

# Pre-DCR Clearance Agreement

This agreement is made on ..... between:

\_\_\_\_\_  
[Developer Business Name]

\_\_\_\_\_  
[ABN]

(Developer)

and

Electricity Networks Corporation

ABN 18 540 492 861

(Western Power)

For project (Western Power project reference) \_\_\_\_\_

## 1 Recitals

- (a) The Developer is undertaking a Subdivision which requires the supply of electricity from Western Power's network through an Underground Distribution Scheme (UDS).
- (b) Western Power requires the Developer to undertake and fund the planning, design and construction of the UDS in accordance with the Underground Distribution Schemes Manual (UDS Manual).
- (c) The Developer has read and understood the requirements in the UDS Manual and the information contained on Western Power's website.
- (d) Western Power is providing Clearance Documents to the Developer prior to finalising the design conformance review of the UDS on the terms of this Agreement.

## 2 Term

- (a) This Agreement commences on the Commencement Date and terminates on the date of Handover.
- (b) The provisions of clause 5 (Indemnities), 6 (Insurance), defects liability period, 6(a) (Dispute resolution) and 9 (General) survive the termination of this Agreement.

## 3 Deliverables

### 3.1 Developer Deliverables

The Developer must:

- (a) comply with all requirements in the UDS Manual save for any amendments expressly notified to the Developer by Western Power in writing or inconsistencies with the terms of this Agreement;

- (b) pay to Western Power all amounts contained in an invoice in accordance with the terms of the invoice.

### 3.2 Western Power Obligations

Western Power must:

- (a) issue the Clearance Documents following execution of this Agreement by both parties;
- (b) comply with its obligations in the UDS Manual.

## 4 Acknowledgment

The parties acknowledge and agree:

- (a) that this Agreement does not impliedly or expressly provide the Developer with a guarantee that Western Power will accept Handover of the UDS;
- (b) that this Agreement does not impliedly or expressly provide priority in the energisation process as outlined in the UDS Manual;
- (c) that a failure by the Developer to perform the Developer Deliverables will result in the Developer being ineligible from participating in further Pre-DCR Clearance agreements with Western Power;
- (d) that the Developer may not undertake any Relevant Transaction unless:
  - (i) the other party signs an acknowledgment letter which includes the information contained in clause 4(a) and 4(b) and that the Land is subject to this Pre-DCR Agreement; and
  - (ii) any documents included in the Relevant Transaction includes the following wording, *'The interested party of this lot is aware that the lot will not have electricity supplied by Western Power before handover of the operational equipment is achieved in accordance with provision 6.2.2.11 of the UDS Manual'*;
- (e) that if a Relevant Transaction has already occurred, the Developer must obtain an acknowledgement letter from the other party;
- (f) that the Developer must inform all other parties to a Relevant Transaction of any delays to the estimated date of Handover;
- (g) that the Developer will provide to Western Power any documentation related to the Relevant Transaction as soon as reasonably practicable after a request is made by Western Power in writing;



- (h) that if the Developer fails to perform its obligations and duties under this Agreement or the UDS Manual, Western Power may choose, at its absolute discretion, to perform the duties under this Agreement and step in and complete the Works and issue an invoice to back charge the Developer for all costs associated with those Works.

## Invoices

When Western Power becomes entitled to:

- (i) a payment of all or part of the Quote; or
- (j) a payment of any other amount fee reasonably required by Western Power,

Western Power may submit a tax invoice (as defined for the purposes of the GST Act) to the Developer for the amount payable.

## 5 Indemnity and limit of liability

### 5.1 Developer indemnity

The Developer indemnifies and keeps Western Power indemnified against all Claims or Loss arising from or in connection with:

- (a) the Developer's obligations under this Agreement;
- (b) the Developer's obligations under the UDS Manual;
- (c) any third party who suffers property damage or personal injury related to the UDS;
- (d) any third party who purchases the UDS and suffers loss; or
- (e) any negligent act, negligent omission of the Developer or Developer's Personnel.

### 5.2 Consequential loss

Neither party will be liable to the other for any loss of business, loss of opportunity, loss of profit, loss of any contract or for any indirect or consequential loss or damage whether arising out of the breach of this Agreement or otherwise, including without limitation, negligence.

### 5.3 No Liability

- (a) Subject to clause 5.3(b), the Developer agrees that it will not bring any Claim against Western Power under or in respect of this Agreement whether during the Term or after the Term.
- (b) Nothing in clause 5.3(a) operates to prevent the Developer from bringing a Claim or counterclaim against Western Power, whether during the Term or after the Term, in respect of any fraud, deliberate default, gross negligence or wilful misconduct or any act or omission done or not done by Western Power with a reckless disregard for the consequences (or any other person for whom Western Power is responsible).

- (c) If a Court holds that despite subclause 5.3(a), the Developer may bring a Claim or a Claim is brought by the Developer in accordance with clause 5.3(b) and Western Power has a liability to the Developer in respect of a Claim, then the total liability of Western Power and its servants and agents to the Developer for all Claims, including interest on any Claim accruing from the date on which the claim first arose to the date of judgment, settlement, deduction or set off, is limited in the aggregate to the Liability Limit.

## 6 Insurance

- (a) At all times prior to the expiry of the final Defects Liability Period, the Developer must effect and maintain the following insurances for the Works, or must procure that their Contractor(s) effect and maintain the following insurances for the Works:
  - (i) public liability insurance in respect of:
    - (A) injury or illness to or death of any person; and
    - (B) physical loss, damage or destruction to any property (including that of Western Power),  
which insurance will provide cover in respect of each and every occurrence to an amount of \$20,000,000, in respect of all losses occurring during each period of insurance;
  - (ii) motor vehicle third party liability insurance covering legal liability against property damage and bodily injury to or death of persons (in addition to compulsory third party motor vehicle insurance) caused by motor vehicles used by the Developer and its Personnel for an amount not less than \$20,000,000 for any one occurrence or accident;
  - (iii) contract works insurance in respect of the Works for the full value of the Works for loss and damage to the Works; and
  - (iv) workers compensation insurance to cover liability arising out of death or injury to persons employed by the Developer or the Contractor(s) on or in connection with performing the Works.
- (b) The Developer must effect and maintain or procure that its consultants and contractor(s) effect and maintain, professional indemnity insurance for any breach of professional duty by any negligent act, error or omission. The amount of cover shall be \$5,000,000 for any one claim and \$5,000,000 in the aggregate during each 12 month period beginning from the Commencement Date to the 3 years after the last Defects Liability Period.
- (c) Copies of these insurances certificates of currency are to be provided by the Developer upon the Western Power's request.

## 7 Dispute Resolution

- (a) If there is a dispute or material unresolved disagreement (**Disagreement**) arising out of or in connection with this Agreement, then within 10 Business Days of a party notifying the other party in writing of the dispute or Disagreement, at least one senior representative from each party must meet and use all reasonable endeavours acting reasonably to resolve the dispute or Disagreement by joint discussions.
- (b) The meeting of the senior representative from each party will be without prejudice except to the extent of any agreements made, recorded and signed by the attendees to resolve the relevant dispute or Disagreement.
- (c) Despite the existence of a dispute or Disagreement, each party must continue to perform its obligations under this Agreement.

## 8 Handover and defects liability period

- (a) The Defects Liability Period will commence from the date of Handover.
- (b) Western Power will, in writing, inform the Developer when Handover has occurred.
- (c) If faults arise during the Defects Liability Period, Western Power will carry out remedial repairs and back charge the Developer for all direct and associated costs.
- (d) The Developer will be notified of any remedial works as soon as practicable.

## 9 General

### 9.1 Entire agreement

The Agreement states all the express terms of the Agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

### 9.2 No reliance

The Developer has not relied on any statement by Western Power not expressly included in the Agreement.

### 9.3 Prohibition, enforceability and severance

- (a) Any provision of, or the application of any provision of, the Agreement or any right, power, authority, discretion or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) If any term or part of the Agreement is, or becomes for any reason, invalid or unenforceable at law, that term or part of the Agreement is severed from the Agreement without affecting the remainder of the Agreement and the Agreement continues to be valid and enforceable in all things.

### 9.4 Cumulative rights

The rights, powers, authorities, discretions and remedies arising out of or under the Agreement are cumulative and do not exclude any other right, power, authority, discretion or remedy of Western Power.

### 9.5 Variation

A variation of any term of the Agreement must be in writing and signed by the Parties.

### 9.6 Exercise of rights

- (a) A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- (b) A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy.
- (c) Failure by a Party to exercise, or a delay in exercising, a right, power or remedy does not prevent its exercise.

### 9.7 Counterparts

- (a) The Agreement may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute the Agreement by signing any counterpart.

### 9.8 Waiver

- (a) Waiver of any requirement, right, power, authority, discretion or remedy arising under the Agreement, including those arising upon default under the Agreement, must be in writing and signed by the Party granting the waiver.
- (b) A failure or delay in the exercise, or partial exercise, of:
  - (i) a right arising from a breach of the Agreement; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under the Agreement,

does not result in a waiver of that right, power, authority, discretion or remedy.

- (c) A Party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of the Agreement or on a default under the Agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A full or partial waiver in respect of a breach of a term of the Agreement is not a waiver in respect of further or other breaches of the same or any other term of the Agreement.
- (e) This clause 9.8 may not itself be waived except by writing.

## 9.9 Costs and expenses

Any action to be taken by either Party in performing its obligations under the Agreement must be taken at its own cost and expense unless otherwise provided in the Agreement.

## 9.10 Duty

The Developer must pay the duty payable under the *Duties Act 2008 (WA)*, if any, on the Agreement and any copies of the Agreement and any other document in connection with the Agreement.

## 9.11 Governing law and jurisdiction

- (a) The Agreement is governed by the law in force in Western Australia.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with the Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 10 Interpretation

### 10.1 General

In the Agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of the Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a clause, Party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, the Agreement and a reference to the Agreement includes any schedule, attachment and exhibit.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of the legislation.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party includes that party's successors and permitted assignees.
- (j) A promise on the part of two or more persons binds them jointly and severally.

- (k) A reference to an agreement other than the Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (l) No provision of the Agreement will be construed adversely to a Party because that Party was responsible for the preparation of the Agreement or that provision.
- (m) A reference to a body, other than a Party (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body;is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

## 10.2 Interpretation of inclusive expression

Specifying anything in the Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

## 11 Definitions

Terms in this Agreement adopt their meaning in the Underground Distribution Scheme Manual, except where the context otherwise requires:

**"Agreement"** means this agreement.

**"Business Day"** means a day on which banks are open for general banking business in Perth, Western Australia excluding a Saturday, Sunday or public holiday.

**"Claim"** means a demand, action or proceeding of any nature whether actual or threatened.

**"Commencement Date"** means the later date this Agreement is signed by the Developer and Western Power.

**"Contractor"** means the person(s) or organisation(s) appointed by the Developer to perform the Works under a contract.

**"Clearance Documents"** means the clearance certificate Western Power must prepare and provide to the Developer for submission to the Western Australian Planning Commission.

**"Defects Liability Period"** means an initial period of 12 months commencing from the date of Handover.

**"GST Act"** means A New Tax System (*Goods and Services Tax*) Act 1999 (Cth).

**"Government Agency"** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

**"Handover"** means the date the ownership and operational control of equipment is handed over to Western Power in accordance with provision 6.2.2.11 of the UDS Manual.

“**Law**” means any act, ordinance, regulation, subordinate legislation, by-law, award or proclamation of Western Australia or the State or Territory in which the work under the Agreement or any part of the Agreement is being carried out.

“**Liability Limit**” means \$50,000.

“**Loss**” means:

- (a) any liability, cost, expense, loss, personal injury (including illness), death or damage; and
- (b) in relation to a Claim, Loss includes amounts payable on the Claim and (whether or not the Claim is successful), legal costs and disbursements on an indemnity basis.

“**Party**” means a party to the Agreement.

“**Personnel**” means a parties officers, employees, delegates, subcontractors, partners, agents and service providers of any nature.

“**person**” includes a firm or body corporate or unincorporate as well as an individual or an officer of Western Power designated by title.

“**Quote**” has the same meaning as in the UDS Manual.

“**Relevant Transaction**” means any disposition of an interest in the Subdivision including but not limited to an agreement for sale, transfer, a mortgage and a declaration of trust.

“**Subdivision**” has the same meaning as in the UDS Manual.

“**Tax Invoice**” has the same meaning as that defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“**UDS Manual**” means the Western Power Underground Distribution Schemes Manual (as amended from time to time).

“**Western Power**” means the Electricity Networks Corporation (trading as Western Power) ABN 18 540 492 861, a statutory body corporate established by section 4(1)(b) of the Electricity Corporations Act 2005 (WA).

“**Works**” means the planning, design, and construction of the UDS in accordance with the UDS Manual.

Executed as an agreement on the \_\_\_\_\_ day of \_\_\_\_\_ 2024 by:

**EXECUTED** for and on behalf of **ELECTRICITY NETWORKS CORPORATION ABN 18 540 492 861** in accordance with section 156(4) of the *Government Trading Enterprises Act 2023* (WA):

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Position title

**EXECUTED** in accordance with section 126 of the *Corporations Act 2001 (Cth)*, by its duly authorised agent:

\_\_\_\_\_  
Signature of Authorised Officer

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Position Title

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**OR**

**EXECUTED** by

in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name

.....  
Name

.....  
Position Title

.....  
Position Title

.....  
Date

.....  
Date