

Electric Vehicle Charging Infrastructure Pole Access Agreement

Powercor Australia Ltd

ABN 89 064 651 109

(Distributor)

and

[insert Customer name]

ABN [insert Customer ABN]

(Customer)

2026

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THIS AGREEMENT is made on

2026

BETWEEN:

- (1) Powercor Australia Ltd ABN 89 064 651 109 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 Poles 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 licence to access the Poles 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 Area means, in respect of a Pole, the part of the Pole where the Equipment can be located in accordance with an Access Licence.

Access Fees means the fees payable by Customer for the right to install and to leave situated Equipment on the Poles.

Access Licence means a licence granted by Distributor to Customer in respect of a Pole.

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

ACS Labour Rates means the AER approved Alternate Control Services labour rates published in the Distributor's annual pricing proposal.

AER means the Australian Energy Regulator.

Application Fee means the fee described as Application fee and published from time to time on Distributor's website, 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, acting reasonably, 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 Poles;

- (b) is authorised by Distributor at the relevant time to work in, on or near the Poles 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 Poles that show the Site Works that have been completed under this Agreement.

Audit Fee mean the amounts calculated in accordance with the applicable rates in Item 3(a) of Schedule 1 as adjusted from time to time in accordance with clause 14.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of any state and territory fair trading legislation.

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).

Commencement Date means the date the last party has executed this Agreement.

Contestable Electricity Services takes the meaning given to that term by the AER's Ring-fencing Guideline Electricity Distribution published in accordance with Chapter 6 of the National Electricity Rules, as amended from time to time.

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

Direct Control Service takes the meaning given to that term by the National Electricity Law (being Schedule 1 to the *National Electricity (South Australia) Act 1996* (SA), as amended from time to time.

Electricity Distribution Function means the services Distributor provides under the terms of its electricity distributor's licence and network service provider registration under the Electricity Legislation.

Electricity Legislation means the *Electricity Industry Act 2000* (Vic), the *Essential Services Commission Act 2001* (Vic), the *Electrical Safety Act 1998* (Vic), the *Electricity Safety (Installations) Regulations 2009*, the *National Electricity (Victoria) Act 2005*, the National Electricity (Victoria) Law and Rules, any instrument made under or for the purposes of the foregoing 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, or change to the interpretation 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, the AER, the Australian Energy Market Operator or the ESC; 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 Poles, Distributor's Personnel, Approved 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 Pole;
- (c) threatens the integrity of the electricity network or any part of it; or
- (d) any other event which requires the exclusion of Customer's Personnel from any Pole, or cessation of the operation of any Equipment on a Pole, as defined by Distributor from time to time acting reasonably.

Equipment means the electric vehicle charging equipment owned by Customer described in an Access Licence for a Pole. For avoidance of doubt any electric vehicle charging equipment that does not accord with the description in the relevant Access Licence is not Equipment.

ESC means the Essential Services Commission of Victoria.

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.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation and includes any code of practice relating to the use of a Pole or any Equipment installed in, on or around a Pole.

Loss includes Indirect Losses, costs and expenses arising from or in any way connected with complying with any environmental, planning or other regulatory laws including public consultations, public inquiries and preparation of any plans or reports, 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 a Party, 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 Pole that meets the definition of a Direct Control Service.

Permitted Purposes means to install, operate and maintain the Equipment covered by an Access Licence.

Personnel means directors, officers, employees, agents, subcontractors, 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 Poles which has been caused, either directly or indirectly, by a defect in or interruption to the supply of electricity; or
- (d) any damage to Poles which has been caused, either directly or indirectly, by a failure or breakdown of equipment, whatsoever the cause of that failure or breakdown.

Pole means a pole the subject of a current Access Licence.

Related Electricity Service Provider takes the meaning given to that term by the AER's Ring-fencing Guideline Electricity Distribution published in accordance with Chapter 6 of the National Electricity Rules, as amended from time to time.

Removal Plan means the removal plan referred to in clause 20.8, which describes Customer's tasks, roles, responsibilities and time frames for removing the Equipment from the Poles.

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

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

- (a) allow Customer's Equipment to be installed on a Pole;
- (b) install Equipment on Poles in accordance with this Agreement;
- (c) repair Equipment in accordance with clause 11 (other than repairs which Distributor is required to undertake under clause 11);
- (d) relocate Equipment in accordance with clause 18.1; and
- (e) remove Equipment in accordance with clause 18.2.

Standards means:

- (a) Distributor's network standard and any other Distributor standard Distributor reasonably considers necessary, from time to time, to carry out the Electricity Distribution Function, as amended as Distributor considers reasonably necessary to protect its legitimate interests;
- (b) the documents listed in Schedule 3, as amended by the relevant authors from time to time; and
- (c) any other documents agreed by the Parties from time to time.

Tax means taxes, duties, levies, rates, fees and charges imposed by a Governmental Agency.

Third Party Approved Contractor means an Approved Contractor other than:

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

Unlicensed Equipment means equipment installed on a pole where:

- (a) the pole is not the subject of a current Access Licence under this Agreement;
- (b) the equipment differs from the scope, specifications or location for that Equipment under this Agreement;
- (c) or Customer has purported to create or grant an interest an interest in the equipment in default of clause 5.3(a),

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 3 of Schedule 1 payable to Distributor by Customer under clause 14.3 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 reference to a Party is to a party to this Agreement and includes their respective successors and permitted assigns.

- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a body corporate, an unincorporated body or other entity.
- (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) 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 and 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) any special terms of an Access Licence;
- (b) this Agreement;
- (c) the Schedules; and
- (d) any other terms of an Access Licence.

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.

2.2 **Renewal**

- (a) This Agreement may be renewed for a further period agreed by Distributor (in its absolute discretion, acting reasonably).
- (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) completing an application via Distributors online application method
 - (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.

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; or
 - (ii) 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), it will issue an access licence to Customer.

3.4 **Customer's notification**

- (a) Customer has 20 Days after receiving a access licence from Distributor under clause 3.3 to notify Distributor of its acceptance of the access licence by executing and returning a copy of the Access Licence to Distributor.
- (b) The access offer will lapse if Customer does not execute and return a copy of the Access Licence in accordance with 3.4(a).

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.
- (b) Either Party may decide not to proceed with an Access Licence at any time during the period described in 3.4(a) and prior to the execution of the Access Licence by them. Any Access Licence will be deemed to have lapsed on written notification of this to the other Party.

3.6 **Unlicensed Equipment**

- (a) In the event that there is 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 poles on which the Unlicensed Equipment is installed; or
 - (ii) remove the Unlicensed Equipment at Customer's cost, unless Customer can promptly show why this should not occur to Distributor's satisfaction, acting reasonably, and make good any damage or disturbance to the relevant poles caused by the installation or removal of such Equipment, to the condition in which the Poles existed at the commencement of this Agreement (fair wear and tear excepted).
- (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 3(b) of Schedule 1 to the extent they apply (and otherwise at cost).

4. **MAKE READY WORK**

4.1 **Make Ready Work undertaken by Distributor**

- (a) Make Ready Work must be undertaken by Distributor or Distributor's Approved Contractor, on Distributor's behalf.
- (b) Where Make Ready Work is to be undertaken at Customer's cost, Distributor will provide Customer with a quote for Distributor to perform all of the Make Ready Work required in connection with an Access Licence.
- (c) 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.

5. **INSTALLATION AND MAINTENANCE OF EQUIPMENT**

5.1 **Installation of Equipment**

- (a) Customer may install Customer's Equipment either itself or using Approved Contractor, on a Pole specified in an Access Licence on and from:
 - (i) where Distributor notifies Customer that Make Ready Works are required under clause 3.3, Distributor notifying Customer that those Make Ready Works are complete; or
 - (ii) otherwise, the Access Licence Commencement Date.
- (b) Customer may not undertake any Site Work in, on or near Poles until an Access Licence has been issued in relation to such Poles.

- (c) Customer must ensure that any Equipment installed on a Pole is maintained at all times in order to comply with all applicable Laws and Standards, 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.

5.2 Maintenance of Equipment

- (a) Subject to clause 10.1(c), Customer may maintain Equipment, which may include replacing Equipment, either itself or using an Approved Contractor, 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) For avoidance of doubt, any change to Equipment (including replacement of Equipment) that means the equipment does not accord with the description included in an 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

5.3 Restrictions on interests in Equipment

- (a) Customer must not create or grant any interest in the Equipment including any security interest without the prior written consent of the Distributor, which consent may require the proposed counterparty to agree to the terms of this Agreement. The Distributor must act reasonably in deciding whether to grant consent and to impose any condition on any consent granted.
- (b) If Customer purports to create or grant an interest of the kind described in clause 5.3(a) above, any associated equipment will immediately cease to meet the definition of Equipment and become Unlicensed Equipment.

5.4 Signage Requirements

Customer must ensure that any appropriate safety warning signs are installed on each Pole subject to the Access Licence in accordance with any applicable Law or Standard.

6. GRANT OF ACCESS LICENCE

6.1 Nature of Licences

- (a) Each Access Licence grants a non-exclusive licence to install, operate and maintain Equipment in, on or near the Poles in accordance with the terms and conditions of

this Agreement. For the avoidance of doubt, any special terms set out in the Access Licence form part of this Agreement and override any terms in this Agreement.

- (b) Customer acknowledges its rights are personal and rest in contract only and:
 - (i) do not create or vest in Customer any ownership or property rights in any Pole, or in the land or space they occupy; and
 - (ii) are subject to the rights of the Distributor and other persons to access the Pole.

6.2 **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 Pole 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 Pole;
- (c) the remaining Service Life of the Pole 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.

6.3 **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 Poles; and
 - (ii) all existing easements, covenants or other property dealings in relation to the Poles; and
 - (iii) Distributor's rights to full and unfettered access to the Poles at all times.
- (b) Customer acknowledges that:
 - (i) Distributor may not be excluded from accessing a Pole by any action of Customer; and
 - (ii) each Access Licence is subject to Customer obtaining and maintaining all necessary Clearances in accordance with clause 7.

7. **CLEARANCES**

7.1 **Customer to obtain and maintain**

Customer must, at its cost, obtain and maintain for the duration of this Agreement, all Clearances required by Law necessary to enable:

- (a) it to have the Equipment attached to the Poles; and
- (b) its end-users to access the Equipment.

7.2 **Proof of compliance**

Customer must provide to Distributor, at Customer's cost and on demand, such proof of all Clearances as Distributor may require. Customer must provide such proof of compliance before any Site Work is carried out.

7.3 **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 which Customer is required to obtain under clause 7.

7.4 **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 Pole, or to provide Customer with any form of assistance in obtaining the Clearances which Customer is required to obtain under clause 7.

8. **DISTRIBUTOR RIGHTS AND ACKNOWLEDGEMENTS**

8.1 **Rights**

The parties agree the Distributor may:

- (a) continue to access, use, inspect, maintain, repair and upgrade the Poles at any time 24 hours a day, 7 days a week;
- (b) in the event of an Emergency:
 - (i) exclude any Customer's Personnel or end-users from any Pole;
 - (ii) require Customer to interrupt the use of any Equipment; and
 - (iii) take any measure or perform any works on or in relation to any Equipment (including removing, relocating or powering down Equipment) notwithstanding that such measures and works may interrupt, damage, delay or interfere with the Equipment;
- (c) enter into other licence agreements or arrangements with third parties for access to Poles;
- (d) require Customer to interrupt or suspend the use of any Equipment if other users of the Pole experience interference to their equipment because of the Equipment; and
- (e) arrange for a contractor to remove or make safe on a Pole, anything that in the opinion of Distributor is unsafe in any respect.

8.2 **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, 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 8.2(c), Distributor may, at Customer's cost calculated in accordance with Item 3 of Schedule 1, either:
 - (i) conduct an audit;
 - (ii) take steps to rectify any non-compliant Site Work other than Site Work performed by Distributor or Distributor's nominated Approved Contractor or Equipment; or
 - (iii) remove any non-compliant Site Work other than Site Work performed by Distributor or Distributor's nominated Approved Contractor 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 8.2(d),as set out in, or calculated in accordance with Item 3 of Schedule 1.
- (f) Customer must pay Distributor fees in connection with any work undertaken by Distributor under clause 8.2(d)(ii) or 8.2(d)(iii) as set out or calculated in accordance with Item 3 of Schedule 1.

8.3 **Acknowledgments**

Distributor acknowledges that any Equipment that is installed on a Pole 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 Poles 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 Poles 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, at its own cost and risk;

- (f) 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;
- (g) Distributor makes no representations in relation to the current or future suitability of the Poles for the Permitted Purpose;
- (h) Distributor makes no representations in relation to any third party facilities installed in, on or near the Poles;
- (i) Customer enters into this Agreement with full knowledge, relying on its own enquiries into the nature and frequency of Power System Occurrences;
- (j) Distributor makes no representation that the Permitted Purpose complies with the terms of applicable Laws or other planning or development controls or that the Poles are suitable for the Permitted Purpose;
- (k) nothing in this Agreement impacts on or derogates from the obligations of Customer under applicable Law;
- (l) except as expressly provided for in this Agreement, Customer acquires no right, title or interest in the Poles or any other assets or equipment owned by Distributor;
- (m) 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 Poles that may be imposed by any Law or Standards from time to time; and
- (n) 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) Distributor agrees that it will promptly issue access authorisations to all persons meeting the requirements of paragraphs (a) and (b) in the definition of Approved Contractor.
- (b) Subject to clause 10.1(c), 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 this with the terms of the relevant Access Licence and this Agreement.
- (c) Customer acknowledges that where Site Work amounts to a Direct Control Service, only Distributor or its Approved Contractor on Distributor's behalf, may perform the Site Work.
- (d) Customer shall be liable for the acts and omissions of all Approved Contractors (other than Distributor).

10.2 **Restrictions on physical access**

- (a) Approved Contractors may only physically access the Poles to the extent required to perform Site Work.

- (b) Any other access to Poles (or any other assets of the Distributor) requires the prior written consent of Distributor (which consent may be withheld by the Distributor, acting reasonably).

10.3 **Attendance of Distributor's Personnel**

- (a) Distributor may, in its absolute discretion, require, the attendance of Distributor's Personnel at the time of any Site Work.
- (b) If Distributor requires the attendance of Distributor's Personnel at the time of any Site Work in accordance with clause 10.3(a):
 - (i) Distributor must act reasonably in proposing times for attendance of Distributor's Personnel; and
 - (ii) Customer must reimburse Distributor for the reasonable costs of the attendance of Distributor's Personnel under clause 10.3(a) in accordance with the rates in item 3 of Schedule 1

10.4 **Removal of Customer's Personnel or Approved Contractors**

Distributor may, or may require Customer to, promptly exclude or remove any Customer's Personnel from the vicinity of Poles 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 are not properly qualified or accredited; or
- (b) if required by Law or for safety or security reasons.

10.5 **Compliance with Standards**

Customer must ensure that any Third Party 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 reasonable 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); and
- (e) avoid interfering with, altering or damaging:
 - (i) Poles and any of Distributor's equipment that is installed on a Pole; and
 - (ii) the equipment of any third party installed on a Pole.

11. **REPAIR AND NOTIFICATION OF FAULTS**

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

Customer must:

- (a) at its cost inspect and maintain the Equipment installed on any Pole in a safe condition in accordance with all applicable Laws and Standards and this Agreement; and
- (b) co-operate with Distributor in facilitating any maintenance operations undertaken by Distributor in respect of the Poles.

11.2 Approved Contractor to repair Equipment

Customer must ensure that all maintenance or repair work on or in respect of any Equipment installed on a Pole is undertaken by an Approved Contractor.

11.3 Repairs

Where any:

- (a) Pole;
- (b) other hardware or equipment owned by Distributor; or
- (c) 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 this and Distributor will make repairs and will invoice Customer for their cost in accordance with the fees in item 3(b) of Schedule 1 to the extent they apply (and otherwise at cost).

11.4 Emergencies

In the event of an Emergency, Distributor will make any repairs in accordance with its established emergency and safety procedures. The Customer must reimburse Distributor for that portion of the cost of the repairs to the extent caused or contributed to by the act or omission of Customer.

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

Powercor Faults Powercor Faults operator

Phone: 13 24 12

12. OCCUPATIONAL HEALTH AND SAFETY

12.1 Customer acknowledgments

Customer acknowledges that:

- (a) there are safety risks associated with the supply of electricity and with working on and around the Poles, and that Customer, unless performed by Distributor or Distributor's Approved Contractor, undertakes and administers the Site Work and installation of Equipment with full knowledge of these safety risks; and
- (b) while Distributor will take reasonable steps to ensure that Poles 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, on a Pole.

12.2 Customer obligations

Customer must:

- (a) ensure the safety, health and welfare of its Approved Contractors or other persons who may be affected by:
 - (i) Customer's Site Work or other work which is carried out under this Agreement or the terms of the relevant Access Licence by or on behalf of the Customer; and
 - (ii) the operation of the Equipment or any equipment;
- (b) provide to Distributor, at no cost to Distributor, all information and/or training regarding Equipment, so that Distributor's Personnel or contractors can work safely on Poles or in relation to the disconnection and removal of the Equipment;
- (c) ensure that complete, accurate and up to date records of the training undertaken by all Approved Contractors who undertake work in, on or near Poles are maintained and arrange for Distributor to access those records if reasonably requested by Distributor;
- (d) ensure that any work permitted under this Agreement is undertaken only if the Pole at which that work is to be undertaken is safe and without risk to the health of any person;
- (e) 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 Equipment, of which it is aware;
- (f) 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 a Pole by any Approved Contractor; and
- (g) not interfere with the attendance of Distributor's Personnel in accordance with clause 10.3.
- (h) 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 presents a risk to health or safety of persons or property or the distribution of electricity;
 - (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 persons undertaking the Site Work other than Distributor or its nominated Approved Contractor 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 10.5 and 12.
- (c) Nothing in this Agreement imposes any duty or obligation upon Distributor to oversee or manage Customer's Site Work undertaken by a Third Party Contractor or to ensure that such Site Work is carried out in accordance with the Law and Standards.

14. **FEES**

14.1 **Payment of Access Fees**

- (a) The Access Fee will be payable by Customer with respect to each Pole.
- (b) Access Fees will be payable as set out in the Access Licence and Schedule 1.

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**

Distributor will give Customer a notice whenever the Distributor considers the Unlicensed Equipment Administration Fee will be payable by Customer for Unlicensed Equipment in respect of a Pole. The fee may be for any period the Distributor reasonably considers that the Unlicensed Equipment has been on a pole, and may also be for any period until the Unlicensed Equipment has an Access Licence. The notice will set out the Unlicensed Equipment Administration Fee payable by Customer and how it is calculated.

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 3(b) and Item 3(c) of Schedule 1.

14.5 **Annual Adjustment of Fees**

The Fees, excluding the Application Fee and the rates in Item 3 of Schedule 1, are to be adjusted annually on each 1 July by 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 the definition of variable C.

14.6 **Invoicing**

- (a) Access Fees are calculated for a Financial Year and are invoiced annually, in advance.
- (b) 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 the Customer or Distributor 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**

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 Access Licences granted, 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 Poles it expects to have access or 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 affects the Distributor's recovery of costs, or economic return, in relation to any Pole in respect of or by reference to any actual or assumed revenue or cost recovery from providing access (of any kind) to Poles.
- (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 Pole is apportioned equitably across all persons who access the Pole from Distributor on a commercial basis including any Related Electricity Service Provider of Distributor that accesses the Pole for the purpose of providing Contestable Electricity Services, having regard to the proportion that the revenue received from Customer in relation to the applicable Pole bears to the total revenue received by Distributor in respect of such Pole.

- (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 expressly stated to be exclusive of GST, 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, 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 any Tax:

- (a) 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; and

- (b) that arise in connection with the installation of any Equipment on the Poles which are imposed on Distributor or Customer on behalf of Distributor by a Governmental Agency.

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 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 Poles 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 Poles and Equipment located on any of Poles to minimise the disruption and inconvenience caused by Distributor and any Approved Contractor working on behalf of Customer working simultaneously on a Pole.
- (b) The Parties will co-ordinate the work programs on a good faith basis. However, Distributor's work program in connection with the performance of its Electricity Distribution Functions 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 Poles or to any Equipment installed on Poles, 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 on any pole and all poles on which the Customer has installed any equipment.
- (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 or as soon as possible where the Distributor notifies they are necessary in an Emergency.
- (c) Customer will provide reports to Distributor relating to its access to and use of Poles including reports on all Equipment installed in, on or near Poles under this Agreement, as listed in and at the frequency specified in Schedule 2.
- (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 2.
- (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 POLES OR EQUIPMENT**

18.1 **Relocation to a new position on the Pole**

- (a) Distributor may require Customer to relocate Equipment installed on a Pole to a new position on the Pole at the Distributor's cost or, if relocation is required by applicable Laws and Standards, at Customer's cost.
- (b) If Distributor requires Customer to relocate Equipment to a new position on a Pole 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 provide notice in writing to the Customer of its intention to relocate the Equipment itself and, no earlier than [5] Days after giving that notice, proceed to relocate the Equipment, at its own cost or, if relocation is required by applicable Laws and Standards, at the cost of Customer, provided that (i) the Equipment will achieve substantially the same quality, comparable performance, suitability and safety as was afforded the Equipment in respect of the existing position, and (ii) Customer has not advised Distributor that it will, and does, relocate the Equipment within [5] Days of the notice given under this paragraph. Customer must reimburse Distributor for its costs associated with such work in accordance with the rates in Item 3 of Schedule 1 to the extent they apply (and otherwise at cost).
- (d) Where Distributor has relocated Equipment under clause 18.1(c) 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 Poles**

- (a) Distributor may require Customer to relocate Equipment installed on a Pole to an alternative Pole at the Distributor's cost or, if relocation is required by applicable Laws and Standards, at Customer's cost.
- (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 Pole which affords substantially the same quality, comparable performance, suitability and safety as was afforded the Equipment in respect of the existing Pole;
 - (iii) to the extent practical, minimise any disruption to the operation of the Equipment; and
 - (iv) subject to clause 17.3, consult with Customer in relation to the design and progressive construction of any works at the alternative Pole.
- (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 Pole location specified in the Access Licence will be amended in accordance with the relocation notice;

- (ii) Customer must promptly acknowledge in writing to Distributor its acceptance of the alternative Pole; and
 - (iii) Customer must promptly, in accordance with Distributor's reasonable directions, relocate the Equipment to the alternative Pole.
- (e) If Customer fails to comply with its obligations under clause 18.2(d)(iii), Distributor may provide notice in writing to the Customer of its intention to relocate the Equipment itself and, no earlier than [5] Days after giving that notice, proceed to relocate the Equipment itself if the alternative Pole will achieve substantially the same quality, comparable performance, suitability and safety as was afforded the Equipment in respect of the existing Pole, and, if relocation is required by applicable Laws and Standards, Customer must reimburse Distributor in accordance with the rates in Item 3 of Schedule 1 to the extent they apply (and otherwise at cost).
- (f) Where Distributor has relocated Equipment under clause 18.2(e), 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 or fails to respond to the relocation notice within the time specified by clause 16.2(c):
- (i) the Access Licence will be amended to remove the relevant Pole; and
 - (ii) Customer must remove the Equipment from the relevant Pole as quickly as practical following such notice and reinstate such Pole to the state it was in prior to Customer accessing it, fair wear and tear excluded.

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 Pole permitted under this Agreement including for:
- (i) public and product liability to an amount of not less than \$20 million; and
 - (ii) damage (including the costs of demolition and removal) to a Pole and any property or equipment on Poles (whether owned by Distributor or any other person) which is caused by Customer, its contractors or end-users of Customer's equipment.
- (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 on an occurrence, as opposed to a claims made, basis; and
 - (iii) have no adverse exclusions, endorsements or alterations to the interest of the Distributor unless first approved in writing by Distributor acting reasonably.
- (c) Distributor 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 Pole permitted under this Agreement including for:
- (i) public and product liability to an amount of not less than \$20 million; and

- (ii) damage to any Equipment, including the costs of demolition and removal, and damage to any property of an end-user of the Equipment caused by the Distributor or its contractors.
- (d) On request, each Party will forward a copy to the other Party of certificates of currency for every policy of insurance above.

20. **TERMINATION OR EXPIRY**

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

- (a) Distributor may terminate an Access Licence with immediate effect by giving notice to Customer if:
 - (i) the Distributor's use of the relevant Poles in connection with the performance of its Electricity Distribution Functions may in a material way be adversely affected by Customer's use of such Poles and it is not reasonably practicable to relocate the Equipment to other Poles and such adverse effect is not, or cannot be, remedied by the Customer within a reasonable time notified by Distributor;
 - (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 Poles in connection with the performance of its Electricity Distribution Functions and such act or omission is not, or cannot be, remedied by the Customer within a reasonable time notified by Distributor;
 - (iii) Customer's management of any health, safety or public relations issue in relation to the relevant Poles or Equipment is inconsistent with any Law, Standard or reasonable health or safety requirement of Distributor and is not, or cannot be, remedied by the Customer within a reasonable time notified by Distributor;
 - (iv) Customer no longer has full legal ownership of the relevant Equipment and any other person with any ownership rights has not agreed with the Distributor to accept the terms of this Agreement;
 - (v) the relevant Poles are resumed or Distributor ceases to have rights to such Poles (including where Distributor is a licensee or lessee of such Poles, and that licence or lease is terminated); or
 - (vi) the relevant Poles are destroyed or damaged so as to render such Poles unfit for the purposes of this Agreement.
- (b) Distributor may terminate an Access Licence by giving reasonable notice to Customer if it is necessary to rebuild or replace the relevant Poles or effect any change in Distributor's use of such Poles in connection with the performance of its Electricity Distribution Functions and such rebuilding, replacement, removal or change cannot reasonably be carried out without termination of access to them and it is not reasonably practicable to relocate the Equipment to other Poles.

20.2 **Immediate termination of Agreement by Distributor**

Distributor may terminate this Agreement with immediate effect by giving notice to Customer if:

- (a) Customer fails to rectify any material breach of any Law or Standard applicable to the relevant Equipment or the Poles within 30 Days of written notice from Distributor;

- (b) there is a Change in Law which makes it illegal for Distributor to provide Customer with access to the Poles;
- (c) Customer fails to rectify any material breach of this Agreement within [30] Days of written notice from the Distributor.

20.3 **Termination of Agreement by Distributor**

Distributor may terminate this Agreement on giving 180 Days written notice to Customer.

20.4 **Termination of Access Licence by Customer**

- (a) Customer may terminate an Access Licence with immediate effect by giving notice to Distributor if:
 - (i) Distributor's management of any health, safety or public relations issue in relation to the relevant Poles or Equipment is inconsistent with any Law, Standard and is not, or cannot be, remedied by the Distributor within a reasonable time notified by Customer; or
 - (ii) it is necessary to rebuild or replace the relevant Equipment;
 - (iii) the relevant Poles are resumed, or Distributor ceases to have rights to grant access to such Poles (including where Distributor is a licensee or lessee of such Poles, and that licence or lease is terminated); or
 - (iv) the relevant Poles are destroyed or damaged so as to render such Poles unfit for the purposes of this Agreement.

20.5 **Immediate termination of Agreement by Customer**

Customer may terminate this Agreement with immediate effect by giving notice to Distributor if:

- (a) Distributor does not rectify any material breach of any Law or Standard applicable to the Poles within 30 Days of written notice from Customer;
- (b) there is a Change in Law which makes it illegal for Customer to access the Poles;
- (c) Distributor fails to rectify any material breach of this Agreement within 30 Days of written notice from the Customer.

20.6 **Termination of Agreement by Customer**

Customer may terminate this Agreement on giving 90 Days written notice to Distributor.

20.7 **Termination of Agreement by either Party**

In addition to any rights a Party may have under this Agreement 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 27.8(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) 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
- (e) 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.

20.8 **Removal of Equipment**

- (a) Upon the termination or expiry of each Access Licence or this Agreement, Customer's right to access or use the Poles is at an end other than for the purposes of removing Equipment in accordance with the Removal Plan.
- (b) Upon the termination or expiry of each Access Licence, Customer must, at its own cost, in accordance with clauses 12, 13 and the Removal Plan that applies to the relevant Poles, and to the satisfaction of Distributor:
 - (i) remove or have removed all Equipment from the relevant Poles; and
 - (ii) make good any damage or disturbance to the relevant Poles caused by the installation or removal of such Equipment, to the condition in which the Poles 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 Fees and other charges due to Distributor under this Agreement until the date when all Equipment is physically removed from the Poles.
- (d) If Customer fails to remove all Equipment, then 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 3 of Schedule 1 to the extent they apply (and otherwise at cost).
- (e) Customer agrees that its compliance with 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.

20.9 **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 Pole after termination or expiry of the relevant

Access Licence or this Agreement. Distributor may use or deal with any such Equipment as it sees fit as if it were the property of Distributor.

20.10 **Consequences of termination or expiry**

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.

- (a) 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.
- (b) Termination or expiry of this Agreement will terminate any Access Licences current as of the date of such termination or expiry.

20.11 **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 and subject to Law (which, for clarity, includes the Australian Consumer 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 a Party, its employees, officers, agents or contractors be liable to the other Party 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 the Party or its employees', officers', agents' or contractors' negligence or any breach of this Agreement);
 - (iii) a Party, its employees, officers, agents or contractors will only be liable to the other Party 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 the Party, its employees, officers, agents or contractors and liability for that Loss is otherwise not excluded by this Agreement;
 - (iv) subject to clause 21.1(b), the aggregate liability of a Party and its employees', officers', agents' and contractors', in connection with this Agreement is \$20,000,000
- (b) the liability of Distributor, its employees, officers, agents and contractors for a failure to comply with any applicable guarantee under the Australian Consumer Law is limited, at Distributor's option, to any one or more of the following:
 - (i) if the breach relates to a supply of 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 a supply of 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 the other party 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 the party to perform obligations in accordance with this Agreement;
 - (ii) any damage to Poles, property, 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 injury, Loss or damage suffered by any person in, on or near a Pole;
 - (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 the other party 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 in accordance with clause 7.

- (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 pay any Tax under this Agreement.

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 below or the address last notified by the intended recipient to the sender after the date of this Agreement:
 - (i) to Distributor

Attention:	Network Access Manager
Email:	EVCIpoleaccess@powercor.com.au
 - (ii) to [Customer]:

Attention:	[Customer contact]
Email:	[Customer contact email address]
- (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. **RESOLUTION OF DISPUTES**

26.1 **Disputes**

- (a) If a dispute arises between the Parties in connection with this Agreement neither Party may issue legal proceedings in respect of that dispute unless it has first complied with this clause. The disputing Party must give written notice of the dispute ("**Dispute Notice**"), including reasonable particulars to the Responsible Officer of the other Party.
- (b) Senior officers of each Party must meet within [10] Days of receipt of the Dispute Notice and endeavour to resolve the dispute in good faith within [30] Days. If the dispute is not resolved within the [30 Day] period referred to (or such longer period as the parties agree in writing), either Party may refer the dispute to mediation by a mediator to be agreed between the parties, or if the parties are unable to agree upon a mediator within [10] Days, a mediator to be nominated by the President for the time being of the Resolution Institute or their nominee. Mediation must be conducted in Melbourne under the Resolution Institute rules.
- (c) Either Party may issue legal proceedings, in respect of the matters the subject of the dispute, only if a mediation does not result in a settlement of the dispute within [60 Days] after the Dispute Notice (or such longer period as the parties agree in writing). Nothing in this clause will preclude a Party from seeking urgent injunctive relief in cases of genuine urgency without having complied with the requirements of this clause.

27. **GENERAL**

27.1 **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.

27.2 **Exclusion of statutory rights**

- (a) Customer acknowledges that for as long as this Agreement remains in force subject to applicable Law (which, for clarity includes the Australian Consumer Law and Electricity Legislation):
 - (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 Pole;
 - (ii) Customer will only access a Pole pursuant to the terms and conditions of this Agreement.
- (b) For the avoidance of doubt, where an Access Licence or this Agreement is terminated or expires, Customer ceases to have any right to have Customer's Equipment located on the relevant Pole.
- (c) Customer agrees that any Equipment installed in breach of this clause will be treated as Unlicensed Equipment.

27.3 **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) in any other case, the whole provision is to be severed;
 - (iii) and the remainder of this Agreement has full force and effect.

27.4 **Costs and Stamp Duty**

Each Party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

27.5 **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.

27.6 **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.

27.7 **Amendment**

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

27.8 **Assignment and Subcontracting**

- (a) Customer may not assign, sub lease, 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 poles.

27.9 **Waiver, Remedies Cumulative**

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement by a Party 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 a Party under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by Law.

27.10 **Third Party Benefit**

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

27.11 **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.

27.12 **Counterparts**

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

SCHEDULE 1

Fees and Rates

Item 1 Access Fee

The Access Fees will be calculated by multiplying the number of Poles by the sum of the following items, charged per annum (as adjusted in accordance with clause 14.5).

EVCI negotiated service - pole rental fee (\$ per pole per annum)				
FY26/27	FY27/28	FY28/29	FY29/30	FY30/31
Year 1	Year 2	Year 3	Year 4	Year 5
\$1,254.55	Year 1 + CPI	\$827.90 + CPI	Year 3 + CPI	Year 4 + CPI

*Year 3 Access Fee is reflective of current values; actual Year 3 rate will be the figure shown adjusted for CPI

Item 2 Unlicensed Equipment Administration Fee

The Unlicensed Equipment Administration Fee in respect of a Pole, is three times the Access Fee for each Equipment item. The fee may be for any period the Distributor reasonably considers that the Unlicensed Equipment has been on a pole, calculated pro rata as a daily rate, up to and until the Unlicensed Equipment has an Access Licence or is removed.

Item 3 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 8.2(e)(i)	The applicable published ACS labour rates for the relevant period.
(ii) Audit of qualifications and of accreditations of Customer's Personnel	The applicable published ACS labour rates for the relevant period.
(b) Rates for time	
(i) Clerical assistance by Distributor's Personnel (other than Distributor's contractors) (e.g. resolve scheduling or administrative queries)	The applicable published ACS Labour Rates for the relevant year.

Service or activity provided by Distributor for the benefit of Customer	Unit Rate
(ii) General engineering, project management and similar support provided by Distributor's 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 Pole attendance: The applicable published ACS Labour Rates for the relevant year, charged at a minimum 2 hour 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 Pole 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 2

Reporting Requirements

Report	Minimum Content	Frequency
As Built Report	The underground cable plan for the earth cable, Pole, location details, installation date, installer company details.	Within 10 business days of the installation works
HSE Performance Report	<p>The HSE Performance Report is to provide the following information</p> <ul style="list-style-type: none"> • Safe Work Method Statement (SWMS) • Incident reports, including near misses • Documents listed in the Access Request Form 	As requested by the Distributor if required
Customer Design Installation and Construction Documents	This Document is to provide the Distributor with design drawings, construction and commissioning of each type of technology	Prior to the installation of the technology type on the Distributor's Pole

SCHEDULE 3

Standards documents

Rules and Standards apply to Equipment include, but are not limited to, the following:

- (a) Relevant Victorian Electricity Supply Industry (VESI) requirements and documentation such as; Shared Use of Pole Code (2020), Fieldworkers Handbook, Skills and Training Matrix, The Green Book and any other relevant Victorian Electricity Supply Industry
- (b) The Victorian Service & Installation Rules
- (c) The Australian Standards (technical and manufacturing)
- (d) The Distributors Pole Mounted Electric Vehicle Charging Infrastructure Guideline

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 **POWERCOR AUSTRALIA LTD**, by its duly authorised officer, in the presence of:

Date

Signature of witness

Signature of officer

Name

Name

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

Date

Signature of witness

Signature of officer

Name

Name