



# Master Facilities Access Agreement

CitiPower Pty Ltd

ABN 76 064 651 056

(Distributor)

and

[insert Customer name]

ABN [insert Customer ABN]

(Customer)

**[Legal notes:**

- 1. This template long form FAA has been prepared to use as a base document in negotiations with telecommunications companies seeking access to facilities in order to install telecommunications equipment.**
- 2. This template FAA does not address transitional arrangements where an access seeker has an existing FAA with CitiPower and equipment already installed on CitiPower's facilities. It is intended that the template would be modified in each case to address the transitional arrangements required for the particular access [seeker.]**

2018

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**THIS AGREEMENT** is made on

2018

**BETWEEN:**

- (1) CitiPower Pty Ltd ABN 76 064 651 056 of 40 Market Street, Melbourne Victoria 3000;  
(**Distributor**); and
- (2) [insert Customer name] ABN [insert Customer ABN] of 6 [insert address] (**Customer**).

**RECITALS:**

- (A) Customer has requested that Distributor provide it with access to the Facilities for the Permitted Purposes and for Site Work.
- (B) This Agreement sets out the terms and conditions on which Customer may apply for, and Distributor may grant to Customer, a license to access the Facilities for the Permitted Purposes and to undertake the Site Work.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

**Access Charge** means the fees payable by Customer under each Access Licence for the right to install and to leave situated Equipment in, on or near Facilities in accordance with the terms of this Agreement and the relevant Access Licence.

**Access Fees** means the amount payable by Customer per annum (or part thereof) in consideration for the grant of all Access Licences, as calculated in accordance with Item 3 of Schedule 4 and adjusted from time to time in accordance with clause 14.

**Access Licence** means a licence granted by Distributor to Customer in respect of one or more Facility.

**Access Licence Commencement Date** means the date of the Access Licence or the date that the Access Licence is signed by the Responsible Officers of both Parties, whichever is later.

**Access Offer** means a written notification by Distributor to Customer setting out the terms on which Distributor accepts part or all of an Access Request under this Agreement.

**Access Request** means a written request by Customer to Distributor for an Access Licence with respect to one or more specified Facilities.

**ACS Labour Rates** means the AER approved Alternate Control Services labour rates published in the Distributors annual pricing proposal.

**AER** means the Australian Energy Regulator.

**Application Fee** means the fee set out in Item 1 of Schedule 4 payable to Distributor by Customer with each Access Request in accordance with clause 14.2.

**Approved Contractor** means any individual (including Distributor and any employee, contractor, subsidiary or related body corporate of Distributor) approved by Distributor and who, at the time of performing any Site Work:

- (a) has satisfied Distributor's training, induction and authorisation requirements at the relevant time for performing work in, on or near the Facilities;
- (b) is authorised by Distributor at the relevant time to work in, on or near the Facilities to undertake the Site Works specified in the authorisation; and
- (c) at the relevant time holds a current access authorisation issued or approved by Distributor.

**As Built Drawings** means drawings of the Facilities that show the Site Works that have been completed under this Agreement.

**Contractor** means any entity engaged by Customer to perform any part of the Site Works.

**Contract Year** means each year commencing on the Commencement Date or each anniversary thereof.

**Audit Fee** mean the amounts calculated in accordance with the applicable rates in Item 5(a) of Schedule 4 as adjusted from time to time in accordance with clause 14.

**Change in Law** is the introduction of, or a change in, any Law, official directive, ruling, code or request by a Governmental Agency or a change in its interpretation or application.

**Clearances** mean consents, authorisations, registrations, filings, lodgements, permits, franchises, notarisations, certificates, permissions, licences, approvals, directions, declarations, authorities or exemptions from, by or with any government or any governmental, semi-governmental or judicial entity or authority (including any self-regulatory organisation established under statute or any stock exchange).

**Codes** means any code of practice relating to the use of a Facility or any Equipment installed in, on or around a Facility.

**Commencement Date** means [##].

**Completion Certificate** means a written notice issued by Customer which certifies that Make Ready Work undertaken by Customer or a Contractor has been completed in accordance with this Agreement and the Access Licence relating to that Make Ready Work.

**Compliance Costs** includes costs and expenses arising from or in any way connected with complying with any telecommunications, environmental, planning or other regulatory laws including public consultations, public inquiries and preparation of any plans or reports.

**Day** means any day on which the trading banks are open for business in Victoria.

**Distributor** means CitiPower Pty Ltd.

**Distributor System Operator** means the person identified as such in clause 11.5(b).

**Electricity Distribution Function** means the services Distributor provides under the terms of its electricity distributor's licence under the Electricity Legislation.

**Electricity Legislation** means the *Electricity Act 2000 (Vic)*, the *Electrical Safety Act 1998 (Vic)*, the *Electricity Safety (Installations) Regulations 2009*, the *National Electricity (Victoria) Act 2005*, the National Electricity Rules and any other applicable act, regulation or other legislative instrument.

**Electricity Regulatory Event** occurring in relation to Distributor means:

- (a) any Change in Law relevant to Distributor's business and operations;
- (b) any amendment to, or replacement of, any provision of the Electricity Legislation;
- (c) the grant of an injunction against Distributor in relation to a breach or alleged contravention of the Electricity Legislation;
- (d) the giving of a lawful direction to Distributor by the Australian Competition and Consumer Commission; or
- (e) any determination or decision of the AER or the ESC.

**Emergency** means an event which:

- (a) threatens (or will be likely to threaten) the safety of Facilities, Distributor's Personnel, Contractors, any third party or other member of the public;
- (b) causes (or will be likely to cause) any Equipment to interrupt the operation of a Facility;
- (c) threatens the integrity of the electricity network or any part of it; or
- (d) any other event which requires the exclusion of Customer Personnel from any Facility or Site as defined by Distributor from time to time.

**Emergency Event Plan** means a plan specifying how Customer may act in an Emergency which when approved by Distributor will form part of the Access Licence.

**Equipment** means all items of equipment including antennae, communications dishes, communications towers, telehousing equipment, cables, switches, signage, wires, wireless equipment or other structures owned by Customer.

**ESC** means the Essential Services Commission.

**Expiry Date** means the date 5 years after the Commencement Date.

**Facility** means any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole, conduit, cable rack, equipment, building or other infrastructure.

**Fee** means any amount payable by Customer to Distributor under this Agreement, including (but not limited to) the:

- (a) Access Fee;
- (b) Application Fee;
- (c) Audit Fee; and
- (d) Unlicensed Equipment Administration Fee.

**Financial Year** means the 12 month period starting on 1 July and ending on 30 June.

**Force Majeure** means any event which is beyond the reasonable control of a party including, without limitation, any act of God, blockade, riot, lightning, fire, explosion, epidemic, quarantine restriction or any other event (whether of the kind specified in this Agreement or otherwise).

**Governmental Agency** means a council, government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.

**GST** is defined in section 195-1 of the GST Act.

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

**Indirect Loss** means

- (a) any loss which does not arise naturally from a breach of this Agreement;
- (b) any loss of opportunity or business interruption;
- (c) any economic loss or loss of revenue or profit; and
- (d) any loss which is punitive or exemplary in nature.

**Land Consents** means the authorisations, licences, permits, easement rights, and other similar things from the owners and occupiers of land or, where the land is public land, the person or authority charged with the care of the land, as required by Law.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

**Loss** includes Indirect Losses, Compliance Costs, other losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, whether present or future, fixed or unascertained, actual or contingent and whether or not arising from or in any way connected with a negligent act or omission of Distributor, its employees, officers, agents or contractors.

**Make Ready Work** means any work that Distributor considers is reasonably necessary to be undertaken to allow Customer's Equipment to be installed on a Facility.

**Network Standards** means:

- (a) Distributor's network standard; and
- (b) any other Distributor standard as Distributor reasonably considers necessary to carry out the Electricity Distribution Function,

as amended from time to time.

**Party** means a party to this Agreement and their respective successors and permitted assigns.

**Permitted Purposes** means to install, operate and maintain the Equipment in accordance with the relevant Access Licence.

**Personnel** means directors, officers, employees, agent, subcontractor, advisers and representatives of a Party and includes the Approved Contractors of a Party.

**Power System Occurrences** means:

- (a) any defect in or interruption to the supply of electricity, whatsoever its cause;
- (b) any break down or failure of, or damage to, equipment which led to a defect in or interruption to the supply of electricity;

- (c) any damage to Facilities which has been caused, either directly or indirectly, by a defect in or interruption to the supply of electricity; or
- (d) any damage to Facilities which has been caused, either directly or indirectly, by a failure or breakdown of equipment, whatsoever the cause of that failure or breakdown.

**Removal Plan** means the removal plan referred to in clause 20.5, which describes Customer's tasks, roles, responsibilities and time frames for removing the Equipment from the Facilities.

**Responsible Officer** is defined in clause 17.1.

**Safe Work Method Statement** has the same meaning given to it in the *Occupational Health & Safety Regulations 2017 (Vic)*.

**Service Life** means the remaining operational life planned by Distributor for a Facility.

**Site** means a site owned, leased, licensed, occupied or used by Distributor.

**Site Operational Work** means all work or other activities, other than Make Ready Work and any works which Distributor is required to undertake under clause 11, requiring physical access to and attendance in, on or near a Facility in order to:

- (a) install Equipment in, on or near Facilities in accordance with this Agreement and the relevant Access Licence;
- (b) repair Equipment in accordance with clause 11 (other than repairs which Distributor is required to undertake under clause 11);
- (c) relocate Equipment in accordance with clause 18.1; and
- (d) remove Equipment in accordance with clause 18.2.

**Site Work** means Site Operational Work and Make Ready Work.

**Standards** means:

- (a) Network Standards;
- (b) the documents listed in Schedule 6, as amended by the relevant authors from time to time; and
- (c) any other documents agreed by the Parties from time to time.

**Subsidiary** has the meaning given in the *Corporations Act 2001 (Cth)*, but excludes any person that has entered into an agreement with Distributor relating to access to Distributor's facilities.

**Telecommunications Act** means the *Telecommunications Act 1997 (Cth)*.

**Telecommunications Laws and Standards** means the Telecommunications Act and all codes or standards registered under Part 6 of the Telecommunications Act, codes and determinations made by the Minister or the Australian Communications and Media Authority under the Telecommunications Act, regulations, subordinate legislation or determinations made under the Telecommunications Act and any other laws, codes, standards or regulations relating to the installation, operation or maintenance of telecommunications equipment and facilities.

**Tender Policy** means Distributor Tendering Policy as amended by Distributor from time to time.

**Third Party Approved Contractor** means an Approved Contractor other than:

- (a) Distributor; or
- (b) an Approved Contractor nominated by Distributor to perform the Make Ready Works.

**Unlicensed Equipment** means Equipment installed on a Facility where:

- (a) the Facility is not the subject of a current Access Licence under this Agreement; or
- (b) the Equipment differs from the scope, specifications or location for that Equipment under the Access Licence

but does not include Equipment which was installed prior to the Commencement Date and has valid tenure pursuant to an earlier agreement between Customer and Distributor.

**Unlicensed Equipment Administration Fee** means the Fee set out in Item 4 of Schedule 4 payable to Distributor by Customer under clause 3.1(a)(iii) as adjusted from time to time in accordance with clause 14.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes body corporate, an unincorporated body corporate or other entity and conversely.
- (e) A reference to a clause or schedule is to a clause or schedule in this Agreement.
- (f) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulation and statutory instruments issued under it.
- (g) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Agreement or that other agreement document.
- (h) A reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing.
- (i) A reference to 'dollars' or '\$' is a reference to Australian currency.
- (j) In the event of any inconsistency or conflict between either the Telecommunications Act or the Facilities Access Code and this Agreement, the terms of this Agreement shall prevail to the extent permitted by Law.
- (k) Nothing in this Agreement is to be interpreted against a Party solely on the ground that the Party put forward this Agreement or a relevant part of it.

### 1.3 **Priority of documents**

If there is any inconsistency between this Agreement, a Schedule, an Access Request or an Access Licence they will, to the extent of any inconsistency, take effect in the following order of priority:

- (a) this Agreement;
- (b) the Schedule;
- (c) the Access Licence; and
- (d) the Access Request.

## 2. **TERM OF AGREEMENT**

### 2.1 **Term**

This Agreement will commence on the Commencement Date and ends on the earlier of:

- (a) the Expiry Date; and
- (b) lawful termination of this Agreement.

**[Legal note: This template FAA does not include a general fee review clause, on the basis that fees can be revisited at the end of the initial 5 year term. If a longer contractual term is agreed, consider including a fee review mechanism.]**

### 2.2 **Renewal**

- (a) This Agreement may be renewed for a further period agreed by Distributor (in its absolute discretion).
- (b) If this Agreement is renewed, the renewed agreement will be on the same terms as this Agreement, except as otherwise agreed between the parties.

## 3. **APPLICATION FOR ACCESS LICENCE**

### 3.1 **Submission of Access Request**

- (a) Customer may, at any time during the term of this Agreement, at its own cost, apply to Distributor for an Access Licence by:
  - (i) submitting an Access Request in the form, and including the information set out in Schedule 1;
  - (ii) paying the Application Fee; and
  - (iii) if Distributor has given notice to Customer under clause 3.6(a), paying the Unlicensed Equipment Administration Fee.
- (b) If requested by Distributor, Customer shall, at its cost, promptly provide to Distributor such additional information as Distributor reasonably requires to assess any Access Request.
- (c) Distributor may, in its absolute discretion and from time to time, amend or waive one or more of the requirements set out in Schedule 1.

### 3.2 **Notification of decision**

- (a) Following assessment of an Access Request, Distributor may, in its absolute discretion and without giving reasons, notify Customer:
  - (i) that Distributor accepts part or all of the Access Request;
  - (ii) that, in accordance with clause 5(a), Distributor needs to undertake surveys and studies to assess further the Access Request; or
  - (iii) that Distributor rejects part or all of the Access Request.
- (b) If Distributor does not notify Customer, in accordance with clause 3.2(a), within 30 Days of Distributor's receipt of an Access Request, then the Access Request is deemed to be rejected.
- (c) Distributor is not required to refund the Application Fee in any circumstances whatsoever.

### 3.3 **Access Offer**

Where Distributor accepts part or all of an Access Request under clause 3.2(a)(i) or clause 3.2(a)(ii), it will issue an Access Offer in the form set out in Schedule 2.

### 3.4 **Customer's notification**

- (a) Customer has [10] Days after receiving an Access Offer from Distributor under clause 3.2(a)(i) to notify Distributor of its acceptance of the Access Offer by executing and returning a copy of the Access Licence to Distributor.
- (b) Where Distributor has issued an Access Offer requiring Make Ready Work, Customer must, at the same time as it notifies Distributor under paragraph 3.4(a):
  - (i) accept the quote provided by Distributor under clause 4.2(a) for the performance of the Make Ready Work; or
  - (ii) subject to clause 4.2(c), reject the quote provided by Distributor for the performance of the Make Ready Work and provide written evidence that a Third Party Approved Contractor has provided Customer with a quote to perform the Make Ready Work at a cost that it is materially less than the amount quoted by Distributor.
- (c) The Access Offer will lapse if Customer does not accept the Access Offer in accordance with 3.4(a) and 3.4(b).

### 3.5 **No requirement to accept**

- (a) Nothing in this clause 3 will be interpreted as requiring Customer to accept the terms and conditions of an Access Licence which is provided as part of any Access Offer.
- (b) Either Party may decide not to proceed with an Access Licence at any time prior to the execution of the Access Licence by them. Any Access Offer will be deemed to have lapsed on written notification of this to the other Party.

### 3.6 **Unlicensed Equipment**

- (a) In the event that Distributor discovers Unlicensed Equipment, Distributor may give Customer notice of the Unlicensed Equipment and require Customer to submit an Access Request with respect to such Unlicensed Equipment.

- (b) Within [20] Days after receipt of notice under clause 3.6(a), Customer must:
  - (i) submit an Access Request in relation to the Facilities on which the Unlicensed Equipment is installed; or
  - (ii) remove the Unlicensed Equipment at Customer's cost.
- (c) If Customer fails to remove all Unlicensed Equipment in accordance with clause 3.6(b)(ii), then Customer agrees that Distributor may remove, or arrange for the removal of, all such Unlicensed Equipment at Customer's risk and cost. Within [30] Days after the receipt of an invoice from Distributor, Customer will reimburse Distributor for all costs incurred by Distributor in removing Customer's Unlicensed Equipment in accordance with the rates in Item 5(b) of Schedule 4 to the extent they apply (and otherwise at cost).

#### 4. **MAKE READY WORK**

##### 4.1 **Make Ready Work undertaken by Approved Contractor**

- (a) Make Ready Work must be undertaken by an Approved Contractor at Customer's cost and in accordance with:
  - (i) the terms of this Agreement and the relevant Access License; and
  - (ii) any specific requirements of Distributor acting reasonably.
- (b) If any Make Ready Work will differ significantly from any approved design forming part of the relevant Access Licence, Customer must lodge a new Access Request under clause 3.
- (c) All Make Ready Work will be and remain the property of Distributor and, to the extent necessary, Customer must transfer, or procure that its Contractor transfers, to Distributor any rights of ownership over the Make Ready Work and will sign, or procure that its Approved Contractor signs, all documentation and do all such things reasonably required by Distributor to perfect Distributor's title to the Make Ready Work.
- (d) Distributor has the right to inspect all completed Make Ready Work.

##### 4.2 **Distributor to perform Make Ready Work**

- (a) Distributor will provide Customer with a quote for Distributor, or an Approved Contractor nominated by Distributor, to perform all of the Make Ready Work required in connection with an Access Licence, except for such Make Ready Work as Distributor, or the Approved Contractor nominated by Distributor, is not qualified to perform.
- (b) Customer may seek a quote from a Third Party Approved Contractor for the performance of the Make Ready Work required in connection with the Access Licence.
- (c) Customer may only reject the quote provided by Distributor under paragraph 4.2(a) if it receives a quote from a Third Party Approved Contract undertaking to perform the Make Ready Work at a cost that it is materially less than the amount quoted by Distributor.

##### 4.3 **Make Ready Work undertaken by Third Party Approved Contractor**

Where Customer appoints a Third Party Approved Contractor, Customer must reimburse Distributor for any reasonable costs incurred by Distributor directly arising from the

performance of the Make Ready Work in accordance with the rates set out in Item 5(b) of Schedule 4.

#### 4.4 **Inspection of Make Ready Work**

**[Legal note: Business to comment whether it would be preferable to simplify this process, particularly where Distributor performs the Make Ready Works itself.]**

- (a) Upon completion of the Make Ready Work under this clause 4, Customer must provide a Completion Certificate to Distributor for Distributor's approval.
- (b) Prior to the issue of a Completion Certificate, Customer must, at its own cost, have any Make Ready Works audited by an auditor accredited by Distributor to confirm that the Make Ready Works were performed in accordance with this Agreement and Standards and the relevant Access Licence.
- (c) If any Make Ready Work is found by the audit under clause 4.4(b) to not be in compliance with this Agreement or the relevant Access Licence, Customer must, at its cost, rectify that Make Ready Work so that it is in compliance with this Agreement and the relevant Access Licence within a reasonable time and in any case, no more than 20 Days after the results of the audit have been received by Customer.
- (d) Where Customer fails to comply with clause 4.4(c) as to the rectification of Make Ready Work, Distributor may take reasonable steps to rectify that Make Ready Work and charge to Customer the rate in Item 5(b) of Schedule 4 to the extent they apply, and if not, then at cost.
- (e) If Customer fails to pay any costs reasonably and directly incurred by Distributor under clause 4.3 or clause 4.4(d) by the date set out in any notice requiring payment of these costs, Distributor's obligation to process Access Requests is suspended from that date until payment is received.
- (f) Details of any audit (including any report provided by the auditor) together with details of any rectification Site Works undertaken by Customer arising out of that audit under this clause 4.4 must be provided to Distributor in the Completion Certificate provided by Customer for that Make Ready Work. Nothing in this clause 4 relieves Customer of any of its obligations under this Agreement or an Access Licence.

#### 5. **SURVEYS AND STUDIES**

- (a) If Distributor determines that it must undertake surveys and studies to assess an Access Request, it must notify Customer within [30] Days of its receipt of the Access Request. This notice must set out:
  - (i) details of all surveys and studies which Distributor determines to be reasonably necessary to consider an Access Request; and
  - (ii) an estimate of the costs to be incurred in accordance with the rates set out in item 5(b) of Schedule 4 and a description of the work to which it relates.
- (b) Within [10] Days of Customer receiving notification from Distributor under clause 5(a), Customer will notify Distributor:
  - (i) of its agreement to reimburse Distributor, in accordance with the rates set out in Item 5(b) of Schedule 4, for the estimated costs to be incurred in conducting the surveys and studies; or
  - (ii) of its rejection of the estimated costs to conduct the surveys and studies.

- (c) After receipt of Customer's notice of agreement under clause 5(b)(ii) Distributor may proceed to conduct the relevant surveys and studies. At any time before, during or after completion of such surveys and studies Distributor may, in its absolute discretion and without giving reasons, notify Customer that Distributor accepts or rejects part or all of the relevant Access Request.
- (d) If Distributor accepts part or all of the relevant Access Request, Distributor will make an Access Offer in accordance in the form set out in Schedule 2 (and clauses 3.4 to 3.5 will apply).
- (e) If Customer does not respond to Distributor's notice under clause 5(a) within [10] Days of receipt of such notice or rejects the notice in accordance with clause 5(b)(ii) then the related Access Request will lapse.
- (f) After agreeing to reimburse Distributor under clause 5(b)(i), Customer must pay for the costs incurred by Distributor in conducting the relevant surveys and studies as invoiced by Distributor to Customer under clause 14.6(b), which may exceed the estimate provided under clause 5(a)(ii). For the avoidance of doubt, Customer must pay the costs irrespective of whether Customer enters into a Access Licence in respect of the Access Request.

## 6. **INSTALLATION AND MAINTENANCE OF EQUIPMENT**

### 6.1 **Installation of Equipment**

- (a) Customer may install Customer's Equipment on a Facility as specified in the Access Licence on and from:
  - (i) where Distributor notifies Customer that Make Ready Works are required under clause 3.3, Distributor notifying Customer that it approves the Completion Certificate relating to those Make Ready Works; or
  - (ii) otherwise, the Access Licence Commencement Date.
- (b) Customer may not undertake any Site Work in, on or near a Facility until the parties have signed an Access Licence in relation to such Facility.
- (c) Customer must ensure that any Equipment installed on a Facility is maintained at all times in order to comply with all applicable Laws and Standards current at the time the Equipment was installed, and will not interfere with or damage Distributor's or any third party's access or equipment.
- (d) Customer must notify Distributor immediately if it becomes aware that the installation of Equipment has caused any interference or damage to Distributor's or any third party's access or equipment.
- (e) As soon as practical, but no later than 3 weeks after the installation of any Equipment, Customer must provide Distributor with a written notice:
  - (i) enclosing the As Built Drawings; and
  - (ii) certifying that the installation has been completed and that the As Built Drawings are accurate.
- (f) All Equipment installed after the Commencement Date of this agreement must be clearly marked and identified as Customer's Equipment.

- (g) Distributor may require Customer to remove any Unlicensed Equipment, including Equipment not specified in the Access Licence within [5] Days of Customer receiving notice of the request for removal.

## 6.2 Maintenance of Equipment

- (a) Customer may maintain Equipment subject to an Access Licence, which may include replacing Equipment, where:
  - (i) the replacement Equipment will not interfere with or damage Distributor's or any third party's access or equipment; and
  - (ii) the replacement Equipment and the Site Works required in connection with the additional or replacement Equipment installed comply with all applicable Laws and Standards.
- (b) Notwithstanding clause (a), any maintenance of Equipment (including replacement of Equipment) that will increase the height of, or area occupied by, an item of Equipment (as compared to the scope and specifications for that Equipment in the Access Licence) is to be treated as the installation of new Equipment, in relation to which Customer must make an Access Request under clause 3.1.

## 6.3 Restrictions on use of Equipment

Customer will not do any of the following in relation to any Equipment that is installed in, on or near the Facilities:

- (a) permit any third party to make use of the Equipment for any reason, without the written approval of Distributor which approval may be withheld at Distributor's sole and unfettered discretion, or if given, upon such terms and conditions, including those related to fees and charges, as Distributor may determine; and
- (b) lease, licence, swap, sell, mortgage, charge or otherwise encumber the Equipment or its right to access any Facility for the purposes of installing Equipment.

## 6.4 No access or shared usage of Facilities

Customer must not, without the written approval of Distributor which approval may be withheld at Distributor's sole and unfettered discretion, or if given, upon such terms and conditions, including those related to fees and charges, as Distributor may determine:

- (a) permit any third party to make use of, operate, access or sub-lease any Facility for any reason; and
- (b) assign, licence, sub-licence, or transfer any rights or obligations under the Access Licence to any third party or its right to access any Facility for any reason whatsoever.

This clause 6.4 strictly prohibits joint facilities rollouts and/or the use of the Access Licence and Facility for the benefit of a party other than Customer that is not expressly granted by Distributor pursuant to an Access Licence. For the avoidance of doubt, a third party includes an unincorporated joint venture in which Customer participates.

## 6.5 Signage Requirements

- (a) Customer must ensure that the appropriate safety warning signs are installed on each Facility subject to the Access Licence in accordance with the applicable Law or Standard.

## 7. GRANT OF ACCESS LICENCE

### 7.1 Nature of Access Licences

- (a) Each Access Licence will be a non-exclusive licence to install, operate and maintain Equipment in, on or near nominated Facilities in accordance with the terms and conditions of this Agreement, the relevant Access Licence and all applicable Laws and Standards.
- (b) Customer acknowledges that the rights confirmed by Distributor under an Access Licence rest in contract only and:
  - (i) do not create or vest in Customer any ownership or property rights in any Facility or other Distributor asset, or in the land or space they occupy;
  - (ii) do not create any tenancy between Distributor and Customer; and
  - (iii) will not confer on Customer an exclusive right to any Facility or any area on a Facility.

### 7.2 Term of Access Licences

Each Access Licence will come into force on the relevant Access Licence Commencement Date and will continue for a term of the shorter of the following periods:

- (a) the date set out in the Access Licence;
- (b) if Distributor approves a subsequent Access Request with respect to a Facility the subject of the first mentioned Access Licence, on and from the Access Licence Commencement Date of the subsequent Access Licence issued with respect to the Facility;
- (c) the remaining Service Life of the Facility the subject of the Access Licence;
- (d) such other period as may be agreed to in writing by the Parties; and
- (e) the unexpired term of this Agreement.

### 7.3 Access Licence subject to existing rights

- (a) Any rights granted by Distributor to Customer under this Agreement and pursuant to any Access Licence are subject to:
  - (i) all existing leases, licences, agreements and other contractual arrangements between Distributor and third parties in relation to the Facilities; and
  - (ii) all existing easements, covenants or other property dealings in relation to the Facilities; and
  - (iii) Distributor's rights to full and unfettered access to the Facilities at all times.
- (b) Customer acknowledges that:
  - (i) Distributor may not be excluded from entry upon a Facility by any action of Customer; and
  - (ii) each Access Licence is subject to Customer obtaining and maintaining all necessary Clearances and Land Consents in accordance with clause 8.

## 8. **CLEARANCES AND LAND CONSENTS**

### 8.1 **Customer to obtain and maintain**

Customer must, at its cost, obtain and maintain for the duration of each Access Licence, all Clearances and Land Consents required by Law necessary to enable it to undertake the Site Work.

### 8.2 **Proof of compliance**

Customer must provide to Distributor, at Customer's cost and on demand, such proof of Customer's compliance with clause 8 as Distributor may require. Customer must provide such proof of compliance before any Site Work under the relevant Access Licence is carried out.

### 8.3 **No guarantee**

Nothing in this Agreement will be construed so as to imply a guarantee by Distributor to Customer that Customer will be able to obtain the Clearances and Land Consents which Customer is required to obtain under clause 8.

### 8.4 **No obligation to acquire further rights or to assist**

Nothing in this Agreement will be construed as imposing an obligation on Distributor to negotiate with or acquire from a third party any additional rights in respect of a Facility, or to provide Customer with any form of assistance in obtaining the Clearances and Land Consents which Customer is required to obtain under clause 8. Distributor Rights and Acknowledgments

### 8.5 **Rights**

Distributor reserves its rights to:

- (a) continue to access and use the Facilities at any time 24 hours a day, 7 days a week;
- (b) in the event of an Emergency:
  - (i) exclude any Customer Personnel from the site of any Facility;
  - (ii) require Customer to interrupt the use of any Equipment; and
  - (iii) enter upon the site of any Facility and take any measure or perform any works on or in relation to any Equipment (including removing, relocating or powering down Equipment) or any other Customer property, notwithstanding that such measures and works may interrupt, damage, delay or interfere with the Equipment;
- (c) enter upon the site of any Facility at any time for any reason, including for the purpose of inspecting, repairing, altering, adding to, removing, relocating or renewing any part or the whole of that Facility or any equipment located on the site of that Facility;
- (d) enter into other licence agreements or arrangements with third parties for access to Facilities;
- (e) require Customer to interrupt or suspend the use of any Equipment if other users of the Facility experience interference to their equipment because of the Equipment; and

- (f) arrange for a Contractor to remove or make safe on a Facility, anything that in the opinion of Distributor is unsafe in any respect.

## 8.6 Audits

- (a) Distributor may at any time, itself or through a third party, undertake an audit in relation to compliance with Agreement by Customer.
- (b) Customer must provide all necessary assistance to Distributor in carrying out such audits.
- (c) In the event Distributor discovers (whether through an audit or otherwise) a breach of this Agreement or an Access Licence, Distributor may require Customer to rectify the breach or comply with a reasonable request of Distributor no more than 20 Days after receiving a notice from Distributor requiring such rectification.
- (d) Where Customer fails to comply with a notice provided by Distributor under clause 8.6(c), Distributor may, at Customer's cost calculated in accordance with Item 5 of Schedule 4, either:
  - (i) conduct an audit;
  - (ii) take steps to rectify any non-compliant Site Work or Equipment; or
  - (iii) remove any non-compliant Site Work or Equipment.
- (e) Customer must pay Distributor an Audit Fee in connection with:
  - (i) an audit disclosing a breach of this Agreement or of an Access Licence; and
  - (ii) any audit carried out by Distributor under clauses 8.6(d),as set out in, or calculated in accordance with Item 5 of Schedule 4.
- (f) Customer must pay Distributor fees in connection with any work undertaken by Distributor under clause 8.6(d)(ii) or 8.6(d)(iii) as set out or calculated in accordance with Item 5 of Schedule 4.

## 8.7 Acknowledgments

Distributor acknowledges that any Equipment that is installed in, on or near a Facility in accordance with the relevant Access Licence is the property of Customer.

## 9. ACKNOWLEDGMENTS OF CUSTOMER

Customer acknowledges that:

- (a) nothing in this Agreement shall be taken to oblige Distributor to negotiate or enter into any Access Licence or other agreement with Customer;
- (b) nothing in this Agreement shall imply, nor shall it be taken to imply, any exclusive right on the part of Customer to access Facilities and install and/or operate Equipment or to provide any particular service or combination of services to consumers using or via that Equipment;
- (c) Distributor may already, or may at some point in the future, allow other third party service providers to access Facilities for the purpose of installing or operating infrastructure or equipment (including telecommunications infrastructure or equipment) and that Distributor makes no representations and gives no warranties

about the effect or impact that the grant of such access may have on Customer's ability to install and operate any Equipment or to provide its services to consumers using or via the Equipment;

- (d) nothing in this Agreement shall prevent or obstruct Distributor in the discharge of its obligations and responsibilities in the supply and distribution of energy or otherwise under the Electricity Legislation;
- (e) Customer installs all Equipment, and undertakes all Site Work, at its own cost and risk;
- (f) Customer must only enter onto the site of Facilities for the Permitted Purpose or Site Work;
- (g) Customer must comply strictly with this Agreement and the terms of the relevant Access Licence when carrying out Site Work, or causing Site Work to be carried out;
- (h) Distributor makes no representations in relation to the current or future suitability of the Facilities for the Permitted Purpose;
- (i) Distributor makes no representations in relation to any third party facilities installed in, on or near the Facilities;
- (j) Customer enters into this Agreement with full knowledge, relying on its own enquiries into the nature and frequency of Power System Occurrences;
- (k) Distributor makes no representation that the Permitted Purpose complies with the terms of applicable Laws or other planning or development controls or that the Facilities are suitable for the Permitted Purpose;
- (l) nothing in this Agreement impacts on or derogates from the obligations of Customer under applicable Law;
- (m) except as expressly provided for in this Agreement, Customer acquires no right, title or interest in the Facilities or any other assets or equipment owned by Distributor;
- (n) Customer enters into this Agreement with full knowledge, relying on its own enquiries of any and all prohibitions and restrictions on the use of the Facilities that may be imposed by any Law or Standards from time to time; and
- (o) Distributor has no obligation to supply electricity to Customer in respect of any Equipment and Customer must make its own arrangements for such supply at its own cost.

## 10. **APPROVED CONTRACTORS TO UNDERTAKE SITE WORK**

### 10.1 **Approved Contractors**

- (a) Customer agrees that Site Work must only be performed:
  - (i) by Approved Contractors pursuant to separate agreements between the Approved Contractors and Customer;
  - (ii) at Customer's cost; and
  - (iii) in accordance with the terms of the relevant Access Licence and this Agreement.
- (b) Customer shall be liable for the acts and omissions of all Approved Contractors.

## 10.2 **Restrictions on physical access**

- (a) Approved Contractors may only physically access the Facilities to the extent required to perform Site Work.
- (b) Except as provided in clause 10.2(a), Approved Contractors may not physically access any buildings, fittings, fixtures, plant and equipment (other than Facilities) which are owned, maintained and operated by Distributor, without the prior written consent of Distributor (which consent may be withheld in Distributor's absolute discretion).

## 10.3 **Attendance of Distributor Personnel**

Distributor may, in its absolute discretion, require, the attendance of Distributor Personnel at the time of any Site Work.

## 10.4 **Removal of Customer Personnel or Approved Contractors**

Distributor may, or may require Customer to, promptly exclude or remove any Customer Personnel from the vicinity of Facilities or any area where Site Works are being carried out or promptly suspend any Approved Contractor from performing the Site Works:

- (a) if the Approved Contractors do not meet the requirements of this Agreement or an Access Licence or are not properly qualified or accredited; or
- (b) if required by Law or for safety or security reasons.

## 10.5 **Customer to nominate for Site Operational Work**

Where Customer has complied with clause 10.6, Customer may nominate an Approved Contractor to perform the relevant Site Operational Work.

## 10.6 **Option to tender for Site Work**

Customer, exercising good faith, must provide Distributor (or its nominee) with a reasonable opportunity to tender for the performance of any Site Work in accordance with Distributor's Tender Policy.

## 10.7 **Compliance with Standards**

Customer must ensure that any Approved Contractor performing any Site Work must at all times:

- (a) exercise due care and skill;
- (b) comply with all Standards;
- (c) comply with all security, safety and other related requirements of Distributor, as notified to Customer from time to time;
- (d) comply with all relevant provisions of applicable Laws (including, but not limited to, the Electricity Legislation);
- (e) comply with any other Australian standards at the time relevant to the telecommunications industry and the electricity industry; and
- (f) avoid interfering with, altering or damaging:

- (i) Facilities and any of Distributor's equipment that is installed on or within a Facility; and
- (ii) the equipment of any third party installed on or within a Facility.

## 11. REPAIR AND NOTIFICATION OF FAULTS

### 11.1 Customer to keep in good order and repair

Customer must, at its cost:

- (a) inspect and maintain the Equipment installed in, on or near any Facility in a safe and operable condition in accordance with all applicable Laws and Standards and this Agreement;
- (b) repair, to recognised telecommunications industry best practice (and provide copies of all Equipment inspection reports to Distributor);
- (c) organise any maintenance and repairs to the Equipment installed in, on or near any Facility which Distributor may reasonably require (including obtain and maintain all necessary Clearances and Land Consents to undertake such work); and
- (d) co-operate with Distributor in facilitating any maintenance operations undertaken by Distributor in respect of the Facilities on or within which the Equipment is installed.

### 11.2 Approved Contractor to repair Equipment

Customer must ensure that all maintenance or repair work on or in respect of any Equipment installed in, on or near a Facility is undertaken by an Approved Contractor in accordance with clause 10.

### 11.3 Repairs

- (a) Distributor will be responsible for the routine maintenance of its Facilities.
- (b) Subject to clause 11.4, where any component of any Equipment is damaged or is otherwise rendered defective or faulty (Fault), Customer shall at its cost, engage an Approved Contractor in accordance with clause 10 to repair the Fault at its first reasonable opportunity.
- (c) Where any component of any:
  - (i) Facility;
  - (ii) other hardware or equipment owned by Distributor; or
  - (iii) hardware or equipment owned by a third party,

is damaged or otherwise rendered defective or faulty by the act or omission of Customer, Customer must immediately notify Distributor of such damaged and Distributor will correct or repair the Fault and will invoice Customer for the cost of such corrections or repair in accordance with the fees in item 5(b) of Schedule 4.

### 11.4 Emergencies

In the event of an Emergency, Distributor will repair any Fault in accordance with its established emergency and safety procedures. Where Distributor repairs a Fault under this clause 11.4, then Customer must reimburse Distributor for that portion of the cost of the repairs for which it would have been responsible under clause 11.3 (as the case may be).

## 11.5 Notification of Faults

- (a) Each Party shall provide a 24 hour contact name and telephone number for the purpose of receiving verbal notification of defects, faults, or other problems of which either Party becomes aware.
- (b) The 24 hour contact name and telephone number of each Party is:

### Customer

Attention: [ # # ]

Phone: [ # # ]

Mobile: [ # # ]

### Distributor

Network Control Room: [ # # ]

Phone: [ # # ]

Mobile: [ # # ]

Distributor System Operator: [ # # ]

Phone: [ # # ]

Mobile: [ # # ]

## 12. OCCUPATIONAL HEALTH AND SAFETY

### 12.1 Customer acknowledgments

Customer acknowledges that:

- (a) Distributor may have (depending on the circumstances) a range of obligations under occupational health and safety laws to ensure that the Facilities and the means of access to and exit from the Facilities are safe;
- (b) Distributor could be exposed to civil claims or criminal prosecution if Customer does not implement adequate measures to ensure the health and safety of any Approved Contractor undertaking Site Work, or when otherwise accessing Facilities for or on behalf of Customer;
- (c) there are safety risks associated with the supply of electricity and with working in, on and around the Facilities, and that Customer undertakes and administers the Site Work and installation of Equipment with full knowledge of these safety risks;
- (d) Customer has control over the Site Work as set out in this Agreement; and
- (e) while Distributor will take reasonable steps to ensure that Facilities are maintained to a safe standard, it is not reasonably practicable for Distributor to ensure the safety of Customer's activities, as permitted under this Agreement, in, on or near a Facility.

## 12.2 Customer obligations

Customer must:

- (a) control all aspects of the performance of any Site Work under the relevant Access Licence;
- (b) ensure the safety, health and welfare of its Personnel who may be affected by the performance of any Site Work which is carried out under this Agreement and the terms of the relevant Access Licence;
- (c) ensure that Distributor is able to safely work in the vicinity of the Equipment (or any related Customer equipment or infrastructure) for any Distributor related work;
- (d) provide to Distributor, at no cost to Distributor, all information and/or training and approvals necessary to enable Distributor Personnel or contractors to work safely on Facilities which support, house or are in the vicinity of the Equipment (and any related Customer equipment or infrastructure);
- (e) ensure that all persons, except for Distributor, who undertake any work in, on or near the Facilities for or on behalf of Customer are Approved Contractors and are suitably trained and equipped to undertake such work;
- (f) ensure that complete, accurate and up to date records of the training undertaken by all Approved Contractors who undertake work in, on or near Facilities are maintained and arrange for Distributor to access those records if reasonably requested by Distributor;
- (g) conduct regular reviews of work undertaken by all Approved Contractors who undertake work in, on or near Facilities to ensure that safe work systems are followed;
- (h) ensure that any work permitted under this Agreement is undertaken by Approved Contractors for or on behalf of Customer only if the Facility at which that work is to be undertaken is safe and without risk to the health of any person;
- (i) ensure that the manner in which any work permitted under this Agreement is undertaken by Customer Personnel or an Approved Contractor is suitable to the work to be performed and does not risk the safety or health of any person;
- (j) independently assess, develop and implement measures for controlling all safety risks associated with any work permitted under this Agreement that is undertaken in, on or near a Facility;
- (k) promptly inform both Distributor and the relevant authorities of the occurrence of any:
  - (i) serious injury suffered by any person; or
  - (ii) event which could create a risk for any person,arising out of or connected with the Facilities, of which it is aware;
- (l) ensure that adequate signage, guard rails, insulating barriers, fencing and other protective measures are utilised to ensure the safety and health of any person in the vicinity of any work undertaken on or around a Facility by any Approved Contractor;

- (m) ensure that all plant and equipment used by an Approved Contractor at or near a Facility is regularly inspected, tested and maintained, and is safe and operated in a safe manner;
- (n) permit the attendance of Distributor's Personnel in accordance with clause 10.3;
- (o) reimburse Distributor for the reasonable costs of the attendance of Distributor's Personnel under paragraph (n) in accordance with the rates in item 5 of Schedule 4; and
- (p) not enter upon, or cause anyone to enter upon, for any reason, the site of any Facility that is the subject of an Emergency (unless instructed to by Distributor, in which case, such entry and any Site Work shall be carried out strictly in accordance with Distributor instructions);
- (q) accept responsibility for compliance with the Occupational Health and Safety Act 2004 (Vic) when carrying out any Site Work; and
- (r) attend to all applicable lodgements required and pay and indemnify and keep indemnified Distributor against all fees, fines and other amounts becoming payable under or in connection with Customer's obligations under all applicable Laws and Standards in respect of the performance of the Site Work.

13. **SAFETY DIRECTIONS**

- (a) If Distributor forms the view that:
  - (i) any work undertaken or proposed to be undertaken by an Approved Contractor will pose a risk to the public or to the safety of any Distributor employee, agent or contractor or any other person who is in, on or near a Facility;
  - (ii) any Distributor or third party property is being damaged or is likely to be damaged;
  - (iii) the supply of electricity by Distributor is likely to be affected or interfered with in an unauthorised manner; or
  - (iv) any Personnel undertaking the Site Work do not have the necessary training and current work competency accreditations;

then:

  - (v) Distributor may (but has no obligation to Customer under or in connection with this Agreement to) issue a direction to Customer to take reasonable and specified measures to ensure safety including a requirement to cease an activity; and
  - (vi) Customer must, at its cost, immediately comply with any directions given under this clause.
- (b) The issue of or compliance with a direction made under this clause does not limit Customer's obligations under clauses 10.7 and 12.
- (c) Nothing in this clause 13 imposes any duty or obligation upon Distributor to oversee or manage Customer's Site Work or to ensure that Customer's Site Work is carried out in accordance with the Law and all relevant Codes and Network Standards.

## 14. FEES

### 14.1 Payment of Access Fees

- (a) The Access Fee will be payable by Customer with respect to each Facility which is the subject of an Access Licence.
- (b) In each Access Offer, Distributor will detail the Access Fees that apply to the Access Licences set out in the Access Offer.
- (c) Access Fees will be payable under an Access Licence from the Access Licence Commencement Date.

### 14.2 Application Fee

The Application Fee will be payable by Customer in respect of each Access Request it submits at the time it submits the Access Request.

### 14.3 Unlicensed Equipment Administration Fee

The Unlicensed Equipment Administration Fee will be payable by Customer in respect of each Access Request it submits following receipt of notice under clause 3.6(a) payable at the time it submits the Access Request and in accordance with this clause 14.

### 14.4 Fees for Utility Services

Where Distributor, at the request of Customer, performs a service for Customer or provides assistance to Customer, Distributor may charge fees for such service or assistance calculated on the basis of the rates in Item 5(b) and Item 5(c) of Schedule 4.

### 14.5 Annual Adjustment of Fees

The Fees in Schedule 4, excluding the rates in Item 5(b)(iii) and Item 5(c) of Schedule 4, are to be adjusted annually on each 1 July by whichever is the greater of:

- (a) an increase of 3.5% per annum; or
- (b) an increase calculated in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

Where

A = the adjusted Fees;

B = the relevant Fees payable immediately before the adjustment date;

C = the Consumer Price Index All Groups Melbourne last published before the adjustment date; and

D = the Consumer Price Index All Groups Melbourne published 12 months before the index referred to in variable.

### 14.6 Invoicing

- (a) Distributor is required to invoice Customer annually in advance using an agreed invoicing format, for all Access Fees payable by Customer with respect to each Financial Year provided that:

- (i) if any Access Licence is granted during a Financial Year, Distributor will issue a separate invoice for that Access Licence for the period commencing on the Access Licence Commencement Date and ending at the end of that Financial Year; and
  - (ii) each invoice will take into account any Access Licences that will expire during the period to which it relates and pro rata the Access Fees accordingly.
- (b) If Customer has not submitted an Access Request with respect to Unlicensed Equipment or removed such Unlicensed Equipment within 30 Days of receipt of notice under clause 3.6(a), Distributor will invoice Customer for the Unlicensed Equipment Administration Fee on a monthly basis in arrears until such time as Distributor receives an Access Request from Customer with respect to the Unlicensed Equipment or removes such Unlicensed Equipment (whichever occurs first).
- (c) For all other Fees, apart from the Application Fee, Distributor is required to invoice Customer on a monthly basis in arrears.

#### 14.7 **Payment and Interest**

Customer must pay the Fees within 30 Days of the end of the month in which Distributor's invoice setting out such Fees is received.

#### 14.8 **Adjustment of Invoices**

If Customer considers that Distributor has made an error in an amount invoiced or paid under this Agreement:

- (a) Customer agrees to notify Distributor within 30 Days of becoming aware of that fact; and
- (b) provided that Distributor agrees with Customer's calculation of the amount of the error, Distributor will credit or debit Customer's next account with the amount necessary to rectify the error.

#### 14.9 **Survival of clause**

This clause survives termination or expiry of this Agreement. In the event of termination or expiry of any Access Licence, this clause shall continue to apply in relation to such Access Licence.

### 15. **COOPERATION AND REVIEW OF ACCESS FEE IN CONNECTION WITH AER DETERMINATION OR DECISION**

#### 15.1 **Customer provision of forecast information**

- (a) If Distributor is required to provide the AER (or other similar regulator) with information relating to the number of Access Licences to be granted or expected to be granted to Customer, whether as part of a regulatory proposal to be submitted by Distributor under the National Electricity Rules or otherwise, Distributor will notify Customer and provide details of the period in respect of which such information is required (Forecast Period) and the date that such information is required to be provided to the AER (Submission Date). Distributor will provide reasonable prior notice, being not less than 40 Days, of such requirement to Customer.
- (b) Following receipt of notice under clause 15.1(a), Customer will provide Distributor with a forecast of the number of Facilities it expects to seek access to during the Forecast Period at least 20 Days' before the Submission Date (Final Forecast).

- (c) Customer acknowledges that Distributor may provide to the AER:
  - (i) the Final Forecast provided by Customer under clause 15.1(b); and
  - (ii) other information relating to this Agreement that:
    - (A) Customer, acting reasonably, agrees Distributor can provide, having regard to (without limitation) the importance of Distributor maintaining good standing with the AER; or
    - (B) Distributor is required to provide to the AER to comply with any Law or court order.

## 15.2 **Review of Access Fees**

- (a) The parties acknowledge and agree that the Access Fee shall be subject to review throughout the term where any determination or decision is made by the AER (or other similar regulator) which materially reduces Distributor's recovery of costs, or economic return, in relation to any Facility by reference to any actual or assumed revenue or cost recovery from providing access (of any kind) to Facilities.
- (b) Distributor shall notify Customer of any required review under this clause within [one month] of any such determination or decision having been made. In such notice, Distributor will advise Customer of the proposed new Access Fee, which shall be effective on the expiry of [six months] from the date of such notice.
- (c) The new Access Fee proposed by Distributor in the notice must reflect the principle that any increase in cost or reduction in economic return to Distributor in relation to the applicable Facility is apportioned equitably across all persons who access the Facility from Distributor on a commercial basis, having regard to the proportion that the revenue received from Customer in relation to the applicable Facility bears to the total revenue received by Distributor in respect of such Facility.
- (d) Upon request from Customer, Distributor shall meet Customer within [one month] from the date of such notice to give Customer the opportunity to be presented with Distributor's explanation of the basis of its calculation of the new Access Fee and its compliance with paragraph (c), subject to any rights of third parties (or obligations of Distributor in respect of third parties) relating to confidentiality or otherwise.
- (e) With both parties acting reasonably and in good faith, if Customer is able to illustrate to the satisfaction of Distributor, within [one month] of meeting that the new Access Fee is not equitable in accordance with paragraph (c), Distributor shall issue a new notice with a re-calculated new Access Fee, in which case such new Access Fee shall be effective on the expiry of [six months] from the date of such new notice.
- (f) If Customer does not accept the new Access Fee determined in accordance with paragraphs (b) or (e), it may terminate this Agreement by notice in writing to Distributor with effect from [six months] from the date of such notice.

## 16. **TAXES AND CHARGES**

### 16.1 **GST Definitions**

Terms used in this clause not defined elsewhere in this Agreement have the meanings given to them in the GST Act.

## 16.2 **Monetary amounts are GST exclusive**

Unless otherwise expressly stated, all monetary consideration to be provided under or in accordance with this Agreement is exclusive of GST.

## 16.3 **GST exclusive and non-monetary supplies**

To the extent that the consideration to be provided for any supply made under or in accordance with this Agreement is:

- (a) expressly stated to be exclusive of GST; or
- (b) non-monetary,

the recipient of the taxable supply must pay to the supplier (at the same time as payment for the taxable supply is required to be made in accordance with this Agreement) an additional amount equal to the GST payable in respect of the consideration to be provided under (a) or (b), as appropriate, for the taxable supply.

## 16.4 **Tax invoices**

The recipient's obligation to pay the GST component of any consideration under this Agreement is subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment.

## 16.5 **Reimbursable expenses**

If this Agreement requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by another Party, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of the amount of the reimbursable expense net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense and any GST payable by the other Party.

## 16.6 **Other taxes, duties and charges**

Except as set out in this clause 16 in respect of GST, Customer must pay:

- (a) all taxes, duties and charges imposed or levied in Australia or overseas in connection with this Agreement;
- (b) any taxes, duties and charges in connection with this Agreement that arise from a change to, or the announcement, introduction or enactment of, any legislation, regulation, order or rule on or after the Commencement Date;
- (c) any taxes, duties and charges that arise in connection with this Agreement from a change in the rate of the relevant tax, duty or charge on or after the Commencement Date; and
- (d) any taxes, duties, levies, rates, fees and charges that arise in connection with the installation of any Equipment on the Facilities or Sites which are imposed on Distributor or Customer on behalf of Distributor by a Government Agency.

In this clause 16.6 "charges" includes any cost incurred in connection with this Agreement by Distributor from a change in Law after the Commencement Date.

## 16.7 **Evidence of Payment to Government Agency**

- (a) Where Customer must pay an amount pursuant to clause 16.6(d), Customer must provide Distributor written notification evidencing, to the satisfaction of Distributor, the full and timely payment of the relevant taxes, duties, levies, rates, fees or charges before the due date specified in the invoice issued by the Government Agency.
- (b) Notification of payment must be provided to Distributor within 3 days of payment being made by Customer pursuant to clause 16.6(d).

## 17. **LIAISON**

### 17.1 **Responsible Officer**

To facilitate the co-ordination of the Parties' activities under this Agreement, each Party will appoint a member of its Personnel to be responsible for the administration and execution of this Agreement (the **Responsible Officer**).

### 17.2 **Meetings of the Responsible Officers**

The Responsible Officers will meet on a regular basis to discuss any issues arising from Customer's access to, or installation of Equipment on, the Facilities or Sites or any other issues in connection with this Agreement.

### 17.3 **Priority of work programs**

- (a) The Responsible Officers will co-ordinate the Parties' work programs for Facilities and Equipment located in or on any of Facilities to minimise the disruption and inconvenience caused by Distributor and any Contractor working on behalf of Customer working simultaneously on a Facility.
- (b) The Parties will co-ordinate the work programs on a good faith basis. However, Distributor's work program will take precedence where there is a conflict between Distributor's and Customer's work programs.

### 17.4 **Joint review of procedures**

Where any damage or loss has occurred to Facilities the subject of an Access Licence or to any Equipment installed on Facilities, or other difficulties have occurred with a Party's performance under this Agreement, the Parties' Responsible Officers will jointly review relevant procedures with a view to suggesting modifications which would reduce the risk of similar incidents in the future.

### 17.5 **Reporting of Customer**

- (a) Customer must maintain accurate and up to date records of all Equipment installed in, on or near any Facility.
- (b) Customer must provide Distributor with access to the records kept pursuant to clause 17.5(a) within [3] Days of a request to inspect the records from Distributor.
- (c) Customer will provide reports to Distributor relating to its access to and use of Facilities including reports on all Equipment installed in, on or near Facilities under this Agreement, as listed in and at the frequency specified in Schedule 5.
- (d) Any reports provided by Customer under this clause 17.5 must be in the agreed format and include the minimum content specified in Schedule 5.

- (e) Distributor may request, and Customer will provide, information or reports in addition to the reports referred to in clause 17.5(c) but only to the extent such additional information or reports are reasonably necessary for Distributor to confirm Customer's compliance with this Agreement or any Access Licence.

## 18. **RELOCATION OF FACILITIES OR EQUIPMENT**

### 18.1 **Relocation to a new position in or on the Facility**

- (a) Distributor may require Customer (at Customer's cost) to relocate Equipment installed on or in a Facility to a new position on or in the Facility:
  - (i) to enable Distributor to maximise the use of that Facility by all users and potential users if, in the new position, the Equipment will achieve substantially the same quality, comparable performance, suitability and safety as was afforded the Equipment in respect of the existing position;
  - (ii) if required by applicable Laws and Standards; or
  - (iii) if necessary to carry out an Electricity Distribution Function.
- (b) If Distributor requires Customer to relocate Equipment to a new position on or in a Facility in accordance with clause 18.1(a), Distributor must give Customer a relocation notice at least [2 months] prior to the date of the proposed relocation.
- (c) If Customer fails to respond to a relocation notice given under clause 18.1(b) Distributor may, at its sole discretion, either:
  - (i) reschedule the relocation works and Customer must reimburse Distributor for all costs associated with that rescheduling in accordance with the rates set out in item 5(b) of Schedule 4; or
  - (ii) relocate the Equipment itself in any manner it sees fit and at the cost of Customer,  
  
provided that, Customer will reimburse Distributor in accordance with the rates in Item 5(b) of Schedule 4 for its costs associated with such work.
- (d) Where Distributor has relocated Equipment under clause 18.1(c)(ii) Customer must, at its own cost, inspect the Equipment and carry out any necessary work to ensure that the Equipment is properly installed within a reasonable timeframe of receiving notice from Distributor requesting it to do so.

### 18.2 **Removal / Redevelopment of Facilities**

- (a) Distributor may require Customer (at Customer's cost) to relocate Equipment installed on or in a Facility to an alternative Facility on an alternative Site if:
  - (i) Distributor intends to undertake modifications, refurbishment or construction works on the existing Facility or Site that will affect Customer's ability to use the existing Facility or affect the operation of Customer's telecommunications network;
  - (ii) required by any applicable Law or Standard; or
  - (iii) necessary to carry out an Electricity Distribution Function.
- (b) If Distributor requires Customer to relocate Equipment in accordance with clause 18.2(a), Distributor must:

- (i) give Customer a relocation notice at least [2 months] prior to the date of the proposed relocation;
  - (ii) use its reasonable endeavours in cooperation with Customer to offer an alternative Facility which affords substantially the same quality, comparable performance, suitability and safety as was afforded the Equipment in respect of the existing Facilities;
  - (iii) to the extent practical, minimise any disruption to the operation of Customer telecommunications network due to such relocation; and
  - (iv) subject to clause 17.3, consult with Customer in relation to the design and progressive construction of any works at the alternative Facility.
- (c) Within 30 Days of receipt by Customer of a relocation notice under clause 18.1(b), Customer must notify Distributor in writing whether it accepts or rejects that notice.
- (d) If Customer accepts the relocation notice, then:
- (i) the Access Licence will be amended in accordance with the relocation notice;
  - (ii) Distributor must promptly confirm to Customer in writing Customer's right of access to the alternative Facility on the terms and conditions contained in this Agreement and the applicable Access Licence;
  - (iii) Customer must promptly acknowledge in writing to Distributor its acceptance of the alternative Facility; and
  - (iv) Customer must, in accordance with Distributor's directions, relocate the Equipment to the alternative Facility.
- (e) If Customer fails to comply with its obligations under clause 18.2(d)(iv), Distributor may, at its sole discretion, either:
- (i) reschedule the relocation works and Customer must reimburse Distributor for all costs associated with that rescheduling; or
  - (ii) relocate the Equipment itself in any manner it sees fit and at the cost of Customer,
- and, in each case, Customer must reimburse Distributor in accordance with the rates in Item 5(b) of Schedule 4 to the extent they apply (and otherwise at cost).
- (f) Where Distributor has relocated Equipment under clause 18.2(e)(ii), Customer must, at its own cost, inspect the Equipment and carry out any necessary work to ensure that the Equipment is properly installed within a reasonable timeframe of receiving notice from Distributor requesting it to do so.
- (g) If Customer rejects the relocation notice:
- (i) the Access Licence in respect of the existing Facility will automatically terminate on the proposed relocation date set out in the relocation notice provided to Customer under clause 18.1(b) (or such earlier date as notified by Customer), without affecting any remaining Access Licences; and
  - (ii) Customer must remove the Equipment from the relevant Facilities as quickly as practical following such notice remove all Equipment from any Facility and reinstate such Facility to the state it was in prior to Customer accessing it, fair wear and tear excluded.

### 18.3 **Facilities Required for Distributor's Usage**

- (a) Distributor may direct Customer (at Customer's cost) to remove Equipment from a Facility or Site if:
  - (i) the Facility or Site is needed by Distributor for the Electricity Distribution Function (and it is not possible to so use that Facility or the Site if the Equipment is not removed);
  - (ii) required by any applicable Law or Standard; or
  - (iii) Distributor desires to remove or retire a Facility for any reason at its absolute discretion.
- (b) If Distributor requires Customer to relocate Equipment to a new position on or in a Facility in accordance with clause 18.3(a):
  - (i) such a removal will be undertaken by Customer within a reasonable time but in any case no more than [2 months] from receiving a notice from Distributor requesting its removal;
  - (ii) Distributor will use its best endeavours to find an alternative location for the Equipment;
  - (iii) where the Equipment is removed and an alternative location is not found, the Access Licence in respect of the existing Facility will terminate on the date the Equipment is removed;
  - (iv) if an alternative location is found, the relevant Access Licence will be amended accordingly; and
  - (v) if Customer fails to comply with its obligations under clause 18.3(b)(i), Distributor may, at its sole discretion, either:
    - (A) reschedule the removal works and Customer must reimburse Distributor for all costs associated with that rescheduling; or
    - (B) remove the Equipment itself,and, in each case, Customer will reimburse Distributor in accordance with the rates in Item 5(b) of Schedule 4 to the extent they apply (and otherwise at cost).

### 19. **INSURANCE**

- (a) Customer must, at its cost, obtain and maintain during the term of this Agreement, adequate insurance in respect of any use of, or work performed in, on or near, a Facility permitted under this Agreement for:
  - (i) public and product liability to an amount of not less than \$20 million;
  - (ii) damage to any Equipment, including the costs of demolition and removal; and
  - (iii) damage to a Facility and any property or equipment on the Facility, whether owned by Distributor or any other person which is caused by Customer or its Contractors.
- (b) Customer must ensure that all insurance policies taken or to be taken out under this clause 19:

- (i) are taken out with an independent and reputable insurer;
  - (ii) are for amounts and contain conditions acceptable to or required by Distributor and Distributor's insurers;
  - (iii) are on an occurrence, as opposed to a claims made, basis;
  - (iv) have no exclusions, endorsements or alterations unless first approved in writing by Distributor;
  - (v) contain a provision that they cannot be cancelled or avoided without not less than 30 Days prior notice to Distributor; and
  - (vi) are taken out in the names of Distributor and Customer for their respective rights and interests.
- (c) On the anniversary of the commencement of each Access Licence, Customer will forward a copy to Distributor of:
- (i) every policy of insurance referred to in paragraph (a) and certificates of currency in respect of those policies; and
  - (ii) certificates of currency in respect of any Workers Compensation insurance and Third Party Motor Vehicle insurance held by Customer which is related to this Agreement.
- (d) Customer must pay all premiums and other money payable in respect of any policy whenever they are due and payable.
- (e) Customer must not without Distributor's consent in writing do anything to, in, on or near a Facility which will or may:
- (i) increase the rate of any insurance on the Facility;
  - (ii) prejudice any insurance policy; or
  - (iii) conflict with any Law or any requirement of Distributor's insurer(s) relating to fires or fire safety or prevention or with any insurance policy in respect of any insurance policy in respect of the Facility.
- (f) Within [30] Days after the receipt of an invoice from Distributor, Customer shall pay to Distributor , in accordance with clause 14, all extra costs of insurance on the Facility on account of the extra risk caused by Customer's use or occupation of the Facility.
- (g) The insurance policies which Customer is required to effect under this clause must:
- (i) provide that, insofar as the policy may cover more than 1 insured, all insuring agreements and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each Party comprising the insured;
  - (ii) provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties constituting the insured and that failure by an insured to observe and fulfil the terms of the policy shall not prejudice the insurance in regard to any other insured Party; and

- (iii) contain a non-imputation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach of a term or condition of the policy, or any fraud or other act, omission or default by 1 insured Party will not affect another insured Party provided that the said acts or omissions were not made with the connivance of a Party.

## 20. **TERMINATION OR EXPIRY**

### 20.1 **Termination of Access Licence by Distributor**

Distributor may terminate an Access Licence with immediate effect by giving notice to Customer if:

- (a) Customer breaches any Law or Standard applicable to the relevant Equipment or the Facilities;
- (b) there is a Change in Law which makes it illegal or impractical for Distributor to provide Customer with the Access Licence;
- (c) Customer no longer has full legal ownership of the relevant Equipment;
- (d) Customer breaches or is likely to breach any of clause 6.3, 8, 10, 17.5 or 19;
- (e) Distributor reasonably forms the opinion that:
  - (i) its use of the relevant Facilities may in a material way be adversely affected by Customer's use of such Facilities;
  - (ii) any act or omission by Customer may adversely and in a material way affect Distributor's rights of occupation of or access to such Facilities;
  - (iii) Customer's management of any health, safety or public relations issue in relation to the relevant Facilities or Equipment is inconsistent with any Law, Standard or reasonable health or safety requirement of Distributor;
  - (iv) continuing to allow Customer to use the relevant Facilities may be prejudicial to the public standing or reputation of Distributor; or
  - (v) it is necessary to rebuild or replace the relevant Facilities or effect any change in Distributor's use of such Facilities and such rebuilding, replacement, removal or change cannot reasonably be carried out without the termination of the Access Licence;
- (f) where Distributor is not the owner of the relevant Facilities or site on which a Facility sits, any rights granted to Distributor by the owner or occupier of such Facilities to access and use such Facilities are terminated (including where Distributor is a licensee or lessee of such Facilities, and that licence or lease is terminated);
- (g) the relevant Facilities are resumed or Distributor ceases to have rights to such Facilities; or
- (h) the relevant Facilities are destroyed or damaged so as to render such Facilities unfit for the purposes of the Access Licence.

### 20.2 **Termination of the Access Licence by Customer**

Customer may terminate an Access Licence on giving 90 Days written notice to Distributor and after submitting a draft Removal Plan in respect of that Access Licence in accordance with clause 20.5.

### 20.3 **Termination of Agreement by Distributor**

Distributor may terminate this Agreement with immediate effect on giving [90] Days written notice to Customer.

### 20.4 **Termination of Agreement by either Party**

In addition to any rights a Party may have under clauses 20.1 and 20.2 or at Law, either Party may terminate this Agreement with immediate effect, by giving written notice to the other Party of its intention to terminate if:

- (a) the other Party commits a [material] breach of this Agreement and, where the breach is capable of remedy, fails to remedy that breach within [30] Days of receipt of a notice to remedy;
- (b) the other Party commits a [material] breach of this Agreement which is not capable of remedy;
- (c) subject to clause 26.8(b), if either Party assigns, transfers or otherwise disposes or attempts to dispose of any of its rights or obligations under this Agreement without prior written consent of the other Party;
- (d) Customer breaches or is likely to breach clause 10 (Site Work);
- (e) any step is taken (including without limitation, an application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for:
  - (i) the winding up, dissolution, or administration of the other Party; or
  - (ii) the other Party entering into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them;except for the purposes of a solvent reconstruction or amalgamation; or
- (f) a receiver, receiver and manager, or other controller as defined in section 9 of the *Corporations Act 2001* (Cth), administrator or similar officer is appointed with respect to or takes control of the other Party or any of its assets and undertakings.

### 20.5 **Removal Plan**

- (a) Customer must provide Distributor, for its approval, with a draft Removal Plan for the removal from the Facilities all Equipment the subject of the relevant Access Licence, specifying at least:
  - (i) how and in what timeframe Customer will remove all Equipment from the relevant Facilities; and
  - (ii) how Customer will minimise disruption to Distributor's business during the removal of the Equipment.
- (b) The draft Removal Plan must be:
  - (i) in a form that will enable Customer to comply with its obligations under this Agreement;
  - (ii) subject to paragraph (iii), provided by Customer at least [60] Days prior to the expiration of the Access Licence;

- (iii) where Distributor has terminated the Access Licence, provided by Customer within a time period reasonably required by Distributor.
- (c) A draft Removal Plan may relate to removal of equipment the subject of more than one Access Licence with the approval of Distributor which may be withheld in its absolute discretion.
- (d) Within [15] Days after receiving the draft Removal Plan, Distributor may advise Customer of changes which it reasonably requires to the Removal Plan by issuing Customer with a revised Removal Plan.
- (e) Customer must pay all its costs and Distributor's costs arising out of complying with this clause 20.5, including those costs incurred to implement the Removal Plan or revised Removal Plan (as the case may be).

## 20.6 **Removal of Equipment**

- (a) Upon the termination or expiry of each Access Licence, Customer's right to access or use the Facility is at an end other than for the purposes of removing Equipment in accordance with clause 20.5(b).
- (b) Upon the termination or expiry of each Access Licence, Customer must, at its own cost, in accordance with clauses 12, 13 and any Removal Plan that applies to the relevant Facilities, and to the satisfaction of Distributor:
  - (i) remove or have removed all Equipment from the relevant Facilities; and
  - (ii) make good any damage or disturbance to the relevant Facilities caused by the installation or removal of such Equipment, to the condition in which the Facilities existed at the commencement of the relevant Access Licence (fair wear and tear excepted),

within [2] months (or such longer period as the Parties may agree) of the termination or expiry of the relevant Access Licence.
- (c) Customer will remain liable for and will pay to Distributor all Access Charges and other charges due to Distributor under this Agreement until the date when all Equipment is physically removed from the Facility in accordance with clause 20.5(b).
- (d) If Customer fails to remove all Equipment in accordance with clause 6.1(b), then Customer agrees that Distributor may remove, or arrange for the removal of, all such Equipment at Customer's risk and cost. Within [30] Days after the receipt of an invoice from Distributor, Customer will reimburse Distributor for all costs incurred by Distributor in removing Customer's Equipment in accordance with the rates in Item 5(b) of Schedule 4 to the extent they apply (and otherwise at cost).
- (e) Customer agrees that the obligations under this clause 20 shall be obligations in respect of which Distributor shall be entitled to gain an order for specific performance, with the cost of such proceedings to be recoverable by Distributor against Customer.

## 20.7 **Abandonment of Equipment**

Distributor may, in its absolute discretion and on such conditions as it may require, permit Customer to leave certain Equipment at a Facility after termination or expiry of the relevant Access Licence. Distributor may use or deal with any such Equipment as it sees fit as if it were the property of Distributor.

## 20.8 **Consequences of termination or expiry**

- (a) Upon termination or expiry of this Agreement or of any Access Licence:
  - (i) Customer must as quickly as practical following such termination and in no more than [30] Days remove all Equipment from any Facility affected by such termination in accordance with the Removal Plan and reinstate such Facility to the state it was in prior to Customer accessing it, fair wear and tear excluded;
  - (ii) all monies due to Distributor under this Agreement or in respect of that Access Licence (as the case may be) shall be immediately due and payable; and
  - (iii) all rights and obligations of the Parties under this Agreement or in respect of that Access Licence (as the case may be) shall cease, unless expressly preserved.
- (b) Any termination or expiry of this Agreement or of any Access Licence will be without prejudice to the rights of either Party against the other in respect of any antecedent claim or breach of any of the provisions of this Agreement and will be without prejudice to the rights of the Parties to complete binding contracts then in existence.
- (c) Termination of any Access Licence will not affect any other current Access Licences which will continue in full force and effect in accordance with their terms.
- (d) Termination or expiry of this Agreement will terminate any Access Licences current as of the date of such termination or expiry.

## 20.9 **Survival of clause**

- (a) This clause 20 survives termination or expiry of this Agreement. In the event of termination or expiry of any Access Licence, this clause shall continue to apply in relation to such Access Licence.
- (b) Termination or expiry of this Agreement does not affect any provisions of this Agreement which are stated, or by their context required, to survive termination or expiry.

## 21. **LIABILITY**

### 21.1 **Exclusion and Limitation of Liability**

- (a) To the maximum extent permitted by Law:
  - (i) all terms, conditions and warranties expressed or implied by any legislation, the common law, equity, trade, custom or usage or otherwise in connection with this Agreement are expressly excluded;
  - (ii) in no circumstances will Distributor, its employees, officers, agents or contractors be liable to Customer for any Indirect Loss for breach of or arising out of or in any way connected with this Agreement (including Loss or damage caused by Distributor or its employees', officers', agents' or contractors' negligence or any breach of this Agreement);
  - (iii) Distributor, its employees, officers, agents or contractors will only be liable to Customer for any Loss caused by a breach of or arising out of or in any way connected with this Agreement where that Loss was caused by the wilful default of Distributor, its employees, officers, agents or contractors and liability for that Loss is otherwise not excluded by this Agreement;

(iv) subject to clause 21.1(a)(v), the aggregate liability of Distributor and its employees', officers', agents' and contractors', in connection with this Agreement (including all Access Licences):

(A) in any 12 month period ending on the day before an anniversary of the Commencement Date; or

(B) in any period of less than 12 months from the Commencement Date or an anniversary of the Commencement Date to the date of termination or expiry of this Agreement,

will not, in any circumstances, exceed the aggregate of all Access Charges actually paid by Customer during that period; and

(v) the aggregate liability of Distributor and its employees', officers', agents' and contractors', in connection with a particular Access Licence:

(A) in any 12 month period ending on the day before an anniversary of the relevant Access Licence Commencement Date; or

(B) in any period of less than 12 months from the relevant Access Licence Commencement Date or an anniversary of the relevant Access Licence Commencement Date to the date of termination or expiry of the Access Licence,

will not, in any circumstances, exceed the aggregate of all Access Charges in respect of that particular Access Licence actually paid by Customer during that period.

(b) Customer acknowledges and agrees that it has not and will not rely upon any representation, warranty, or undertaking of any kind made on behalf of Distributor in relation to or in any way connected with the subject matter of this Agreement including, without limitation, the fitness of the Facility for the Permitted Purposes.

(c) Subject to clause 21.2, if any legislation implies in this Agreement any term or warranty and also prohibits provisions in a contract excluding or modifying the application of or exercise of, or liability under, that term or warranty, that term or warranty is deemed to be included in this Agreement.

(d) The liability of Distributor, its employees, officers, agents and contractors for a breach of a term or warranty implied by this clause 21.1 is limited, at Distributor's option, to any one or more of the following:

(i) if the breach relates to goods:

(A) the replacement of the goods or the supply of equivalent goods;

(B) the repair of such goods;

(C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(D) the payment of the cost of having the goods repaired; and

(ii) if the breach relates to services:

(A) the supplying of the services again; or

(B) the payment of the cost of having the services supplied again.

## 21.2 **Survival of clause**

This clause 21 survives termination or expiry of this Agreement. In the event of termination or expiry of any Access Licence, this clause shall continue to apply in relation to such Access Licence.

## 22. **INDEMNITY**

### 22.1 **Indemnity**

- (a) Customer agrees to indemnify and hold harmless Distributor and its employees, officers, agents and contractors (those indemnified), to the maximum extent permitted by law, from and against any and all Loss or damage of any kind and nature (whether arising in contract or tort (including negligence) or under any statute or otherwise) suffered or incurred by any of those indemnified arising out of or in any way connected with this Agreement or the exercise (including the purported exercise) by or on behalf of Customer of any rights or obligations under this Agreement including:
  - (i) any failure by Customer to perform obligations in accordance with this Agreement;
  - (ii) any damage to a Facility or other equipment and structures of Distributor;
  - (iii) any interference or interruption in the use or operation of the Equipment installed in, on or near a Facility;
  - (iv) any Loss or damage suffered by any person in, on or near a Facility;
  - (v) any damage to the property of Customer or any of third party.
- (b) Customer indemnifies and must keep indemnified Distributor against all Loss suffered or incurred by Distributor, as a result of any claim by any third party of any kind whatsoever to the extent caused or contributed to by the act or omission of Customer.
- (c) Customer's liability to indemnify Distributor under paragraph (a) above will, subject to clause 21, be reduced to the extent that the liability was actually contributed to by the wilful default of Distributor, by an amount equal to Distributor's contributory responsibility for that liability, provided that the Loss or damage to which the liability relates is not Indirect Loss.
- (d) Customer agrees to release, discharge, hold harmless and indemnify Distributor, to the maximum extent permitted by law, from and against any and all Loss or damage arising out of or in connection with Customer's failure to obtain any Clearances or Land Consents in accordance with clause 8.
- (e) Customer agrees to release, discharge, hold harmless and indemnify Distributor, to the maximum extent permitted by law, from and against any and all Loss or damage (including from negligence on the part of Distributor or others), arising out of or in connection with the induction of electrical current or voltages in any metallic portion of Equipment, due to its proximity to Distributor's power supply and distribution network.
- (f) Customer agrees to release, discharge, hold harmless and indemnify Distributor, to the maximum extent permitted by law, from and against any and all Loss or damage arising out of or in connection with Customer's failure to meet its obligations under clause 16.6(d) or clause 16.7(a).

## 22.2 **Continuing Obligations**

The indemnities, releases and discharges under this Agreement are continuing obligations, separate and independent from the other obligations under this Agreement and survive termination or expiry of any Access Licence or of this Agreement. It is not necessary for Distributor to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

## 22.3 **Subsequent claims**

The making of a claim by a party under an indemnity contained in this Agreement in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of any further Loss arising out of the same event for which it has not previously been indemnified.

## 23. **CONFIDENTIALITY AND NON DISCLOSURE**

### 23.1 **Confidentiality**

- (a) No Party to this Agreement may use, copy, adapt, alter, disclose or part with possession of any information or data of the other which relates to the terms of this Agreement or which is disclosed or otherwise comes into its possession directly or indirectly as a result of this Agreement and which is of a confidential nature (Information) except as strictly necessary to perform its obligations or exercise its rights under this Agreement.
- (b) The obligation of confidentiality in paragraph (a) will not apply to Information:
  - (i) which the receiving party can prove was in its possession at the date it was received or obtained;
  - (ii) which the receiving party obtains from some other person with good legal title to it; or
  - (iii) which comes into the public domain otherwise than through default or negligence of the receiving party.
- (c) The obligations of confidentiality in this clause will continue in full force and effect notwithstanding any termination of this Agreement.

### 23.2 **Exceptions**

- (a) A Party may make any disclosure in relation to this Agreement as in its absolute discretion, it thinks necessary to:
  - (i) its professional advisers, bankers, financial advisers and financiers;
  - (ii) comply with any applicable law or requirement of any regulatory body; or
  - (iii) any of its Personnel to whom it is necessary to disclose the Information in order to exercise rights or perform obligations under this Agreement.
- (b) If Customer makes any disclosure under clause 23.2(a)(ii) or clause 23.2(a)(iii), other than a disclosure to an employee of Customer, the Responsible Officer must, within [3] Days of making such disclosure, provide notice to Distributor that the disclosure has been made.
- (c) Notice pursuant to clause 23.2(b) must state the date the disclosure was made, the information that was disclosed, and to whom the information was disclosed.

## 24. **NOTICES**

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:
  - (i) to [##]: [##]:
    - Attention: [##]
    - Email: [##]
  - (ii) to [##]: [##]:
    - Attention: [##]
    - Email: [##]
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

## 25. **FORCE MAJEURE**

### 25.1 **Suspend obligations**

If a Party is unable to perform any obligation (other than an obligation to pay money) under this Agreement by reason of Force Majeure and that Party:

- (a) gives the other Party prompt notice of the Force Majeure with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform any obligation under this Agreement; and
  - (b) uses all reasonable diligence to remove that Force Majeure as quickly as possible,
- that obligation is suspended insofar as it is affected by, and during the continuance of, the Force Majeure.

### 25.2 **Suspend payments**

For the term that an obligation is suspended under clause 25.1, any obligation on a party to pay monies in connection with that obligation is also suspended.

### 25.3 **Continuation of Force Majeure**

If the Force Majeure continues for a consecutive period of [14] Days after the notice is given, the Parties will meet to discuss in good faith a mutually satisfactory resolution to the problem.

## 26. GENERAL

### 26.1 Electricity Regulatory Event

- (a) If, because of an Electricity Regulatory Event, Distributor's rights or obligations under this Agreement are materially adversely affected then the Parties will meet as soon as practicable and negotiate in good faith to amend this Agreement to address the relevant material adverse effect and put Distributor back in the position it was in under this Agreement prior to the occurrence of the Electricity Regulatory Event, to the extent permitted by Law.
- (b) If the Parties are unable to agree on the amendments proposed by Distributor within 60 Days of commencing their negotiation, Distributor may terminate this Agreement on 30 Days' notice to the other Party.

### 26.2 Exclusion of statutory rights

- (a) Customer acknowledges that for as long as this Agreement remains in force:
  - (i) the rights granted to Customer by Distributor in this Agreement are the sole source of any rights that Customer has in respect of a Facility;
  - (ii) Customer will only access a Facility pursuant to the terms and conditions of this Agreement; and
  - (iii) Customer will not access or seek to access any Facility pursuant to any statutory rights granted to Customer under the Telecommunications Act.
- (b) For the avoidance of doubt, where an Access Licence is terminated or expires, Customer ceases to have any right to have Customer's Equipment located on the relevant Facility.
- (c) Customer agrees that any Equipment installed in breach of this clause will be treated as Unlicensed Equipment in accordance with clause 3.6.

### 26.3 Severance

- (a) If a provision of this Agreement is void, voidable by any Party, unenforceable or illegal, but would not be void, voidable, unenforceable or illegal if it were read down and it is capable of being read down, it is to be read down to that extent.
- (b) If a provision of this Agreement is not able to be read down or is still void, voidable, unenforceable or illegal after being read down:
  - (i) if the provision would not be void, voidable, unenforceable or illegal if words were omitted, those words are to be severed;
  - (ii) if any other case, the whole provision is to be severed;
  - (iii) and the remainder of this Agreement has full force and effect.

### 26.4 Costs and Stamp Duty

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest) payable on or in connection with this Agreement and any instrument executed under or any transaction evidenced by this Agreement must be borne by Customer. Customer must indemnify Distributor on demand against any liability for such stamp duty.

## 26.5 **Relationship of the Parties**

Nothing in this Agreement is to be construed as creating an agency, partnership, association, trust or joint venture between the Parties. Each Party is responsible only for its obligations as set out in this Agreement.

## 26.6 **Entire Agreement**

This Agreement contains the entire agreement between the Parties with respect to its subject matter. It sets out the only conduct relied on by the Parties and supersedes all earlier conduct and prior agreements and understandings between the Parties in connection with its subject matter.

## 26.7 **Amendment**

No amendment, modification or alteration of any part of this Agreement is valid unless in writing and signed by both Parties.

## 26.8 **Assignment and Subcontracting**

- (a) Customer may not assign, sub lease, mortgage, charge or otherwise deal with its rights, benefits or obligations under this Agreement, including any Access Licence, without the prior written consent of Distributor, which consent may be withheld in Distributor's absolute discretion without giving any reason for doing so.
- (b) Distributor may assign any of its rights and obligations under this Agreement, including any Access Licence, to any entity which takes over some or all of the business or activities of Distributor. Distributor will promptly advise Customer if it makes such an assignment. Distributor may require Customer to enter into a novation Agreement transferring the obligations of Distributor and releasing Distributor from all liability under this Agreement to any entity to which the rights and obligations of Distributor are assigned in accordance with this clause.
- (c) Except as expressly permitted by this Agreement in relation to the use of Contractors, Customer may not subcontract the performance of its obligations under this Agreement or attempt or purport to do so without the prior written consent of Distributor, which consent may be withheld in Distributor's absolute discretion without giving any reason for doing so.
- (d) In the event of a permitted subcontract, Customer shall be primarily liable to procure the performance of its obligations under this Agreement by the Contractor. Customer will not be released or discharged from its obligations and liabilities under this Agreement by entering into any subcontract. Any subcontract must be on the same terms and conditions as this Agreement. Customer must ensure that any Contractors are aware of all relevant safety requirements when working in, on or near Distributor's Facilities.

## 26.9 **Waiver, Remedies Cumulative**

- (a) No failure to exercise and no delay in exercising any right, power or remedy under this Agreement by Distributor operates as a waiver. Nor does any single or partial exercise of them preclude any other or further exercise of that or any other right, power or remedy. The rights, powers and remedies given to Distributor under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by Law.
- (b) Without limiting paragraph (a) above, Customer acknowledges and agrees that any review, confirmation, approval, direction or consent given by Distributor in connection with this Agreement:

- (i) is given by Distributor subject to compliance by Customer with this Agreement and does not constitute any waiver, release or satisfaction of any of Customer's obligations under this Agreement; and
- (ii) does not affect any of Customer's obligations to comply with any applicable Laws or to indemnify Distributor under this Agreement.

**26.10 Third Party Benefit**

Customer acknowledges and agrees that clause 22 contains promises for the benefit of Distributor and each of those indemnified and that these promises are enforceable by Distributor and each of those indemnified from time to time, notwithstanding that those indemnified are not parties to this Agreement.

**26.11 No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

**26.12 Governing Law and Jurisdiction**

This Agreement is governed by the laws of Victoria. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

**26.13 Authority**

Individuals executing this Agreement on behalf of the Parties warrant that they have been duly authorised to execute this Agreement and to bind the Party on whose behalf they are signing.

**26.14 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## SCHEDULE 1

### Access Request

#### Section A – Customer Details

The below information should be included in the application when submitting via UE's website. Please provide the following information:

Nominated Point of Contact:	
Position/Title:	
Telephone Number:	
Email Address:	
Fax Number:	
Facility Access Agreement Details:	

#### Section B – Access Required

Please indicate the type of access required by placing a tick next to the desired box and provide a brief description of the access required:

Type	Description
Tunnel <input type="checkbox"/>	
Duct <input type="checkbox"/>	
Hole <input type="checkbox"/>	
Pit <input type="checkbox"/>	
Pole <input type="checkbox"/>	
[Conduit] <input type="checkbox"/>	
[Cable Rack] <input type="checkbox"/>	
[Equipment Building] <input type="checkbox"/>	
Other <input type="checkbox"/> (please specify)	

#### Section C – Make Ready Work Required

Please confirm that the following information has been provided with the Access Request Form by placing a tick next to the relevant box, and provide a document reference number:

<b>Details/design</b>	

**Section D – Documents to be provided with Access Request Form**

Please confirm that the following information has been provided with the Access Request Form by placing a tick next to the relevant box, and provide a document reference number:

<b>Document</b>		<b>Doc Ref No.</b>
1. Description of Facility to be accessed.	<input type="checkbox"/>	
2. Description of proposed Equipment to be installed (including shape, dimensions, weight, colour etc.).	<input type="checkbox"/>	
3. Description of proposed start location address and access point and end location address and access point, including substation number or pit identification number if available.	<input type="checkbox"/>	
4. [Design and Construction Proposal] detailing [##].	<input type="checkbox"/>	
5. Details of all easements and corridors used or crossed (including, if applicable, the Rail Corridor).	<input type="checkbox"/>	
6. Details of all required clearances and consents.	<input type="checkbox"/>	
7. A draft [Safe Work Method Statement].	<input type="checkbox"/>	
8. A draft [Emergency Event Plan].	<input type="checkbox"/>	
9. A [Site Specific OHS Management Plan].	<input type="checkbox"/>	

## SCHEDULE 2

### Access Offer

Dear [**Customer Responsible Officer**],

#### APPROVAL OF ACCESS REQUEST

We are pleased to advise that we accept your Access Request dated [##] on the terms set out in the attached Access Licence.

Please be advised that the Make Ready Work detailed in Annexure [##] of this notice, will need to be undertaken prior to the installation of the Equipment which you are authorised to install under the terms of the Access Licence.

Our estimate of the cost of carrying out the Make Ready Work is set out in Annexure [##] of this notice.

If you wish to accept this Access Offer, please execute the attached Access Licence and return to us within 20 business days of the date of this notice. Alternately, if you require further information to assess this Access Offer, please provide us with a copy of your request, setting out the additional information that you require within 10 business days of the date of this notice.

Please be advised that if you do not, within 20 business days, provide us with:

- (a) executed copy of the attached Access Licence; or
- (b) your request for further information to assist you in assessing the terms of this Access Offer,

then this Access Offer will lapse and a new Access Request will need to be submitted if you desire access to the relevant area at any point in the future.

Please do not hesitate to contact [**Name and Contact Details of Responsible Officer**] if you have any queries regarding this Access Offer or the terms of the Access Licence.

Kind regards

[**Name and Contact Details of Responsible Officer**]

**SCHEDULE 3**

**Pro Forma Access Licence**

Licence dated [##]:

1. This licence is subject to and forms part of the Facilities Access Agreement entered into by CitiPower Pty Ltd (**Utility**) and [**Customer**] (**Customer**) and dated [##]. Except as otherwise specifically provided in this Access Licence, the relationship of the Parties is solely governed by the terms and conditions of this Agreement.
2. [Special terms and conditions on which this Access Licence are set out in Annexure [##] to this document.] [to be used where special terms are required.]
3. The Facilities to which access is to be made available are set out in Annexure [##] to this document, including details of the location and manner of installation of the Equipment.
4. The scope and specifications of the Equipment which Customer is permitted to install pursuant to this Access Licence are set out in Annexure [##] to this document.
5. The dates on which the Facilities will be available for [Make Ready Work] [Site Operational Work] are:  
  
[##]
6. The Access Fees payable by Customer in respect of this Access Licence are set out in Annexure [##] to this document.

Facility Access Officer of Customer

Facility Access Officer of Utility

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

## SCHEDULE 4

### Fees and Rates

#### Item 1 Application Fee

The Application Fee is \$[##] per application per pole.

#### Item 3 Access Fee

The Access Fees will be calculated by multiplying the number of Facilities the subject of one or more current Access Licences by the sum of the following items, charged per annum (as adjusted in accordance with clause 14.5).

Additionally, where Distributor authorises shared use of a Facility pursuant to clause 6.4, a surcharge of 30% is added to the Access Fee for that Facility.

Equipment Item / Facility distribution area location	Starting annual fee
[##]	[##]
[##]	[##]
[##]	[##]

#### Item 4 Unlicensed Equipment Administration Fee

The Unlicensed Equipment Administration Fee will be [##] multiplied by:

- (i) the number of Days between the date on which Customer receives a notice under clause 3.6(a) and the date on which Distributor receives an Access Request in relation to the Facilities that are the subject of the notice; and
- (ii) the number of Facilities that the notice under clause 3.6(a) relates to.

#### Item 5 Schedule of Rates

Service or activity provided by Distributor for the benefit of Customer	Unit Rate
(a) Rates for Audit Fees	
(i) Audit of Site Works for compliance with this Agreement or the relevant Access Licence under clause 8.6(e)(i)	The applicable published ACS labour rates for the relevant period.
(ii) Audit of qualifications and of accreditations of Customer Personnel or Approved Contractors under clause <b>Error! Reference source not found.</b>	The applicable published ACS labour rates for the relevant period.

<b>Service or activity provided by Distributor for the benefit of Customer</b>	<b>Unit Rate</b>
(b) Rates for time and materials	
(i) Clerical assistance by Distributor Personnel (other than Distributor's contractors) (e.g. resolve scheduling or administrative queries)	The applicable published ACS labour rates for the relevant period.
(ii) General engineering project management and similar support provided by Distributor Personnel (other than Distributor's contractors) (e.g. resolution of Customer technical queries)	Office based support: The applicable published ACS labour rates for the relevant period Site attendance: The applicable published ACS labour rates for the relevant period, charged at a minimum 2hour period
(iii) Activities performed by Distributor's contractors	Quote
(c) Wasted Truck Visit	
(i) Payable where Distributor receives a request for a service truck and after inspection of the Facility it becomes clear that the service truck was requested because of the Equipment (and not due to any issues regarding the electricity distribution).	Wasted Service Truck Visit fee as per annually published Summary of Schedule of Charges which are published and amended annually by Distributor and effective from 1 January of each calendar year. The current Schedule of Charges can be viewed on Distributor's website.

**SCHEDULE 5**  
**Reporting Requirements**

[##]

## SCHEDULE 6

### Standards documents

Rules and Standards apply to Equipment (other than Telstra Network Equipment) include, but are not limited to, the following:

- (a) VESI Shared Use of Pole Code UITED
- (b) VESI Fieldworkers Handbook
- (c) VESI Skills and Training Matrix
- (d) Code of Practice on electrical safety for the distribution businesses in the Victorian Electricity Supply Industry (the Green Book)
- (e) Safety and Compliance Training Requirements for Telecommunications Work on Victorian Electricity Supply Industry (VESI) Network Operator Assets
- (f) Victorian Electricity Supply Industry Overhead Line Design Manual, Volume 1
- (g) Victorian Electricity Supply Industry Overhead Line Design Manual, Volume 2
- (h) UE Distribution Construction Standards Manual, Document No. UE MA 2004.
- (i) [AS 2772-1
- (j) Australian Communications Industry Forum c56CI:2004 – Deployment of Mobile Network Infrastructure
- (k) The Code of Engineering Practice for Shared Use of Poles.
- (l) EMC regulatory standards in section 162 of the *Radiocommunications Act 1992* (Cth).]

**[Distributor to include relevant updated standards documents relevant for wireless and wired technologies.]**

**EXECUTED** as an agreement.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**SIGNED** by **CITIPOWER PTY LTD**, by its duly authorised officer, in the presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**SIGNED** by [##] [**INSERT CUSTOMER CONTRACTING ENTITY**], by its duly authorised officer, in the presence of:

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name