

Customer Service Provider Terms and Conditions

1. RECITALS

- a) AECO is a retailer of renewable energy certificate products in Australia.
- b) The CSP is an independent marker and advisor to both the purchasers of energy, renewable energy provides related customer support services described in Schedule 1, Item 2 to customers in the Service Area named in Item 3.
- c) In the normal course of business, the CSP provides Customer Support services with its existing customers in the operation of energy, renewable energy related products and services.
- d) Where the CSP is Appointed by AECO and then provides Services over a Customer's Appointed Contract of an Acceptable Quality then the CSP will receive a Fee in accordance with the terms in this Agreement.

- d) is disclosed by the Disclosing Party to the other party or of which the other party becomes aware, whether before or after the date of this Agreement, and without limitation, includes this Agreement.
- e) the other party creates (whether alone or jointly with any third person) independently of the Disclosing Party
- f) 'Confidential Information' does not include information:
- g) the other party creates (whether alone or jointly with any third person) independently of the Disclosing Party; or
- h) that is public knowledge (otherwise than as a result of a breach of confidentiality by the other party or any of its permitted discloses).

2. DEFINITIONS

Acceptable Quality means the delivery of Services in relation to a Customer's Appointed Contract meeting AECO's Service Delivery Requirements.

AECO Products means products and services provided and sourced exclusively by AECO to Customer and excludes pass through or recovery charges for product and services not provided by AECO in relation to a Contract.

Agents means a director, officer, employee, or contractor of the relevant entity.

Agreement means this document, Application Form and Schedules 1 and 2 as executed by CSP and AECO.

Appointed Contract means the Customer's Contract in relation to which the CSP is Appointed to provide Services.

Appointed Period means any time a CSP is Appointed to provide Services in relation to an Appointed Contract.

Appointed, Appointment means the process of assigning the CSP to provide Services in relation to a Customers Contract by CSP as described in clause 4.

Appointed Contract means the Customer's Contract that in relation to which the CSP is Appointed to deliver Services.

Business Day means a day that is not a Saturday, Sunday, or public holiday in the capital city in the state defined in Item 4.

Commencement Date means the date defined in Item 5.

Confidential Information means all information of a party ('Disclosing Party')

- a) marked or described as confidential; or within 30 days after oral disclosure, by label, stamp or other written communication.;
- b) which by its nature is confidential;
- c) treated by the Disclosing Party as confidential; and

Consequential Loss means any loss or damages not arising naturally according to the usual course of things, including, but not limited to, any incidental or indirect losses or any loss of revenue, loss of reputation, loss of profits, loss of production, loss of business opportunity or business interruption, loss of contract, data or anticipated savings, or any special, indirect, punitive, or exemplary damages.

Contract means a contract using AECO's standard terms and conditions relevant to the AECO Product being agreed to by AECO with the Customer.

Customer means an AECO customer who has agreed in a Contract to purchase AECO Products.

Customer Support, Support means Services.

Customer Payment means a payment to AECO by a Customer in relationship to an Appointed Contract.

Competitive Products means any product or service that competes with AECO Products. This includes any product that provides or is composed of or delivers renewable energy benefits directly or indirectly from renewable energy certificates or carbon credits compliant to any foreign national or international standards including the IREC standard for renewable energy certificates. Competitive Products specifically does not include renewable energy products certified under the New South Wales Government National GreenPower Accreditation Program or similar Australian certification program for Australian sourced RECs or which are not internationally tradable.

Event of Default means:

- a) a breach of a Party's obligation under this Agreement and the breach is not capable of remedy or if it is capable of remedy, where the Party fails to remedy that breach within thirty (30) days of receipt of written notice requiring it to be remedied;
- b) a Party becomes subject to external administration, management or control including the appointment of a receiver, receiver and manager, liquidator or voluntary administrator;

- c) a Party is unable to pay its debts within the meaning of Section 95 of the *Corporations Act 2001* (Cth); or
- d) a Party who is a natural person commits an act of bankruptcy or takes advantage of the provisions of Part X of the *Bankruptcy Act 1966* (Cth).
- e) Any breach of clauses 11 and 12
- f) **Fee** means the fee payable to the CSP under clause 3 (Fee) of this Agreement.

GST means a goods and services tax or similar value added tax levied or imposed in the Commonwealth of Australia pursuant to the GST Law.

GST Law has the meaning given to such term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act.

Item means an item in Schedule 1.

Party means either AECO or the CSP and 'Parties' means all of them.

Partner, Partnership does not mean any legal entity or partnership in the meaning of the *Corporations Act 2001*, or any joint venture or agency relationship between Parties. Its meaning is limited to a generalised non-specific description of a commercial transaction relationship of mutual benefit between the Parties.

Personnel means CSP or Related Body Corporate officers, directors, agents, employees, associates or anyone who provide Service on behalf of CSP under this agreement.

REC means Renewable Energy Certificate.

Recipient means the person who receives Confidential Information.

Related Body Corporate means in relation to either Party, a body corporate that is deemed to be related to that Party pursuant to the definition of that terms in section 50 of the *Corporations Act 2001*.

Services means the services described in this Agreement in Schedules 1 and 2.

Service Period means a period of time in which Services were delivered by CSP in relation to an Appointed Contract.

Service Delivery Requirements means the meeting the Service Delivery Standards outlined in Schedule 2 and as modified by AECO from time to time.

Tax Invoice means an invoice which complies with the requirements for any invoice under the GST Law.

Acceptable Quality means the delivery of Services in relation to a Customer's Appointed Contract meeting AECO's Service Delivery Requirements.

AECO Products means products and services provided and sourced exclusively by AECO to Customer and excludes pass through or recovery charges for product and services not provided by AECO in relation to a Contract.

Agents means a director, officer, employee, or contractor of the relevant entity.

Agreement means this document as executed by the Parties.

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Commencement Date means the date defined in Item 5.

Confidential Information of a party ('Disclosing Party') means all information:

- a) marked or described as confidential;
- b) which by its nature is confidential;
- c) treated by the Disclosing Party as confidential; and
- d) is disclosed by the Disclosing Party to the other party or of which the other party becomes aware, whether before or after the date of this Agreement,
- e) and without limitation, includes this Agreement, but 'Confidential Information' does not include information:
- f) the other party creates (whether alone or jointly with any third person) independently of the Disclosing Party; or
- g) that is public knowledge (otherwise than as a result of a breach of confidentiality by the other party or any of its permitted discloses).

Consequential Loss means any loss or damages not arising naturally according to the usual course of things, including, but not limited to, any incidental or indirect losses or any loss of revenue, loss of reputation, loss of profits, loss of production, loss of business opportunity or business interruption, loss of contract or anticipated savings, or any special, indirect, punitive or exemplary damages.

Contract means a contract using AECO's standard terms and conditions relevant to the AECO Product being agreed to by AECO with the Customer.

Customer means an AECO customer who has agreed to a Contract to purchase AECO Products. Customer Support, Support means Services.

Customer Payment means a payment to AECO by a customer in relationship to an Appointed Contract.

Competitive Products means any product or service that competes with AECO Products. This includes any product that provides or is composed of or delivers renewable energy benefits directly or indirectly from renewable energy certificates or carbon credits compliant to any foreign national or international standards including the IREC standard for renewable energy certificates. Competitive Products specifically does not include renewable energy products certified under the New South Wales Government National GreenPower Accreditation Program or similar Australian certification program for Australian sourced RECs or which are not internationally tradable.

Event of Default means:

- a) a breach of a Party's obligation under this Agreement and the breach is not capable of remedy or if it is capable of remedy, where the Party fails to remedy that breach within

thirty (30) days of receipt of written notice requiring it to be remedied;

- b) a Party becomes subject to external administration, management or control including the appointment of a receiver, receiver and manager, liquidator or voluntary administrator;
- c) a Party is unable to pay its debts within the meaning of Section 95 of the *Corporations Act 2001* (Cth); or
- d) a Party who is a natural person commits an act of bankruptcy or takes advantage of the provisions of Part X of the *Bankruptcy Act 1966* (Cth).
- e) Any breach of clause 11.1.
- f) **Fee** means the fee payable to the CSP under clause 3 (Fee) of this Agreement.

GST means a goods and services tax or similar value added tax levied or imposed in the Commonwealth of Australia pursuant to the GST Law.

GST Law has the meaning given to such term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act.

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Party means either AECO or the CSP and 'Parties' means all of them.

Partner, Partnership does not mean any legal entity or partnership in the meaning of the *Corporations Act 2001*, or any joint venture or agency relationship between Parties. Its meaning is limited to a generalised non-specific description of a commercial transaction relationship of mutual benefit between the Parties.

Personnel means CSP or Related Body Corporate officers, directors, agents, employees, associates or anyone who provide Service on behalf of CSP under this agreement. **REC means** Renewable Energy Certificate.

Recipient means the person who receives Confidential Information.

Related Body Corporate means in relation to either Party, a body corporate that is deemed to be related to that Party pursuant to the definition of that terms in section 50 of the *Corporations Act 2001*.

Service means the services described in this Agreement in Schedule 1 and 2.

Service Period means a period of time in which Services were delivered by CSP in relation to an Appointed Contract.

Service Delivery Requirements means the meeting the Service Delivery Standards outlined in Schedule 2 and as modified by AECO from time to time.

Tax Invoice means an invoice which complies with the requirements for any invoice under the GST Law.

3. NATURE OF RELATIONSHIP

- 3.1 Nothing in this Agreement binds the CSP or any of its employees, or an employee, Agent, Related Body Corporate, CSP or joint venturer of AECO, except to the extent expressly provided for in this Agreement.

- 3.2 The CSP has no authority to incur and must not incur any obligation on behalf of AECO except with the prior express written instructions of AECO.
- 3.3 The CSP must advise those parties with whom it deals in connection with the subject matter of this Agreement (including Customers) that the CSP has no authority to bind AECO to any obligation.
- 3.4 AECO may, at its discretion, in respect of Customer Contracts:
 - a) Use the services of other CSPs, agents or service provider companies; or
 - b) Decide not to Appoint CSP for Appointed Contracts or any similar or comparable services, at any time and from time to time.
- 3.5 In particular and without limitation the CSP must not and must ensure the Personnel do not:
 - a) hold itself or themselves, as the case may be, out as an agent of AECO in its dealings with third parties; or
 - b) purport to incur any obligation, or make any promise, contract or undertaking, warranty or representation for or on behalf of AECO.

4. APPOINTMENT

- 4.1 AECO may appoint CSP to provide Services for a Customer's Contract for Appointment Period.
 - 4.2 Termination of Appointment.
- An Appointed Period of an Appointed Contract may be terminated by:
- a) Expiration of the term of the Appointment Period.
 - b) By termination of this Agreement.
 - c) By receipt of AECO of a notice sent from the Customer indicating they are not satisfied with the Services delivered to them by CSP.
 - d) The Appointed Period may be terminated by a breach of this Agreement in relation to the Appointed Contract.
 - e) Failure to provide Acceptable Quality Services as outlined in Clause 4.3.
- 4.3 Failure to provide Acceptable Quality Services.

A failure to provide Acceptable Quality Services will occur if:

- a) The Service Delivery Requirements in Schedule 2 are breached for an Appointed Contract and the breach is not capable of remedy or if it is capable of remedy, where the Party fails to remedy that breach within thirty (30) days of receipt of written notice requiring it to be remedied;

- b) A similar in nature or systematic repeated failure to provide Acceptable Quality Services over multiple Appointed Contracts will be taken as a failure of Acceptable Quality Services over multiple or all of CSP's Appointed Contracts ("Repeated Breach").
- c) A Repeated breach is not capable of remedy or if it is capable of remedy, where the Party fails to remedy that breach within thirty (30) days of receipt of written notice requiring it to be remedied;
- d) Any Breach of Clauses 6, 7 and/or 11 by the CSP in relation to the Appointed Contract or Appointed Contract Customer.

4.4 Update of Service Delivery Requirements

AECO may from time to time provide CSP with an updated Service Delivery Requirements in Schedule 2 by providing the CSP thirty (30) days' notice of any such change the updated Schedule 2 shall take effect following such notification.

5. COMMENCEMENT TERM AND RENEWAL

- 5.1 The term of this Agreement shall be 12 months commencing from the Commencement date set out in Item 5 in Schedule 1.
- 5.2 The agreement shall automatically renew for an additional 12 months unless notice of non-renewal is given by either Party at least thirty (30) days prior the Agreement term expiry.

6. PERSONNEL

6.1 Personnel Obligations

The CSP must ensure that all Personnel while performing the Services:

- a) comply with all applicable Laws, policies, procedures, rules, regulations, standards of conduct, requirements, and directions of AECO;
- b) do not represent in any way that they are employees of AECO;
- c) act diligently, ethically, soberly, and honestly and perform their duties with due care, skill and diligence;
- d) comply with all Laws relating to misleading, deceptive, and unconscionable conduct;
- e) conduct themselves in a manner which is consistent with AECO's best interests; and
- f) do not act in any manner that could be reasonably expected to disrupt or adversely affect AECO's business reputation, interests, or goodwill.
- g) Maintain sufficient skills and knowledge to deliver Services to an Acceptable Quality.

6.2 Treatment of Personnel

Nothing in this Agreement is to be treated as having the effect that the Personnel are or will be employees of AECO.

6.3 Training of Personnel

- h) The CSP must have in place (or establish and maintain) a clearly defined training program for all Personnel in the proper and lawful provision of the Services ("Training Program") and maintain sufficient Personnel skills and knowledge in AECO products and services.
- i) The Training Program must, at a minimum, provide training to the Personnel in the requirements of the Laws applicable to the provision of the Services including, without limitation, the requirements of the applicable Retail Marketing Code, electricity regulator, the Australian Consumer Law and, if it applies in the Service Area, the National Energy Customer Framework.
- j) The CSP must ensure that Training Program is ongoing, and the training of all Personnel is up to date and current.
- k) The CSP must keep records of the training received by the CSP's Personnel in accordance with this clause and provide copies of those records to AECO on request

6.4 Compliance Program

- 6.4.1 The CSP must have in place (or establish and maintain) a compliance program to monitor the provision of the Services by the CSP's Personnel in accordance with the requirements of this Agreement ("Compliance Program").
- 6.4.2 The CSP must keep records of the activities undertaken by the CSP in accordance with the Compliance Program and provide copies of those records to AECO on request.

- 6.5 CSP agrees that it is responsible for Personnel's compliance in relation to this Agreement. Any breach of this Agreement, including clause 11 Error! Reference source not found., by Personnel will be in relation to this Agreement will be as if that breach was done by the CSP.

7. CUSTOMER COMPLAINTS

- a) The CSP must maintain a formal process for capturing, registering, and managing customer complaints ("Complaints Procedure").
- b) Without limiting the CSP's obligations under clause 10.1(c), if the CSP receives a complaint in relation to the provision of the Services by the CSP or its Personnel; or a complaint with respect to AECO in relation to Customer's Contract, the CSP must immediately inform AECO of the complaint, providing details of the complaint and its outcome under the Complaints Procedure, including but not limited to, the following information:
 - i. the identity of the Customer making the complaint.
 - ii. relevant Personnel;
 - iii. the nature of the complaint; and

iv. the outcome of the complaint.

- c) The CSP must cooperate with, and provide such assistance to, AECO as AECO may reasonably require to resolve a Customer complaint.
- d) The CSP must keep records of any Customer complaints received by the CSP in relation to the provision of the Services and provide copies of those records to AECO on request.

7.1 CSP's general obligations not limited. The obligations of the CSP in this clause 7 are without limitation to the general obligations of the CSP set out in clause 12.

8. FEE

8.1 The Fee for each Customer is described in Item 6 in Schedule 1.

8.2 For the avoidance of doubt, the Fee is only payable in relation to the payments from the Customer under the Appointed Contract.

8.3 The Fee is only earned in relation to a Service Period if:

- a) AECO Appoints the CSP for the Appointed Contract as described within this Agreement; and
- b) The CSP provides Services for a Service Period.
- c) The CSP provides Services of Acceptable Quality for the Service Period.
- d) The Customer pays AECO for invoiced AECO Products for the Service Period in relation to the Appointed Contract.

8.4 The Fee does not apply in any other circumstances.

8.5 The Fee is inclusive of GST and covers all costs and expenses that may be incurred by the CSP in relation to the performance of the Service under this Agreement.

8.6 The Fee is exclusive of any other services provided by CSP to AECO outside of this Agreement.

9. PAYMENT

9.1 Reporting obligations

From time to time as reasonably requested by the CSP, AECO may issue to the CSP a notice ("Service Delivery Report") setting out, in respect of the relevant period:

- a) the identity of each Customer in respect of which the CSP is eligible for a Fee (if any);
- b) the amount of Fee payable (if any) by AECO to the CSP in respect of each Customer, calculated in accordance with Schedule 1; and
- c) such other evidence as may reasonably be required to verify any amount of Fee payable by AECO to the CSP.

9.2 The Fee, in respect of a Contract, will be paid in accordance with the provisions of this clause 8.

9.3 AECO and the CSP may agree in writing to alter the payment arrangement from time to time.

9.4 The payment schedule of Fees is described in Item 7 in Schedule 1.

9.5 AECO will not be under any obligation to pay the CSP any sums due under this Agreement in the event of a Customer breaching any terms of the Contract.

9.6 AECO will not be under any obligation to pay the CSP any sums due under this Agreement whilst the Customer remains in breach of any terms of the Contract.

9.7 If the breach of the relevant Contract is remedied in accordance with the terms of the relevant Contract, the Fee will again be payable from the date the breach is remedied in accordance with the terms of this Agreement.

9.8 Payment of money to the CSP does not constitute an admission by AECO that the services described in this Agreement have been performed in accordance with this Agreement.

9.9 The CSP must give AECO a Tax Invoice in the form and at the time required by AECO.

9.10 Any commission or fee payable to the CSP will be paid by AECO within thirty (30) days of the receipt of a correct Tax Invoice as required under sub-clause 9.9 above.

9.11 Set-off

- a) AECO may deduct and set-off from any moneys otherwise due to the CSP by AECO from any money due to AECO by the CSP (including for any breach of this Agreement).
- b) This right of set-off is without prejudice to or in limitation of any other remedies of AECO.

10. GST

10.1 Definitions

Words defined in the GST Law have the same meaning in this clause, except where the context makes it clear that a different meaning is intended to apply.

10.2 GST exclusive

In addition to paying the Fees and any other amount payable under or in connection with this Agreement (which is exclusive of GST), AECO must:

- a) pay to the CSP an amount equal to any GST payable for any supply by the CSP in respect of which the Fee or other amount is payable under this Agreement; and
- b) make such payment either on the date when the Fee or other amounts to which it relates is due or within five

Business Days after AECO is issued with a tax invoice, whichever is later.

systems, communication facilities and administrative support);

11. OBLIGATIONS OF THE CSP

11.1 Fidelity.

11.1.1 The CSP agrees to provide Services with fidelity towards the interests of AECO.

11.1.2 CSP and Personnel shall not disparage AECO, its respective officers, directors, employees, stockholders, agents and affiliates, in any manner likely to be harmful to them or their business, business reputation or personal reputation. This includes any communication via social media or on any website or any application or via any other method regardless of the professional or personal nature of the user's account.

11.1.3 CSP and Personnel shall not commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the reputation and goodwill associated with AECO.

11.1.4 The CSP agrees to comply with AECO's Supplier and Partner code of conduct ("Code of Conduct") which outlines reasonable behaviour and operational standards. AECO may update the Code of Conduct from time to time and will provide CSP 30 days' notice of any change to the Code of Conduct

11.2 Diligence.

11.2.1 The CSP agrees to

- a) ensure that the Services under this Agreement are performed diligently, competently, with care and skill and in a proper and professional manner; and
- b) keep adequate records of the Services performed pursuant to this
- c) Agreement, and if requested to do so, provide to AECO copies of those records and of correspondence or other material arising from or relating to the provision of those Services under this Agreement.

11.3 Exclusiveness.

11.3.1 CSP shall not market, sell or represent Competitive Products to any AECO Customer or potential AECO Customer during any Appointed Period.

11.4 In performing its obligations under this Agreement, the CSP must comply with the provisions of Part VB of the *Trade Practices Act 1974* (Cth).

12. GENERAL OBLIGATIONS

12.1 The CSP must:

- a) ensure that at all times it maintains and allocates adequate resources to fully discharge all its obligations under this Agreement (including adequately skilled Personnel, tools, working capital, computer and other

b) make all reasonable efforts not to interfere with AECO's business and operations when providing the Services and otherwise performing its obligations under this Agreement ~~document~~;

c) promptly notify AECO if any of the Services or the provision of them conflicts with any applicable Law or any authorisation, permit or licence held by the CSP in connection with the provision of the Services; and

d) ensure that all Personnel used in providing the Services are familiar with all applicable procedures and policies referred to in clause 6.1.

e) use the customer support systems and processes provided to CSP and follow the procedures and policies in relation to the delivery of Services. This includes reporting of customer issues and complaints.

12.2 Subcontractors

a) The CSP may, with the prior written consent of AECO, subcontract any part (but must not subcontract all) of its obligations under this Agreement.

b) The CSP is responsible for ensuring the suitability of all subcontractors in the provision of the Services and for ensuring that any work undertaken by any subcontractor meets the requirements of this Agreement.

c) If the CSP subcontracts any part of its obligations under this Agreement, it must ensure that its subcontractors obtain and maintain insurances consistent with the CSP's obligation to obtain and maintain insurances under clause 15.

d) Any approval given by AECO to the CSP in relation to subcontracting does not discharge or release the CSP from any Liability for the performance of its obligations under this Agreement

e) AECO and the CSP agree that to the maximum extent allowed by Law, the provisions of the Civil Liability Act 2002 (NSW), including Part 4 (Proportionate Liability) have no application to this Agreement ~~document~~.

13. OBLIGATIONS OF AECO

13.1 AECO must:

a) promptly consider and respond to any Customers' issues and complaints as reported by CSP as part of the Services.

b) pay the Fee for an Appointed Period, in accordance with the terms of this Agreement;

c) provide accurate and complete information to the CSP.

13.2 No duty on AECO

Except as expressly provided for in this Agreement, AECO does not assume any obligation or duty to:

- a) advise the CSP;
- b) supervise or control the performance of the Services;
- c) ensure the proper performance of any of the CSP's obligations under this Agreement;
- d) exercise any discretion for the benefit of the CSP; or
- e) Appoint all or any Contracts of any Customer to the CSP.

13.3 Directions, information

- a) AECO must provide the CSP with directions, instructions or information which are requested by the CSP and which are reasonably necessary to assist the CSP in the performance of its obligations under this Agreement.
- b) Where the CSP considers that any directions, instructions or information are inadequate or incomplete, it must notify AECO, as soon as practicable, so as not to cause delay in the provision of the Services and AECO must as soon as practicable provide clarification to the CSP in respect of that direction, instruction or information.
- c) The giving of any direction, instruction, information, permission or approval by AECO does not:
 - I. constitute a waiver of any breach under this Agreement; or
 - II. affect the CSP's obligations and its sole responsibility for the performance of the Services.

13.4 Access to information

Without limiting the CSP's obligations under clauses 6.3 and 6.4 the CSP must keep full and accurate records of the Services provided under this Agreement and must give AECO access to those records on request.

14. TERMINATION

- 14.1 This Agreement will commence on the Commencement Date as set out in Clause 5 above or until terminated by either party on provision of one (1) months notice.
- 14.2 If either Party commits any Event of Default, the other party may terminate this Agreement by seven (7) days notice in writing.

15. EFFECT OF TERMINATION

- 15.1 If this Agreement is terminated for any reason the CSP must, at its own expense within seven (7) days from the date of termination of this Agreement:
 - a) return to AECO all promotional material supplied and all Confidential Information which belongs to AECO; and
 - b) permanently delete any Confidential Information stored by the CSP in a computer or electronic retrieval system so that it is incapable of retrieval.

- c) reasonably co-operate with AECO to transfer responsibility for the provision of the Services to AECO or any new contractor engaged by AECO to provide services the same as or similar to the Services following termination of this Agreement or expiration of the Term;

15.2 Termination of this Agreement is without prejudice to any right of action or remedy which has accrued or may accrue in favour of AECO.

15.3 The rights and obligations contained in clause 16 shall survive the termination or expiration of this Agreement.

16. CONFIDENTIALITY

16.1 Each Party will:

- a) treat Confidential Information as secret and confidential;
- b) not use Confidential Information for any purpose other than the performance of its obligations under this Agreement;
- c) restrict the disclosure of Confidential Information to those members of its staff and other professional consultants who require the Confidential Information to perform their obligations under this Agreement;
- d) from time to time and as requested to do so by the Disclosing Party, immediately supply the Disclosing Party with a list of persons to whom Confidential Information has been disclosed;
- e) ensure that each person to whom Confidential Information has been disclosed complies with the obligations of the Recipient under this Agreement and, if required by the Disclosing Party, execute a confidentiality agreement in a form reasonably required by the Disclosing Party;
- f) immediately notify the Disclosing Party in writing if any person has disclosed or is suspected by the Recipient of disclosing or intending to disclose any Confidential Information to any other person otherwise in accordance with this Agreement;
- g) not disclose Confidential Information to any person including any person to whom the Recipient may otherwise disclose Confidential Information under this Agreement if the Disclosing Party reasonably objects to disclosure of

Confidential Information to that person;

- a) not copy, reproduce, make records of or take extracts from Confidential Information except as reasonably necessary to enable the Recipient to perform its obligations under this Agreement;
- b) neither expressly or impliedly disclose the existence of Confidential Information.

16.2 This clause 16 does not prohibit disclosure of Confidential Information if disclosure is required by law or the Disclosing Party has given prior written consent to the disclosure.

The provisions of this clause 16 shall not apply to such Confidential Information which (i) is in the public domain other than through the

default of the Recipient; (ii) is in possession of the Recipient prior to receipt from the Disclosing Party; (iii) is required by law or by order of a competent court or government agency;

legal advisers to compromise or settle any claim, whether of the parties or another person.

- f) allows AECO may to recover a payment under the indemnity given in clause before it makes the payment in respect of which the indemnity is given.

17. INTELLECTUAL PROPERTY

17.1 Intellectual Property

- a) Any Intellectual Property in any materials or information (including Confidential Information) owned by a party at the
- b) Commencement Date shall remain the
- c) Intellectual Property of that party. Each of AECO and the CSP acknowledges that it has no rights, title or interest in the Intellectual Property of the other party.
- d) The CSP must not use AECO's Intellectual Property or any identification associated with AECO (such as logos), without first obtaining AECO's written consent.

18.3 Professional Indemnity Insurance

- a) The CSP must ensure it holds a current, valid policy of professional liability and indemnity insurance with a reputable insurer for at least AUD\$10 million for each claim and in the aggregate for any 12month period prior to commencing performance of the Services.
- b) The insurance period must be at least for a period of at least six years following expiration of the Term or termination of the Agreement under clause 14

18. INSURANCE AND INDEMNITIES

18.1 General indemnity

The CSP indemnifies AECO from and against, and must pay to AECO on demand the amount of any Loss suffered arising directly or indirectly out of or in connection with:

- a) any act or omission (including negligence) of the CSP or its Personnel in providing or failing to provide the Services;
- b) any misrepresentation by the CSP;
- c) any breach by the CSP or its Personnel of a provision of this Agreement; or
- d) any act or omission of the CSP or its Personnel that causes or contributes to a breach by AECO of any Law applicable to the provision of the Services.

18.2 Operation and nature of indemnity

The indemnity given in clause 18.1

- a) is a continuing obligation of the indemnifying party, whether or not legal proceedings are instituted, and despite any settlement of account or the occurrence of any other thing, and survives the termination of this Agreement document;
- b) is an additional, separate, and independent obligation of the indemnifying party and no one indemnity limits the generality of any other indemnity;
- c) applies whether the loss or damage arises in connection with negligence,
- d) misrepresentation, or other cause; and
- e) includes legal expenses on a full indemnity basis and damages and other compensation paid on the advice of

18.4 Worker's Compensation

The CSP must ensure that a worker's compensation insurance policy is effected prior to commencing performance of the Services and remains current until the expiration or termination of this Agreement, covering liability for loss, damage, claims and all direct or associated costs and expenses arising at common law or under workers compensation legislation in respect of persons employed by the CSP.

18.5 Public Liability

The CSP must obtain a policy of public liability insurance for at least AUD\$10 million with a reputable insurer prior to commencing performance of the Services and must maintain that policy until the expiration or termination of this Agreement.

18.6 Proof of Insurance

The CSP must, on request by AECO, provide AECO with proof, in the form of certificates of currency, of all insurances required to be maintained by the CSP under this document.

18.7 Survival of obligations

The obligations in this clause 18 shall survive any termination or expiration of this Agreement.

19. LIABILITY

19.1 AECO is not liable to the CSP for any loss or damage whatsoever arising directly or indirectly out of the actions of AECO under this Agreement whether under contract, in tort, under statute or otherwise at law or in equity.

19.2 AECO is not liable to the CSP for any Consequential Loss arising out of or in connection with this Agreement or any act or omission of AECO in connection with the Agreement even if AECO knew or should have known those damages were possible or foreseeable.

19.3 The CSP must indemnify AECO for any loss or damage arising from any claim or action brought by any third party

arising from the acts or omissions of the CSP in connection with this Agreement.

- 19.4** The CSP is liable for any injury to, or illness or death of, any person arising from the acts or omissions of the CSP in connection with this Agreement.
- 19.5** 19.5 The CSP is liable for any damage to, or loss or destruction of, any tangible property arising from the acts or omissions of the CSP in connection with this Agreement.
- 19.6** To the fullest extent permitted by applicable law, in no event shall either party be liable to the other for any Consequential Loss special, indirect, incidental, punitive, exemplary, or consequential damages of any kind (including but not limited to loss of business, data, profits), arising out of or relating to this Agreement, regardless of the theory of liability and whether each party was advised of the possibility of such damage or loss.
- 19.7** To the fullest extent permitted by applicable law, in no event shall the total and exclusive liability of AECO, from all claims or causes of action and under all theories of liability arising out of or relating to this Agreement, exceed the Fee and/or Invoice on which the claim is based. This limitation of liability will not apply to claims for death or personal injury caused by negligence, breach of confidentiality or infringement of intellectual property rights.

20. DISPUTE RESOLUTION

- 20.1** The Parties agree that if a dispute arises between them relating to the interpretation of this Agreement then the party which considers that the dispute has arisen must serve a notice ("Notice of Dispute") on the party containing particulars and, where relevant, supporting documentation explaining the dispute.
- 20.2** Within fourteen (14) days of the service of the Notice of Dispute, a senior representative of each party must meet to discuss and attempt to resolve the dispute. The meeting must be held at a place to be agreed between the senior representatives and, failing agreement, at the offices of AECO in the most appropriate capital city.
- 20.3** If the senior representatives cannot resolve the dispute within fourteen (14) days of the date of the meeting referred to in clause 20.2 either party may refer the dispute within a further seven (7) days:
- a) if the dispute is in respect of calculation of costs or other accounting issues, to an accountant appointed by the President from the National Office of the Institute of Chartered Accountants who, acting as an expert not as an arbitrator, must consider the matter upon which the dispute has arisen and recommend the correct approach to resolve the dispute; and
 - b) if the dispute relates to any other matter, to a mediator nominated by the Institute of Arbitrators and Mediators (IAMA).
- 20.4** Costs of the expert or mediator are to be shared equally by the Parties.
- 20.5** No Mediation Outcome.
- a) If the expert appointed under clause 20.3 (a) is unwilling or unable to make a recommendation within forty-five (45) days of the reference of the dispute to the expert; or
 - b) the Parties are unable to reach a compromise following mediation under clause 20.3 (b) within forty-five (45) days of referral to the mediator either party may refer the matter to legal proceedings.
- 20.6** This dispute resolution mechanism does not apply after a party has terminated this Agreement under clause 14

21. NOTICES

- 21.1** A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or email.
- 21.2** A notice, consent or other communication that complies with this clause is regarded as given and received:
- a) if it is delivered, when it has been left at the addressee's address;
 - b) if it is sent by mail, three Business Days after it is posted; and
 - c) if it is sent by fax, when the addressee actually receives it in full and in legible form.
- 21.3** In the case of an email, a notice, consent, or other communication is regarded as given and received if the sender receives confirmation on its server that the message has been transmitted and:
- a) if it is transmitted by 5.00 pm (Melbourne time) on a Business Day – on that Business Day; or
 - b) if it is transmitted after 5.00 pm (Melbourne time) on the Business Day, or on a day that is not a Business Day – on the next Business Day.
- 21.4** A communication to AECO must be left at the address, or sent by prepaid ordinary post to the address or by facsimile to the facsimile number which is specified in Item 8, or if AECO notifies in writing another address or facsimile number then to that address or facsimile number.
- 21.5** A communication to the CSP must be left at the address of the CSP in Australia, or sent by prepaid ordinary post to the address of the addresses in Australia or by facsimile to the facsimile number in Australia which is specified in Item 9, or if the CSP notifies in writing another address or facsimile number in Australia then to that address or facsimile number.

22. EXPENSES OF CSP

- 22.1** All expenses for travelling, entertainment, office, clerical, maintenance and general selling expenses that may be incurred by the CSP in connection with this Agreement will be borne wholly by the CSP. In no case shall AECO be responsible or liable for such expense.

23. ASSIGNMENT

- 23.1 A Party cannot assign or otherwise transfer any or all of its rights arising out of this Agreement without the other Party's prior written consent which shall not be unreasonably withheld.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This Agreement must be construed in accordance with the laws of the state described in Item 10 in Schedule 1.
- 24.2 The Parties submit to the non-exclusive jurisdiction of that state in relation to any dispute arising out of or in connection with this Agreement.

25. SEVERABILITY AND LAW

- 25.1 Any part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.
- 25.2 The obligations in this Agreement are in addition to those obligations that exist at law or in equity and do not replace or otherwise limit those obligations.

26. ENTIRE AGREEMENT

Except to the extent set out in this Agreement:

- c) This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and contains all of the representations, undertakings, warranties, covenants, agreements and deed of the Parties.
- d) This Agreement supersedes all prior negotiations, contracts, arrangements, understandings, agreements and deeds with respect to the subject matter of this Agreement.
- e) There are no representations, undertakings, warranties, covenants, agreements, or deeds between the parties, express or implied, except as contained within this Agreement.

27. AMENDMENT

- 27.1 Subject to clause 28 below, this Agreement
- 27.2 (including the provision of a right created by this Agreement) may only be waived, varied, modified, amended, or added to by agreement in writing signed by the Parties.

28. AMENDMENT OF SCHEDULES:

- 28.1 Notwithstanding clause 4.4, AECO reserves the right to modify Schedules 1 and 2 of this Agreement at any time during the term of this Agreement, without requiring consent or approval from CSP.
- 28.2 AECO shall provide written notice to CSP at least thirty (30) days prior to the effective date of the new Schedules.

- 28.3 The modified Schedules shall become effective upon the expiration of the aforementioned thirty (30) day notice period, without any requirement for CSP's consent or objection.

- 28.4 CSP agrees to comply with and abide by the modified Schedules without objection or refusal.

- 28.5 Any failure of CSP to comply with the modified Schedules shall constitute a material breach of this Agreement."

29. EXERCISE OF RIGHTS

- 29.1 A Party may exercise a right under this Agreement at its discretion, and separately or concurrently with another right.
- 29.2 A single or partial exercise of a right by the Party does not prevent a further exercise of that or any other right.
- 29.3 Failure by the Party to exercise, or delay in exercising a right does not prevent its exercise.

30. REMEDIES CUMULATIVE

- 30.1 The rights provided in this Agreement are cumulative with and not exclusive of the rights provided by law or in equity independently of this Agreement.

31. COSTS

- 31.1 Except as otherwise provided in this Agreement, the Parties must bear their own legal costs and disbursements incurred in the preparation and execution of this Agreement.

32. AUDIT

- 32.1 During the term of this Agreement and not more than once per year (unless circumstances warrant additional audits as described below), either party may audit the other parties policies, procedures and records that relate to the performance of the that party under this Agreement to ensure compliance with this Agreement upon at least 10 business days' notice.
- 32.2 Notwithstanding the foregoing, the parties agree that AECO may conduct an audit at any time, in the event of (i) audits required by governmental or regulatory authorities, (ii) investigations of claims of misappropriation, fraud, or business irregularities of a potentially criminal nature, or (iii) AECO reasonably believes that an audit is necessary to address a material operational problem or issue that poses a threat to AECO's business.

33. GENERAL

- 33.1 **Force Majeure.** If a Party is unable to carry out any of its obligations under this Agreement due to Force Majeure, then upon such Party's giving notice of such Force Majeure as soon as reasonably practicable after its occurrence (but in no event later than seven (7) days following such occurrence), the obligations of the affected Party shall be suspended to the extent and for the duration of the Force Majeure, and the affected Party shall not be liable to the other Party for any loss arising from such suspension. Either Party may also choose

to terminate the Agreement if the Force Majeure lasts for a period of more than one hundred and twenty (120) days, without liability to the other Party.

33.2 Relationship Between Parties. In all matters relating to this Agreement, AECO Energy and the CSP shall be independent contractors.

33.3 Compliance with Data Privacy Act 1988. Both parties agree to comply with the Data Privacy Act 1988. To the extent that a Party provides the other Party with information relating to an identified or identifiable individual ("Personal Data"), each Party shall, to the extent required by applicable data protection laws, process and/or transfer such Personal Data in accordance with applicable data protection law.

33.4 Compliance with Laws. Each party shall ensure compliance with all applicable laws, rules, and regulations in connection with its activities under this Agreement, including without limitation to laws, rules and regulations governing export controls, anticorruption and/or anti-bribery. If at any time during this Agreement there are changes to the enactment and/or regulatory rules relating to RECs, then the Parties shall, in good faith, discuss appropriate changes made to this Agreement to comply with all applicable regulations and/or laws, and shall amend this Agreement to so comply.

33.5 The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

33.6 Partial Invalidity. If any provision of this Agreement or the application thereof to any party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. No failure of either party to exercise any power or right given either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

33.7 Execution in Counterparts. This Agreement may be entered into in counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

33.8 Interpretation. In the Agreement, unless the context otherwise requires or permits: a) Where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning; b) References to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions; c) References to months and years means calendar months and years; d) The use of headings are only for convenience and do not affect interpretation and any headings, underlining or marginal notes are only included for ease of reference; e) The terms "included", "including" and similar expressions when introducing a list of items do not exclude a reference to other items of the same class or genus.

33.9 Exclusion of contrary legislation. Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this document is excluded to the fullest extent permitted by Law.

33.10 Inconsistency with other documents. If there is a conflict between provisions in this Agreement and any other document or agreement entered into between the parties then, unless otherwise agreed in writing by the parties, this Agreement will take precedence over any such other document or agreement.

33.11 Consents. Where this document contemplates that a party may agree or consent to something (however it is described), that party may:

- a) agree or consent, or not agree or consent, in its absolute discretion; and
- b) agree or consent subject to conditions, unless this document expressly contemplates otherwise.

33.12 Waiver of rights. A right may only be waived in writing, signed by the party giving the waiver, and:

- a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again and
- c) the exercise of a right does not prevent any further exercise of that right or of any other right.