

## WALGA

### Memorandum of Understanding – Electricity Retail Arrangements

<b>1. Parties</b>	<p><b>Western Australian Local Government Association</b> (ABN 28 126 945 127) Level 1, 170 Railway Parade, West Leederville, Western Australia 6007 <b>(WALGA)</b></p> <p>Town of Cottesloe (ABN 19 824 630 520) 190 Broome Street, Cottesloe WA 6011 <b>(Participant)</b></p>
<b>2. Background</b>	<p>(a) WALGA administers the Preferred Supplier Program in relation to, among other things, the procurement of electricity by Local Governments in Western Australia.</p> <p>(b) Participation in the Preferred Supplier Program by suppliers and Local Governments is voluntary and Local Governments are free to procure the supply of electricity independently of the Preferred Supplier Program and WALGA.</p> <p>(c) WALGA and the Participant intend, without the establishment of legal obligations between the parties except to the extent expressly described in this Document, that WALGA will facilitate a group buying arrangement in respect of the purchase of electricity by the Participant and other WALGA members (<b>Group</b>) in the South West Interconnected System on and subject to the terms of this Document.</p>
<b>3. Procurement process</b>	<p>(a) WALGA must, as soon as practicable following the date this Document is signed by the last party to do so (<b>Effective Date</b>), collate such information about the historical and forecast electricity requirements of the Participant and other members of the Group and will seek no fewer than three offers from suppliers in the South West interconnected system that participate in the WALGA Preferred Supplier Program.</p> <p>(b) In obtaining offers from suppliers, WALGA is to notify suppliers that:</p> <ul style="list-style-type: none"><li>(i) an Evaluation Panel comprised of persons appointed by WALGA will assess the offer on the basis of price, contract term, take or pay obligations (if any), and sustainability, as well as such other criteria that WALGA may consider material from time to time (<b>Evaluation Criteria</b>);</li><li>(ii) they may give no more than three separate offers based on different approaches to the Evaluation Criteria; and</li><li>(iii) they should prepare their offers on the basis that the successful supplier(s) will obtain 100% of the electricity requirements of the Group, subject to the termination or expiry of current contracts. However, to avoid doubt, suppliers should be advised that any decision to enter into a supply contract with the successful supplier rests solely with each individual member of the Group and not with WALGA.</li></ul> <p>(c) The procurement process, as between the suppliers and WALGA shall otherwise comply with the requirements of the Preferred Supplier Program.</p>

<p><b>4. Evaluation Panel</b></p>	<p>(a) WALGA must, within seven days of the Effective Date, appoint not fewer than six people to comprise a panel for the purposes of assessing the offers submitted by suppliers (<b>Evaluation Panel</b>).</p> <p>(b) WALGA must use reasonable endeavours to ensure that members of the Evaluation Panel have a reasonable degree of experience and/or sufficient expertise in procurement, electricity and/or local government to enable them to make an informed assessment of the Evaluation Criteria.</p> <p>(c) WALGA may remove members of the Evaluation Panel if:</p> <p>(i) a member of the Evaluation Panel fails to attend three consecutive meetings; or</p> <p>(ii) in WALGA's view, a member of the Evaluation Panel fails to diligently scrutinise or contribute to deliberations in relation to assessment of offers against the Evaluation Criteria.</p> <p>(d) WALGA may appoint new members of the Evaluation Panel from time to time provided that appointments are made in accordance with clause 4(b).</p> <p>(e) WALGA must keep records of all meetings of the Evaluation Panel, including in relation to the assessment of offers against the Evaluation Criteria.</p> <p>(f) WALGA must use its reasonable endeavours to ensure that the Evaluation Panel arrives at a single recommendation in relation to an offer for electricity supply as soon as practicable, based on a simple majority of members of the Evaluation Panel.</p> <p>(g) WALGA must give notice to the Participant following a recommendation by the Evaluation Panel.</p>
<p><b>5. Status and intent of this Document</b></p>	<p>(a) With the exception of this clause 5 and clauses 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18, which are legally binding on the parties, this document does not establish any legally binding obligation on any party.</p> <p>(b) This Document takes effect on the Effective Date.</p> <p>(c) A party may terminate this Document on not less than seven days written notice to all the other parties to this Document.</p> <p>(d) Each of the clauses described in clause 6(a) survive termination of this Document.</p>
<p><b>6. Group buying</b></p>	<p>Each party acknowledges and agrees that nothing in this document operates to oblige a party to enter into an electricity supply contract with a particular electricity supplier, whether recommended under this Document, the Preferred Supplier Program or otherwise.</p>
<p><b>7. Mutual warranties</b></p>	<p>Each party warrants and represents to the other party that, as at the date of this Document and each subsequent day prior to a party terminating its participation in this Document:</p> <p>(a) the party is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;</p> <p>(b) the party has the power, capacity and authorisation to enter into and perform its obligations under this Document;</p> <p>(c) the party has obtained all necessary authorisations for the execution, delivery and performance by it of this Document in accordance with its terms;</p>

	<p>(d) its execution, delivery and performance of this Document complies with its constitution and does not breach any law, obligation or agreement by which it is a party or it is bound; and</p> <p>(e) no party enters into this Document as trustee for or nominee for any other person.</p>
<b>8. Confidentiality</b>	<p>All information exchanged between the parties under, concerning or in connection with the contents of this Document or during the negotiations preceding or subsequent to the date of this Document in relation to the Proposed Transaction is confidential to the parties which disclosed that information (each a <b>discloser</b>) and may not be disclosed to any person except:</p> <p>(a) in accordance with the requirements of this Document;</p> <p>(b) to any senior officers (direct or indirect) of a party who have a requirement to know the confidential information for the furtherance of the matters contemplated in this Document:</p> <p>(i) the recipient's senior officers first agree to keep the information disclosed confidential as required by this Document; and</p> <p>(ii) the recipient will be responsible for any breach of confidence by the recipient's senior officers;</p> <p>(c) to employees, legal advisers, auditors or other consultants of the recipient or its affiliates who have a requirement to know the confidential information for the furtherance of the matters contemplated in this Document;</p> <p>(d) if the information is generally and publicly available other than as a result of a breach of confidence by the person receiving the information; or</p> <p>(e) with the prior written consent of the discloser.</p>
<b>9. Announcements</b>	<p>No party may make any public announcement in relation to this Document, the transactions contemplated by this Document or the matters contained in this Document without first providing each other party with a copy of such announcement and obtaining the prior written approval of each other party, which approval must not be unreasonably withheld, delayed or conditioned.</p>
<b>10. Interpretation</b>	<p>In this Document headings are for convenience only and do not affect the interpretation of this Document, and unless the context otherwise requires:</p> <p>(a) if a word or phrase is given a defined meaning, that word or phrase has a corresponding meaning in this Document;</p> <p>(b) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;</p> <p>(c) the word "including" or any other form of that word is not a word of limitation;</p> <p>(d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;</p> <p>(e) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;</p> <p>(f) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of</p>

	<p>novation and, in the case of a trustee, includes any substituted or additional trustee;</p> <p>(g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;</p> <p>(h) a reference to a document (including this Document) is to that document as varied, novated, ratified or replaced from time to time;</p> <p>(i) a reference to a party, clause, schedule or annexure is a reference to a party, clause, schedule or annexure to or of this Document, and a reference to this Document includes all schedules and annexures to it; and</p> <p>(j) if the day on or by which a person must do something under this Document is not a business day in Perth, Western Australia, the person must do it on or by the next business day in Perth, Western Australia.</p>
<b>11. Limitation of Liability</b>	<p>(a) No party is liable to the other party for, and each party releases the other party in respect of, any loss, cost, liability, proceedings, claim or amount of money suffered or incurred by another party arising in connection with this Document. To the extent that WALGA's liability cannot be entirely limited as a consequence of the operation of any law, WALGA's liability is limited to providing anything amounting to services under this Document a further time.</p> <p>(b) The parties acknowledge that the limitation of liability and release described in clause 11(a):</p> <p>(i) does not extend to amounts payable in relation to the Preferred Supplier Program, generally; and</p> <p>(ii) may be pleaded as a bar to suit in a Court of competent jurisdiction.</p>
<b>12. Governing law</b>	<p>(a) This Document is governed by and will be construed in accordance with the laws of Western Australia.</p> <p>(b) Each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of the Courts of Western Australia in relation to both itself, its property and any disputes arising in relation to this Document.</p>
<b>13. Assignment</b>	A party must not assign its rights under this Document without the prior written consent of each other party, such consent not to be unreasonably withheld, delayed or conditioned.
<b>14. Notices</b>	<p>(a) Any notice to or by a party under this Document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.</p> <p>(b) Any notice may be served by delivery in person or by prepaid post or transmission by facsimile or electronic mail to the address or number of the recipient set out as follows or otherwise as most recently notified by the recipient to the sender:</p> <p style="text-align: center;">Western Australia Local Government Association 170 Railway Parade, Leederville West Western Australia 6007 Attention: Toby Costanzo Email: TCostanzo@walga.asn.au</p>

	<p>Town of Cottesloe  109 Broome Street, Cottesloe WA 6011  Attention: Emma Saikovski  Email: cep@cottesloe.wa.gov.au</p> <p>(c) Any notice is taken to be received on:</p> <ul style="list-style-type: none"> <li>(i) in the case of prepaid post sent to an address in the same country, on the fifth day after posting;</li> <li>(ii) in the case of delivery by hand, upon delivery to the recipient;</li> <li>(iii) in the case of email, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this clause 11, 24 hours after the email was sent.</li> </ul>
<b>15. Amendments</b>	Any amendment to this Document has no force or effect, unless effected by a document signed by or on behalf of all of the parties.
<b>16. Expenses</b>	Each of the parties will bear its own expenses relating to the preparation of this Document.
<b>17. Entire agreement</b>	This Document embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties in relation to the subject matter of this Document and supersedes any prior written or other agreement between the parties in relation to that subject matter.
<b>18. Counterparts</b>	This Document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same agreement.

**Executed as a Memorandum of Understanding:**

**Executed** by Western Australian Local )  
Government Association (**ABN 28 126 945** )  
**127**) [in accordance with its constitution]: )

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NICHOLAS SLOAN

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TANYA TOON-POYTON

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CHIEF EXECUTIVE OFFICER

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EXECUTIVE ASSISTANT

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Date of execution

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**Executed** by Town of Cottesloe (ABN 19 )  
824 630 520) [ in accordance with its )  
constitution]: )

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MATTHEW SCOTT

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SHAUN KAN

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CHIEF EXECUTIVE OFFICER

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DIRECTOR ENGINEERING SERVICES

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Date of execution

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