

Sales Broker Terms and Conditions

1. RECITALS

- a) AECO Energy is a broker and provider of energy products and service products in Australia.
- b) The Partner is an independent sales organisation to both the purchasers of energy, renewable energy and related services.
- c) Partner wishes to provide a sales service to AECO Energy for the retail of sales of products and services described in Item 2 to customers in the Service Area named in Item 3.
- d) In the normal course of business, the Partner wishes to liaise with potential Customers operating in the market and coordinates/negotiates contracts for the provision of AECO Energy Products with Customers on behalf of AECO Energy.
- e) AECO Energy wishes to use the services of Partner to sell AECO Energy Products to Customers.
- f) Where the Partner introduces a Customer to AECO Energy and the
- g) Customer enters into a Contract with AECO Energy for the supply of AECO Products then the Partner will receive a sales 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;
- e) the other party creates (whether alone or jointly with any third person) independently of the
- f) 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, data or anticipated savings, or any special, indirect, punitive, or exemplary damages.

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

“Customer” means an Introduced Customer who enters into a Contract with AECO Energy.

“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);
- 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); or
- e) Any breach of clauses ~~11.2~~ and 12.

“Fee” means the fee payable to the Partner under clause 6 (Fee) of this Agreement.

“Force Majeure” means any event or circumstance beyond the reasonable control of the Party claiming the Force Majeure (the “Affected Party”) which it could not reasonably have avoided or overcome and which makes it impossible for the Affected Party to perform its obligations under 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.

2. DEFINITIONS

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

“Agent” means a director, officer, employee, or contractor of the relevant entity.

“Agreement” means this document, Partner Program Application Form and Schedule 1 as executed by the Partner and AECO Energy.

“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 in Schedule 1.

“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;

“**Introduced Customer**” means any entity or person who has engaged with the Partner to obtain AECO Energy Products from AECO Energy.

“**Item**” means an item in Schedule 1. “**Market Price**” means the normal price AECO Energy offers to the Customer for Services at a point in time.

“**Special Market Price Variance**” means varying the Market Price to a Customer for Services. It may be expressed as an absolute currency amount or as a percentage of Original Market Price.

“**Offer Price**” price offered to Customer by AECO Energy for Services.

“**Offer Price Variance**” means varying the Offer Price to a Customer. It may be expressed as an absolute currency amount or as a percentage of Original Market Price.

“**Original Market Price**” means the Market Price before any Special Market Price Variance.

“**Original Offer Price**” means the Offer Price before any Offer Price Variance.

“**Paid AECO Product Sale**” means that any fee payable by Customer for an AECO Product provided to customer has been fully paid by the Customer to AECO Energy.

“**Party**” means either AECO Energy or the Partner and ‘Parties’ means all of them.

“**Partner, Partnership**” does not imply or mean any legal partnership or joint venture or agency relationship. Its meaning is limited to a generalised non-specific description of a commercial services relationship of mutual benefit between parties.

“**Personnel**” means Partner or Related Body Corporate officers, directors, agents, employees, associates or anyone who provide Service on behalf of the Partner 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 provided by Partner in relation to this Agreement.

“**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 Partner or any of its employees, or an employee, Agent, Related Body Corporate, partner, or joint ventures of AECO Energy, except to the extent expressly provided for in this Agreement.

3.2 The Partner has no authority to incur and must not incur any obligation on behalf of AECO Energy except with the prior express written instructions of AECO Energy.

3.3 The Partner must advise those parties with whom it deals in connection with the subject matter of this Agreement (including Customers) that the Partner has no authority to bind AECO Energy to any obligation.

3.4 AECO Energy may, at its discretion, in respect of potential customers:

- a) Use the services of other Partners, agents, or marketing companies; or b) Decide not to use the Service or any similar or comparable services, at any time and from time to time.

3.5 In particular and without limitation the Partner must not and must ensure the Personnel do not:

- a) hold itself or themselves out, as the case may be, as an agent of AECO Energy 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 Energy.

4. PERSONNEL

4.1 Personnel Obligations

The Partner 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 Energy;
- b) do not represent in any way that they are employees of AECO Energy;
- 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
- e) unconscionable conduct;
- f) conduct themselves in a manner which is consistent with AECO Energy’s best interests; and
- g) do not act in any manner that could be reasonably expected to disrupt
- h) or adversely affect AECO Energy’s business reputation, interests, or goodwill.

4.2 Treatment of Personnel

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

4.3 Training of Personnel

- a) The Partner 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”).
- b) 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.

- c) The Partner must ensure that Training Program is ongoing, and the training of all Personnel is up-to-date and current.
- d) The Partner must keep records of the training received by the Partner's Personnel in accordance with this clause and provide copies of those records to AECO Energy on request.

4.4 Compliance Program

4.4.1 The Partner must have in place (or establish and maintain) a compliance program to monitor the provision of the Services by the Partner's Personnel in accordance with the requirements of this Agreement ("Compliance Program").

4.4.2 The Partner must keep records of the activities undertaken by the Partner in accordance with the Compliance Program and provide copies of those records to AECO Energy on request.

5. CUSTOMER COMPLAINTS

- a) The Partner must maintain a formal process for capturing, registering and managing customer complaints ("Complaints Procedure").
- b) Without limiting the Partner's obligations under clause 11, if the Partner receives a complaint in relation to the provision of the Services by the Partner or its Personnel and which mentions AECO Energy or relates to an AECO Energy offer, the Partner must immediately inform AECO Energy 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 Partner must cooperate with, and provide such assistance to AECO Energy, as AECO Energy may reasonably require resolving a Customer complaint.
- d) The Partner must keep records of any Customer complaints received by the Partner in relation to the provision of the Services and provide copies of those records to AECO Energy on request.

5.1 The Partner's general obligations is not limited.

The obligations of the Partner in this clause 5 are without limitation to the general obligations of the Partner set out in clause 13.

6. FEE

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

6.2 For the avoidance of doubt, the Fee is only payable for Paid AECO Energy Product Sales in relation to the Contract for that Customer.

6.3 The Fee may vary depending on the AEPP Level of the Partner as defined in Item 6 ("Partner Level").

6.4 The Partner Level is fixed at the time of execution of a Customer Contract and future changes to the Partner's Partner Level, will not affect future payments of Fee in relation to that Customer Contract.

6.5 AECO Energy has sole discretion of which Partner Level is used for a Partner and may change a Partner's Partner Level at any time with 30 days' notice.

6.6 The Fee in relation to a Customer is only earned if:

- a) The Partner introduces the Customer to AECO Energy ("the Introduction");
- b) AECO Energy engages the Partner for the Service described within this Agreement;
- c) AECO Energy enters into a Contract directly and in a timely manner and as a result of the Introduction and the service described within this Agreement;
- d) The Customer pays AECO Energy for invoiced AECO Energy Products; and
- e) The Partner is not in breach of this Agreement.

6.7 The Fee does not apply in any other circumstances.

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

6.9 The Fee is exclusive of any other services provided by Partner to AECO Energy outside of this Agreement.

6.10 Notwithstanding the computation in Item 6 in Schedule 1:

- a) The Fee when expressed in terms of a percentage is only of the Original Market Price. Unless, where the Market Price is higher than the Original Market Price, then the Fee shall be calculated on the higher amount.
- b) Any Partner initiated request for Offer Price Variance shall vary the calculation of the Fee, such that the Fee is reduced or increased by the amount of the Offer Price Variance.

7. SERVICE PRICE VARIANCES

7.1 AECO Energy has absolute discretion on all Service pricing and offers to Customers of AECO Energy Products.

7.2 The Partner can request that AECO Energy vary the Offer Price for Services by requesting an Offer Price Variance or a Special Market Price Variance.

7.3 It is in AECO Energy's absolute discretion to vary any Offer Price or Market Price for any offer for AECO Energy Products to a Customer.

7.4 Changes to Offer Price from an Offer Price Variance will vary the Fee in the amount equal to the Offer Price Variance.

7.5 AECO Energy may at its discretion in response to a Partner requested Special Market Price Variance include an Offer Price Variance.

7.6 AECO Energy will provide notice of any Special Market Price Variance and Offer Price Variance to the Partner on offers of AECO Energy Products to Customers.

8. AMENDMENT OF SCHEDULES:

8.1 AECO Energy reserves the right to modify Schedules of this Agreement at any time during the term of this Agreement, without requiring consent or approval from Partner.

8.2 AECO Energy shall provide written notice to Partner at least thirty (30) days prior to the effective date of the new Schedules.

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

8.4 Partner agrees to comply with and abide by the modified Schedules without objection or refusal.

8.5 Any failure of Partner to comply with the modified Schedules shall constitute a material breach of this Agreement.

8.6 Notwithstanding any subsequent amendments or changes to the Schedules mentioned in this Agreement, the Schedules that were in operation at the time of formation of the Customer Contract shall continue to apply to the obligations outlined in relation to that specific Customer Contract. Any amendments or modifications made to the Schedules after the formation of the Customer Contract shall not affect the rights, duties, or obligations established under the terms of this Agreement in relation to the Customer Contract at the time of its formation.

9. PAYMENT

9.1 Reporting obligations

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

- a) the identity of each Customer in respect of which the Partner is eligible for a Fee (if any);
- b) the amount of Fee payable (if any) by AECO Energy to the Partner 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 Energy to the Partner.

9.2 The Fee, in respect of a Contract, will be paid in accordance with the provisions of clause 6.

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

9.4 The payment schedule of Fees is described in Item 6 in Schedule 1.

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

9.6 AECO Energy will not be under any obligation to pay the Partner 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 Partner does not constitute an admission by AECO Energy that Services have been performed in accordance with this Agreement.

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

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

9.11 In the event that the Partner is in breach of this Agreement and that breach is limited in scope to a Customer then no Fee is payable for Services in relation to that Customer until such time as that breach is remedied.

9.12 Set-Off

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

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 Energy must:

- a) pay to the Partner an amount equal to any GST payable for any supply by the Partner in respect of which the Fee or other amount is payable under this document 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 Energy is issued with a tax invoice, whichever is later.

11. OBLIGATIONS OF THE PARTNER

11.1 As and when it is required by the Partner's customers, the Partner shall submit a request to AECO Energy for a quotation for the sale of AECO Energy Products for each Introduced Customer. The Partner must:

- a) obtain from Introduced Customers such approvals as are required to ensure that it is properly authorised to represent the Introduced Customer and to release the Introduced Customer's information to AECO;
- b) provide AECO Energy with customer details and all information AECO Energy may reasonably require conducting its usual pricing quotation, including, but not limited to, energy information, summary of customer's energy history and consumption forecast;
- c) not discriminate between retailers of renewable energy and to use all reasonable endeavours to inform AECO Energy of all requests to purchase renewable energy received through the Partner;
- d) not make or issue any statement, representation or claim and shall give no warranty to any person in respect of AECO Energy's business, products or services unless specifically authorised by AECO Energy in writing; and
- e) use all reasonable endeavours to assist AECO Energy without charge to recover any sums due to AECO Energy by the Customer under the Contract.

11.2 The Partner must:

- a) ensure that the Services under this Agreement are performed diligently, competently, with care and skill and in a proper and professional manner;
- b) keep adequate records of the services performed pursuant to this Agreement, and if requested to do so, provide to AECO Energy copies of those records and of correspondence or other material arising from or relating to the provision of those services under this Agreement; and
- c) in performing its obligations under this Agreement, the Partner must comply with the provisions of Part VB of the *Trade Practices Act 1974* (Cth).

12. FIDELITY

12.3 The Partner agrees to provide Services with fidelity towards the interests of AECO Energy.

12.4 Partner and Personnel shall not disparage AECO Energy, 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.

12.5 Partner 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 Energy.

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

13. GENERAL OBLIGATIONS

13.1 The Partner 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 systems, communication facilities and administrative support);
- b) make all reasonable efforts not to interfere with AECO Energy's business and operations when providing the Services and otherwise performing its obligations under this Agreement;
- c) promptly notify AECO Energy if any of the Services or the provision of them conflicts with any applicable Law or any authorisation, permit or licence held by the Partner in connection with the provision of the Services;
- d) ensure that all Personnel used in providing the Services are familiar with all applicable procedures and policies referred to in clause 4.1.; and
- e) strictly comply with AECO Energy Supplier and Partner Code of Conduct.

13.2 Subcontractors

- a) The Partner may, with the prior written consent of AECO Energy, subcontract any part (but must not subcontract all) of its obligations under this Agreement.
- b) The Partner 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 Partner subcontracts any part of its obligations under this Agreement, it must ensure that its subcontractors obtain and maintain insurances consistent with the Partner's obligation to obtain and maintain insurances under clause 19.
- d) Any approval given by AECO Energy to the Partner in relation to subcontracting does not discharge or release the Partner from any Liability for the performance of its obligations under this Agreement.
- e) AECO Energy and the Partner 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.

14. OBLIGATIONS OF AECO Energy

14.1 AECO Energy must:

- a) promptly consider and respond to any request for a quotation from an Introduced Customer.
- b) pay the Fee as outlined in Clause 6 and in the manner set out in Clause 9 in this Agreement;
- c) provide accurate and complete information to the Partner.

14.2 No duty on AECO Energy

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

- a) advise the Partner;
- b) supervise or control the performance of the Services;
- c) ensure the proper performance of any of the Partner's obligations under this Agreement document;
- d) exercise any discretion for the benefit of the Partner; or
- e) enter into a Contract with a Customer.

14.3 Directions, information

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

14.4 Access to information

Without limiting the Partner's obligations under clauses 4.4.1 4.4.2 and 11.2, the Partner must keep full and accurate records of the Services provided under this Agreement ~~document~~ and must give the Principal access to those records on request.

15. TERMINATION

15.1 This Agreement will commence on the Commencement Date and continues until terminated by either party on provision of one (1) month's notice.

15.2 If either Party commits any Event of Default, the other party may terminate this Agreement by seven (7) days' notice in writing.

16. EFFECT OF TERMINATION

16.1 If this Agreement is terminated for any reason the Partner must, at its own expense within seven (7) days from the date of termination of this Agreement:

- a) return to AECO Energy all promotional material supplied and all Confidential Information which belongs to AECO Energy;
- b) permanently delete any Confidential Information stored by the Partner in a computer or electronic retrieval system so that it is incapable of retrieval; and
- c) reasonably co-operate with AECO Energy to transfer responsibility for the provision of the Services to AECO Energy or any new contractor engaged by AECO Energy to provide services the same as or similar to the Services following termination of this Agreement or expiry of the Term.

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

16.3 The rights and obligations contained in clauses 6, 11.2, 12, 17 and 32 shall survive the termination or expiry of this Agreement whilst any Fee is payable to the Partner.

16.4 For the sake of clarity, AECO Energy will continue paying to the Partner in relation to an individual Customer Contract such Fees as it would pay if this Agreement had not been terminated or expired subject to clauses 6, 11.2, 12, 17 and 32.

17. CONFIDENTIALITY

17.3 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 to under this Agreement if the Disclosing Party reasonably objects to the disclosure of Confidential Information to that person;
- h) 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; and
- i) neither expressly nor impliedly disclose the existence of Confidential Information.

17.4 The provisions of this clause 17 does not prohibit disclosure of 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) if disclosure is required by law or by order of a competent court or government agency; or the Disclosing Party has given prior written consent to the disclosure.

18. INTELLECTUAL PROPERTY

18.3 Intellectual Property

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

19. INSURANCE AND INDEMNITIES

19.1 General indemnity

The Partner indemnifies AECO Energy from and against, and must pay to AECO Energy 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 Partner or its Personnel in providing or failing to provide the Services;
- b) any misrepresentation by the Partner;
- c) any breach by the Partner or its Personnel of a provision of this Agreement; or
- d) any act or omission of the Partner or its Personnel that causes or contributes to a breach by AECO Energy of a Law applicable to the provision of the Services.

19.2 Operation and nature of indemnity.

The indemnity given in clause 19.1

- 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;

- 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, misrepresentation, or other cause; and
- d) includes legal expenses on a full indemnity basis and damages and other compensation paid on the advice of legal advisers to compromise or settle any claim, whether of the parties or another person.
- e) AECO Energy may recover a payment under the indemnity given in clause 19.1 before it makes the payment in respect of which the indemnity is given.

19.3 Professional Indemnity Insurance

- a) The Partner 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 12-month 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 expiry of the Term or termination of this Agreement under clause 15.

19.4 Worker's Compensation

The Partner 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 Partner.

19.5 Public Liability

The Partner 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 termination or expiration of this Agreement.

19.6 Proof of Insurance

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

19.7 Survival of obligations

The obligations in this clause 19 shall survive any termination or expiration of this Agreement.

20. LIABILITY

20.1 AECO Energy is not liable to the Partner for any loss or damage whatsoever arising directly or indirectly out of the actions of AECO

Energy under this Agreement whether under contract, in tort, under statute or otherwise at law or in equity.

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

20.3 The Partner must indemnify AECO Energy for any loss or damage arising from any claim or action brought by any third party arising from the acts or omissions of the Partner in connection with this Agreement.

20.4 The Partner is liable for any injury to, or illness or death of, any person arising from the acts or omissions of the Partner in connection with this Agreement.

20.5 The Partner is liable for any damage to, or loss or destruction of, any tangible property arising from the acts or omissions of the Partner in connection with this Agreement.

20.6 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.

20.7 To the fullest extent permitted by applicable law, in no event shall the total and exclusive liability of AECO Energy, 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.

21. DISPUTE RESOLUTION.

21.1 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.

21.2 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 Energy in the most appropriate capital city.

21.3 If the senior representatives cannot resolve the dispute within fourteen (14) days of the date of the meeting referred to in clause 21.2, 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).

21.4 Costs of the expert or mediator are to be shared equally by the Parties.

21.5 No Mediation Outcome.

- a) If the expert appointed under clause 21.3 (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 21.3 (b) within forty-five (45) days of referral to the mediator.

Either party may refer the matter to legal proceedings.

21.6 This dispute resolution mechanism does not apply after a party has terminated this Agreement under clause 15 (TERMINATION).

22. NOTICES

22.1 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.

22.2 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.

22.3 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.

22.4 A communication to AECO Energy 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 Items 8 and 9, or if AECO Energy notifies in writing another address or facsimile number then to that address or facsimile number.

22.5 A communication to the Partner must be left at the address of the Partner 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 Partner notifies in writing another address or facsimile number in Australia then to that address or facsimile number.

23. EXPENSES OF PARTNER

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

24. ASSIGNMENT

24.1 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.

25. GOVERNING LAW AND JURISDICTION

25.1 This Agreement must be construed in accordance with the laws of the state described in Item 10 in Schedule 1.

25.2 The Parties submit to the nonexclusive jurisdiction of that state in relation to any dispute arising out of or in connection with this Agreement.

26. SEVERABILITY AND LAW

26.1 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.

26.2 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.

27. ENTIRE AGREEMENT

Except to the extent set out in this Agreement:

- a) 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.
- b) This Agreement supersedes all prior negotiations, contracts, arrangements, understandings, agreements and deeds with respect to the subject matter of this Agreement.
- c) There are no representations, undertakings, warranties, covenants, agreements, or deeds between the parties, express or implied, except as contained within this Agreement.

28. AMENDMENT

28.1 This Agreement (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.

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 party's 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 Energy 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 Energy 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 Affected 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 Partner 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, anti-corruption 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 to or by 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 Agreement is excluded to the full 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 Agreement 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.
- c) unless this Agreement 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.