Essential System Services Agreement

Pilbara ISOCo Limited

and

[ESS Provider]

[This is Annexure 1 to the Request for Proposal]

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Essential System Services Agreement

Date 2024

Parties

|  |  |
| --- | --- |
| ISO | Pilbara ISOCo Limited ACN 650 785 783 of Level 11, 12-14 The Esplanade Perth WA 6000 |
| ESS Provider | [Insert] |

Recitals

1. The ISO is appointed to the role of independent system operator for the NWIS and has functions which include maintaining and improving system security in any interconnected Pilbara system and facilitating overall network coordination and planning for interconnected Pilbara systems.
2. The ISO is required under Subchapter 8.1 of the PNR to procure Essential System Services for the NWIS.
3. The ESS Provider has agreed to provide the Services on the terms and conditions of this agreement.

**This agreement provides**

# Definitions

1. **Act** means the *Electricity Industry Act 2004* (WA).

**Authority** means any government, local authority or regulatory department, minister or agency of any government or other authority, agency, commission, court, tribunal or similar entity having powers or jurisdiction under any law or regulation.

1. **Available** means, in respect of a Service at any time, that the Service is or is capable of being provided by the Equipment in accordance with this agreement.
2. **Base SRESS** means the service described as such in Schedule 2.
3. **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.
4. **Change in Control** means in relation to the ESS Provider, the occurrence of any of the following:
   1. a change in the shareholding of the ESS Provider (provided that the ESS Provider is not listed on a recognised securities exchange) that results in a different person or group of persons having control of the composition of the board of directors or 50% or more of the shares giving a right to vote at general meetings; or
   2. a change in the shareholding of the ESS Provider’s holding company (provided that the holding company is not listed on a recognised securities exchange) that results in a different person or group of persons having control of the composition of the board of directors or 50% or more of the shares giving a right to vote at general meetings.
5. **Change in Law** means any change in or repeal of a Law which occurs after the date of execution of this agreement (unless the change is published before the date of execution of this agreement) and which has a material adverse effect on the rights or obligations of a party under this agreement (including the cost of providing the Services) excluding a change in Law relating to income tax, a tax on capital gains, or taxes, imposts or charges of a similar nature.
6. **Claim** means any claim, loss, liability, cost or expense, whether arising in contract, tort (including negligence), equity or otherwise.
7. **Conditions Precedent** means the conditions precedent set out in clause 3.2**.**
8. **Conditions Precedent Satisfaction Date** is specified in item #3 of Schedule 1.
9. **Contract Commencement Date** is specified in item #4 of Schedule 1.
10. **Contract Term** means the period starting at 00:00 hours on the Contract Commencement Date and ending at 24:00 hours on the Expiry Date (as may be extended under clause 7.1)].
11. **Corporations Act** means the Corporations Act 2001 (Cth).
12. **Credible** has the meaning set out in the PNR.
13. **EBAS Procedure** has the meaning set out in the PNR.
14. **Enable** has the meaning set out in the PNR.
15. **Equipment** is specified in item #2 of Schedule 1.
16. **Essential System Service** has the meaning set out in the PNR.
17. **Expiry Date** is specified in item #5 of Schedule 1.
18. **Force Majeure Event** means any event or circumstance not within the reasonable control of the party affected by it and which by the exercise of due diligence and compliance with Good Electricity Industry Practice the affected party is not reasonably able to prevent or overcome including the following if they fall within the above criteria:
    1. acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, cyclones, tidal waves, landslides, adverse weather conditions, fires and any natural disaster; or
    2. acts of war (declared or undeclared), acts of public enemies, riots, civil disturbance, malicious damage, sabotage, blockade, revolution, riot and insurrection; or
    3. strikes, lockouts or other labour difficulties other than those which are specific to the affected party; or
    4. unforeseen or unpreventable breakage or accident or other damage to any plant, machinery or equipment lines, or pipes resulting in the partial or complete shutdown of the Equipment but not where this is caused by norma wear and tear or the failure to properly maintain and/or stock spare parts; or
    5. embargo, inability to obtain any necessary materials, equipment, facilities or qualified employees, power or water shortage or lack of, or delay in, transportation; or
    6. the inability of the ESS Provider to provide a Service due to interruption or curtailment occurring under any contracts between the ESS Provider and a third party for the supply, transport or delivery of natural gas or diesel to the Equipment provided that such interruption or curtailment is not due to an act, omission or default of the ESS Provider under any of those contracts; or
    7. the inability of the ESS Provider to provide a Service due to a force majeure event epidemic, pandemic or quarantine; or
    8. acts or omissions (whether legislative, executive or administrative) of any Authority;
19. but excluding:
    1. a lack of funds, financial hardship or the inability of a party to make a profit or achieve a satisfactory rate of return,
    2. loss of customers or market share.
20. **Generating Unit** has the meaning set out in the PNR.
21. **Good Electricity Industry Practice** has the meaning set out in the PNR.
22. **GST** means the goods and services tax imposed under the GST Law.
23. **GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
24. **Insolvency Event** means the occurrence of any one or more of the following events in relation to a party:
    1. it is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable Law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
    2. any step is taken to appoint a receiver, a receiver and manager, a liquidator or a provisional liquidator or other like person to it or any of its assets, operations or business;
    3. an administrator is appointed to it under section 436A, section 436B or section 436C of the Corporations Act;
    4. a controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
    5. an application is made to a Court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed, and that application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
    6. any step is taken to enter into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
    7. it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
    8. it is taken to have failed to comply with a statutory demand under section 459F(1) of the Corporations Act;
    9. a notice is issued under section 601AA or section 601AB of the Corporations Act and not withdrawn or dismissed within 15 Business Days;
    10. a writ of execution for an amount of in excess of $100,000 is levied against it or a material part of its property which is not dismissed within 15 Business Days;
    11. it ceases to carry on business or threatens to do so; or
    12. anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in paragraphs (a) to (k) of this definition.
25. **ISO Control Desk** has the meaning set out in the PNR.
26. **Law** means:
    1. common law and equity (if applicable);
    2. a present or future obligation or “function” arising “under” a “written law” of any jurisdiction as “amended” from time to time (where words in quotation marks have the meanings given by the *Interpretation Act 1984* (WA);
    3. any Authority requirements or guidelines; and
    4. includes the PNR, and any procedure made under the PNR.

**NWIS** has the meaning set out in the PNR.

**Payer** has the meaning given to it in Subchapter 8.3 of the PNR.

**Personnel** in relation to a party, means any of its employees, representatives, directors, officers, agents or contractors.

**Planned Maintenance** means routine or planned inspection, testing, preventative maintenance, corrective maintenance, repairs or replacement of any part of the Equipment in accordance with the maintenance program set out in Schedule 3, as may be amended in accordance with clause 8.2.

**PNAC** has the meaning set out in the PNR.

1. **PNR** means the Pilbara Networks Rules made under the Act as amended from time to time (and includes the Harmonised Technical Rules (as defined in the PNR)), and a reference to a specific rule is to the rule so numbered in PNR Version dated 1 July 2023.
2. **Power System** has the meaning set out in the PNR.
3. **Primary FCESS** means the service described as such in Schedule 2.
4. **Quarter** means a three month period beginning on 1 January, 1 April, 1 July or 1 October.
5. **Received Information** means any information that the ESS Provider receives in its capacity as ESS Provider under this agreement.
6. **Rules Dispute** has the meaning set out in the PNR.
7. **Secure State** has the meaning set out in the PNR.
8. **Service** means a service set out in item #1 of Schedule 1.
9. **Service Charge** means the service charge in respect of each Service set out in item #7 of Schedule 1.
10. **Settlement Period** has the meaning set out in the PNR.
11. **Supplementary SRESS** means the service described as such in Schedule 2.
12. **Supplementary SRESS Activation Notice** means an oral or written communication from the ISO Control Desk to the ESS Provider calling on or Directing it to Enable a Generating Unit under Supplementary SRESS.
13. **Supplementary SRESS Activation Period** means,for each occasion on which a Generating Unit is Enabled under Supplementary SRESS, the period between the Supplementary SRESS Activation Time and the Supplementary SRESS Deactivation Time.
14. **Supplementary SRESS Activation Time** means the time at which a Supplementary SRESS Activation Notice is given, unless the notice specifies a later time for the Generating Unit to be Enabled in which case it means that later time.

**Supplementary SRESS Deactivation Notice** means an oral or written communication from the ISO Control Desk to the ESS Provider notifying it that the obligation to Enable a Generating Unit under Supplementary SRESS has or will come to an end.

**Supplementary SRESS Deactivation Time** means the time at which a Supplementary SRESS Deactivation Notice is given, unless the notice specifies that the obligation to Enable a Generating Unit under the Supplementary SRESS Service will come to an end at a later time, in which case it means that later time.

1. **Unavailable** means not Available.
2. **Visibility** has the meaning set out in the PNR.
3. **Wilful Misconduct** means an intentional and conscious disregard of any provision of this agreement, but does not include any error of judgment or mistake made by a person alleged to be culpable or by any director, employee, agent or contractor of that person in the exercise, in good faith, of any function, power, authority or discretion conferred on that person under this agreement or under any law.

# Interpretation

### Capitalised terms used in this agreement which are defined in the PNR and not otherwise defined in this agreement have the same meaning as set out in the PNR.

### If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.

### The singular includes the plural and vice versa.

### A reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this agreement.

### The word *includes* and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this agreement.

### The word *under* has the meaning in the *Interpretation Act 1984* (WA).

### A reference to a document includes a variation or replacement of it.

### A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.

### A reference to this agreement includes an annexure.

### A heading is for convenience only and does not affect the interpretation of this agreement.

### A reference to person includes a reference to:

#### a natural person, a body corporate, a trust, a partnership, a joint venture, an unincorporated body or other entity;

#### if the person is a natural person, the person’s personal representatives and assigns; and

#### if the person is not a natural person, the person’s successors and assigns.

### Part performance of an obligation does not constitute performance of an obligation.

### A reference to currency is to Australian currency.

### A reference to time is to Perth, Western Australia time.

### A reference to a day is a reference to the period which starts at midnight and ends 24 hours later.

### If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.

# Conditions Precedent

## Except for clauses 19 to 34 and this clause 3, this agreement does not become binding and has no force or effect unless and until all of the Conditions Precedent have been either satisfied, or waived in accordance with this clause 3.

## The ESS Provider must satisfy the following Conditions Precedent by the Conditions Precedent Satisfaction Date:

### [The ESS Provider must be registered as a ‘registered controller’ under Subchapter 4.1 of the PNR.] [*Note: Can be deleted if the ESS Provider is already a registered controller at the time of entry into the contract.*]

### [*any others?*]

## The ESS Provider must promptly provide written notice to the ISO upon satisfaction of each Condition Precedent.

## The Condition Precedent in clause 3.2(a) [*add any others*] is for the sole benefit of the ISO and is only waived if the ISO notifies the ESS Provider in writing that the ISO waives the Condition Precedent.

## [The Condition Precedent in clause [*add any CP’s for benefit of ESS Provider*] is for the sole benefit of the ESS Provider and is only waived if the ESS Provider notifies the ISO in writing that the ESS Provider waives the Condition Precedent.]

## If any Condition Precedent is not fully satisfied or waived by the Conditions Precedent Satisfaction Date, the ISO or the ESS Provider may, prior to satisfaction or waiver in accordance with this clause 3, terminate this agreement by giving the other party not less than 2 Business Days’ notice.

## If this agreement is terminated under clause 3.6, this agreement is of no further effect and the parties are released from any further obligation or liability under this agreement (other than in respect of any antecedent breaches of this agreement).

# Supply of services

## The ESS Provider must:

### remain registered as a ‘registered controller’ under Subchapter 4.1 of the PNR at all times during the Contract Term; and

### ensure that each Service is Available for at least the minimum periods set out in clause 6; and

### provide and maintain Visibility in accordance with rule 106 of the PNR; and

### Enable each Service requested by the ISO at any time during the Contract Term in accordance with item #6 of Schedule 1; and

### keep each Service Enabled in accordance with the Service requirements in item #1 of Schedule 1.

## The ISO may, but is not obliged to, request the ESS Provider to Enable a Service under this agreement.

## A Direction or other notice by the ISO to the ESS Provider under the PNR to Enable or Disable a Service has effect also as a notice under this agreement.

## The ESS Provider must perform its obligations under this agreement in good faith having regard to the “ESS objectives” in rule 199 of the PNR.

# Activation of Supplementary SRESS

## The ISO Control Desk may give a Supplementary SRESS Activation Notice at any time during the Contract Term, including while one or more other Supplementary SRESS Activation Notices are in effect under this agreement or other agreements.

## A Supplementary SRESS Activation Notice may, but does not have to, specify the location or other characteristics (or both) of a Generating Unit to be started.

## The ISO Control Desk may, but does not have to, apply a dispatch merit order in choosing between Supplementary SRESS providers, which may take into account price, geographical location or other factors.

## The ISO Control Desk’s dispatch merit order may, but does not have to, take account of machines’ expected governor response speeds as follows:

### when choosing between Supplementary SRESS providers and Generating Units; and

### by weighting the prices set out in Supplementary SRESS providers’ agreements, including this agreement.

## The ISO Control Desk may specify, extend or shorten any duration of Supplementary SRESS Activation Period as it sees fit.

## Without limiting clauses 5.1 to 5.5, the ISO Control Desk must, so far as practicable consistent with its other obligations under the PNR and the prevailing circumstances:

### endeavour to minimise the occasions on which, and duration for which, Supplementary SRESS is Activated; and

### when considering which Generating Units to Enable, endeavour to cause as little disruption as possible to a Generator’s operational flexibility.

## Despite clause 5.6, in an emergency or in other unusual operational circumstances where the ISO Control Desk determines that there is no other practicable alternative to keep the Power System in, or return the Power System to, a Secure State, the ISO Control Desk may request a Generator to cancel or defer a planned Outage of a Generating Unit, or to recall a Generating Unit from Outage, in order to have the Generating Unit provide Supplementary SRESS, in which case the Generator must use its best endeavours in accordance with GEIP to comply.

## Noting in this agreement limits the ISO Control Desk’s ability to Enable a Generating Unit under PNR rule 215(b).

# Minimum Service Availability

## For Primary FCESS and Base SRESS, the ESS Provider must ensure that the Service is Available for at least 98% of the Contract Term.

## The ESS Provider must meet the requirement in clause 6.1 despite any Planned Maintenance.

## For the purposes of determining whether the requirement in clause 6.1 for a Service has been met, the Availability of the Service is calculated as A/B x 100, expressed as a percentage, where:

### A = the total number of minutes in the Contract Term during which the Service was Available; and

### B = the total number of minutes in the Contract Term.

## For Supplementary SRESS, subject to clause 6.5 the ESS Provider must ensure that the Service is available for 100% of each Supplementary SRESS Activation Period.

## The obligation in clause 6.4 does not apply in respect of a Generating Unit to the extent that:

### the Generating Unit is, or is scheduled to be, under Planned Maintenance at the Supplementary SRESS Activation Time (unless clause 5.7 applies); or

### complying with clause 6.4:

#### is impossible; or

#### is inappropriate due to prevailing emergency circumstances; or

#### would be contrary to any law; or

#### may cause or exacerbate a situation which risks physical injury or death to any person or material damage to any Equipment.

# Extension of Contract Term

## The ISO may extend the Contract Term in respect of one or more Services for a period of up to 12 months by giving the ESS Provider notice in writing at least 1 month before the Expiry Date expressing the ISO’s intention to extend the Contract Term for the period specified in the notice.

## If the ISO extends the Contract Term in relation to some but not all of the Services, the Services which are not extended will cease on the Expiry Date.

# Maintenance

## The ESS Provider must:

### operate and maintain the Equipment in accordance with:

#### Good Electricity Industry Practice;

#### the requirements of all relevant Laws; and

### maintain its rights of access to and use of the NWIS in respect of the Equipment.

## The Planned Maintenance program for the period 1 July 2024 to 30 June 2025 is set out in Schedule 3. The ISO and the ESS Provider may from time to time agree changes to the maintenance program. Any agreed changes must be recorded by the parties in writing.

## The ESS Provider must promptly notify the ISO in writing if any changes or modifications are proposed to the Equipment which could reasonably be expected to impact the Availability or reliability of the Equipment. The ISO may require the ESS Provider to conduct a test, at the cost of the ESS Provider, to demonstrate compliance with the Availability or Enablement requirements of this agreement following any such changes or modifications being made.

# Inability or failure to provide Services

## If at any time during the Contract Term, the ESS Provider considers that a Service is, or it is Credible it will become, Unavailable for any reason, it must promptly on a 24/7 basis notify the ISO specifying:

### the Service the notice applies to;

### when the Service became, or will become, Unavailable;

### how long the ESS Provider expects the Unavailability to continue; and

### the cause of the Unavailability,

and the ESS Provider must notify the ISO when the Service becomes Available again.

## If a Service is Unavailable for any reason other than a Force Majeure Event, the ESS Provider must:

### diligently at its own expense promptly take all necessary remedial action to ensure that the Equipment can provide the relevant Service under this agreement; and

### promptly advise the ISO of the proposed timetable for implementing the remedial action and keep the ISO informed of progress; and

### after taking the remedial action, submit such evidence as the ISO may reasonably require to demonstrate to the ISO’s reasonable satisfaction that the Service is Available.

## Nothing in this clause 9 affects any rights of the ISO in respect of a breach of this agreement by the ESS Provider, including any breach of the ESS Provider’s obligations under clauses 4 or 6.

# Records, audit and inspection

## The ESS Provider must:

### maintain a true and accurate set of accounts and records regarding this agreement including the provision of the Services under this agreement, the operation, maintenance and testing of the Equipment; and

### properly record all transactions in relation to this agreement (including payments made or received in connection with this agreement); and

### retain and ensure that its Personnel retain any of the accounts, books and records referred to in this clause 10 for a period of no less than 5 years after the termination of this agreement.

## The ISO may request from the ESS Provider, from time to time, and the ESS Provider must provide within 5 Business Days of the request any information as the ISO might reasonably require in connection with the provision of the Services under this agreement.

## The ISO may, upon reasonable notice to the ESS Provider and at reasonable times, audit any of the accounts and records maintained under clause 10.1.

## The ISO may, upon reasonable notice to the ESS Provider and at reasonable times, inspect any of the Equipment to determine whether the ESS Provider is complying with this agreement.

## The ESS Provider must provide the ISO and its Personnel with all reasonable assistance they may require to conduct an audit or inspection under this clause 10.

## The ISO must ensure that it does not unduly interfere with the ESS Provider’s general business or operations in conducting any audit or inspection under this clause 10.

# Service Charge

## The parties acknowledge that:

### the ESS Provider is entitled under the PNR to payment of the Service Charge for each Service by one or more Payers, in accordance with rules 239 to 243 of the PNR; and

### the ISO is not obliged to make any payment for or in respect of a Service.

## The Service Charge is exclusive of GST.

## Each “payment note” issued by the ISO under rule 239 of the PNR must be in the form of a “tax invoice” under the GST Law.

# Energy balancing and settlement

The parties acknowledge that the ISO will undertake energy balancing and settlement in accordance with Subchapters 8.2 and 8.3 of the PNR and the EBAS Procedure in respect of each Service which is Enabled during the Contract Term.

# ISO Liability

## Subject to clause 13.2, the total liability of the ISO in respect of any and all Claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with this agreement or the provision of the Services is limited to a maximum aggregate amount equal to the higher of:

### the aggregate Service Charge payable over the Contract Term; and

### $5,000,000.

## Regardless of the nature of any Claim, the ISO is not liable in any circumstances for any:

### damages or losses that are not direct and do not flow naturally from a breach of this agreement, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this agreement;

### loss of market, opportunity or profit (whether direct or indirect).

## The limitation of liability in clause 13.1 will not apply to any liability arising out of or in connection with fraud or Wilful Misconduct on the part of the ISO.

# ESS Provider Liability

## Subject to clause 14.2, and other than any amounts payable under Chapter 8 of the PNR in connection with this agreement, the total liability of the ESS Provider in respect of any and all Claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with this agreement or the provision of the Services is limited to a maximum aggregate amount equal to the higher of:

### the aggregate Service Charge payable over the Contract Term; and

### $5,000,000.

## Regardless of the nature of any Claim, the ESS Provider is not liable in any circumstances for any:

### damages or losses that are not direct and do not flow naturally from a breach of this agreement, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this agreement;

### loss of market, opportunity or profit (whether direct or indirect).

## The limitation of liability in clause 14.1 will not apply to any liability arising out of or in connection with fraud or Wilful Misconduct on the part of the ESS Provider.

# Immunity under the Act

Nothing in this agreement is intended to constitute a contract which, pursuant to regulation 24 of the *Electricity Industry (Pilbara Networks) Regulations 2021*, limits, excludes or varies the operation of any immunity granted under the Act or regulations under the Act. The monetary caps in clauses 13.1and 14.1 are intended to apply only to liability which is not otherwise excluded by the immunities.

# Force Majeure

## A party will be excused for failing to perform any of its obligations (excluding an obligation to pay money), in whole or in part, or for otherwise being in breach of any obligation under this agreement if and to the extent that the failure or breach is caused by or is due to a Force Majeure Event.

## An affected party must notify the other party in writing as soon as reasonably practicable after becoming aware of the occurrence of a Force Majeure Event. The notice must include:

### details of the event or circumstance constituting the Force Majeure Event; and

### an estimate of the likely effect of that Force Majeure Event on the affected party’s ability to perform its obligations under this agreement; and

### the measures proposed to be adopted to remedy or abate the Force Majeure Event; and

### where reasonably ascertainable, its best estimate of the likely period of that Force Majeure Event.

## The affected party must notify the other party in writing as soon as reasonably practicable after it is no longer affected by the relevant Force Majeure Event. The notice must include:

### The actual period of that Force Majeure Event, stating the actual starting and ending dates of that Force Majeure Event; and

### The effect of that Force Majeure Event on the affected party’s ability to perform its obligations under this agreement.

## An affected party must use reasonable endeavours to mitigate or overcome the Force Majeure Event and resume full performance of its obligations as soon as reasonably practicable, provided that this will not require a party to do things which are uneconomic or to settle strikes or labour disputes on terms contrary to the reasonable wishes of the affected party.

### An affected party must keep the other party informed, in writing, on an ongoing basis of the actions being taken by the affected party.

### The affected party must notify the other party in writing when the Force Majeure Event has ceased or abated to an extent which permits resumption of performance of obligations to occur and when resumption of performance has occurred.

## Suspension of obligations by reason of a Force Majeure Event will not operate so as to extend the Contract Term.

## If a Force Majeure Event occurs which for a period of at least 2 months, means the Equipment is incapable of providing the Services under this agreement, then the ISO may, unless the Force Majeure Event has ceased to have that effect, terminate this agreement with immediate effect by written notice to the ESS Provider.

# Termination

## Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

### the other party commits a breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so; or

### the other party suffers an Insolvency Event.

## If there is a Change in Control of the ESS Provider or the ESS Provider transfers, assigns or novates a right or obligation under this agreement without the prior consent of the ISO under clause 27.2 or 27.4 (as appliable), then the ISO may terminate this agreement with immediate effect by giving written notice to the ESS Provider.

## Termination or expiry of this agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this agreement which existed at or before the date of termination or expiry.

# Change in Law

## If a Change in Law occurs during the Contract Term, a party may give written notice to the other party of the Change in Law and the notice must include full details of the impact of the Change in Law and any supporting information reasonably necessary to enable the other party to verify its impact.

## Any notice under clause 18.1 must be given within 3 months of the Change in Law, otherwise this clause 18 does not apply.

## On receipt of a notice given under clause 18.1, the parties must negotiate in good faith such amendments to this agreement as are necessary or appropriate on the basis of the following principles:

### the amendments will endeavour to preserve the economic and legal effect of this agreement as at the Contract Commencement Date to the extent practicable; and

### the amendments will otherwise be fair and reasonable in the circumstances.

## If the parties are unable to agree on the amendments in accordance with clause 18.3 within two months of receipt of the notice under clause 18.1, the dispute must be resolved in accordance with clause 19.

# Dispute resolution

## If a dispute arises in relation to this agreement or its subject matter, then:

### to the extent the dispute is a Rules Dispute, it must be resolved as a Rules Dispute; and

### otherwise clauses 19.2 to 19.6 apply.

## A party to this agreement claiming that a dispute has arisen must give a written notice to the other party in accordance with clause 24 specifying the nature of the dispute (**Dispute Notice**).

## The parties must then participate in mediation in accordance with this clause 19.

## If, within seven days of receipt of the Dispute Notice (or such longer period as mutually agreed by them) the parties do not agree on:

### the identity of the mediator;

### the mediator’s fees; and/or

### the process to be followed for the mediation,

then the mediation will be administered by the Australian Disputes Centre (**ADC**) in accordance with the ADC Guidelines for Commercial Mediation applicable at the time the matter is referred to the ADC and which are deemed to be incorporated into this agreement.

## The parties must participate in the mediation in good faith, and this obligation to participate in good faith includes, but is not limited to:

### adopting an honest and genuine approach to resolving the dispute by discussion;

### taking steps to clarify or resolve outstanding matters in the dispute;

### considering such options for the resolution of the dispute as may be propounded by the opposing party or mediator;

### putting forward options for the resolution of the dispute; and

### complying with any directions given by the mediator.

## If the dispute is not resolved within 60 Business Days of the date of the Dispute Notice, or the parties agree to discontinue mediation, either party may terminate the dispute resolution process undertaken and commence court proceedings in relation to the dispute.

## Unless otherwise agreed by the parties, or determined under the Rules Dispute processes (if applicable), the parties must continue to perform their obligations under this agreement despite the existence of a dispute.

## Nothing in this clause 19, prevents a party from seeking injunctive relief or urgent declaratory relief in respect of a dispute or any matter arising in connection with this agreement.

# Relationship of the parties

The ESS Provider is engaged by the ISO as an independent contractor and nothing in this agreement creates or constitutes a relationship of employer and employee, principal and agent, trustee and beneficiary, or of partnership or joint venture between the parties.

# Representations and warranties

## Each party represents and warrants to the other party that:

### it has full power and authority to enter into and perform its obligations under this agreement;

### an obligation under this agreement is legal, valid, binding and enforceable against it;

### it has taken the action necessary to authorise the execution and performance of this agreement.

## The ESS Provider represents and warrants that that it has the technical capabilities and requisite legal rights and authority to deliver, or ensure delivery of, the Services in accordance with the terms and conditions of this agreement.

## Each party relies on the other party’s representations and warranties being true and correct.

# Costs and expenses

Each party must pay its own legal and other costs and expenses in relation to the negotiation, preparation and execution of this agreement and any related document.

# Confidentiality

## The Received Information is deemed to be “confidential information” for the purposes of the PNR and “confidential information” and “commercially sensitive information” (as applicable) for the purposes of the PNAC.

## The ESS Provider must comply with its obligations under the PNR and the PNAC in respect of the Received Information and all other confidential or commercially sensitive information.

## Without limiting clause 23.2, the ESS Provider must not use or disclose Received Information for any purpose other than providing the Services under this agreement.

## The ESS Provider must not make, or permit any person to make, any public announcement or other public communication concerning this agreement without the prior written consent of the ISO (such consent not to be unreasonably withheld or delayed).

## Nothing in this agreement limits the ISO’s ability to publish information under the PNR provided that the ISO complies with the provisions of the PNR in relation to any “confidential information” (as that term is defined in the PNR) of the ESS Provider or any “associate” (as that term is defined in the PNR) of the ESS Provider.

## Rule 100 of the PNR applies as a term of this agreement in respect of any “other entities’ data” (as defined in rule 100) contained in the Received Information.

# Notices and communications

## A notice to a party under this agreement, which is required to be in writing, must be:

### written in English;

### addressed to that party at the email address specified below (or any alternative email address previously given in writing to the sending party in accordance with this clause 24)

|  |  |
| --- | --- |
| **Party** | **Address for notices** |
| ISO | James Campbell-Everden  Chief Executive Officer  [James.campbell-everden@pilbaraisoco.com.au](mailto:James.campbell-everden@pilbaraisoco.com.au) |
| ESS Provider | [Name]  [Email address] |

## A notice is regarded as given and received at the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

## The parties agree that day to day operational communications related to the running of the NWIS, including any request by the ISO for a Service to be Enabled may be made by automated electronic process, telephone or other instantaneous means of communication.

## Unless communications made under clause 24.3 are recorded in some other way satisfactory to both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those communications record brief details of their substance and timing.

# Governing law and jurisdiction

## The law of Western Australia governs this agreement.

## Subject to clause 19.1(a), each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

## Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in clause 25.2 on the basis that:

### any proceeding arising out of or in connection with this agreement has been brought in an inconvenient forum; or

### the courts described in clause 25.2 do not have jurisdiction.

# Variation

The parties can vary this agreement only if the variation is in writing and signed by each party.

# Assignment, novation, transfer and change in control

## The ESS Provider must not transfer, assign or novate its interest in all or part of the Equipment unless the ESS Provider also assigns, or novates its interest in this agreement to the proposed assignee.

## A party must obtain the prior written consent of each other party before it transfers, assigns or novates a right or obligation under this agreement (not to be unreasonably withheld or delayed).

## The ISO must give its consent under clause 27.2 if:

### the ESS Provider disposes of the Equipment and its rights in this agreement to a related body corporate (as defined in the Corporations Act) of the ESS Provider (**Assignee**); and

### the Assignee is registered as a ‘registered controller’ under Subchapter 4.1 of the PNR; and

### the ISO is satisfied that the Assignee has experience in providing the Services and is able to perform the ESS Provider’s obligations under this agreement; and

### the ESS Provider executes and delivers to the ISO a deed of assignment and assumption (in form and in substance satisfactory to the ISO acting reasonably) prior to the disposal under which the Assignee agrees to assume the obligations of the ESS Provider under this agreement.

## The ESS Provider must not undergo a Change in Control without the prior written consent of the ISO (not to be unreasonably withheld or delayed).

## The ISO must give its consent under clause 27.4 if the ESS Provider will, immediately after the Change in Control remain as the registered controller under Subchapter 4.1 of the PNR and the ISO is satisfied that the ESS Provider will continue to have the experience and capability necessary to provide the Services and perform the ESS Provider’s obligations under this agreement.

# Rights are cumulative

A party's rights under this agreement are in addition to its rights at law.

# Severance

## If a part of this agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that part must be severed and ignored in the interpretation of this agreement.

## The remaining parts of this agreement remain in full force and effect.

# Waiver

## A party granting a waiver of a right relating to this agreement must give written notice of that waiver to the party that benefits from the waiver.

## A party's failure, partial failure or delay in exercising a right relating to this agreement is not a waiver of that right.

## A party may not claim that another party’s delay or failure to exercise a right relating to this agreement:

### constitutes a waiver of that right; or

### is a defence to its own action or inaction.

## The parties may not waive or vary this clause.

# Entire agreement

This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, undertakings and agreements.

# Survival

## The warranties survive the termination of this agreement.

## To the extent that a party has not satisfied an obligation or it is a continuing obligation, that obligation survives termination.

# Further assurance

Each party at its own expense must do everything necessary to give full effect to this agreement.

# Counterparts

## The parties may execute this agreement in any number of counterparts, which taken together constitute one instrument.

## The parties may exchange counterparts by scanning the entire duly executed counterpart and emailing it to the other party.



Services

|  |  |  |
| --- | --- | --- |
| Item # |  |  |
|  | **Service(s)** | [Primary FCESS = x MW]  [Base SRESS – X MW]  [Supplementary SRESS]  [*Note: This cell to list the services (defined in Schedule 2) which are included in this contract.*] |
|  | **Equipment** | [*Insert details of all components of ESS Provider’s Equipment used for provision of the Services.*  *For Supplementary SRESS this will involve location and perhaps other characteristics as agreed, for each individual Generating Unit.*] |
|  | **Conditions Precedent Satisfaction Date** | 30 June 2024 |
|  | **Contract Commencement Date** | 1 July 2024 |
|  | **Expiry Date** | 30 June 2025 |
|  | **Service activation** | [*Note: To be completed – see RFP* ] |
|  | **Service Charge** | [*Insert GST exclusive amount per Settlement Period for each service.*  *For Supplementary SRESS this will involve a per-start flagfall and an hourly charge. Different rates may be specified for different locations or machines.*]  The ESS Provider acknowledges that these prices may be weighted or otherwise adjusted in a dispatch merit order to take account of a machine’s expected governor response speeds as described in clause 5.4(b), but acknowledges further that if its Service is Activated, it will be paid the above price and not any weighted or adjusted price. |



Service Descriptions

|  |  |
| --- | --- |
|  |  |
| **Primary FCESS** | [***Note: To be copied in from RFP***] |
| **Base SRESS** | [***Note: To be copied in from RFP***] |
| **Supplementary SRESS** | [***Note: To be copied in from RFP***] |



Maintenance Program

Signed as an agreement[***Authorised rep signature blocks included, change to other format eg s127 Corps Act if required.***]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed as an agreement** for and on behalf of **Pilbara ISOCo Limited ACN 650 785 783** by its duly authorised representative in the presence of: | ) ) ) ) ) ) |  | |
| Authorised representative’s signature | |
| Authorised representative’s name | |
| Authorised representative’s position | |
| Date | |
| Signature of witness |  |  | |
| Print name of witness |  |  | |
| Print address of witness |  |  | |
| Occupation of witness |  |  | |
| **Signed as an agreement** for and on behalf of**[ESS Provider]** **ACN [Insert]** by its duly authorised representative in the presence of: | | ) ) ) ) ) ) |  | |
| Authorised representative’s signature | |
| Authorised representative’s name | |
| Authorised representative’s position | |
| Date | |
| Signature of witness | |  |  | |
| Print name of witness | |  |  | |
| Print address of witness | |  |  | |
| Occupation of witness | |  |  | |