.22 The *service provider* must include an *application form* in its *access arrangement* which makes provision for an *applicant* to provide the following information to the *service provider* in respect of an *application*:

(a) the full name and address of the *applicant*; and

(b) whether the *applicant* is acting as agent for any person in making the *application*, and if so, details of the *applicant's* principals; and

(c) the *applicant's* preliminary classification of the *application*; and

(d) any conditions precedent that the *applicant* seeks for the requested *access contract*; and

(e) whether the *application* is being made in connection with a tender process under clauses A2.56 to A2.61; and

(f) the *covered service*s requested, and for each requested *covered service*:

(i) the requested *services start date* and requested *services end date*; and

(ii) the location or meter number of each requested *connection point*, as applicable; and

(iii) the requested *service standards*; and

(iv) the requested *tariff*; and

(v) any additional terms the *applicant* seeks in respect of the *covered service*;

and

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[4] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 10 in respect of *services* to be added to an existing *access contract,* and 25 otherwise.

[5] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 25.

(g) for each requested *connection point*:

(i) such information regarding the *facilities and equipment* at the *connection point* to the extent required by:

A the *technical rules*; or

B the *service provider* acting as a reasonable and prudent person,

and

(ii) if the *applicant* wishes to nominate a *proposed controller* for the *connection point*, information in reasonable detail regarding the *proposed controller*; and

(iii) if the *connection point* is an *entry point* — the proposed declared sent out capacity (expressed in kW or kVA) of the plant connected or to be *connected* at the *entry point*; and

(iv) if the *connection point* is an *exit point* — the expected *maximum demand* (expressed in kW or kVA) connected or to be connected at each *exit point*;

and

(h) if the *applicant* so chooses, the *applicant's* preliminary proposal in relation to whether any contribution under the *capital contributions policy* will be paid for or provided in kind, and the preliminary proposed terms on which that may occur (but this does not prevent the *applicant* from making an alternative proposal once the scope of any *augmentation* is better known); and

(i) such information concerning the *applicant* as the *service provider* requires, acting reasonably, to assess the *applicant's* ability to meet its obligations under the requested *access contract*.

A2.23 An *applicant* may request in an *application* a *preliminary assessment* of a *class 3 application*.

A2.24 When an *application* contains estimates or forecasts of any information —

(a) the *service provider* may treat that estimated or forecast information as factual information; and

(b) the *application* is a warranty by the *applicant* to the *service provider* that each such estimate or forecast is the *applicant's* best estimate or forecast as a *reasonable and prudent person*.

Errors or omissions in an application

A2.25 If the *service provider* becomes aware of any material error or omission in an *application* or purported *application* it must immediately notify the *applicant* about it and may request information under clause A2.28.

A2.26 If an *applicant* is notified by the *service provider* or otherwise becomes aware of any material error or omission in an *application*, it must amend the *application* to remedy it as soon as practicable after becoming aware of it.

A2.27 If remedying an error or omission in an *application* amounts to a material amendment to the *application*, clauses A2.73 and A2.74 apply.

Additional information

A2.28 At any time, the *service provider* may, acting as a *reasonable and prudent person*, request the *applicant* to provide further information that the *service provider* reasonably requires to enable it to *process* the *application*.

A2.29 An *applicant* who receives an information request under clause A2.28 must provide the requested information to the *service provider* as soon as reasonably practicable.

Sub-appendix 2.3 – Capacity increase notices and customer transfer requests

Capacity increase notice

A2.30 A *user* may request a *capacity increase* by providing a *capacity increase notice* to the *service provider*.

A2.31 Within 10 *business days* of receipt of a *capacity increase notice* under clause A2.30, the *service provider* must determine, and notify the *user*, whether or not it accepts the *capacity increase*.

A2.32 The *service provider* must accept the *capacity increase* if it forms the view as a *reasonable and prudent person* that:

(a) accepting the *capacity increase* would not be likely to impede the ability of the *service provider* to provide a *covered service* sought in an *access application* lodged by another *applicant*; and

(b) it is not likely that an *augmentation* would be required to provide the *capacity increase*,

and otherwise the *service provider* must reject the *capacity increase*.

A2.33 If the *service provider* accepts the *capacity increase* under clause A2.31 then the *service provider* and the *user* must, as soon as practicable, arrange to amend the *user's access contract* in accordance with the *capacity increase*.

A2.34 If the *service provider* does not accept the *capacity increase* under clause A2.31 then the *service provider* must state in its notice under clause A2.31 that the *user* must make an *application* under Sub-appendix 2.2 to increase its capacity as described in the *capacity increase notice*.

Lodgement fees for capacity increase notices

A2.35 For a *capacity increase notice* an *applicant* must pay to the *service provider* the a *lodgement fee* of $*[x]*[6] at the time it lodges the *capacity increase notice*.

A2.36 The *service provider* may adjust the amount referred to in clause A2.35 (including as previously adjusted) from each 1 July in accordance with section 14.26(a) of the Code and must provide a notice setting out the adjusted amount to the *Authority*, and the *Authority* must place the notice on the *public register*.

Lead times for capacity increase notices

A2.37 An *applicant* must endeavour to lodge a *capacity increase notice* to the *service provider* at least *[x]*[7] *business days* before the requested *services start date*.

Form of capacity increase notices

A2.38 A *capacity increase notice* must:

(a) provide sufficient information to the *service provider* to enable the *service provider* to process the *capacity increase notice*; and

(b) comply with any requirements for *capacity increase notice* under a *law*.

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[6] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* The value inserted for variable *[x]* may be expressed as a single value or by a more sophisticated structure for example a range of numbers but should not exceed a forecast of reasonable costs which would be incurred by a prudent *service provider*, acting efficiently and in good faith, in accordance with *good electricity industry practice*, seeking to achieve the lowest practicable cost of processing a *capacity increase notice* in relation to the relevant *network.*

[7] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 10.

Additional information

A2.39 At any time, the *service provider* may, acting as a *reasonable and prudent person*, request the *applicant* to provide further information that the *service provider* reasonably requires to enable it to process a *capacity increase notice.*

A2.40 An *applicant* who receives an information request under clause A2.39 must provide the requested information to the *service provider* as soon as reasonably practicable.

Customer transfer requests

A2.41 An *incoming user* may lodge a *customer transfer request* with the *service provider.*

A2.42 The *service provider*, *incoming user* and *outgoing user* must comply with the *customer transfer code* with respect to a *customer transfer request*.

A2.43 To the extent that there is no *customer transfer code* or the *customer transfer code* does not make provision for any of the following matters (**"transfer matters"**):

(a) the timing of the lodgement and processing of the *customer transfer request*; and

(b) the fees, if any, applying to the *customer transfer request*; and

(c) the form of the *customer transfer request*; and

(d) information required to be provided by or to any person in connection with the *customer transfer request*; and

(e) any other matter which it is necessary or convenient to deal with to facilitate the efficient processing of the *customer transfer request*,

the *service provider*, *incoming user* and *outgoing user* must:

(f) comply with any provisions in the *access arrangement* dealing with the *transfer matters*; and

(g) to the extent that the *access arrangement* does not make provision for a *transfer matter*, as *reasonable and prudent persons*, act in a manner which facilitates the efficient processing of the *customer transfer request*.

A2.44 A *customer transfer request* is not to be assessed as an *application* and the *queuing rules* do not apply to the processing of a *customer transfer request*.

Sub-appendix 2.4 – The Queue

Queuing rules apply only when there are competing applications

A2.45 The *queuing rules* apply only where there are *competing applications*.

Queuing rules determine priority of applications

A2.46 The *queuing rules* apply to determine the *priority* of an *applicant's application* in the *queue.*

A2.47 Subject to clause A2.61, the *priority* of an *applicant's application* in a *queue* is to be determined by reference to the time at which the *application* is lodged, which is the time at which the *service provider* actually receives the *application*.

A2.48 If an *applicant* submits more than one *application*, then the *applicant* has a different *priority* in respect of each *application*, and every reference in the *queuing rules* to the *applicant's priority* is to be read as a reference to the *applicant's priority* in respect of the relevant *application*.

More than one queue

A2.49 Under clause A2.47 there may from time to time be more than one *queue* in respect of a *network*.

{Example: One group of *applications* may relate to new *generation* projects in one part of a *covered network* and another group of *applications* may relate to new *consumers* at an industrial area at a different part of the *covered network* and each group of applications may be in a separate queue.}

First come first served principle

A2.50 Subject to clauses A2.51 to A2.62, the *service provider* must ensure that an *applicant* with earlier *priority* receives an *access offer* before an *applicant* with later *priority* (**"first come first served"**).

Bypass

A2.51 Subject to the process in clauses A2.53 to A2.55, *bypass* is permitted to the extent necessary to better achieve the *Code objective.*

A2.52 Without limiting clause A2.51, circumstances where the *bypass* test in clause A2.51 might be satisfied include:

(a) where an *application* that has earlier *priority* in a *queue* cannot, and an *application* with later *priority* can, presently proceed to an *access contract* or otherwise progress through the *applications* process, for example because:

(i) the *applicant* with earlier *priority* has not obtained environmental or other approvals that it requires in order to proceed; or

(ii) of delays in *processing* the *application* that has earlier *priority* caused by the *arbitration* of an *access dispute* under Chapter 10; or

(b) where an *applicant* fails to use reasonable endeavours to progress its *application* in accordance with this *applications and queuing policy*; or

(c) where the *application* is frivolous, vexatious or was not made in good faith.

A2.53 If the *service provider* considers that the *bypass* test in clause A2.51 is satisfied in relation to an *application*, it must give the *applicant* a notice (subject to clause A2.12) setting out in reasonable detail the basis on which the *service provider* considers that the *bypass* test in clause A2.51 is satisfied and requiring the *applicant* to either:

(a) if possible, progress the *application*; or

(b) otherwise provide information to the *service provider* demonstrating why the *application* should not be *bypassed*.

A2.54 At least *[x]*[8] *business days* after giving a notice under clause A2.53, the *service provider* must make a fresh determination, having regard to all relevant material including anything which has occurred, and any information provided, since the notice was given under clause A2.53 whether the *bypass* test in clause A2.51 is satisfied, and if the *service provider* considers that the *bypass* test in clause A2.51 is satisfied, it may *bypass* the *application* to the extent permitted under clause A2.51.

A2.55 If the *service provider bypasses* an *application* under clause A2.54, the *service provider* must (subject to clause A2.12) provide *reasons* to the *applicant* for its decision to *bypass* the *application* including information in reasonable detail explaining on what basis the *service provider* determined that *bypassing* the *application* was necessary to better achieve the *Code objective* under clause A2.51.

Applications in relation to tender projects etc

A2.56 Clauses A2.58 to A2.60 apply:

(a) where a *proponent* gives notice (**"tender notice"**) to the *service provider* that it is requesting tenders or proposals in connection with a *project* and that some or all of the persons lodging tenders or proposals in connection with the *project* may wish to *transport* electricity from or to the *project* and may lodge a *class 3 application* for that purpose; and

(b) where the *service provider* has not been given a *tender notice* by a *proponent* but two or more *applications* have been lodged with the *service provider*, each of which is expressly designated as being made in connection with the same tender process.

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[8] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not be less than 20.

A2.57 When a *proponent* requests tenders or proposals in connection with a *project* the *proponent* must also inform *applicants* who may lodge tenders or proposals in connection with the *project* to specify on their *application forms* that the *application* is being made in connection with the tender process for the *project*.

A2.58 When a *class 3 application* is lodged with the *service provider*, the *service provider* must determine as a *reasonable and prudent person* whether it is lodged for the purpose of *transporting* electricity from or to a *project*, and if so it must by notice to the *applicant* designate the *application* as a *project-related application.*

A2.59 For the purposes of A2.58, the *service provider* must determine that an *application* is lodged for the purpose of *transporting* electricity from or to a *project* where the *application* provides that it is made in connection with a tender process under clauses A2.56 to A2.61.

A2.60 If an *applicant* receives a notice from the *service provider* under clause A2.58, the *applicant* may notify the *service provider* that its *application* is not a *project-related application* and the *service provider* must deal with the *application* on the basis that it is not a *project-related application*.

A2.61 All *project-related applications* for a *project* are to be treated as having the same *priority*, equal to the *priority* attaching to the earlier of:

(a) the date the *service provider* received the *tender notice* from the *proponent*; or

(b) such other date that the *service provider* becomes aware that an invitation to tender for the *project* has been announced.

A2.62 If the *service provider* is of the opinion that one or more *access contracts* have been entered into in connection with a *project*, the *service provider* must:

(a) liaise with the *proponent* of the *project* to determine whether its opinion is correct; and

(b) if it determines that its opinion is correct, give notice to each other *applicant* that has made an *application* in connection with the *project* that:

(i) one or more *access contracts* have been entered into in connection with the *project*; and

(ii) its *application's priority* in the *queue* is now the *priority* that its *application* would have had in accordance with the *first come first served* principle if it had not been designated as a *project-related application*.

Reserve capacity auctions for SWIS

A2.63 *[x]*[9]

Processing of applications not affected

A2.64 Nothing in the *queuing rules* prevents the *service provider* from *processing* more than one *application* concurrently.

A2.65 To avoid doubt, the *service provider* must comply with the timeframes set out in this *applications and queuing policy* in respect of each *application* which is lodged with the *service provider*, whether or not it is *processing* more than one *application* concurrently.

Exercising an option not affected

A2.66 An option granted to a *user* as part of the terms of an *access contract* to extend the duration of the *access contract* is not an *application* and is not subject to the *queuing rules* if it is exercised in accordance with its terms.

[9] If applicable, insert provisions regarding *processing* of *applications* made in connection with a tender process under a *law* made under Part 9 of the *Act*. To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* See section 5.7(h) of the *Code.*

Priority of withdrawn applications

A2.67 An *application* which is withdrawn or deemed by this *access arrangement* to have been withdrawn loses its *priority* under the *queuing rules*, even if it is subsequently amended or resubmitted.

Provision of information about position in queue

A2.68 The *service provider* must make known to any *applicant* with an *application* in a *queue*:

(a) in respect of each *competing application* in the *queue*:

(i) the fact that the *competing application* exists in the *queue*; and

(ii) whether the *competing application* is ahead of, or behind, the *applicant's* position in the *queue* and if any of the *competing applications* are *project-related applications*; and

(b) a description of the circumstances which caused the *applications* in the *queue* to be *competing applications* (including information in reasonable detail regarding the aggregated capacity requirements of those *competing applications* which are ahead of the *applicant* in the *queue*); and

(c) the likely time until the making of an *access offer* and the commissioning of any necessary *augmentation*; and

(d) except to the extent that it is prevented from doing so by clause A2.12, in respect of each *competing application* in the *queue*:

(i) the capacity requirements of the *competing application*; and

(ii) the geographic location at which the *competing application* seeks the capacity; and

(iii) reasonable details regarding any *augmentation* required by the *competing application*.

A2.69 The information in clause A2.68 must be provided:

(a) upon initial lodgement of an *application*; and

(b) at any time after a reasonable request by the *applicant* for updated information; and

(c) as soon as practicable after a material change in the information previously notified under this clause A2.69, including when information of the kind referred to in clause A2.68(d) which was previously withheld on the ground that the *service provider* was prevented from doing so by clause A2.12 is no longer entitled to be withheld on that ground.

Sub-appendix 2.5 – Amendment and withdrawal of application

Amendment to application

A2.70 An *applicant* may at any time by notice to the *service provider* amend an *application*.

A2.71 Without limiting clause A2.70, an amendment to an *application* may include a change to the identity of the *applicant* in which case the other information in the *application* must also be amended accordingly.

Amending application to address necessary augmentation

A2.72 Without limiting clause A2.70, if an *application* would require an *augmentation*, then at any time after the *service provider* provides the necessary information the *applicant* may revise its *application* to add to the *application* the terms of a *works contract* or a *payment contract* under the *capital contributions policy*.

Priority of amended applications

A2.73 Subject to clause A2.74, an amended *application* has the same *priority* as the original *application*.

A2.74 Subject to clause A2.75, if an amended *application* is *materially different* from the original *application*, and if the difference is such that an *applicant* whose *competing application* has a date of *priority* subsequent to the original *application* is materially prejudiced in terms of the likelihood, timing and terms of its obtaining *access* (compared with that later *applicant's* position with respect to the original *application*), then:

(a) if it is possible to construe the amended *application* as a combination of the original *application* and a notional supplementary *application* (whether for further *capacity* or otherwise) — then the original *application* retains its *priority* and the notional supplementary *application* has *priority* according to the time of amendment; but

(b) otherwise — the amended *application* has *priority* according to the time of amendment.

A2.75 For the purposes of clause A2.74, without limiting the ways in which an amended *application* may be *materially different* to the original *application*, an amended *application* is not *materially different* from the original *application*:

(a) in terms of the capacity sought in the *application*, if the capacity sought in the amended *application* is ± *[x]* [10]% of the capacity sought in the original *application*; and

(b) in terms of the charges payable under the *application*, if the charges payable under the amended *application* are ± *[x]*[11]*%* of the charges payable under the original *application*; and

(c) to the extent that the amendment deals with the matters in clause A2.72; and

(d) *[x]*[12]

Withdrawal of application

A2.76 An *applicant* may at any time before it enters into an *access contract*, by notice in writing to the *service provider* withdraw an *application*.

Applications do not expire

A2.77 Subject to clause A2.78, an *application* does not expire due to the passage of time.

A2.78 Where the *service provider* holds the opinion as a *reasonable and prudent person* that it is unlikely that an *access offer* will be made in respect of a *dormant application*, then the *service provider* must give the *applicant* a notice requiring the *applicant* to provide information to the *service provider* demonstrating why the *dormant application* should not be taken to have been withdrawn by the *applicant*.

A2.79 At least *[x]*[13] *business days* after giving a notice under clause A2.78, the *service provider* must make a fresh determination, having regard to all relevant material including anything which has occurred, and any information provided, since the notice was given under clause A2.78 whether the *dormant application* should be taken to have been withdrawn by the *applicant*.

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[10] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* The value inserted for variable *[x]* should allow for the normal fine-tuning of output or load as a *project* is developed. It is not intended to accommodate a material reconfiguration of the *project (*e.g. adding or removing a processing unit), nor to facilitate 'gaming' of the *queue.*

[11] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement.* The value inserted for variable *[x]* should allow for the normal fine-tuning of output or load as a *project* is developed. It is not intended to accommodate a material reconfiguration of the *project (*e.g. adding or removing a processing unit), nor to facilitate 'gaming' of the *queue.*

[12] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. If there are to be other criteria inserted in the *access arrangement,* to be taken into account when determining if an amended *application* is *materially different* from the original *application*, add "(d) ".

[13] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not be less than 20.

A2.80 If the *service provider* makes a determination under clause A2.79 that the *dormant application* should be taken to have been withdrawn by the *applicant* then the *dormant application* is deemed to have been withdrawn by the *applicant*.

Sub-appendix 2.6 – Processing the application and making the access offer

Service provider must be expeditious and diligent

A2.81 The *service provider* must *process* an *application* expeditiously and diligently.

Conditions precedent permitted in access contract

A2.82 The *service provider* and an *applicant* must negotiate in good faith regarding any conditions precedent that the *applicant* or *service provider* seeks to have included in an *access contract* in order to achieve the objectives set out in clause A2.83.

A2.83 The objectives of this *applications and queuing policy* with regard to conditions precedent are:

(a) conditions precedent in *access contracts* should facilitate the development of electricity *consuming* and *generating* projects and provide flexibility; and

(b) conditions precedent should not unduly impede the ability of the *service provider* to provide a *covered services* to *applicants* with later *priority* or cause uncertainty and delay; and

(c) conditions precedent should not constitute an inappropriate barrier to entry into a market or be for the purpose of hindering or preventing *access* by any person to *covered services*.

Conditions precedent and determination of spare capacity

A2.84 In determining whether there is sufficient *spare capacity* to provide *covered services* requested in an *application* the *service provider*:

(a) subject to clause A2.84(b), must regard any conditional *access contract* as being unconditional; and

(b) must, for the purposes of determining *spare capacity* only, disregard its obligation to provide *covered services* under any conditional *access contract* that contains a condition precedent for which a period of longer than 18 months from the date the *access contract* was entered into is allowed for its fulfilment.

A2.85 To avoid doubt nothing in clause A2.84 prevents a *service provider* or an *applicant* from entering into an *access contract* that contains a condition precedent for which a period of longer than 18 months from the date the *access contract* was entered into is allowed for its fulfilment.

Security

A2.86 If the *service provider* determines that an *applicant's* technical or financial resources are such that a *reasonable and prudent person* would consider there to be a material risk that the *applicant* will be unable to meet its obligations under any *access contract* which results from the *applicant's application*, then the *service provider* may, subject to clause A2.87, require as a term of the *access contract* either or both of the following:

(a) a provision, at the *applicant's* election, requiring the *applicant* to

(i) pay the charges for up to 2 months' *services* in advance; or

(ii) provide a bank guarantee in terms acceptable to the *service provider* (acting as a *reasonable and prudent person*), guaranteeing the charges for 2 months' *services*; or

(iii) if applicable, procure from the *applicant's* parent company a guarantee substantially in the form set out in the *service provider's access arrangement* guaranteeing the charges under the *access contract*;

and

(b) if the *applicant* will be required to make a *capital contribution*, a provision, at the *applicant's* election, requiring the *applicant* to:

(i) provide a bank guarantee in terms acceptable to the *service provider* (acting as a *reasonable and prudent person*), guaranteeing the *capital contribution*; or

(ii) if applicable, procure from the *applicant's* parent company a guarantee substantially in the form set out in the *service provider's access arrangement* guaranteeing the *capital contribution*.

A2.87 If the *service provider* requires an *applicant* to provide security under clause A2.86, then:

(a) the *applicant* may propose alternative arrangements (for example, more frequent payment) to manage the *service provider's* financial risk under the *access contract*, and

(b) if so, the *service provider* and the *applicant* must negotiate as *reasonable and prudent persons*, with a view to agreeing on alternative arrangements which meet the following objectives:

(i) minimising the extent to which the *service provider's* requirement for security from the *applicant* constitutes a barrier to the *applicant's* entry to a market; and

(ii) not contravening section 115 of the *Act*, and not otherwise hindering the *applicant's* ability to compete in upstream or downstream markets,

but also in the view of a *reasonable and prudent person*:

(iii) reasonably addressing the risk to the *service provider* that the *applicant* may be unable to meet the *applicant's* obligations under the *access contract*; and

(iv) being reasonably practicable for the *service provider* to administer.

A2.88 For the purposes of clauses A2.86 and A2.87, a reference:

(a) to an *applicant* includes a *user* where the *user* has lodged a *capacity increase notice* or *customer transfer request*; and

(b) to an *application* includes a *capacity increase notice* or *customer transfer request*.

Initial response

A2.89 Subject to clause A2.91, the *service provider* must provide an *initial response* to the *applicant* specifying:

(a) if the *application* is a *class 1 application* or *class 2 application*, advising the *service provider's* classification of the *application; or*

(b) if the *application* is a *class 3 application* advising the *service provider's* classification of the *application* and specifying:

(i) the time by which the *service provider* will provide a *preliminary assessment* (if requested); and

(ii) the time by which the *service provider* expects to make an *access offer*; and

(iii) whether the *application* has caused the *service provider* to give a notice under clause A2.53 to any person.

A2.90 The *initial response* must be provided:

(a) for a *class 1 application* — within *[x][14] business days* after the *application* is lodged; or

(b) for a *class 2 application* — within *[x][15] business days* after the *application* is lodged; or

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[14] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 5.

[15] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 5.

(c) for a *class 3 application* — within *[x]*[16] *business days* after the *application* is lodged.

A2.91 If, by the time by which the *service provider* is required to give an *applicant* an *initial response* under clause A2.90, the *service provider* has given the *applicant* an *access offer*, the *service provider* is not required to provide an *initial response* to the *applicant*.

A2.92 An *initial response* is not binding on a *service provider*, and the *service provider* is not liable for any error or omission, which is made as a *reasonable and prudent person*, in an *initial response*.

Preliminary assessment

A2.93 If an *application* contains a request for a *preliminary assessment* of a *class 3 application*, the *service provider* must give the *applicant* a *preliminary assessment* setting out at least the following information:

(a) whether it is likely that there is sufficient *spare capacity* to provide the requested *covered service*s or whether an *augmentation* is likely to be required to provide those *covered services*, including whether it is likely that any new *connection assets* will be required to provide the *covered service*s requested in the *application*; and

(b) whether or not a *capital contribution* is likely to be required from the *user* under the *capital contributions policy* and an estimate of the amount of the *capital contribution* which will be sought; and

(c) a good faith estimate of the likely time required for the planning, designing, approving, financing, construction and commissioning of any necessary *augmentations*; and

(d) a description of what system or other studies are likely to be required in the *processing* of the *application*, information regarding whether the *service provider* is able to undertake the studies and an estimate of the approximate costs of such studies.

A2.94 If, by the time by which the *service provider* is required to give an *applicant* a *preliminary assessment* under clause A2.93, the *service provider* has given the *applicant* an *access offer*, the *service provider* is not required to provide a *preliminary assessment* to the *applicant*.

A2.95 The *preliminary assessment* must be provided as soon as practicable after the *application* is lodged, having regard to the nature of the *application*.

Progress reporting

A2.96 An *applicant* must upon request by the *service provider* (which request must not be made more frequently than once per month) provide a progress report to the *service provider* containing information in reasonable detail regarding its *application*, including whether there has been any material change in any information previously provided by the *applicant*.

A2.97 The *service provider* must upon request by the *applicant* (which request must not be made more frequently than once per month) provide a progress report to the *applicant* containing information in reasonable detail regarding the *processing* of the *application*, including:

(a) whether there has been any material change in any estimates of costs or times previously provided by the *service provider*; and

(b) if the *application* requests a *preliminary assessment*, whether there has been any material change in any of the matters listed in clause A2.93.

A2.98 If an *applicant* has requested a *preliminary assessment* the *applicant* must not request a progress report until one month after the *applicant* has received the *preliminary assessment*.

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[16] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 20.

Service provider must make access offer

A2.99 The *service provider* must, acting as a *reasonable and prudent person*, give an *access offer* to the *applicant* as soon as practicable, and in any event must (subject to clause A2.100) do so within:

(a) for a *class 1 application* — *[x]*[17] *business days* after the *application* is lodged; or

(b) for a *class 2 application* — *[x]*[18] *business days* after the *application* is lodged; or

(c) for a *class 3 application* — as soon as practicable after the *application* is lodged, having regard to the nature of the *application*.

Extension of time to perform obligations

A2.100 If:

(a) the *service provider* (acting as a *reasonable and prudent person*) has requested further information from the *applicant* under clause A2.28 which it reasonably requires to *process* the *application*; and

(b) the request was made as soon as the *service provider* became aware that it required the information; and

(c) the *service provider* has expeditiously and diligently progressed the *processing* of the *application* before making the request, after receiving the information, and (to the extent possible) between making the request and receiving the information,

then the time period for complying with any other obligation under this *applications and queuing policy* is extended by an amount of time equal to the time taken by the *applicant* to comply with the request.

A2.101 An *applicant* and the *service provider* may agree to deal with any matter in connection with the *applicant's application* in a manner different to the treatment of the matter in this *applications and queuing policy* as long as the ability of the *service provider* to provide a *covered service* that is sought by another *applicant* is not impeded.

A2.102 Without limiting the generality of clause A2.101, an *applicant* and the *service provider* may agree to extend any one or more of any of the time periods set out in this *applications and queuing policy* on one or more occasions, and:

(a) the time period is extended by the amount of time agreed; and

(b) unless otherwise agreed, the time for complying with any other obligation is extended by the same amount of time.

Terms of access offer – If application requests reference service

A2.103 If an *application* requests a *reference service* on terms materially the same as those set out for the *reference service* in the *access arrangement*, then:

(a) if the *application* is a *class 1 application* — the *access offer* must be on materially the same terms as those requested in the *application* except (subject to clause A2.104) for the terms relating to any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87; and

(b) if the *application* is a *class 2 application* — the *access offer* must be on materially the same terms as those requested in the *application* except (subject to clause A2.104) for the terms relating to any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87; and

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[17] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 5.

[18] To be inserted when the *model applications and queuing policy* is incorporated into an *access arrangement*, if applicable. Unless the *Authority* considers that the *Code objective* and the objectives in section 5.7 require otherwise, the value inserted for variable *[x]* should not exceed 10.

(c) if the *application* is a *class 3 application* — the *access offer* must be on materially the same terms as those requested in the *application* except (subject to clause A2.104) for the terms relating to:

(i) any *capital contribution* (including the terms of any *works contract* or *payment contract*); and

(ii) any other provisions necessary to deal with any *augmentation*; and

(iii) the *services start date*, however the *access offer* must not specify a earlier *services start date* where doing so may impede the ability of the *service provider* to provide a *covered service* that is sought by another *applicant*; and

(iv) any security or other prudential requirements, which must be determined in accordance with clauses A2.86 and A2.87.

A2.104 Any terms in an *access offer* under clause A2.103(c) or clause A2.103(b) dealing with a matter listed under that clause must be:

(a) consistent with the *Code objective*; and

(b) reasonable; and

(c) subject to clauses A2.104(a) and A2.104(b), as similar as practicable to any terms requested in the *application* dealing with the matter.

Terms of access offer – If application requests non-reference service

A2.105 If an *application* requests a *non-reference service* then the terms of the *access offer* must be:

(a) consistent with the *Code objective*; and

(b) reasonable; and

(c) subject to clauses A2.105(a) and A2.105(b), as similar as practicable to any terms requested in the *application* dealing with the relevant matter.

Arbitrator's powers preserved

A2.106 Nothing in clauses A2.103 to A2.105 limits the *arbitrator's* power to make an award compelling the *service provider* to provide *access* to a *covered service* on terms specified in the award.

Access offer is not a contract

A2.107 Despite the giving of an *access offer* by the *service provider* to the *applicant*, the *service provider* and the *applicant* will not be taken to have entered into an *access contract* until the *applicant* has *signed* that document.

Applicant's options on receipt of an access offer

A2.108 The *applicant* must as soon as practicable, and in any event within 30 *business days*, after receipt of an *access offer*, either:

(a) *sign* the *access offer*, thereby entering into an *access contract*; or

(b) by notice to the *service provider* reject the *access offer* and request amendments to the *application*; or

(c) by notice to the *service provider* withdraw the *application*,

and if 30 *business days* after receipt of the *access offer* the *applicant* has not complied with any of clauses A2.108(a), A2.108(b), or A2.108(c), then (unless the *arbitrator* makes an order extending the time limit on the ground that the delay is beyond the *applicant's* reasonable control) the *applicant* is to be taken to have withdrawn its *application*.

A2.109 If the *applicant* rejects an *access offer* and requests amendments to the *application* under clause A2.108(b), the *service provider* must:

(a) deal with the amended *application* in accordance with clauses A2.73 to A2.75; and

(b) make a further *access offer* to the *applicant* which incorporates the *applicant's* requested amendments as soon as practicable in accordance with this *applications and queuing policy*.

If applicant accepts access offer

A2.110 If the *applicant signs* the *access offer*, it must:

(a) forthwith give written notice of the *signing* to the *service provider*;

(b) as soon as practicable procure the stamping of the *signed access contract*; and

(c) as soon as practicable thereafter give to the *service provider* at least one original copy of the *signed* and stamped *access contract*.

A2.111 Upon an *applicant* signing an *access offer*, the *application* in response to which the *access offer* was made ceases to exist.

Appendix 3 – Model Standard Access Contract

{Outline: An *access arrangement* must specify a *standard access contract* for each *reference service* (section 5.3). The *service provider* may draft and submit for *assessment* its own *standard access contract*. This Appendix 3 sets out a *model standard access contract*. Under section 5.5(a), the *Authority* must determine that a *standard access contract* is consistent with section 5.3 and the *Code objective* if the *standard access contract* reproduces without material omission or variation the *model standard access contract*. Otherwise, under section 5.5(b) the *Authority* will use this model *standard access contract* as a benchmark when assessing the *service provider's* proposed *standard access contract*.}

{This Appendix 3 contains four parts.

Part A contains definitions and commencement provisions, and is included in all *access contracts*.

Part B contains provisions dealing with *capacity services*. It forms part of the *capacity contract*.

Part C contains provisions dealing with technical compliance. It forms part of the *technical compliance contract.*

Part D contains general contractual provisions, and is included in all *access contracts*.

An *access contract* can comprise:

- a **"capacity contract"** based on Part B, together with Parts A and D; and
- a **"technical compliance contract"** based on Part C, together with Parts A and D; and
- a contract which is both a **"capacity contract"** and a **"technical compliance contract"**, containing all four Parts.}

This Appendix 3 leaves some matters to be completed. These matters are noted in square brackets, and fall into two categories:

- Matters which are to be completed when an *access contract* is incorporated into an *access arrangement* is approved by the *Authority* under Chapter 4. Without limiting the *Authority's* discretion or duties, the way these matters are dealt with must be consistent with the *Code objective* and section 5.4(a).
- Matters which are to be agreed by the *parties* during the *access contract* negotiations, or determined by the *arbitrator* when determining an access dispute.

Footnotes following each matter in square brackets denote which category the matter falls into, and provide guidance as to the content of the matter. The footnotes form part of this model *standard access contract* and have legal effect.

Agreement dated

Parties

This is a contract between

[Insert name of service provider] [19] (**"service provider"**)

and

[Insert name of user][20] (**"UserCo"**)

[x][21]

Background

(a) *UserCo* has made an *access application* under the *access arrangement*.

(b) S*ervice provider* has made an offer, in accordance with the *access arrangement*, to provide *covered services* to *UserCo.*

(c) *UserCo* has accepted the offer*.*

(d) *[x]*[22]

Part A – Interpretation and introduction

{Note: Refer to clause A3.11 for when this Part A applies.}

Definitions and interpretation

A3.2 In this contract the following terms have the following meanings, unless the contrary intention is apparent:

"access arrangement" means the access arrangement approved in respect of the *network* under the *Code*.

"access rights", in clauses A3.103 to A3.105, means all or part of *UserCo's* rights under this contract to obtain a *covered service*.

"accounting period" means *[x]*[23].

"Act" means the *Electricity Industry Act 2004*.

"affected obligation", in respect of a *force majeure event*, means the obligation (other than an obligation to pay money) that the *affected person* is unable, wholly or in part to perform because of the *force majeure event*.

"affected person", in respect of a *force majeure event,* means a *party* who is unable, wholly or in part, to perform an *affected obligation*.

"affected service" has the meaning given to it in clause A3.42(b).

"affected service period", has the meaning given to it in clause A3.42(b).

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[19] -To be inserted in the *access contract* by agreement between the parties or arbitrated award.

[20] To be inserted in the *access contract* by agreement between the parties or arbitrated award.

[21] If there is to be an *indemnifier,* insert name of *indemnifier* and add: "(**"indemnifier")**". Whether there is to be an *indemnifier* is to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[22] If there is to be an *indemnifier*, add: " (d) The *indemnifier* has agreed to indemnify *service provider* in respect of certain of *UserCo's* liabilities."

[23] Insert the period in respect of which invoices are rendered. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

"applications and queuing policy" means the applications and queuing policy in the *access arrangement*.

"augmentation", in relation to the *network*, means an increase in the capability of the *network* to provide *covered services*, including by the development, construction, acquisition or commissioning of new *network assets.*

"authorised officer" means the authorised officer of a *party* as specified in Schedule 9 to whom notice, approval, consent or other *communications* may be given.

"Authority" means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003.*

"bare transfer" means a *transfer* of all or part of *UserCo's access rights* in which *UserCo's* obligations under this contract, and all other terms of this contract, remain in full force and effect after the *transfer*.

"business day" means a day that is not a Saturday, Sunday or public holiday throughout Western Australia.

"capacity" refers to the capacity of the *network* or a *connection point* to transfer electricity.

"capacity contract" means an *access contract* (as defined in the *Code*) containing provisions materially equivalent to those in Parts A, B and D of this contract.

"capacity increase notice" has the meaning given to it in clause A3.17.

"capital contribution" means any amount (which may be either an up-front amount or a periodic amount, as agreed between the *parties*) as specified in Schedule 5.

"capital contributions policy" means the policy contained in the *access arrangement* dealing with *capital contributions* by *users.*

"CEO meeting" means a meeting under clause A3.97 between the senior executive officers of each *party* to attempt to resolve a *dispute*.

"charge" for a *service* for an *accounting period* means the amount that is payable by *UserCo* to *service provider* for the *service*, calculated by applying the *tariff* for the *service,* during the *accounting period*.

"claim" means any claim, demand, action or proceeding made or instituted against a *party* in respect of which that *party* may under this contract, seek to claim indemnity under this contract against the other *party*.

"Code" means the *Electricity Networks Access Code 2004*.

"Code objective" has the meaning given to it in section 2.1 of the *Code*.

"commencement date" means the date specified in item 2 of Schedule 1.

"common service" means a *covered service* that is ancillary to the provision of one or more of *entry services*, *exit services* and network use of system services that ensures the reliability of the *network* or otherwise provides benefits to *users* of the *network*, the costs of which cannot reasonably be allocated to one or more particular *users* and so need to be allocated across all *users*.

"communication" means a notice, approval, consent or other communication given or made under this contract.

"confidential information" means information which is confidential under clause A3.109.

"connect" means to form a physical link to or through the *network*.

"connection assets", for a *connection point*, means all of the *network assets* that are used only in order to provide *covered services* at the *connection point.*

"connection point" means a point on the *network* identified in this contract as an *entry point* or *exit point* under this contract.

"connection service" means the right to *connect facilities and equipment* at a *connection point.*

{Note: A *connection service* is the right to physically connect to the *network*, and will regulate technical compliance etc. It is not the same thing as an *entry service* or *exit service*, which are the right to transfer electricity.}

"contestable", in relation to a *consumer*, means a *consumer* whose *load* exceeds the threshold prescribed under section 93 of the *Electricity Corporation Act 1994* or another enactment.

"contracted point" has the meaning given to it in clause A3.19(b)(i).

"contract maximum demand" or **"CMD"** for a *connection point* means the maximum amount of electricity that *UserCo* may transfer out of the *network* at the *connection point* being either:

(a) the amount specified in Schedule 3 from time to time in respect of the *connection point*; or

(b) if no amount is specified in Schedule 3, the maximum amount of electricity permitted to be transferred through the *connection assets* at the *connection point* under the *technical rules.*

{Note: A *user* is free under the *Code* to seek *access* to a *service* with a varying *CMD*, which will be a *non-reference service*.}

"contracted capacity" for a *connection point* means:

(a) for the electricity transferred into the *network,* the *DSOC;* and

(b) for the electricity transferred out of the *network,* the *CMD.*

"Corporations Act" means the *Corporations Act 2001* of the Commonwealth.

"covered service" means a *service* in relation to the *transportation* of electricity provided by means of the *network*, including:

(a) a *connection service*; or

(b) an *entry service* or *exit service*; or

(c) a network use of system service; or

(d) a *common* service, or

(e) a service ancillary to the services listed in paragraphs (a) to (d) above,

but does not include an *excluded service*.

"CPI" means the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities published by the Australian Bureau of Statistics from time to time or, if the Consumer Price Index (all groups) for the Weighted Average of Eight Capital Cities ceases to be published, such alternative index as *service provider* 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*.

"curtailment" includes a whole or partial curtailment or whole or partial interruption of a *service*.

"customer transfer code" means a code made under section 39(1) or section 39(2a) of the *Act* in respect of a matter referred to in section 39(2)(b) of the *Act*.

"default", in relation to a *party*, is defined in clause A3.85.

"designated controller", where applicable, in respect of a *connection point*, is determined in accordance with clauses A3.36 to A3.39.

"designated point" has the meaning given to it in clause A3.36.

"destination point" has the meaning given to it in clause A3.19(b).

"direct damage" suffered by a person means loss or damage suffered by the person which is not *indirect damage*.

"disconnect", in respect of a *connection point*, means to operate switching or other equipment so as to prevent the transfer of electricity through the *connection point*.

"discounted rate" means *[x]*[24]% p.a.

"dispute" means any dispute or difference concerning:

(a) the construction of; or

(b) anything contained in or arising out of; or

(c) the rights, obligations, duties or liabilities of a *party* under,

this contract.

"DSOC" or **"declared sent out capacity"** for a *connection point* means the maximum amount of electricity that *UserCo* may transfer into the *network* at the *connection point*, being either:

(a) the amount specified in Schedule 3 from time to time; or

(b) if no amount is specified in Schedule 3, the maximum amount of electricity permitted to be transferred through the *connection assets* at the *connection point* under the *technical rules.*

{Note: A *user* is free under the *Code* to seek access to a *service* with a varying *DSOC*, which will be a *non-reference service*.}

"due date" means the date *[x]* [25] *business days* after a *party* receives a *tax invoice* issued under clause A3.44 or A3.45.

"efficiently minimising costs" means *service provider* incurring no more costs than would be incurred by a prudent *service provider*, acting efficiently, in accordance with *good electricity industry practice*, seeking to achieve the lowest sustainable cost of delivering the *services*.

"Electricity Distribution Regulations" means the *Electricity Distribution Regulations 1997*.

"Electricity Transmission Regulations" means the *Electricity Transmission Regulations 1996*.

"emergency" has the meaning given to it in clause A3.126.

"end date" for a *connection point*, means the date specified as such in Schedule 3 for the *connection point*.

"entry point" means a point on the *covered network* identified as such in this contract at which, subject to this contract, electricity is more likely to be transferred into the *network* than transferred out of the *network*.

"entry service" means a *covered service* provided by *service provider* at an *entry point* under which *UserCo* may transfer electricity into the *network* at the *entry point*.

"excluded service" means a *service* for the *transportation* of electricity provided by means of the *network,* including:

(a) a connection service; or

(b) an entry service or exit service; or

(c) a network use of system service; or

(d) a common service; or

(e) a *service* ancillary to the services listed in paragraphs (a) to (d) above

which meets the following criteria:

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[24] To be completed – for example this could be a reference to the overdraft rate published by a major bank. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[25] Insert the number of days to be allowed for payment. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award. Unless the *Authority* or *arbitrator* consider that a different value will better achieve the *Code objective*, 10 business days should be used.

(f) the supply of the *service* is subject to effective competition; and

(g) the cost of the *service* is able to be excluded from consideration for *price control* purposes without departing from the *Code objective.*

"exit point" means a point on the *covered network* identified as such in this contract at which, subject to this contract, electricity is more likely to be transferred out of the *network* than transferred into the *network*.

"exit service" means *a covered service* provided by *service provider* at an *exit point* under which *UserCo* may transfer electricity out of the *network* at the *exit point*.

"facilities and equipment", in relation to a *connection point*, means the apparatus, equipment, plant and buildings used for or in connection with *generating*, consuming and *transporting* electricity at the *connection point*.

"financial provision", in relation to a *capital contribution,* means the payment by *UserCo* of a *capital contribution* by way of either a periodic financial payment or an up front financial payment, as agreed, in accordance with Schedule 5.

"force majeure" in respect of a *party* means an event or circumstance beyond the *party's* control, and which the *party* acting as a *reasonable and prudent person* is not able to prevent or overcome, including (where the foregoing conditions are satisfied):

(a) any act of God, lightning, earthquake, storm, fire, flood, subsidence, land slide, mud slide, wash-out, explosion or natural disaster; or

(b) any insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or

(c) any determination, award or order of any court or tribunal, or any regulatory authority or the award of any arbitrator arising after the commencement date; or

(d) any act or omission of government or any government or regulatory department, body, instrumentality, ministry, agency, fire brigade; or

(e) any inability or delay in obtaining any governmental, quasi-governmental or regulatory approval, consent, permit, licence or authority; or

(f) any industrial disputes of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or

(g) any significant plant or equipment failure which could not have been avoided by the exercise of *good electricity industry practice*; or

(h) any act or omission of any person with *facilities and equipment* connected to the *network* which frustrates the *party's* ability to perform its obligations under this contract; or

(i) any application of any law of the Commonwealth, any Commonwealth authority, the State, any State authority or any local government; or

(j) accidents, weather and acts of third parties (such as generators and other users of electricity) that affect the quality, frequency and continuity of the supply of electricity.

"force majeure event" means an event of *force majeure*.

"generate" means to produce electricity.

"generating plant" in relation to a *connection point* means all *facilities and equipment* involved in *generating* electricity.

"good electricity industry practice" means the exercise of that degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances consistent with applicable *laws* and applicable recognised codes, standards and guidelines.

"GST" means goods and services tax or similar value added tax levied or imposed in Australia on a taxable supply under the *GST Act* or otherwise.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999)*of the Commonwealth.

"guest party" has the meaning given to it in clause A3.92.

"host party" has the meaning given to it in clause A3.92.

"indemnified party" has the meaning given to it in clause A3.75.

"indemnifying party" has the meaning given to it in clause A3.75.

"indirect damage" suffered by a person means:

(a) any consequential loss, consequential damage or special damages however caused or suffered by the person including any:

(i) loss of (or loss of anticipated) opportunity, use, production, revenue, income, profits, business and savings; or

(ii) loss due to business interruption; or

(iii) increased costs; or

(iv) punitive or exemplary damages,

whether or not the consequential loss or damage or special damage was foreseeable; or

(b) in respect of contractual damages, damages which would fall within the second limb of the rule in *Hadley* v *Baxendale* [1854] 9 Exch. 341; or

(c) any liability of the person to any other person, or any claim, demand, action or proceeding brought against the person by any other person, and the costs and expenses connected with the claim.

"information provider", in relation to *confidential information,* means the *party* providing the information.

"information recipient", in relation to *confidential information*, means the recipient of the information.

"insolvency event" in respect of a *party* means any one or more of:

(a) any suspension or cessation to payment of all or a class of its debts by an insolvent within the meaning of section 95A of the *Corporations Act 2001* of the Commonwealth*;* or

(b) any execution or other process of any court or authority issued against or levied upon any material part of that *party*'s property or assets; or

(c) a petition or application is presented (and not withdrawn within 10 *business days*) or an order is made or a resolution is passed for the winding up or dissolution without winding up of that *party* otherwise than for the purpose of reconstruction or amalgamation under a scheme; or

(d) a receiver or a receiver and manager of the undertaking or any material part thereof of that *party* is appointed; or

(e) that *party* proposes to enter into or enters into any arrangement, reconstruction or composition with or for the benefit of its creditors; or

(f) an administrator of that *party* is appointed or the board of directors of that *party* passes a resolution to the effect that is specified in section 436A(1) of the *Corporations Act 2001* of the Commonwealth; or

(g) that *party* fails (as defined by section 459F of the *Corporations Act 2001* of the Commonwealth) to comply with a statutory demand; or

(h) a controller (as defined in the *Corporations Act 2001* of the Commonwealth) is appointed in respect of that *party* or the whole or a material part of that *party's* undertaking, property or assets; or

(i) application is made to a Court for an order in respect of that *party* under Part 2F.1 of the *Corporations Act 2001* of the Commonwealth; or

(j) an event referred to in section 459C(2) of the *Corporations Act 2001* of the Commonwealth occurs in respect of that *party*; or

(k) anything analogous or having a substantially similar effect to any of the events specified above occurs under the *law* of any applicable jurisdiction.

"integrated provider" means:

(a) if *service provider* is Western Power Corporation - *service provider*; and

(b) if *service provider* is not Western Power Corporation - *service provider*, if under section 13.29 of the *Code*, *service provider* has been given an exemption from section 13.11(a) of the *Code*.

"interconnected system" means an electricity system comprising two or more *networks* interconnected with each other, and in relation to the network means an *interconnected system* of which the *network* is a part.

"law" means "written laws" and "statutory instruments" as defined in the Code, 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 and rules of the general law including the common law and equity.

"load" means the amount of electrical power transferred out of the *network* at a *connection point* at a specified time.

"maintain" includes (as necessary and as applicable) calibrate, test, verify, renew, replace, repair and update.

"market rules" means the 'market rules' referred to in section 123(1) of the Act.

"metering equipment" means equipment to measure and record electricity as transferred to or from the *network* at a *connection point*.

"network" means the network (as defined in the *Code*) owned, operated or owned and operated by *service provider* in respect of which access is given under this contract.

"network assets", in relation to the *network*, means the apparatus, equipment, plant and buildings used to provide or in connection with providing *covered services.* on the *network*, which assets are either *connection assets* or *shared assets*.

"network business" means the part of an *integrated provider's* business and functions which is responsible for the operation and maintenance of the *network* and the provision of *covered services* by means of the *network.*

"other business" means the part or parts of an *integrated provider's* business which are not the *network business*, and includes any part or parts of the *integrated provider's* business and functions which acquire *covered services* from the *network business*.

"party" means *service provider* or *UserCo* and **"parties"** means both of them.[26]

"payment error" means any underpayment or overpayment by a *party* of any amount in respect of an invoice.

"possession" includes custody, control, and an immediate right to possession, custody, or control.

"prescribed rate" means the *discounted rate* plus 3% p.a.

"price list" means the most recent *price list* published under the *access arrangement* in accordance with the *Code*.

"reasonable and prudent person" means a person acting in good faith and in accordance with *good electricity industry practice*.

"receipt date" has the meaning given to it in clause A3.96.

"related body corporate", in relation to a body corporate, means a body corporate that is a related body corporate to the first-mentioned body corporate under section 50 of the *Corporations Act 2001* of the Commonwealth.

"relocation" has the meaning given to it in clause A3.19.

"representatives meeting" means a meeting under clause A3.96 between a duly authorised representative of each *party* to attempt to resolve a *dispute*.

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[26] If there is to be an *indemnifier,* insert after "both of them.": "In relation to *indemnifier*, "**other party**" means *service provider."*

"service", in respect of a *connection point*, means a service to be provided under this contract in respect of the *connection point* as specified in Schedule 2, and if applicable (including if the service is an *entry service* or an *exit service*) includes the transfer of electricity at a *connection point*.

"service provider's default" means an event of *default* by *service provider.*

"service provider's premises" means the land on which the *service provider's works* are located.

"service provider's works" means the works referred to in Schedule 6.

"service standards" for a *service* means:

(a) the technical standard, and reliability, of delivered electricity specified for the *service* in Schedule 2; or

(b) if nothing is specified for the *service* in Schedule 2 — the service standard (as defined in the *Code*) applying in respect of the *service* under the *access arrangement*.

"shared assets" means *network assets* which are not *connection assets*.

"standing charges" has the meaning given to it in clause A3.42(a).

"start date", for a *connection point*, means the date specified as such in Schedule 3 for the *connection point*.

"supplementary matters" means the following matters: balancing; line losses; metering; ancillary services; stand-by; trading; settlement; and, any other matter in respect of which arrangements must exist between *UserCo* and *service provider* to enable the efficient operation of the *network* and to facilitate access to *services* under this contract, in accordance with the *Code objective*.

"system operator" for the *network* means, unless the *technical rules* provide otherwise, the person or persons who:

(a) operate and control the system operation control centre; or

(b) where there is no system operation control centre — is responsible for the control of the *network* through monitoring, switching and dispatch; or

(c) where the system operation control centre and another party are both responsible for the control of the *network* through monitoring, switching and dispatch — perform either (a) or (b).

"tariff", for a *service*, means the tariff specified for the *service* in Schedule 4.

"tax invoice" has the meaning given to that term in the *GST Act*.

"technical compliance contract" means an *access contract* (as defined in the *Code*) containing provisions materially equivalent to those in Parts A, C and D of this contract.

"technical rules" means the technical rules applying from time to time to the *network* under Chapter 12 of the *Code*.

"term" means the term of this contract which commences on the *commencement date* and ends on the *termination date.*

"termination date" means the date specified in item 3 of Schedule 1.

"third party recipient" means any person to whom the *information recipient* discloses *confidential information*, or allows *confidential information* to be disclosed.

"transfer", when used in clauses A3.105 and A3.106, includes assign and novate.

"transport" includes transmit and distribute.

"uncontracted point" has the meaning given to it in clause A3.19(b)(ii).

"undisputed portion" means, subject to clause A3.45(d), an amount shown on a *tax invoice* which a *party* does not dispute to be payable.

"unpaid portion" has the meaning given to it in clause A3.51(b).

"user" means a person, including a generator or a consumer, who is party to an access contract with a *service provider*, and under section 13.4(e) of the Code includes an other business as a party to a deemed access contract (where the terms "generator", "consumer", "access contract", "other business" and "deemed access contract" have the meanings they are given in the Code).

"UserCo's default" means an event of *default* by *UserCo.*

"UserCo's premises" means the land on which *UserCo's works* are located.

"UserCo's works" means the works referred to in Schedule 7.

"variation request", in relation to a *connection point,* means a request from *UserCo* to *service provider* to vary the *contracted capacity* at the *connection point.*

"visitors" means the customers, invitees, licensees and visitors of a *party*.

"workers" means the directors, officers, servants, employees, agents and contractors of a *party*.

"year" means calendar year.

Interpretation

A3.3 In this contract, unless the contrary intention appears:

(a) a reference to:

(i) one gender includes any other gender; and

(ii) the singular includes the plural and the plural includes the singular; and

(iii) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body; and

(iv) this contract or any other instrument includes any variation or replacement of it; and

(v) a reference to a "**law**" includes any amendment or re-enactment of it that is for the time being in force, and includes all laws made under it from time to time; and

(vi) **"under"** includes "by", "by virtue of", "pursuant to" and "in accordance with"; and

(vii) **"day"** means a calendar day; and

(viii) **"person"** includes a public body, company, or association or body of persons, corporate or unincorporated; and

(ix) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and

(x) all monetary amounts are in Australian dollars and are exclusive of *GST*; and

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

(c) headings are for convenience only and do not affect the interpretation, or form part of, this contract; and

(d) **"copy"** includes a facsimile copy, photocopy or (subject to the Electronic Communication Protocol in Schedule 10) electronic copy; and

(e) **"including"** and similar expressions are not words of limitation; and

(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; and

(g) where italic typeface has been applied to some words and expressions, it is solely to indicate that those words or expressions may be defined in clause A3.2 or elsewhere, and in interpreting this contract, the fact that italic typeface has or has not been applied to a word or expression is to be disregarded (but nothing in this clause A3.3(g) limits the application of clause A3.2); and

(h) where information in this contract is set out in braces (namely **"{"** and **"}"**), whether or not preceded by the expression "Note", "Outline" or "Example", the information:

(i) is provided for information only and does not form part of this contract; and

(ii) is to be disregarded in interpreting this contract; and

(iii) might not reflect amendments to this contract or other documents or *laws*; and

(i) a reference to:

(i) this contract includes any schedule to this contract; and

(ii) a clause is a reference to a clause of this contract.

A3.4 Unless the contrary intention is apparent, the rules of interpretation in the *Interpretation Act 1984* apply to the interpretation of this contract.

Duration

A3.5 **Commencement and term**

(a) This contract commences on the *commencement date*.

(b) This *contract* ends on the *termination date* (unless terminated earlier in accordance with this contract).

{Note: During the *term* of this contract (i.e. between the *commencement date* and the *termination date*) *service provider* must provide the *services* to *UserCo*. However, for each *connection point*, the obligation on *service provider* to provide those *services* is determined by the *start date* and *end date* for each *service*.}

A3.6 **Option to extend term**

[x][27]

A3.7 **Conditions Precedent**

[x] [28]

There must be both a capacity contract and a technical compliance contract

A3.8 For each *connection point*, there must be:

(a) a *capacity contract*; and

(b) a *technical compliance contract*,

in respect of the *connection point*.

{Note: This contract may deal with one, or more than one, correction point.}

A3.9 Without limiting the ways in which clause A3.8 may be satisfied, clause A3.8 is satisfied if the *capacity contract* and *technical compliance contract* are both contained in this contract.

A3.10 *Service provider* is not required to provide *services* at a *connection point* whenever, and for so long as clause A3.8 is not complied with for the *connection point*.

When the parts of this contract apply

A3.11 For each *connection point*:

(a) Parts A and D of this contract apply; and

(b) if this contract is expressed in Schedule 3 to be a *capacity contract* for the *connection point* — Part B of this contract applies; and

(c) if this contract is expressed in Schedule 3 to be a *technical compliance contract* for the *connection point* — Part C of this contract applies.

{Note: This contract may be expressed to be both a capacity contract and a technical compliance contract.}

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[27] Insert option provisions if applicable. To be inserted in the access contract by agreement between the parties or arbitrated award. Consequential amendments may be needed to the duration provisions and definitions.

[28] Insert conditions precedent if applicable. To be inserted in the access contract by agreement between the parties or arbitrated award.

Part B – Capacity Provisions

{Note: Refer to clause A3.11 for when this Part B applies.}

Provision and use

A3.12 For each *connection point*, on and from the *start date* and up to and including the *end date:*

(a) *service provider* must provide the *services*; and

(b) *UserCo* must pay for and may use the *services*.

Contracted capacity

A3.13 Subject to this contract, to the extent that a *service* at a *connection point* relates to *capacity*, *service provider* must provide the *service* up to the *contracted capacity* for the *connection point*.

Contracted maximum demand and declared sent-out capacity

A3.14 For each *connection point*, *UserCo* must endeavour as a *reasonable and prudent person* to ensure that:

(a) the amount of electricity transferred out of the *network* by or on behalf of *UserCo* does not exceed the *CMD*; and

(b) the amount of electricity transferred into the *network* by or on behalf of *UserCo* does not exceed the *DSOC*.

Variation to contracted capacity

A3.15 *UserCo* may submit to *service provider* a *variation request* in relation to a *connection point.*

A3.16 Subject to clause A3.17, within 10 *business days* after receipt of a *variation request*, *service provider* must determine, and notify *UserCo*, whether or not it accepts the *variation request.*

A3.17 If in a *variation request UserCo* requests *service provider* to increase the *contracted capacity* at a *connection point* (**"capacity increase notice"**), *service provider* must notify *UserCo* that it accepts the *variation request* and the time that the acceptance takes effect, unless:

(a) accepting the *capacity increase notice* would be likely to impede the ability of *service provider* to provide a *service* that is sought in an access application lodged by another applicant under the *applications and queuing policy*; or

(b) it is likely that an *augmentation* would be required in response to the *capacity increase notice*,

in either or both cases *service provider* must by notice reject the *capacity increase notice* and state in the notice that to increase its capacity as described in the *capacity increase notice UserCo* must make an *application* under the *applications and queuing policy*.

{Note: If *UserCo* wishes to obtain capacity at a connection point which is not already specified in Schedule 3, *UserCo* must make an access application under the *applications and queuing policy*.}

A3.18 The *parties* must update Schedule 3 following any variation made in accordance with clauses A3.15 to and A3.17.

Relocation

A3.19 A **"relocation"** comprises *UserCo*:

(a) reducing its *capacity* at a *connection point*; and

(b) making a corresponding increase in its *capacity* at another *connection point* (**"destination point"**) which may be either:

(i) a *connection point* at which *UserCo* already has *capacity* (**"contracted point"**); or

(ii) a *connection point* at which *UserCo* does not already have *capacity* (**"uncontracted point"**).

A3.20 *UserCo* may apply to *service provider* to undertake a *relocation*, and subject to clauses A3.21, A3.22 and A3.23 *service provider* must permit the *relocation* within 10 *business days* after the application.

A3.21 Subject to clause A3.23, if the *destination point* is a *contracted point*, then *UserCo* must lodge a *capacity increase notice* or an *access application*, as applicable, in respect of the *capacity* sought to be *relocated* to the *destination point*, and the *relocation* must not take place until permitted under the *applications and queuing policy*.

A3.22 Subject to clause A3.23, if the *destination point* is an *uncontracted point*, then *UserCo* must lodge an *access application* in respect of the capacity sought to be *relocated* to the *destination point*, and the *relocation* must not take place until permitted under the *applications and queuing policy*.

A3.23 *Service provider* may:

(a) withhold its consent to a reduction under clause A3.19(a) only on reasonable commercial grounds; and

(b) impose conditions in respect of a reduction under clause A3.19(a) only to the extent that they are reasonable on commercial grounds.

{An example of a matter that would be reasonable for the purposes of clause A3.23 is *service provider* specifying that, as a condition of its agreement to a *relocation*, the *service provider* must receive at least the same amount of revenue as it would have received before the *relocation*, or more revenue if *tariffs* at the *destination point* are higher.}

A3.24 The *parties* must update Schedule 3 following any variation made in accordance with clause A3.20.

Customer transfer

{Note: See section 5.7(f) of the *Code*.}

A3.25 If a *customer transfer code* places obligations on a *party* in respect of *capacity* or *services* under this contract, the party must comply with the obligations.

Provisions of access arrangement on supplementary matters apply

A3.26 The provisions of the *access arrangement* in respect of *supplementary matters* which are incorporated in the *access arrangement* under section 5.27 of the *Code* apply also as terms of this contract, to the extent they are expressed to do so.

Curtailment

A3.27 *Service provider* may, in accordance with *good electricity industry practice, curtail* the provision of *services* in respect of a *connection point:*

(a) to carry out planned *augmentation* or *maintenance* to the *network*; or

(b) to carry out unplanned *maintenance* to the *network* where *service provider* considers it necessary to do so to avoid injury to any person or material damage to any property or the environment; or

(c) in the event of breakdown of or damage to the *network* that affects *service provider's* ability to provide *services* at that *connection point*; or

(d) if a *force majeure event* occurs affecting *service provider's* ability to provide *services* at the *connection point* for so long as *service provider's* ability to provide *services* is affected by the *force majeure event;* or

(e) to the extent necessary for *service provider* to comply with a *law*.

A3.28 *Service provider* must keep the extent and duration of any *curtailment* under clause A3.27 to the minimum reasonably required in accordance with *good electricity industry practice.*

A3.29 *Service provider* must use reasonable endeavours to notify *UserCo* of any *curtailment* under clause A3.27 as soon as practicable.

A3.30 If *service provider* notifies *UserCo* of a *curtailment* of *services* under clauses A3.27 to A3.29 in respect of a *connection point*, *UserCo* (acting to the standard of a *reasonable and prudent person*) must comply with any reasonable requirements set out in the notice concerning the *curtailment*.

Title to electricity

A3.31 Title to electricity which is transferred into the *network* at a *connection point* passes from *UserCo* to *service provider* at the time it passes through the *connection point*.

A3.32 Title to electricity which is transferred out of the *network* at a *connection point* passes from *service provider* to *UserCo* at the time it passes through the *connection point*.

A3.33 To avoid doubt, nothing in, and nothing done under or in connection with, this contract causes *UserCo* to acquire any right, title or interest in or to the *network* or any part of it.

A3.34 The operation of clause A3.33 may be displaced by an express provision of this contract.

A3.35 Subject to clause A3.27, upon the transfer from *UserCo* to *service provider* of title to and *possession* of a quantity of electricity delivered at an *entry point*, *UserCo* becomes entitled to receive an equivalent quantity of electricity from *service provider* at an *exit point*.

Designated controllers

A3.36 **Points which require a designated controller**

Each of the following is a **"designated point"** for which there must be a *designated controller*:

(a) an *entry point* specified in Schedule 3 at which the installed *capacity* of the *facilities and equipment* to transfer electricity into the *network* exceeds 30 KVA; and

(b) an *exit point* specified in Schedule 3 at which *[x]*.[29]

A3.37 **Selecting the designated controller**

(a) Unless otherwise notified by *UserCo* under clause A3.37(b), the *designated controller* for a *connection point* is the *designated controller* specified in Schedule 3.

(b) Where:

(i) no *designated controller* is specified in Schedule 3 for a *designated point* or *service provider* has objected to the *designated controller* nominated by *UserCo* — *UserCo* must; and

(ii) *UserCo* wishes to change the *designated controller* for a *designated point* — *UserCo* may,

by notice to *service provider* nominate a person who owns, operates or controls the *facilities and equipment* at the *designated point* as the *designated controller* for the *designated point* and the person nominated is the *designated controller* from the time of the notice or a later time specified in the notice.

(c) *Service provider*, acting as a *reasonable and prudent person*, may at any time on reasonable technical or commercial grounds object to the *designated controller* for a *designated point*, in which case *UserCo* must, under clause A3.37(b), either dispute *service provider's* objection under clause A3.96 or nominate a different person as *designated controller*.

(d) The *parties* must amend Schedule 3 following any variation made in accordance with clause A3.37(b).

A3.38 **User must procure designated controller's compliance**

For each *designated point UserCo* must (unless *UserCo* is the *designated controller*) ensure that the *designated controller* complies, and will continue to comply, with the following provisions of this contract, (for which purpose, references to "UserCo" in the provisions are to be read as references to "designated controller"):

(a) clauses A3.92 to A3.95 (*access to premises*); and

(b) clause A3.120 (*notices*); and

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[29] To be completed – the test for when an exit point needs a *designated controller*. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

(c) clause A3.55 (*good electricity industry practice*); and

(d) clause A3.56 (*cooperation*); and

(e) clause A3.61 (*technical rules*).

A3.39 **UserCo must satisfy service provider of its arrangements with designated controller**

(a) On reasonable request from *service provider*, *UserCo* must (unless the *designated controller* has already entered into an agreement under clause A3.39(b)(i) or A3.39(b)(ii)) provide evidence to *service provider's* satisfaction as a *reasonable and prudent person* that *UserCo* is complying, and will continue to comply, with clause A3.38.

(b) If *UserCo* does not satisfy *service provider* under clause A3.39(a), s*ervice provider* may *curtail* the provision of *services* in respect of the *connection point* until the *designated controller* has either:

(i) entered into a *technical compliance contract* with *service provider* in respect of the *connection point*; or

(ii) otherwise agreed in writing with *service provider* to be bound by the clauses specified in clause A3.38.

{Note: One way for the agreement in clause A3.39(b)(ii) to be reached would be for the *designated controller* to sign this contract as a *party* in respect of the relevant clauses.}

Tariff and charges

A3.40 **Tariff**

[*RETAIN ONE ONLY OF THE FOLLOWING TWO OPTIONS, EITHER:*

OPTION A:

(a) The *tariff* payable under this contract for a *service* is the *tariff* specified in the *price list* from time to time for the *service*.

(b) If:

(i) no *price list* is published by the *Authority* on the date required under the *Code*, or

(ii) a purported *price list* which does not comply with the *access arrangement* is published,

then to the extent that the effect of a *price list* (if it had been published on the date required under the Code and had been compliant with the *access arrangement*) would have been to reduce the *tariff* payable by *UserCo*, then *UserCo* may recover the *tariff* reduction as an overpayment under clause A3.48.

(c) If applicable, the *tariff* payable under clause A3.40(a) for a *service* (**"contracted service"**) after the end of the current *access arrangement period* is to be determined as follows:

(i) if the new *access arrangement* contains a *reference service* (**"equivalent reference service"**) which is materially the same as the *contracted service* — then the *tariff* for the *contracted service* is to be the *reference tariff* for the *equivalent reference service*; and

(ii) if the new *access arrangement* does not contain an *equivalent reference service*, or if for any reason there is no new *access arrangement* — then the *tariff* for a year will be the *tariff* in the final *price list* which *service provider* was required to publish under the current *access arrangement*, adjusted annually every *[x]*[30] by an amount equal to *[x]*[31]% of the change in *CPI* from the previous adjustment date.

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[30] Insert the adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[31] Insert the percentage of the change in *CPI* from the previous adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by

(d) Clause A3.40(c) applies, with appropriate modifications, in respect of the end of each successive *access arrangement period*.

OR OPTION B:

(a) The *tariff* payable under this contract for a *service* is the *tariff* specified in the *price list* most recently published before the *commencement date* for the *service*, and any subsequent *price lists* are to be disregarded.

(b) *Tariffs* determined under clause A3.40(a) are to be adjusted annually every *[x]*[32] by an amount equal to *[x]*[33]*%* of the change in *CPI* from the previous adjustment date.

WHICHEVER IS APPLICABLE][34]

A3.41 **Charges**

UserCo must pay *service provider* the *charge* for each *service* calculated at the *tariff* determined under clause A3.40.

A3.42 **Charges during service provider's force majeure event**

(a) This clause A3.42 applies in respect of any *service* for which some or all of the *charges* (**"standing charges"**) are payable whether or not *UserCo* makes use of the *service*.

(b) If a *service* (**"affected service"**) is unavailable for any consecutive period of 2 days or longer (**"affected service period"**) due to a *force majeure event* where *service provider* is the *affected person*, then, for the whole of the *affected service period*, *UserCo* is relieved of its obligation under clause A3.41 and instead must pay 10% of the *standing charges* for the *affected service*.

A3.43 **Capital contributions**

If the *parties* have agreed that *UserCo* must pay a *capital contribution* the *parties* must comply with the provisions set out in Schedule 5 regarding the *capital contribution*.

Invoicing and payment

A3.44 **Service provider invoices**

Service provider must, within 10 *business days* after the end of an *accounting period*, issue to *UserCo* a *tax invoice* for the *accounting period* showing:

(a) all amounts payable by *UserCo* to *service provider* under this contract; and

(b) all outstanding amounts as at the end of the *accounting period* and interest payable on those amounts; and

(c) *GST* payable under clause A3.50.

At the same time as issuing a *tax invoice* under this clause A3.44, *service provider* must provide to *UserCo*, in electronic form, the metering information used to calculate the *charges*

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agreement between the parties or arbitrated award. Unless the *Authority* or *arbitrator* consider that a different value will better achieve the *Code objective*, 67% of *CPI* should be used.

[32] Insert the adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[33] Insert the percentage of the change in *CPI* from the previous adjustment date. To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award. Unless the *Authority* or *arbitrator* consider that a different value will better achieve the *Code objective*, 67% of *CPI* should be used.

[34] ~~To be inserted in the *access contract* by agreement between the parties or arbitrated award.~~ Unless the *Authority* considers that a different approach will better achieve the *Code objective*, the standard *access contract* must offer *UserCo* the option, at the time it enters into the contract, to make a once-off election for the *term* of the contract as to whether it will pay the *reference tariff* as in effect from time to time (Option A), or whether it will lock in the *reference tariff* in effect at the time of contracting, to be escalated at a percentage of *CPI* (Option B). If Option A is chosen, definitions need to be added to clause A3.2.

shown on the *tax invoice* in sufficient detail to enable *UserCo* to understand how *service provider* calculated the *charges*.

A3.45 **User invoices**

(a) At the same time as *service provider* issues to *UserCo* a *tax invoice* for the *accounting period* under clause A3.44, *service provider* must provide *UserCo* with all information necessary for *UserCo* to determine any amounts payable by *service provider* to *UserCo*.

(b) *UserCo* must, within 5 *business days* after receiving the information under clause A3.45(a), issue to *service provider* a *tax invoice* for the *accounting period* showing:

(i) all amounts payable by *service provider* to *UserCo* under this contract, which amounts may be calculated using the information provided to *user* by *service provider* under A3.45(a); and

(ii) all outstanding amounts as at the end of the *accounting period* and interest payable on those amounts; and

(iii) *GST* payable under clause A3.50.

(c) If *UserCo disputes* the information provided by *service provider* under clause A3.45(a), then:

(i) *UserCo* may issue a *tax invoice* under clause A3.45(b) for an amount *UserCo* (acting as a *reasonable and prudent person*) estimates to be the correct amount payable; and

(ii) *UserCo* must before the *due date* of the *tax invoice* under clause A3.45(b), give notice to *service provider* that it *disputes* the information provided under clause A3.45(a) and provide in that notice full details of the *dispute*.

(d) Clause A3.47 applies in respect of a tax invoice issued under clause A3.45(b), for the purposes of which the **"undisputed portion"** is taken to be an amount calculated in accordance with the information provided by *service provider* under clause A3.45(a).

A3.46 **Payment of invoices**

(a) Each *party* which receives a *tax invoice* under clause A3.44 or A3.45, must on or before the *due date* pay to the *party* issuing the *tax invoice* all amounts shown on the *tax invoice* which are payable under the contract.

(b) If a *party* fails to comply with clause A3.46(a) then, without prejudice to the other *party's* other rights, the *party* must pay interest on any unpaid amount, such interest to be calculated daily at the *prescribed rate* from the *due date* until payment.

A3.47 **Disputed invoices**

(a) If a *party disputes* any amount set out in a *tax invoice* issued under clause A3.44 or A3.45, 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) Any amount withheld by a *party* under clause A3.47(a) but subsequently found to have been payable is, without prejudice to the relevant other *party*'s other rights, to attract interest calculated daily at the *prescribed rate* from the *due date* of the *tax invoice* until payment.

(c) Any amount paid by a *party* under clause A3.47(a) but subsequently found not to have been payable is, without prejudice to that *party*'s other rights, to attract interest calculated daily at the *discounted rate* from the date the *party* paid the amount to the date the relevant other *party* repays the amount.

A3.48 **Under and over payments**

(a) If a *party* detects a *payment error* by a *party* of any amount within 18 calendar months after the *payment error*:

(i) the *party* must give notice to the other *party* of the *payment error;* and

(ii) an adjusting payment must be made by the appropriate *party* within 10 *business days* of the notice.

(b) Subject to clause A3.48(c), the adjusting payment must, without prejudice to the *party's* other rights, include interest calculated daily at the *discounted rate* from the date of the *payment error* until the date of the adjusting payment.

(c) An adjusting payment by a *party* will not attract interest under clause A3.48(b) if the underpayment was the result of an error by the other *party.*

A3.49 **Interest on overdue payments**

If a *party* defaults in due and punctual payment of a *tax invoice:*

(a) clauses A3.85 to A3.91 apply; and

(b) the overdue payments attract interest payable at the *prescribed rate* until the *default* is remedied.

A3.50 **GST**

(a) Unless expressly included, the consideration for any supply under or in connection with this contract (including any *tariff* derived from a *price list*) is *GST* exclusive.

(b) To the extent that any supply made under or in connection with this contract is a taxable supply, 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 clauses A3.44 and A3.45, the supplier must issue a *tax invoice* to the recipient of a supply to which clause A3.50(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) Definitions in the *GST Act* apply also in this clause A3.50 unless the context indicates otherwise.

Security

A3.51 If, at any time, *service provider* determines that *UserCo's*[35] technical or financial resources are such that a *reasonable and prudent person* would consider there to be a material risk that *UserCo* will be unable to meet its obligations under this contract, then *service provider* may, subject to clause A3.52, do either or both of the following:

(a) require *UserCo*, at *UserCo's* election, to:[36]

(i) pay in advance the *charges* for up to 2 months' *services*; or

(ii) provide a bank guarantee in terms acceptable to *service provider* (acting reasonably), guaranteeing the *charges* for 2 months' *services*; or

(iii) procure from *UserCo's* parent company a guarantee substantially in the form set out in Schedule 11;

and

[35] If there is to be an *indemnifier*, replace "*UserCo's*" with "either or both of *UserCo's* or *indemnifier's*".

[36] If there is to be an *indemnifier*, replace "require *UserCo*, at *UserCo's* election, to" with "require *UserCo* to nominate which of *UserCo* or *Indemnifier* is to provide the following security (**"nominated person"**), and then require the *nominated person*, at *UserCo's* election, to:".

(b) if clause A3.43 applies and any amount of the *capital contribution* remains unpaid or unprovided, require *UserCo* (in addition to *UserCo's* obligations under clause A3.51(a)), at *UserCo's* election, to:[37]

(i) pay to *service provider* in full an amount equal to:

A if the *capital contribution* is a *financial provision* — the net present value of the unpaid amounts of the *financial provision*; or

B if the *capital contribution* is a *provision in kind* — the net present value of the likely cost to the *service provider* of completing the *provision in kind* (which must not exceed the amount that would be spent by a prudent *service provider efficiently minimising costs* of completing the *provision in kind*);

each in this clause referred to as the **"unpaid portion"**; or

(ii) provide a bank guarantee in terms acceptable to *service provider* (acting reasonably), guaranteeing the *unpaid portion*; or

(iii) procure from *UserCo's*[38] parent company a guarantee substantially in the form set out in Schedule 11 guaranteeing the *unpaid portion*.

A3.52 If *service provider* requires *UserCo* to provide security under clause A3.51, then *UserCo* may propose alternative arrangements (for example, more frequent payment) to manage *service provider's* financial risk under this contract, and if so, *service provider* and *UserCo* must negotiate as *reasonable and prudent persons*, with a view to agreeing alternative arrangements which meet the following objectives:

(a) minimising the extent to which the requirements of clause A3.51 constitute a barrier to *UserCo's* entry to a market; and

(b) not contravening section 115 of the *Act* and not otherwise hindering *UserCo's* ability to compete in upstream or downstream markets,

but also in the view of a *reasonable and prudent person*:

(c) reasonably addressing the risk to *service provider* that *UserCo*[39] may be unable to meet its obligations under this contract; and

(d) being reasonably practicable for the *service provider* to administer.

A3.53 If the *parties* fail to agree on alternative arrangements under clause A3.52, then:

(a) *UserCo* must comply with clause A3.51 unless the matter is the subject of a *dispute* under clause A3.53(b); and

(b) the matter may be the subject of a *dispute* under this contract, in which case the *dispute* resolver may either:

(i) determine the terms of an appropriate alternative arrangement in which case *UserCo* must comply with those terms; or

(ii) determine that no alternative arrangement would meet the objectives in clause A3.52 in which case *UserCo* must comply with clause A3.51.

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[37] If there is to be an *indemnifier*, replace "require *UserCo* (in addition to *UserCo's* obligations under clause A3.51(a))at *UserCo's* election, to:" with "require *UserCo* (in addition to *UserCo's* obligations under clause A3.51(a)), to nominate which of *UserCo* or *indemnifier* is to provide the following security ("**nominated person**"), and then require the *nominated person*, at *UserCo's* election, to:".

[38] If there is to be an *indemnifier*, replace "*UserCo's*" with the "*nominated person's*".

[39] If there is to be an *indemnifier*, replace "*UserCo*" with "*UserCo* or *indemnifier*, as applicable,".

Part C – Technical Compliance Provisions

{Note: refer to clause A3.11 for when this Part C applies.}

Good electricity industry practice

A3.54 *Service provider* must comply with *good electricity industry practice* when providing *services* and otherwise when acting, or not acting, in connection with this contract.

A3.55 *UserCo* must comply with *good electricity industry practice* in receiving *services and* otherwise when acting, or not acting, in connection with this contract.

Cooperation

A3.56 *UserCo* and *service provider* (each acting as *reasonable and prudent persons*) 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*; and

(b) the development and implementation of *maintenance* schedules for *facilities and equipment* for a *connection point* and *network assets* for the *network*.

Directions from system operator

A3.57 Without limiting the generality of clause A3.56 *UserCo* and *service provider* must comply with any directions given by *system operator*.

User must provide information

A3.58 *Service provider* may as a *reasonable and prudent person*, in respect of a *connection point*, make a reasonable request for *generation* forecast information or *load* forecast information, as applicable.

A3.59 A request under clause A3.58 must not be made more than once in any 12 month period except in an accident, emergency, potential danger or other extraordinary circumstances.

A3.60 *UserCo* must comply with *service provider's* reasonable request under clause A3.58.

Technical rules

A3.61 *Service provider* and *UserCo* must each comply with the *technical rules*.

Actions of third parties causing user to breach technical rules

A3.62 If the actions of another person (including a customer of *UserCo*) cause *UserCo* to breach the *technical rules*, then *UserCo* is not in breach of clause A3.61 and is not liable for any breach of the *technical rules* unless *UserCo:*

(a) has been negligent; or

(b) has not acted as a *reasonable and prudent person.*

A3.63 Nothing in clause A3.62 limits the operation of clauses A3.71 or A3.80 in respect of either *UserCo* or *service provider*.

Tariff and charges

A3.64 *[x]*[40]

Invoicing and payment

A3.65 *[x]*[41]

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[40] If this *access contract* is a *technical compliance contract* only, and any *tariff* or *charge* applies, insert clauses A3.40 to A3.43 here.

Security

A3.66 *[x]*[42]

Part D – Common Provisions

{Note: Refer to clause A3.11 for when this Part D applies.}

Service provider must comply with service standards

A3.67 *Service provider* must provide the *services* to *UserCo* in accordance with the *service standards*.

Representations and warranties

A3.68 **User's representations and warranties**

(a) *UserCo* represents and warrants to *service provider* that:

(i) *UserCo* has complied with the *applications and queuing policy* in the *access arrangement* and the requirements in the *Code* in respect of its access application under the *access arrangement*; and

(ii) *UserCo's* obligations under this contract are valid and binding and are enforceable against *UserCo* in accordance with their terms; and

(iii) this contract and any other transaction under it does not contravene *user's* constituent documents or any *law* or any of *UserCo's* obligations or undertakings by which *UserCo* or any of *UserCo's* assets are bound or cause to be exceeded any limitation on *UserCo's* or *UserCo's* directors' powers; and

(iv) neither *UserCo* nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

(b) The representations and warranties in clause A3.68(a) are to be taken to be made on each day on which:

(i) this contract is in effect; or

(ii) any amount payable by *UserCo* to *service provider* under this contract is or may be outstanding.

A3.69 **[Indemnifier's representation and warranty]**

[x][43]

A3.70 **Service provider's representations and warranties**

(a) *Service provider* represents and warrants to *UserCo* that:

(i) *service provider* complied with the *applications and queuing policy* in the *access arrangement* and the requirements in the *Code* in respect of *UserCo's* access application under the *access arrangement*; and

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[41] If this *access contract* is a *technical compliance contract* only, and any *tariff* or *charge* applies, insert clauses A3.44 to A3.50 here.

[42] If this *access contract* is a *technical compliance contract* only, and the *service provider* is permitted by the *access arrangement* to seek security in respect of such a contract, insert clauses A3.51 to A3.53 here.

[43] If there is to be an indemnifier, add a new clause under this heading: "*The indemnifier* represents and warrants to *service provider* that as at the *commencement date*, there has been no material change in the *indemnifier's* financial position since the date *service provider* received information from the *indemnifier* stating that financial position."

(ii) *service provider's* obligations under this contract are valid and binding and are enforceable against *service provider* in accordance with their terms; and

(iii) this contract and any other transaction under it does not contravene *service provider's* constituent documents or any *law* or any of *service provider's* obligations or undertakings by which *service provider* or any of *service provider's* assets are bound or cause to be exceeded any limitation on *service provider's* or *service provider's* directors' powers; and

(iv) neither *service provider* nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

(b) The representations and warranties in clause A3.70(a) are to be taken to be made on each day on which:

(i) this contract is in effect; or

(ii) any amount payable by *service provider* to *UserCo* under this contract is or may be outstanding.

Liability and indemnity

A3.71 **Liability for direct damage**

Subject to the terms of this contract, a *party* who:

(a) is negligent; or

(b) commits a *default* under this contract,

is liable to the other *party* for, and must indemnify the other *party* against, any *direct damage* caused by, consequent upon or arising out of the negligence or *default.*

A3.72 **Fraud**

A *party* who is fraudulent in respect of its obligations to the other *party* under this contract, is liable to the other *party*[44] for, and is to indemnify the other *party*[45] against, any damage caused by, consequent upon or arising out of the fraud. In this case, the exclusion of *indirect damage* in clause A3.73(a) does not apply.

A3.73 **Exclusion of indirect damage**

(a) Subject to clause A3.73(b):

(i) *UserCo*[46] is not in any circumstances to be liable to *service provider* for any *indirect damage* suffered by *service provider*, however arising; and

(ii) *service provider* is not in any circumstances to be liable to *UserCo*[47] for any *indirect damage* suffered by *UserCo*[48], however arising.

(b) Where this contract states that "[t]he exclusion of *indirect damage* in clause A3.73(a) does not apply", or words to a similar effect, in relation to a matter, then:

(i) the exclusion of *indirect damage* in clause A3.73(a) does not apply in relation to that matter; and

(ii) the *parties'* liability in relation to the matter is to be determined by *law*, and to avoid doubt the definition of *indirect damage* in this contract is to be disregarded for the purposes of that determination.

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[44] If the *party* is *service provider,* and if there is to be an *indemnifier,* replace "the other *party"* with "either *UserCo* or *indemnifier".*

[45] If the *party* is *service provider,* and if there is to be an *indemnifier,* replace "the other *party"* with *"*both *UserCo* and *indemnifier".*

[46] If there is to be an *indemnifier*, replace "*UserCo"* with *"*either or both of *UserCo or indemnifier".*

[47] If there is to be an *indemnifier*, replace "*UserCo"* with "either or both of *UserCo* or *indemnifier."*

[48] If there is to be an *indemnifier*, replace "*UserCo"* with "either or both of *UserCo* or *indemnifier".*

A3.74 **Limitation of liability**

The maximum liability of:

(a) *service provider* to *UserCo*[49] under and in connection with this contract is limited to an amount of $*[x]*[50]; or

(b) *UserCo*[51] to *service provider* under and in connection with this contract is limited to an amount of $*[x]*[52].

A3.75 **Procedure for party seeking to rely on indemnity**

If any claim, demand, action or proceeding (collectively **"claim"**) is made or instituted against a *party*[53] in respect of which that *party*[54] (**"indemnified party"**) may under this contract seek to claim indemnity under this contract against the other *party*[55] (**"indemnifying party"**), the following procedure applies:

(a) *indemnified party* must give notice of the *claim* to the *indemnifying party* as soon as reasonably practicable; and

(b) *indemnified party* must not admit, compromise, settle or pay any *claim* or take any other steps which may in any way prejudice the defence or challenge of the *claim* without the prior written consent of the *indemnifying party* (which must not be unreasonably withheld) except as may be reasonably required in order to defend any judgment against *indemnified party* (to avoid doubt, Part 1E of the *Civil Liability Act 2002* applies in respect of any 'apology' (as defined in section 5AF of that Act) given by the *indemnified party*); and

(c) *indemnified party* must permit the *indemnifying party* at the *indemnifying party*'s expense to take any reasonable action in the name of *indemnified party* to defend or otherwise settle the *claim* as *indemnifying party* may reasonably require; and

(d) *indemnified party* must ensure that *indemnifying party* and its representatives are given reasonable access to any of the documents, records, staff, premises and advisers of the *indemnified party* as may be reasonably required by *indemnifying party* in relation to any action taken or proposed to be taken by *indemnifying party* under clause A3.75(c).

A3.76 **Mitigation of losses**

A *party*[56] must take such action as is reasonably required to mitigate any loss to it for which indemnity may be claimed under this contract or otherwise.

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[49] If there is to be an *indemnifier*, replace "*UserCo"* with "both *UserCo* and *indemnifier* collectively".

[50] Insert the maximum amount of *service provider's* liability to *UserCo* under and in connection with this contract, and insert what this cap applies to (e.g. whether this is per event, in a time period, over the life of the contract, etc). To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[51] If there is to be an *indemnifier*, replace "*UserCo"* with "both *UserCo* and *indemnifier* collectively".

[52] Insert the maximum amount of *UserCo's* liability to *service provider* under and in connection with this contract, and insert what this cap applies to (e.g. whether this is per event, in a time period, over the life of the contract, etc). To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[53] If the *party* is *UserCo,* and if there is to be an *indemnifier,* replace "the *party"* with "either or both of *UserCo* or *indemnifier".*

[54] If the *party* is *UserCo* and if there is to be an *indemnifier,* replace "that *party"* with "either or both of *UserCo* or *indemnifier".*

[55] If the other *party* is *UserCo* and if there is to be an *indemnifier,* then replace "the other *party"* with "either or both of *UserCo* or *indemnifier".*

[56] If there is to be an *indemnifier,* replace *"a party"* with "a *party* and *indemnifier".*

A3.77 **Obligation to pay and right to indemnities survives termination**

(a) A *party's*[57] obligation to pay an amount to another *party* under this contract is a continuing obligation, separate and independent from the other obligations of the *party*[58] and survives termination of this contract.

(b) Each indemnity in this contract is a continuing obligation, separate and independent from the other obligations of the *parties*[59] and survives termination of this contract. It is not necessary for a *party*[60] to incur expense or make payment before enforcing a right of indemnity conferred by this contract.

Insurances

A3.78 **UserCo's insurances**

(a) Subject to clause A3.78(b), *UserCo* must obtain and *maintain* insurance covering those matters, and for the amounts, referred to in Item 1 of Schedule 8.

(b) To the extent that *service provider* consents (such consent not to be unreasonably withheld), *UserCo* may self-insure for some or all of the matters and amounts referred to in Item 1 of Schedule 8.

(c) *UserCo* must, before the *commencement date* and at such other times as *service provider* shall reasonably request in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide *service provider* with certificates of currency for the insurances required under clause A3.78(a) or reasonable details of *UserCo's* arrangements under clause A3.78(b), as the case may be.

A3.79 **Service provider's insurances**[61]

(a) Subject to clause A3.79(b), *service provider* must obtain and *maintain* insurance covering those matters and for the amounts referred to in Item 2 of Schedule 8.

(b) To the extent that *UserCo* consents (such consent not to be unreasonably withheld), *service provider* may self-insure for some or all of the matters and amounts referred to in Item 2 of Schedule 8.

(c) *Service provider* must, before the *commencement date* and at such other times as *UserCo* reasonably requests in writing (such request not to be made more than once in respect of a 12 month period unless extraordinary circumstances apply), provide *UserCo* with certificates of currency for the insurances required under clause A3.79(a) or reasonable details of *service providers* arrangements under clause A3.79(b), as the case may be.

Force majeure

A3.80 If a person (**"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 these clauses A3.80 to A3.84, the *affected person* is released from liability for failing to perform the *affected obligation* 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*.

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[57] If there is to be an *indemnifier,* replace *"a party"* with "a *party* and *indemnifier".*

[58] If the *party* is *UserCo* and if there is to be an *indemnifier,* replace "the *party"* with "either or both of *UserCo* or *indemnifier".*

[59] If there is to be an *indemnifier*, replace "the *parties"* with "both the *parties* and *indemnifier".*

[60] If there is to be an *indemnifier*, replace "*party"* with "either or both of *party* or *indemnifier".*

[61] This clause assumes that *service provider's* self-insurance choices are dealt with on a user-by-user basis. A *service provider* may propose to the *Authority* an alternative approach for inclusion in the *access arrangement*, for example one in which the matters on which the *service provider* may self insure are prescribed in the *access arrangement,* and the *Authority* may approve such an alternative approach.

A3.81 Without limiting clause A3.80, *service provider*'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 A3.27, to the extent of the *curtailment*.

A3.82 Subject to clauses A3.83 and A3.84, 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:

(a) notify the other *party* if the *force majeure event* continues for a period of two days or longer*;* and

(b) use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling personnel and resources) to:

(i) mitigate the consequences; and

(ii) minimise any resulting delay in the performance of the *affected obligation*.

A3.83 If an *affected person* fails to comply with clause A3.82(b)(ii), then the only consequence of that failure is that the period of suspension of the *affected obligation* is reduced by the period of any delay in the performance of the *affected obligation* attributable to that failure.

A3.84 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*.

Default

A3.85 **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; or

(b) that *party* defaults in the due and punctual performance or observance of any of its obligations contained or implied by operation of *law* in this contract; or

(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.

A3.86 **Default by UserCo**

In the event of *UserCo's default*, then *service provider* may:

(a) notify *UserCo* of *UserCo's default* and require *UserCo* to remedy *UserCo's default*; or

(b) if *UserCo's default* is a *default* in the payment of any amount and has not been remedied by the end of the third *business day* after the notice was given, *disconnect*, or *curtail* the provision of *services* in respect of, all or any of *UserCo's connection points* from the *network* whilst *UserCo's default* is continuing; or

(c) if *UserCo's default* is any other type of *default* and at the end of the fifth *business day* after the notice was given:

(i) *UserCo's default* has not been remedied; or

(ii) *UserCo* has not to the reasonable satisfaction of *service provider* begun remedying *UserCo's default* or has begun remedying but is not, in the reasonable opinion of the *service provider,* diligently proceeding to remedy *UserCo's default*,

disconnect, or *curtail* the provision of *services* in respect of, all or any of *UserCo's connection points* from the *network* whilst *UserCo's default* is continuing; and

(d) if *UserCo's default* has not been remedied at the end of the 20th *business day* after the notice was given, terminate this contract.

A3.87 *UserCo's default* under clause A3.86 does not prejudice the rights or remedies accrued to *service provider* at the date of *UserCo's default*.

A3.88 **Default by service provider**

In the event of *service provider's default*, *UserCo* may:

(a) notify *service provider* of *service provider's default* and require *service provider* to remedy the *default*; and

(b) if *service provider's default* has not been remedied at the end of the 20th *business day* after the notice was given:

(i) terminate this contract; or

(ii) withhold payment of any charges payable by *UserCo* from the date of *default* under this contract for so long as the *default* continues unremedied (and no interest is payable by *UserCo* on any amounts so withheld provided they are paid within 10 *business days* after the *default* is remedied).

A3.89 *Service provider's default* under clause A3.88 does not prejudice the rights or remedies accrued to *UserCo* at the date of *service provider's default*.

Termination

A3.90 **Termination**

(a) Subject to clause A3.90(b), this contract terminates on the *termination date*.

(b) This contract may be terminated before the *termination date* by:

(i) written agreement between *service provider* and *UserCo*; or

(ii) notice by either *party* at any time at which this contract does not include at least one *connection point*; or

(iii) notice by either *party* where there is a *default* by the other *party* under this contract, subject to clauses A3.86 or A3.88 as the case may be; or

(iv) notice by either *party* to an *affected person* if a *force majeure event* occurs and the *affected person* is unable wholly or in part to perform any obligation under this contract and the *force majeure event* continues for a period of greater than 180 days in aggregate in any 12 month period.

(c) On termination of this contract *service provider* may *disconnect* any one or more of *UserCo's connection points*.

(d) On termination of this contract, unless alternative provisions are agreed:

(i) *service provider* may dismantle, decommission and remove *service provider*'s *works* and any *metering equipment* installed on *UserCo's premises*; and

(ii) in accordance with *service provider's* instructions, *UserCo* must dismantle and decommission or remove any of *UserCo's works* at or connected to any *connection point* that is located on *service provider's premises* and is not otherwise required under another contract.

A3.91 Termination of this contract under clause A3.90(b) does not prejudice the rights or remedies accrued to either *party* at the date of termination.

Access to premises

A3.92 Each party (**"host party"**) must allow, or use its reasonable endeavours to procure for, the other party (**"guest party"**) all reasonable rights of entry:

(a) for the purposes of constructing, installing, operating, *maintaining* and verifying the accuracy of any *metering equipment*, other equipment or thing; and

(b) to inspect for safety or other reasons the construction, installation, operation, maintenance and repair of any *metering equipment*, other equipment or thing; and

(c) for any other reasonable purpose connected with or arising out of this contract.

A3.93 Any entry under clause A3.92 is made in all respects at the expense and risk of the *guest party*, who must, subject to clauses A3.73 and A3.74, 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; or

(b) the negligence or *default* of *host party* or its *workers* or *visitors;*

(c) a *force majeure event*.

A3.94 A *guest party* must:

(a) before exercising a right of entry under clause A3.92, 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 accident, emergency, potential danger or other extraordinary circumstance; and

(b) while exercising a right of entry under clause A3.92:

(i) act as a *reasonable and prudent person*; and

(ii) without limiting clause A3.94(b)(i), 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 accident, emergency, potential danger or other extraordinary circumstance, and 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*.

A3.95 To the extent that any equipment or thing 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.

Disputes

A3.96 If a *dispute* arises between the *parties,* either *party* may give to the other *party* written notice setting out the material particulars of the *dispute* and requiring duly authorised representatives of each *party* to meet at a place, agreed between the *parties,* within 10 *business days* of the date of receipt of such notice by the relevant *party* (**"receipt date"**)*,* to attempt in good faith by way of discussions and using their best endeavours to resolve the *dispute* (**"representatives meeting"**) and the *parties* must do so.

A3.97 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 the senior executive officer of each *party* must meet at a place agreed between the *parties* within 30 *business days* after the *receipt date* and must attempt in good faith by way of discussions and using their best endeavours to resolve the *dispute* within 35 *business days* after the *receipt date* (**"CEO meeting"**).

A3.98 A *representatives meeting* in clause A3.96 or *CEO meeting* in clause A3.97 may be conducted in person, by telephone, video-conference or similar method of real time communication.

A3.99 If, after complying with the process set out in clauses A3.96 and A3.97 a *dispute* is not resolved, then either *party* may commence an action to resolve the *dispute* through litigation and other court processes.

{Note: The *parties* may, if they agree, endeavour to resolve a *dispute* through mediation, conciliation, arbitration or other alternative resolution methods rather than commencing an action to resolve the *dispute* through litigation.}

A3.100 A *party* must continue to perform its obligations under this contract despite the existence of a *dispute*, unless otherwise agreed.

Set off

A3.101 A *party* (**"first party"**) may set off any amount due for payment by it to the other *party* under this contract against any amount which is due for payment by the other *party* to the *first party* under this contract.

A3.102 Except as permitted in clause A3.101, no set off is permitted by either *party* in connection with this contract, whether under this contract or otherwise.

Transfer by user

A3.103 Subject to clause A3.104, *UserCo* may make a *bare transfer* of its *access rights* without *service provider*'s prior consent.

A3.104 If *UserCo* makes a *bare transfer*, *UserCo* must notify *service provider* of:

(a) the identity of the *transferee*; and

(b) the nature of the *transferred access rights*,

before the *transferee* may commence using the *transferred access rights*.

A3.105 For a *transfer* other than a *bare transfer*, *UserCo* may *transfer* its *access rights* (subject to clause A3.106) and subject to the *service provider's* prior written consent and such conditions as the *service provider* may impose.

A3.106 For a *transfer* other than a *bare transfer*, *service provider* may:

(a) withhold its consent in clause A3.105 only on reasonable commercial or technical grounds; and

(b) impose conditions in respect of the *transfer*, but only to the extent that they are reasonable on commercial and technical grounds.

Corporate restructuring of service provider[62]

A3.107 If *service provider* is restructured:

(a) in accordance with government policy by *law*; or

(b) through other means, including the:

(i) use of subsidiary or associated companies; or

(ii) transfer of assets, rights and liabilities,

then the rights and obligations of *service provider* under this contract are assigned to the appropriate legal entity pursuant to the restructure.

A3.108 A restructure, transfer or assignment under clause A3.107 does not require *UserCo's* approval or consent.

Confidentiality

A3.109 **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; or

(b) the circumstances in which the information was disclosed or the nature of the information disclosed may reasonably be considered as being confidential; or

(c) the information constitutes trade secrets; or

(d) the information has a commercial value to a party which would be destroyed or diminished by the publication of the information; or

(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.

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[62] This clause to be omitted from *standard access contract* unless *service provider* is a wholly state-owned corporation.

A3.110 Clause A3.109 does not apply to information which, without breach of this contract or other breach of confidence:

(a) is or becomes generally and publicly available other than by a breach of clause A3.111; or

(b) is lawfully obtained by a *party* from a person other than a *party* or a *related body corporate* of a *party* where such person is entitled to disclose the *confidential information*; or

(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.

A3.111 **Prohibited disclosure**

Subject to clause A3.112, an *information recipient* must not disclose or allow to be disclosed any *confidential information* to a *third party recipient.*

A3.112 **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:

(i) with written consent of the *information provider*; or

(ii) to employees, a *related body corporate* or legal advisers, auditors or other consultants of the *party* requiring information for the purposes of this contract or for the purposes of providing professional advice in relation to this contract; or

(iii) to a bona fide proposed assignee of a *party* to this contract or registered shareholder of 20 percent or more of the voting shares in a *party*; or

(iv) if required by *law* or by an authority which has jurisdiction over a *party* or any of its related bodies corporate or by the rules of a stock exchange which has jurisdiction over a *party* or any of its *related bodies corporate*; or

(v) if required for the purposes of prosecuting or defending a *dispute* or if otherwise required in connection with legal proceedings related to this contract.

(b) Nothing in clause A3.112(a) limits *service provider's* obligations to comply with Chapter 13 of the *Code*.

A3.113 **Third party disclosure**

An *information recipient* disclosing information under clause A3.112(a) must:

(a) use all reasonable endeavours to ensure that a *third party recipient* does not disclose the *confidential information* except in the circumstances permitted in clause A3.112(a); and

(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 A3.113(b), procure a written confidentiality undertaking from the *third party recipient* consistent with clauses A3.109 to A3.118.

A3.114 **No unauthorised copying**

A *party* must not copy any document containing the other *party's confidential information* except as necessary to perform this contract.

A3.115 **Secure storage**

A *party* must ensure that proper and secure storage is provided for the *confidential information* while in *possession* of a *party*, 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 in accordance with usual corporate governance requirements.

A3.116 **Return of materials**

A *party* must return all documents containing the other *party's confidential information*, including all copies, to the other *party* on termination or expiration of this contract, or upon request by the other *party*, destroy all such documents.

A3.117 **Remedies**

Each *party* acknowledges and agrees that any breach or threatened breach of clauses A3.109 to A3.118 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* or equity, to seek injunctive relief or compel specific performances of these clauses A3.109 to A3.118 in respect of any such breach or threatened breach.

A3.118 **Survival of obligations**

(a) Clauses A3.109 to A3.118 survive the termination of this contract and remain enforceable for a period of 7 years from the date of such termination.

(b) Any person who ceases to be a *party* to this contract continues to be bound by these clauses A3.109 to A3.118.

Ring fencing

A3.119 If *service provider* is an *integrated provider*, then a court or tribunal in considering whether:

(a) representations made by *workers* of the *other business* can be attributed to the *network business*, or vice versa; or

(b) 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

(c) a contract entered into by the *other business* expresses or implies an intention to vary this contract, or vice versa,

must have regard to:

(d) the fact that *service provider* comprises a *network business* and an *other business* and the distribution of personnel and responsibilities between those businesses; and

(e) *service provider's* obligations under Chapter 13 of the *Code* (and, if *service provider* is Western Power Corporation, any regulations made under section 31A of the *Electricity Corporation Act 1994*) and anything done or not done by the *service provider* in connection with those obligations.

Notices

A3.120 **Requirements for notices**

Except as provided in clause A3.121, 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 9 by one or more of the following means:

(i) by hand delivery; or

(ii) by ordinary letter post (airmail if posted to or from a place outside Australia); or

(iii) by way of a courier service for hand delivery; or

(iv) by facsimile to the facsimile number of the addressee, or

(v) by *email*, as specified in the Electronic Communications Protocol in Schedule 10.

A3.121 **Operational and urgent notices**

Where this contract expressly provides, and where the *parties* agree in writing:

(a) notices of a day to day operational nature; or

(b) notices given in an operational emergency,

may be given orally and confirmed in writing within 5 *business days*.

A3.122 **Notice takes effect**

Subject to clause A3.123, a *communication* takes effect from the later of:

(a) the time it is received; and

(b) any later time specified in the *communication*.

A3.123 **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 judgment 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 *communication* is addressed.

(b) a *communication* which is posted is deemed to be received by the *party* to whom the *communication* is addressed:

(i) where the *communication* is sent from outside the country of the address to which it is sent – on the 10th *business day* after the day of posting; and

(ii) otherwise – on the third *business day* after the day of posting.

(c) a *communication* sent by facsimile transmission which is transmitted:

(i) prior to 3 p.m. on a *business day* is deemed to have been received by the *party* on that *business day* at the recipient's location; and

(ii) after 3 p.m. on a *business day*, or on a day which is not a *business day*, is deemed to have been received by the *party* on the first *business day* at the recipient's location following the date of transmission,

provided that the sender of the *communication* is able to produce a transmission log generated by the sender's facsimile machine (or other facsimile transmission device), showing successful uninterrupted facsimile transmission of all pages of the relevant *communication* to the facsimile number of the addressee.

(d) a communication sent electronically is deemed to be received by the *party* in accordance with Schedule 10.

A3.124 **Change of address**

A *party* may at any time, by notice given to the other *party* to this contract, designate a different address or facsimile number for the purpose of these clauses A3.120 to A3.124.

Miscellaneous

A3.125 **Compliance**

Each *party* to this contract must comply with all applicable *laws*.

A3.126 **Variation**

(a) Subject clause A3.126(b), a purported agreement between *service provider* and *UserCo* to revoke, substitute or amend any provision of this contract has no effect unless it is in writing.

(b) Clause A3.126(a) does not prevent *UserCo* and *service provider* from agreeing by non-written means under clause A3.121 to revoke, substitute or amend any provision of this contract in an accident, emergency, potential danger or other unavoidable cause or extraordinary circumstance (each in this clause an **"emergency"**), provided that the non-written revocation, substitution or amendment applies only while the effects of the *emergency* subsist.

A3.127 **No third party benefit**

This contract does not confer any right or benefit on a person other than *UserCo* and *service provider*, despite the person being named or identified, or belonging to a class of persons named or identified, in this contract.

A3.128 **Stamp duty**

UserCo is liable for and must pay all stamp duties that are assessed on this contract.

A3.129 **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.

A3.130 **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*.

A3.131 **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.

A3.132 **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 A3.132 has no effect if the severance alters the basic nature of this contract or is contrary to public policy.

A3.133 **Counterpart execution**

(a) This contract may be executed in counterpart.

(b) Upon each *party* having executed and forwarded to the other *party* a fully signed counterpart of this contract, it is deemed to be properly executed by all *parties.*

A3.134 **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, but not limited to, the execution of documents.

A3.135 **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 9 to an *authorised officer* of another *party* specified in Schedule 9.

(b) A *party* may at any time, by notice given to the other *party*, add or replace an *authorised officer* for the purposes of clause A3.135(a).

A3.136 **Merger**

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

A3.137 **Remedies**

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.

A3.138 **Governing law**

(a) This contract and the transactions contemplated by this contract are governed by the law in force in Western Australia.

(b) Without limiting clause A3.138(a), each *party* irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia and the Courts of appeal from them for the purpose of determining any *dispute* concerning this contract or the transactions contemplated by this contract.

[Execution clauses to be inserted.]

Schedule 1 to Appendix 3 - Access Contract Information

1	*Commencement Date*	
2	*Termination Date*	

Schedule 2 to Appendix 3 – Services

	Type of service	**Specified**	**Service standard**
1.	*Connection service*		
2.	*Entry* or *Exit service*		
3.	*Network use of system service*		
4.	*Common service*		

Schedule 3 to Appendix 3 – Details of Connection Points and Metering Points

Connection point	*Capacity contract* (Tick if applicable)	*Technical compliance contract* (Tick if applicable)	Type of *connection point* (i.e. *entry point* or *exit point*)	*Start Date*	*End Date*	*CMD* (KW/ KVA) (If applicable)	*DSOC* (KW/ KVA) (If applicable)	*Designated controller* [63] (If applicable)

Schedule 4 to Appendix 3 - Tariffs

[x][64]

Schedule 5 to Appendix 3 - Capital Contribution (Provision in Kind Contract or Payment Contract)

[x][65]

[63] To be inserted in the *access contract* by agreement between the parties or arbitrated award.

[64] To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 4. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[65] Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *capital contributions policy* in the *service provider's access arrangement*.

Schedule 6 to Appendix 3 – Service provider's works

[Details to be included in addition to other matters:

(a) description of *service provider's works* including reference to specifications; and

(b) timetable for construction of *service provider's works*].[66]

Schedule 7 to Appendix 3 – UserCo's works

[Details to be included in addition to other matters:

(a) description of *UserCo's works* to be carried out by *UserCo;* and

(b) terms of construction of *UserCo's works;* and

(c) timetable for construction of *UserCo's works;* and

(d) terms of transfer of *UserCo's works* to *service provider* (if any); and

(e) testing and commissioning; and

(f) protocols for maintenance co-ordination.][67]

Schedule 8 to Appendix 3 – Insurances and Limitation of Liability

1. UserCo insurances

[To be completed. For example the required insurances may include:

(a) *public liability – up to $x million;* and

(b) *workers' compensation – up to $y million;* and

(c) *other insurances as appropriate.]*[68]

2. Service provider insurances

[To be completed. For example the required insurances may include:

(a) *public liability – up to $x million;* and

(b) *workers' compensation – up to $y million;* and

(c) *other insurances as appropriate.]*[69]

Schedule 9 to Appendix 3 – Notices

1

	Subject	**Information**
	Address for service of notices/ place of business	
	Authorised officers	
	Email address	
	Facsimile number	

[66] Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider's access arrangement*.

[67] Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider's access arrangement*.

[68] Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider's access arrangement*.

[69] Provisions to be inserted as agreed between the *parties* or determined in an arbitrated award in accordance with the *service provider's access arrangement*.

2 **Service Provider**

	Subject	**Information**
	Address for service of notices/ place of business	
	Authorised officers	
	Email address	
	Facsimile number	

Schedule 10 to Appendix 3 - Electronic Communications Protocol

1. Interpretation

In this schedule:

"addressee" means the person to whose *email address* an *email* is sent**.**

"automated response message" means an *email* ("reply email") sent automatically upon receipt of an *email* ("original email"), 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**:**

(a) the name of the *originator* of the original *email*; and

(b) at least the time, date and subject title of the original *email*; and

{Note: The easiest means to record this information may be to include the whole of the original *email*, preferably excluding attachments, within the reply *email*.}

(c) the name of the *addressee* of the original *email*; and

(d) 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*).

"data" includes the whole or part of a computer program within the meaning of the *Copyright Act 1968* of the Commonwealth.

"email" means a communication of *information* by means of guided or unguided electromagnetic energy, or both, by way of packet transfer between and within computer networks using the TCP/IP protocol.

"email address" means the address nominated in item 3 of Schedule 9, 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.

"information" means information in the form of data, text, images or sound.

"information system" means a system for generating, sending, receiving, storing or otherwise processing *emails*.

"originator" means the *person* who sends an *email* to an *addressee*.

"place of business" means a place of business nominated under item 1 of Schedule 9 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.

"purported originator" means the *person* on the face of the email who appears to be, or purports to be the *originator*, including by purported compliance with clause 5.

2. Parties to establish email addresses

Service provider and *UserCo* must:

(a) from time to time, nominate a *place of business* and establish an *email address* to be used for the *communications* under this contract; and

(b) use reasonable endeavours to ensure that the *information system*, on which *emails* addressed to the *email address* are received, is operational:

(i) a 24 hours-a-day; and

(ii) 7 days-a-week,

to receive *emails* and send *automated response messages* as required by this contract; and

(c) 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

(d) 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*:*

(i) retransmission of the *email*; or

(ii) communication of the *information* by an alternative medium (but this clause 2(b) does not limit the *addressee's* responsibilities under clause 2(d)).

(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:

(i) *originator* has sent; and

(ii) *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* i*nformation system* generates an *automated response message* to:

(i) read the *email* and the *information* it contains, and if applicable communicate it to the appropriate *worker* within the *addressee's* organisation; and

(ii) 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

(iii) 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

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 notice* 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

For the purposes of this contract, an *email* must identify the *originator*.

7. Information format

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 11 to Appendix 3 - Guarantee

DEED dated *[to be completed]*

PARTIES

1. [### ACN ### a company registered in ### of ###] (**"Guarantor"**); and

2. [### ACN ### a company registered in ### of ###] (**"Service Provider"**).

BACKGROUND

A. The *service provider* may in its discretion provide *services* to [###] (**"UserCo"**) under an access contract at the request of each of *UserCo* and the *guarantor*.

B. The *guarantor* wishes to execute this *guarantee* to secure payment of all amounts payable under the *access contract* to the *service provider*.

1. GUARANTEE

The *guarantor* unconditionally and irrevocably guarantees as a continuing security to the *service provider* payment by *UserCo* of all moneys and liabilities due and/or payable from or by *UserCo* to the *service provider* under or in connection with the contract dated [###] (**"access contract"**) created between *UserCo* and the *service provider*(**"secured moneys"**), including moneys and liabilities incurred or arising:

(a) (**liability**): at any present or future time, whether actually or contingently;

(b) (**default**): as a result of any breach of or default under the *access contract*; and/or

(c) (**account**): by way of principal, interest, cost, charge, expense, disbursement, fee, tax, stamp or other duty, indemnity, damages or monetary judicial order.

2. SECURED MONEYS

2.1 Demand Payment

The *guarantor* must pay to the *service provider*, upon demand by the *service provider* at any present or future time, the amount of the *secured moneys* due from and payable by *UserCo* to the *service provider* at that time under, and in the manner and currency specified in, the *access contract.*

2.2 Costs

The *guarantor* must at any present or future time indemnify the *service provider* upon demand for any cost, charge, expense, disbursement, fee, tax or stamp or other duty incurred by the *service provider* at any time in connection with the *access contract*, this *guarantee* or the *secured moneys* relating to:

(a) (**security agreements**): preparation, negotiation, execution or performance, or any termination, amendment, consent, claim, demand or waiver;

(b) (**security rights**): any exercise or enforcement of any right or power conferred on the *service provider*;

(c) (**credit increases**): any extension of further, additional or increased credit or financial accommodation by the *service provider*, or agreement by the *service provider* to increase the amount secured; and/or

(d) (**payments**): the receipt or payment of any moneys, including moneys paid by the *service provider* by way of reimbursement to any third party.

2.3 Set-Off Exclusion

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

3. INDEMNITY

The *guarantor* must as a separate and additional liability of the *guarantor* as a principal debtor, and not as a surety, indemnify the *service provider* against, and pay to the *service provider* upon demand by the *service provider* an amount equal to, all *secured moneys* that are or may become invalid, unenforceable, illegal or irrecoverable for any reason or under any circumstances as a liability to the *service provider* by the *guarantor* as a surety, despite any other provision of this *guarantee*.

4. GUARANTEE PROTECTION

This *guarantee*, and the liability of the *guarantor* under this *guarantee*, is not affected at any time by:

(a) (**waiver**): the granting to any person by the *service provider* of any waiver;

(b) (**agreements**): any agreement, deed or document created with, or action or omission performed, representation made or non-disclosure of any fact or information by, the *service provider* or any person;

(c) (**secured moneys**): any increase or variation in the amount of the *secured money*s occurring for any reason;

(d) (**document amendment**): any amendment to or transfer, release or termination of any agreement, deed or document or any right, power or liability of any person under any agreement, whether for or without consideration;

(e) (**enforcement decisions**): any exercise or enforcement, or any failure or invalidity in, the exercise or enforcement by the *service provider* of any right or power conferred on the *service provider* under any agreement, deed or document or by law;

(f) (**invalidity**): any actual or potential invalidity, unenforceability, illegality or irrecoverability of any agreement, deed or document or consent or any payment made or due to the *service provider* under any agreement for any reason;

(g) (**incapacity**): any incapacity or absence of power or authorisation of, or other fact relating to, any person in connection with the execution of any agreement, deed or document or otherwise, including any change in the constitution or membership of any person; or

(h) (**residual**): any other breach, default, waiver or fact which, except for this provision, might legally operate:

(i) to release or discharge or have any prejudicial effect on; or

(ii) in any manner to release or discharge the *guarantor* from performance of, or limit or provide a defence to any legal action to enforce,

this *guarantee,* or any liability of the *guarantor* under or in connection with this *guarantee*.

5. TERMINATION

The *guarantor* is not entitled to terminate or limit this *guarantee*, or any liability of the *guarantor* under this *guarantee*, until the *secured moneys* have been paid in full.

6. GOVERNING LAW

This *guarantee* is governed by and construed under the law of the State of Western Australia.

7. GENERAL

7.1 Continuing Security

This *guarantee* is a continuing security and is not wholly or partially discharged by the payment at any time of any *secured moneys*, settlement of account or other fact and applies to the balance of the *secured moneys* at any time until a final termination of this *guarantee* by the *service provider.*

7.2 Further Assurance

The *guarantor* must upon request by the *service provider* at any time execute any document and perform any action necessary to give full effect to this *guarantee*, whether prior or subsequent to performance of this *guarantee*.

7.3 Waivers

Any failure or delay by the *service provider* to exercise any right or power under this *guarantee* does not operate as a waiver and the single or partial exercise of any right or power by the *service provider* does not preclude any other or further exercise of that or any other right or power by the *service provider*.

EXECUTED as a deed.

[Execution clauses for guarantee to be inserted]

Appendix 4 – Model Capital Contributions Policy

{Outline: See clause 5.12}

This Appendix 4 leaves some matters to be completed when a *capital contributions policy* is incorporated into an *access arrangement*. These are shown as variables in square brackets, eg. "*[x]*".

The variable can be a simple absolute number or may follow a more sophisticated structure designed by the *service provider* to best suit the characteristics of its *covered network* and business.

The variables proposed by a *service provider* are subject to *approval* by the *Authority* under Chapter 4, and (without limiting the *Authority's* discretion or duties) must be consistent with the *Code objective* and section 5.12.

Footnotes following each matter in square brackets contain instructions to the *Authority*. The footnotes form part of this *model capital contributions policy* and, like these introductory notes, have legal effect.

Sub-appendix 4.1 - Introductory

Definitions and interpretation

A4.1 In this *capital contributions policy*, unless the contrary intention is apparent:

"Code" means the *Electricity Networks Access Code 2004*.

"Code objective" has the meaning given to it in section 2.1 of the *Code*.

"new service" means a *covered service* sought by a relevant applicant which necessitates a *required augmentation* or *alternative option*.

"non-capital contribution" has the meaning given to it in clause A4.16.

"payment contract" has the meaning given to it in clause A4.14(a).

"provision in kind" has the meaning given to it in clause A4.13.

"provision in kind contract" has the meaning given to it in clause A4.13(a).

"reasonable time" is to be determined in accordance with clause A4.9.

"relevant applicant" means an *applicant* seeking a *new service*.

"required augmentation" means an *augmentation* that the *service provider* needs to undertake in order to provide a *new service* to a *relevant applicant*.

A4.2 Unless the contrary intention is apparent, a term with a defined meaning in the *Code* has the same meaning in this *capital contributions policy*.

A4.3 Unless the contrary intention is apparent:

(a) a rule of interpretation in the *Code*; and

(b) the *Interpretation Act 1984*,

apply to the interpretation of this *capital contributions policy*.

Application of this capital contributions policy

A4.4 If it is necessary for a *service provider* to undertake an *augmentation* (**"required augmentation"**) or, due to the *regulatory test*, an *alternative option* in order to provide to an *applicant* (**"relevant applicant"**) a *covered service* (**"new service"**) sought in an *access application*, then this *capital contributions policy* applies.

Sub-appendix 4.2 - Capital contributions

Capital contribution

A4.5 In this *capital contributions policy* and subject to clause A4.6, the *capital contribution* for a *required augmentation* is:

(a) the *forecast new facilities investment* in the *required augmentation* less the amount of the *forecast new facilities investment* which, if the *new facilities investment test* was applied to the *required augmentation*, would satisfy the test; plus

(b) a *reasonable rate of return*, determined under clause A4.9, on the amount determined under clause A4.5(a).

A4.6 A *capital contribution* must not exceed the amount that would be required by a prudent *service provider* acting efficiently, in accordance with *good electricity industry practice*, seeking to achieve the lowest sustainable cost of providing the *new services*.

A4.7 If it is necessary for a *service provider* to undertake a *required augmentation* to provide *new services* to more than one *relevant applicant*, the *service provider* must calculate the *capital contribution* for the *required augmentation* as set out in clause A4.5 and must, acting as a *reasonable and prudent person*, apportion the amount calculated under clause A4.5 between the *relevant applicants* in accordance with the *Code objective* to determine each *relevant applicant's capital contribution*.

A4.8 If the application of this *capital contributions policy* in relation to a *required augmentation* produces a *capital contribution* amount that is greater than zero, the *service provider* is not required to undertake the *required augmentation* unless the *relevant applicant* agrees to provide the *capital contribution* to the *service provider* in accordance with this *capital contributions policy*.

Reasonable rate of return

A4.9 For the purposes of clause A4.5(b), a *reasonable rate of return* is to be determined by the *service provider* as a *reasonable and prudent person* in accordance with the *Code objective* over a *reasonable time* having regard to the risk associated with the *required augmentation*.

A4.10 For the purposes of clause A4.9, a *reasonable time* is to be determined having regard to:

(a) the anticipated commercial life of the *required augmentation*, up to a maximum of 15 years; and

(b) the purpose for which the *relevant applicant* requires the *new services*.

Manner of contribution

A4.11 A *capital contribution* may be made:

(a) by the *relevant applicant* by way of either:

(i) subject to clause A4.13, *provision in kind*; or

(ii) subject to clauses A4.12 and A4.14, a financial payment comprising either:

A periodic financial payments; or

B an up-front financial payment;

or

(b) by the State under the Regional Electricity Supply Policy or otherwise.

A4.12 The *relevant applicant* may elect under clause A4.11(a)(ii)A to make the *capital contribution* by way of a periodic financial payment if:

(a) the *capital contribution* meets any materiality thresholds below which an periodic financial payment will not apply, for example in terms of one or more of the following in respect of a *required augmentation*:

(i) a minimum capital cost of *$[x]*[70]; or

[70] To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

(ii) a minimum amount of *$[x]*[71] per period for a periodic financial payment.

(b) if requested, the *relevant applicant* provides reasonable security to the *service provider* in the *payment contract* under clause A4.14(a) for the payment of the periodic financial payment over the period referred to in clause A4.10(a).

Provision of capital contribution in kind

A4.13 The *service provider* may agree to the *relevant applicant* providing or procuring the *required augmentation*, or part of the *required augmentation*, under clause A4.11(a)(i) itself (**"provision in kind"**), in which case:

(a) the *access contract* or another contract (either in this context a *provision in kind contract*) must deal with the parties' rights and obligations in relation to the *provision in kind*; and

(b) the terms of the *provision in kind contract* are to be negotiated between the *service provider* and the *relevant applicant*, and failing agreement may be the subject of an *access dispute*; and

(c) unless the *provision in kind contract* provides otherwise, title to the *required augmentation* passes to the *service provider* on commissioning; and

(d) if any materiality threshold is met, the *provision in kind contract* must provide for the *service provider* to recoup from other *users* who subsequently benefit from the *required augmentation*, and rebate to the *relevant applicant*, an appropriate amount to reflect the benefit the other *user*s receive from the *provision in kind*.

Provision of capital contribution by financial payment

A4.14 If the *user* elects to make a periodic financial payment under clause A4.11(a)(ii)A or an up-front payment under clause A4.11(a)(ii)B (**"financial provision"**), then:

(a) the terms of the *access contract* or another contract (either in this context a *payment contract*) must deal with the parties' rights and obligations in relation to the *financial provision* including (in the case of the up-front payment) regarding security for the *relevant applicant* and must be negotiated between the *service provider* and the *relevant applicant*, and failing agreement may be the subject of an *access dispute*; and

(b) unless the *payment contract* provides otherwise, title to the *required augmentation* remains with the *service provider* despite the *financial provision*; and

(c) the *payment contract* must provide:

(i) in the case of a periodic payment — for the periodic payments to be adjusted when other *users* subsequently benefit from the *required augmentation*, to ensure that the *relevant applicant* pays no more than a fair share having regard to the benefit the other *user*s receive from the *financial provision*; or

(ii) in the case of an up-front payment, if any materiality threshold is met — for the *service provider* to recoup from other *users* who subsequently benefit from the *required augmentation*, and rebate to the *relevant applicant*, an appropriate amount to reflect the benefit the other *user*s receive from the *financial provision*.

Rebates and recoupment

A4.15 The *capital contributions policy* may specify materiality thresholds below which any recoupment and rebate mechanism under clause A4.13(d) or A4.14(c)(ii) will not apply, for example in terms of one or more of the following in respect of a *required augmentation*:

(a) a minimum capital cost of *$[x]*[72]; or

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[71] To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[72] To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

(b) a minimum amount of *$[x]*[73] to be recouped from or rebated to a *user*; or

(c) a maximum period of *[x]*[74] months over which the mechanism may operate.

Sub-appendix 4.3 – Non- capital contributions

Non-capital contribution

A4.16 In this *capital contributions policy* and subject to clause A4.17, the **"non-capital contribution"** in respect of an *alternative option* is the *alternative option costs* less the amount of the *alternative option costs* which, if the test in section 6.41 was applied to the *alternative option costs*, would satisfy the test.

A4.17 A *non-capital contribution* must not exceed the amount that would be required by a prudent *service provider* acting efficiently, in accordance with *good electricity industry practice*, seeking to achieve the lowest sustainable cost of providing the *new services*.

A4.18 If the application of this *capital contributions policy* in relation to an *alternative option* produces a *non-capital contribution* amount that is greater than zero, the *service provider* is not required to undertake the *alternative option* unless the *relevant applicant* agrees to provide the *non-capital contribution* to the *service provider* in accordance with this *capital contributions policy*.

A4.19 If it is necessary for the *service provider* to undertake an *alternative option* to provide *new services* to more than one *relevant applicant*, the *service provider* must calculate the *non-capital contribution* for the *alternative option* as set out in clause A4.16 and must, acting as a *reasonable and prudent person*, apportion the amount calculated under clause A4.16 between the *relevant applicants* in accordance with the *Code objective* to determine each *relevant applicant's non-capital contribution*.

Manner of contribution

A4.20 A *non-capital contribution* may be made by the *relevant applicant* by way of a financial payment comprising, as agreed between the *service provider* and *relevant applicant*, either:

(a) periodic financial payments; or

(b) an up-front financial payment.

A4.21 Where it is agreed that a *relevant applicant* will make a periodic financial payment or an up-front payment (**"financial provision"**), then the terms of the *access contract* or another contract (either in this context a *payment contract*) must deal with the parties' rights and obligations in relation to the *financial provision* including regarding security for the *relevant applicant* and must be negotiated between the *service provider* and the *relevant applicant*, and failing agreement may be the subject of an *access dispute*.

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[73] To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

[74] To be inserted in the *access arrangement* and approved by the *Authority* under Chapter 5. To the extent that the *Authority* so approves, the *access arrangement* may leave this to be inserted in the *access contract* by agreement between the parties or arbitrated award.

Appendix 5 – Procedural Rules for Arbitration

{Outline: See section 10.2.}

Application

A5.1 This Appendix 5 applies if:

(a) in accordance with the Code, a *service provider* or another person notifies the *Authority* that an *access dispute* exists; and

(b) notification of the dispute is not withdrawn in accordance with the Code.

Definitions

A5.2 In this Appendix 5 **"Court"** means the Supreme Court.

Informality and expedition

A5.3 Subject to the Code, *proceedings* must be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Appendix 5 and Chapter 10, and a proper hearing and determination of a dispute, permit.

A5.4 The *arbitrator* may from time to time make orders regulating the conduct of, and regulating parties' conduct in relation to, *proceedings* which are directed towards achieving the objective in clause A5.3.

A5.5 The parties to an *access dispute* must at all times conduct themselves in a manner which is directed towards achieving the objective in clause A5.3.

A5.6 An order under clause A5.4 is not an award.

Arbitrator may request information

A5.7 The *arbitrator* may request the *Authority* to give to the *arbitrator* any information in the *Authority's* possession that is relevant to the *access dispute*.

A5.8 The *Authority* is to give the *arbitrator* the information requested, whether or not it is confidential and whether or not it came into the *Authority's* possession for the purposes of the arbitration.

A5.9 If the *Authority* gives the *arbitrator* information that is confidential, the *Authority* is to identify the nature and extent of the confidentiality and subject to clause A5.10, the *arbitrator* is to treat the information accordingly.

A5.10 To the extent necessary to comply with the rules of natural justice, the *arbitrator* may disclose to the parties any information provided by the *Authority* whether or not it is confidential, but the *arbitrator* may make an order under clause A5.25 or a determination under clause A5.39 in respect of such information.

Hearing to be in private

A5.11 Subject to Subchapter 10.3 and clause A5.12, *proceedings* are to be heard in private.

A5.12 If the parties agree, *proceedings* or part of the *proceedings* may be conducted in public.

A5.13 The *arbitrator* may give written directions as to the persons who may be present at *proceedings* that are conducted in private.

A5.14 In giving directions under clause A5.13, the *arbitrator* must have regard to the wishes of the parties and the need for commercial confidentiality.

Right to representation

A5.15 Subject to section 10.14, in *proceedings*, a party may appear in person or be represented by someone else.

Procedure

A5.16 In *proceedings*, the *arbitrator*:

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) must act as speedily as a proper consideration of the *access dispute* allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the *access dispute*; and

(c) may gather information about any matter relevant to the *access dispute* in any way the *arbitrator* thinks appropriate.

A5.17 To the extent necessary to comply with the rules of natural justice, the *arbitrator* may disclose to the parties any information gathered by the *arbitrator* under clause A5.16(c) whether or not it is confidential, but the *arbitrator* may make an order under clause A5.25 or a determination under clause A5.39 in respect of such information.

A5.18 The *arbitrator* may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties in the arbitration hearing, and may require that the cases be presented within those periods.

A5.19 The *arbitrator* may require evidence or argument to be presented in writing, and may decide the matters on which the *arbitrator* will hear oral evidence or argument.

A5.20 The *arbitrator* may determine that all or part of *proceedings* are to be conducted by:

(a) telephone; or

(b) closed circuit television; or

(c) any other means of communication.

Particular powers of arbitrator

A5.21 The *arbitrator* may do any of the following things for the purpose of determining an *access dispute*:

(a) give a direction in the course of, or for the purpose of, *proceedings*; and

(b) make an interim determination; and

(c) hear and determine the *proceedings* in the absence of a party who has been given notice of the hearing; and

(d) sit at any place; and

(e) adjourn to any time and place; and

(f) refer any matter to an independent expert and accept the expert's report as evidence.

Determinations

A5.22 If the *arbitrator* makes a determination or interim determination it must:

(a) make it in writing, signed by the *arbitrator*; and

(b) include *reasons* in the determination.

A5.23 If a determination of an *arbitrator* under this Appendix 5 contains:

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material mathematical miscalculation or a material mistake in the description of any person, thing or matter referred to in the determination; or

(d) a defect in form,

the *arbitrator* may correct the determination or the *Court*, on the application of a party, may make an order correcting the determination.

Contempt

A5.24 A person must not do any act or thing in relation to the arbitration of an *access dispute* that would be a contempt of court if the *arbitrator* were a court of record.

Disclosure of information

A5.25 The *arbitrator* may (subject to the rules of natural justice) give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of *proceedings* unless the person has the *arbitrator's* permission.

A5.26 A person must not contravene an order under clause A5.25.

Power to take evidence on oath or affirmation

A5.27 The *arbitrator* may take evidence on oath or affirmation and for that purpose the *arbitrator* may administer an oath or affirmation.

A5.28 The *arbitrator* may summon a person to appear before the *arbitrator* to give evidence and to produce such documents (if any) as are referred to in the summons.

A5.29 The powers contained in clauses A5.27 and A5.28 may only be exercised for the purposes of arbitrating an *access dispute*.

Failing to attend as a witness

A5.30 A person who is served with a summons to appear as a witness before the *arbitrator* must not, without reasonable excuse:

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by the *arbitrator*.

Failing to answer questions etc.

A5.31 A person appearing as a witness before the *arbitrator* must not, without reasonable excuse:

(a) refuse or fail to be sworn or to make an affirmation; or

(b) refuse or fail to answer a question that the person is required to answer by the *arbitrator*; or

(c) refuse or fail to produce a document that he or she is required to produce by a summons served on it.

A5.32 The determination as to what is a reasonable excuse for the purposes A5.31 is solely in the discretion of the *arbitrator*.

A5.33 It is a reasonable excuse for the purposes of clause A5.31 for an individual to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty.

A5.34 Clause A5.33 does not limit what is a reasonable excuse for the purposes of clause A5.31.

Intimidation etc.

A5.35 A person must not:

(a) threaten, intimidate or coerce another person; or

(b) cause or procure damage, loss or disadvantage to another person,

because that other person:

(c) proposes to produce, or has produced, documents to the *arbitrator*; or

(d) proposes to appear, or has appeared, as a witness before the *arbitrator*.

Party may request arbitrator to treat material as confidential

A5.36 A party to *proceedings* may:

(a) inform the *arbitrator* that, in the party's opinion, a specified part of a document contains confidential commercial information; and

(b) request the *arbitrator* not to give a copy of that part to another party.

A5.37 On receiving the request, the *arbitrator* must:

(a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and

(b) ask the other party or parties whether there is any objection to the *arbitrator* complying with the request.

A5.38 If there is an objection to the *arbitrator* complying with a request, the party objecting may inform the *arbitrator* of its objection and of the reasons for it.

A5.39 After considering:

(a) a request;

(b) any objection; and

(c) any further submissions that a party has made in relation to the request,

the *arbitrator* may (subject to the rules of natural justice) make a determination:

(d) to not give to the other party or parties a copy of so much of the document as contains confidential commercial information that the *arbitrator* thinks should not be given; or

(e) to give the other party or another specified party a copy of the whole, or part, of the part of the document that contains confidential information subject to a condition that the party give an undertaking not to disclose the information to another person except to the extent specified by the *arbitrator* and subject to such other conditions as the *arbitrator* determines.

A5.40 If any person (other than the *arbitrator*), in breach of a determination under clause A5.39,discloses information (other than information which has lawfully entered the public domain or which must be disclosed under a *written law*) that the *arbitrator* has determined under clause A5.39 is confidential commercial information, then a person affected by the breach may sue for damages..

Costs

A5.41 The costs of *proceedings* are to be dealt with in accordance with section 10.38.

Appeal to Court

A5.42 A party may appeal to the *Supreme Court*, on a question of law, from a determination of an *arbitrator* under this Appendix 5.

A5.43 An appeal must be instituted:

(a) not later than the 28th day after the day on which the decision is made or within such further period as the *Supreme Court* (whether before or after the end of that day) allows; and

(b) in accordance with the rules of the *Supreme Court*.

A5.44 The *Supreme Court* may make an order staying or otherwise affecting the operation or implementation of the determination of the arbitrator that the *Supreme Court* thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

Copies of decisions to be given to the Authority

A5.45 Where the *arbitrator* is required to give a copy of a draft decision or final decision to the parties to an *access dispute*, the *arbitrator* is to also give a copy of the decision to the *Authority*.

Effect of appointment of new arbitrator on evidence previously given and awards and determinations previously made

A5.46 Where a new person takes over the functions of *arbitrator* in place of a previous *arbitrator* who has begun but not completed the hearing and determination of an *access dispute*:

(a) the new *arbitrator* may order the *proceedings* to be re-heard:

(i) in full, in which case all evidence heard by the previous *arbitrator* is to be disregarded by the new *arbitrator* unless resubmitted or retendered; or

(ii) in part, in which case any evidence heard by the previous *arbitrator* during the parts of the *proceedings* which are re-heard is to be disregarded by the new *arbitrator* unless resubmitted or retendered;

(b) if no order is made under clause A5.46(a), then the *proceedings* are to continue as though the new *arbitrator* had been present from the commencement of the *proceedings*;

(c) if an order is made under clause A5.46(a)(ii), then:

(i) the *proceedings* are to continue as though the new *arbitrator* had been present during the earlier *proceedings*; and

(ii) the new *arbitrator* is to treat any evidence given, document produced or thing done in the course of the earlier *proceedings* in the same manner in all respects as if it had been given, produced or done in the course of the *proceedings* conducted by the new *arbitrator*;

(d) any interim determination made in the course of the earlier *proceedings* is by force of this Appendix 5 to be taken to have been made by the new *arbitrator*; and

(e) the new *arbitrator* may adopt and act on any determination of a matter made in the course of the earlier *proceedings* without applying his or her own judgment to the matter.

A5.47 In clause A5.46, "earlier proceedings" means the *proceedings* or parts of the *proceedings* which the new *arbitrator* does not order to be re-heard under clause A5.46(a)(ii).

Decision of the Arbitrator

A5.48 Unless the *arbitrator* has terminated the *proceedings* under section 10.18, the *arbitrator* must require the parties to make submissions to the *arbitrator* regarding the *access dispute* by a specified date.

A5.49 In making a decision under section 10.17 of the Code, the *arbitrator*:

(a) must consider submissions received from the parties before the date specified by the *arbitrator* under clause A5.48 and may consider submissions received after that date;

(b) may provide a draft decision to the parties and if it does so must request submissions from the parties by a specified date;

(c) if applicable, must consider submissions received from the parties before the date specified by the *arbitrator* under clause A5.49(b) and may consider submissions received after that date; and

(d) must provide a final decision to the parties.

A5.50 The *arbitrator* may by whatever means it considers appropriate seek written submissions from persons who are not parties to the dispute and subject to the rules of natural justice may have regard to those submissions in making its decision under section 10.17 of the Code.

A5.51 The *arbitrator* must provide a final decision under section 10.17 of the Code within three months of requiring parties to make submissions under clause A5.48. The *arbitrator* must also ensure that there is a period of at least 10 *business days*:

(a) between requiring parties to make submissions under clause A5.48 and the last day for such submissions specified by the *arbitrator*; and

(b) between providing a draft decision to the parties under clause A5.49(b) and the last day for submissions on the draft decision specified by the *arbitrator*.

in all other respects the timing for the taking of each of the steps set out in clause A5.49 is a matter for the *arbitrator* to determine.

A5.52 The *arbitrator* may increase the period of three months specified in clause A5.51 by periods of up to one month on one or more occasions provided it provides the parties (and each person who has made a written submission to the *arbitrator*) with a notice of the decision to increase the period.

A5.53 A *service provider* must comply with a decision of the *arbitrator* made under this Appendix 5 from the date specified by the *arbitrator*.

Appendix 6 – Matters to be Addressed by Technical Rules

{Outline: See clause 12.32}

A6.1 *Technical rules* must address at least the following matters:

(a) performance standards in respect of *service standard* parameters; and

(b) the identity of the system operator for the *network*; and

(c) the technical requirements that apply to the design and operation of *facilities and equipment connected* to the *network*; and

(d) the standards which apply to the operation of the *network*, including in emergency situations; and

(e) obligations to test *facilities and equipment* in order to demonstrate compliance with the *technical rules*; and

(f) procedures that apply if the *service provider* believes that any part of *facilities and equipment* does not comply with the *technical rules*; and

(g) procedures that apply to the inspection of *facilities and equipment connected* to the *network*; and

(h) the standards which apply to control and protection settings for *facilities and equipment connected* to the *network*; and

(i) procedures that apply to the commissioning and testing of new *facilities and equipment connected* to the *network*; and

(j) procedures that apply to the disconnection of *facilities and equipment* from the *network*; and

(k) the information that a *user* must provide to the *service provider* in relation to the operation of *facilities and equipment connected* to the *network*; and

(l) the *generation* and *load* forecast information that *users*, *consumers* and *generators* must provide to the *service provider*; and

(m) *network* planning criteria, which must address at least the following matters:

(i) contingency criteria; and

(ii) steady-state criteria including:

A frequency limits; and

B voltage limits; and

C thermal rating criteria; and

D fault rating criteria; and

E maximum protection clearing times; and

F auto reclosing policy; and

G insulation coordination standard;

and

(iii) stability criteria including:

A rotor angle stability criteria; and

B frequency stability criteria; and

C voltage stability criteria;

and

(iv) quality of supply criteria including:

A voltage fluctuation criteria; and

B harmonic voltage criteria; and

C harmonic current criteria; and

D voltage unbalance criteria; and

E electro-magnetic interference criteria;

and

(v) construction standards criteria; and

(n) curtailment of *services* including matters such as:

(i) planned and unplanned maintenance, testing or repair of the *network;* and

(ii) breakdown of or damage to the *network*; and

(iii) events of *force majeure*; and

(iv) the *service provider's* obligations to comply with a *written law* or a *statutory instrument*.

Appendix 7 – General process for public consultation

{Outline: Appendix 7 is cited in certain places throughout the Code.}

Application of this Appendix 7

A7.1 If this Code states that a *matter for consultation*

(a) must be the subject of public consultation under this Appendix 7or

(b) may be the subject of public consultation under this Appendix 7, and the *decision maker* chooses to undertake public consultation under this Appendix 7,

then the *decision maker* must comply with this Appendix 7.

A7.2 If this Code requires:

(a) public consultation in relation to a *matter for consultation* to be completed; or

(b) a decision or determination relating to a *matter for consultation* to be made,

within a specified period of time, the *decision maker* must complete the public consultation or make the decision or determination, as applicable, in accordance with this Appendix 7 and within the specified time.

Where the decision maker is not the Authority

A7.3 Where the *decision maker* is required under this Appendix 7 to publish a thing and:

(a) the *decision maker* is the *Authority* - the *Authority* must *publish* the thing; and

(b) is someone other than the *Authority* -

(i) the *decision maker* must provide a copy of the thing to the *Authority*; and

(ii) once a copy of the thing is provided to the *Authority*, the *Authority* must forthwith *publish* the thing; and

(iii) for the purposes of this Appendix 7, the thing is published from the time that the *Authority publishes* it

Issues paper

A7.4 The *decision maker* may produce and publish an issues paper examining the issues relating to the *matter for consultation*.

Submissions from the service provider

A7.5 Where the *decision maker* is someone other than the *service provider* and is required to invite submissions from the public in relation to a *matter for consultation* in relation to a *covered network* it must also invite submissions from the *service provider*.

First round public submissions

A7.6 The *decision maker* must publish an invitation for submissions in relation to a *matter for consultation*.

A7.7 A *decision maker* must specify in its invitation for submissions under clause A7.6 the length of time it will allow for the making of submissions on a *matter for consultation* in accordance with clause A7.9.

A7.8 A person may make a submission on a *matter for consultation* within the period of time specified by the *decision maker*.

A7.9 The time specified by the *decision maker* for the making of submissions must be:

(a) at least 10 *business days*; and

(b) no greater than 20 *business days*

after the invitation is published, and must be at least 10 *business days* after any issues paper was published under clause A7.4.

Draft decision by the Decision Maker

A7.10 Subject to clause A7.21, the *decision maker* must consider any submissions made on the *matter for consultation*.

A7.11 The *decision maker* may make a draft decision if, in the opinion of the *decision maker* the circumstances warrant the making of a draft decision.

A7.12 If the *decision maker* determines that a draft decision is warranted, the *decision maker* must publish the draft decision within 2 months after the due date for submissions under clause A7.7.

Second round public submissions (if applicable)

A7.13 Clauses A7.15 to A7.17 apply only if the *decision maker makes* a draft decision under clause A7.11.

A7.14 The *decision maker* must publish an invitation for submissions on the draft decision at the time it publishes the draft decision.

A7.15 A *decision maker* must specify in its invitation for submissions under clause A7.6 the length of time it will allow for the making of submissions on a *matter for consultation* in accordance with clause A7.17.

A7.16 A person may make a submission on the draft decision to the *decision maker* within the time period specified by the *decision maker*.

A7.17 The time specified by the *decision maker* for the making of submissions on the draft decision must be:

(a) at least 10 *business days*; and

(b) no greater than 20 *business days*,

after the draft decision is published.

Final decision by decision maker

A7.18 Subject to clause A7.21, the *decision maker* must consider any submissions and make a final decision in relation to the *matter for consideration.*

A7.19 The time for the *decision maker* to make and publish its final decision is:

(a) where a draft decision has been made, within 30 *business days* after the due date for submissions under A7.15; or

(b) otherwise, within 2 months after the due date for submissions under clause A7.7.

Publication of submissions

A7.20 The *decision maker* must publish all submissions made under this Appendix 7.

Late submissions

A7.21 The *decision maker* may, consider any submission made after the time for making that submission has expired.