



HERBERT
SMITH
FREEHILLS

Agreement

Nevertire Solar Farm

Operate and Maintain Agreement

Nevertire Solar Pty Ltd as trustee for the Nevertire
Solar Trust

O&M Solar Pty Ltd



Contents

Table of contents

	Commercial Terms	2
1	Definitions and interpretation	2
1.1	Definitions	2
1.2	Interpretation	17
1.3	Inclusive expressions	18
1.4	Business Day	18
1.5	No adverse presumption	18
1.6	Components of this agreement	18
1.7	Inconsistencies	19
1.8	Changes to Connection Agreement and Access Documents	19
1.9	Language	19
1.10	Adjustment for CPI	19
2	Term	20
2.1	Term	20
2A	Interim Period	20
3	Performance of services	21
3.1	Contractor to perform Services	21
3.2	Principal may postpone Services	21
3.3	Resources and other items provided by Contractor	22
3.4	Resources and other items provided by Principal	22
3.5A	Reliance Material	22
3.5	No reliance	23
3.6	Risks associated with Services	23
3.7	Contractor's obligations unaffected	23
4	Handover from existing contractor	24
4.1	General	24
4.2	Handover inspection and Handover Condition Report	24
4.3	Implementation Plan	24
5	Standards for maintenance	25
5.1	General	25
5.2	Materials and workmanship	25
5.3	Facility	25
5.4	Delivery time for parts	26
5.5	Skill and care	26
6	Service Plans	27
6.1	Requirements	27
6.2	Compliance	27
6.3	Submission	27
6.4	Review	27
6.5	Permitted comments	27
6.6	Resubmission	27



Contents

6.7	Updates.....	28
7	Inspections and testing	28
7.1	Principal may inspect.....	28
7.2	Principal may direct additional tests	28
7.3	Cost of additional testing	29
8	Pre-Existing Facility Defects	29
8.1	Contractor to rectify Pre-Existing Facility Defects	29
8.2	Failure to rectify Pre-Existing Facility Defects	29
8.3	Contractor to minimise disruption	29
8.4	Manufacturer warranties	30
9	Operation and Maintenance Manuals	30
9.1	Requirements.....	30
9.2	Compliance	30
9.3	Submission	30
9.4	Review	30
9.5	Resubmission	30
10	Defects and non-compliances in Contractor Goods and Services	31
10.1	Direction to rectify	31
10.2	Contractor to rectify.....	31
10.3	Failure to rectify	31
10.4	Contractor to minimise disruption	32
10.5	Rights additional	32
11	Subcontractors and personnel	32
11.1	Subcontracting	32
11.2	Exclusion of personnel.....	32
11.3	Industrial relations.....	33
11.4	Payment of subcontractors and employees	33
11.5	Notices under relevant legislation.....	33
11.6	Contractor responsible	34
12	Coordination with Related Activities	34
13	Protection of people, property and environment	34
13.1	Work health and safety requirements	34
13.2	Consultation, cooperation and coordination	35
13.3	Assistance to the Principal.....	36
13.4	Principal Contractor	36
13.5	Environmental requirements.....	37
13.6	Precautions	37
13.7	Assessment and training	37
13.8	Urgent protection	38
13.9	Damage to property	38
13.10	Incidents.....	38
13.11	Entry by Permit Holders or inspectors	39
13.12	Enforcement measures.....	39
13.13	Compliance	39
13.14	Indemnities.....	40



Contents

14	Legislative Requirements	41
14.1	Contractor Authorisations	41
14.2	Principal Authorisations	41
14.3	Conditions of Authorisations	41
14.4	Greenhouse and energy reporting	42
14.5	National pollutant inventory reporting	42
14.6	Modern Slavery Law	43
14.7	SOCI Act and AESCSF	43
15	Relief Events	44
15.1	Relief	44
15.2	Notice of proposed event	44
15.3	Notice of event	44
15.4	Updates	45
15.5	Recommencement	45
15.6	Mitigation	45
16	Compensation Events	45
16.1	Compensation	45
16.2	Notice of proposed event	45
16.3	Notice of event	46
16.4	Updates	46
16.5	Mitigation	46
17	Change Events	46
17.1	Notice of Change Event	46
17.2	Change proposal	47
17.3	Change Order	47
18	Changes to Services	47
18.1	Change proposals	47
18.2	Proposal requirements	47
18.3	Change Order	48
18.4	Change details	48
18.5	Principal not restricted	49
19	Access to Facility	49
19.1	Principal to provide access	49
19.2	Requirements for mobilisation	50
19.3	Access requirements	50
19.4	Services and utilities	50
19.5	Contractor to minimise disruption	50
19.6	Indemnity	51
20	Electricity network	51
20.1	Connection requirements	51
20.2	National electricity market requirements	51
20.3	Indemnity	52
21	Guaranteed Availability	52
21.1	Availability Guarantee	52
21.2	Liquidated damages payable	52
21.3	Claim for Availability Damages	52



Contents

21.4	Failure to assess availability	52
21.5	Genuine pre-estimate	53
21.6	Sole remedy	53
22	Payment	53
22.1	Payment claim	53
22.2	Payment schedule	54
22.3	Contractor to provide adjustment note	54
22.4	Principal to pay	54
22.5	Payment requirements	55
22.6	Payment not approval	55
22.7	Interest on overdue payments	55
22.8	Set off.....	55
22.9	All costs included	55
23	Management and administration	56
23.1	Contractor to maintain records	56
23.2	Principal may audit performance	56
23.3	Reporting	56
23.4	Improvement plans	57
24	Risk and title	57
24.1	Risk in Facility	57
24.2	Risk in work.....	58
24.3	Title in work.....	58
24.4	Title in defective parts.....	58
24.5	Title in electricity and Green Rights	58
24.6	No security	58
24.7	Customs.....	58
25	Insurance	59
25.1	Parties to insure	59
25.2	Compliance	59
25.3	Insurance claims	59
25.4	Records.....	59
25.5	Deductible	60
25.6	Evidence	60
25.7	Failure to insure	60
26	Security for performance	61
26.1	Provision of bank guarantee	61
26.2	Requirements for bank guarantee	61
26.3	Recourse to bank guarantee	61
26.4	Replacement bank guarantee.....	62
26.5	Release of bank guarantee.....	62
26.6	Interest.....	63
26.7	No trust	63
26.8	Financial monitoring.....	63
27	Intellectual property	63
27.1	Warranties.....	63
27.2	Licence granted by Contractor.....	63
27.3	Licence granted by Principal.....	64



Contents

	27.4 Moral Rights	64
	27.5 Remedial action	64
	27.6 Indemnity by Contractor	64
	27.7 Indemnity by Principal	65
28	Confidentiality and publicity	65
	28.1 Definition	65
	28.2 Non-disclosure	65
	28.3 Permitted disclosure	66
	28.4 Undertakings by third parties	66
	28.5 Publicity	66
29	Force Majeure	67
	29.1 Notice	67
	29.2 Suspension	67
	29.3 Mitigation	67
30	Default	67
	30.1 Contractor Events of Default	67
	30.2 Principal may give default notice	68
	30.3 Principal may request cure plan	68
	30.4 Principal Events of Default	69
	30.5 Contractor may give default notice	69
31	Suspension of Services	70
	31.1 Suspension by Principal	70
	31.2 Suspension by Contractor	70
	31.3 Recommencement	70
	31.4 Liability for suspension	71
32	Termination	71
	32.1 Termination for Contractor default or insolvency	71
	32.2 Termination for Principal default or insolvency	71
	32.3 Termination for force majeure	72
	32.4 Termination for convenience	72
	32.5 Not used	72
	32.6 Additional rights on Insolvency Event	72
	32.7 Rights on termination	73
	32.8 Principal not restricted	73
	32.9 Accrued rights and obligations unaffected	74
	32.10 Provisions surviving termination	74
33	End of Service Term	74
	33.1 Contractor to cease performance	74
	33.2 Contractor to provide documents	74
	33.3 Option to purchase Contractor parts	75
	33.4 Handover review	75
	33.5 Contractor to assist with retendering	76
	33.6 Contractor to provide familiarisation and training	76
	33.7 Contractor to provide assistance	77
	33.8 Principal may rectify non-compliance	77



Contents

34	Claims and liability	77
34.1	Excluded Loss.....	77
34.2	Aggregate liability.....	78
34.3	Liability for Availability Damages	79
34.4	Application of caps and exclusions.....	79
34.5	Notice of claims.....	79
34.6	Defence of indemnified claims.....	80
34.7	Operation of the Apportionment Liability Act	80
35	Dispute resolution	81
35.1	Procedure	81
35.2	Negotiation.....	81
35.3	Arbitration.....	81
35.4	Urgent relief	81
36	Taxes and duties	81
36.1	Goods and Services Tax	81
36.2	Other taxes and duties.....	82
37	Security interests in personal property	83
38	Assignment and other dealings	84
39	Liability of Principal as Trustee	84
39.1	Trustee limitation of liability.....	84
39.2	Trustee warranties	85
39.3	Trustee obligations.....	85
40	Enforceability	86
41	Parties' representatives	86
41.1	Principal's Representative	86
41.2	Contractor's Representative	87
41.3	Directions given by Principal.....	87
42	Notices	87
42.1	Form of Notice	87
42.2	How Notice must be given and when Notice is received.....	87
42.3	Notice must not be given by other electronic communication	88
43	General	88
43.1	Governing law and jurisdiction.....	88
43.2	Invalidity and enforceability.....	88
43.3	Waivers	89
43.4	Exercise of rights	89
43.5	Entire agreement	89
43.6	No reliance.....	89
43.7	International Sale of Goods Convention excluded	89
43.8	Variation.....	89
43.9	Indemnities.....	90
43.10	Cumulative rights	90
43.11	Relationship of the parties	90
43.12	Costs and expenses	90
43.13	Further action.....	90



Contents

43.14 Counterparts	90
Schedule 1	
Agreement details	91
Schedule 2	
Pricing details	95
Schedule 3	
Services details	100
Schedule 4	
Handover Condition Report	112
Schedule 5	
Technical Documents	113
Schedule 6	
Manufacturer Warranties	114
Schedule 7	
Health, safety and environment minimum requirements	115
Schedule 8	
Not used	118
Schedule 9	
Connection requirements	119
Schedule 10	
NER requirements	121
Schedule 11	
Access requirements	124



Contents

Schedule 12	
Availability Guarantee	127
Schedule 13	
Insurance requirements	133
Schedule 14	
Schedule 15	
Schedule 16	
Signing page	140



Operate and maintain agreement

Date ► 20 February 2025

Between the Parties

Nevertire Solar Pty Ltd

ACN 626 135 644 as trustee for the Nevertire Solar Trust (ABN 33 893 459 797) of Level 9, Angel Place, 123 Pitt Street, Sydney NSW 2000

(Principal)

O&M Solar Pty Ltd

ABN 28 628 165 891 of 87 Farrell Street, Ouyen VIC 3490

(Contractor)

Recitals

- 1 The Principal owns the Facility.
 - 2 The Principal wishes to engage the Contractor to perform the Services for the Facility during the Service Term in accordance with this agreement.
 - 3 The Contractor wishes to accept its engagement in accordance with this agreement.
-

The Parties agree as follows:

Commercial Terms

1 Definitions and interpretation

1.1 Definitions

Unless inconsistent with the context, the capitalised terms in this agreement have the meanings set out below:

Term	Meaning
Access Documents	the meaning given in Schedule 11.
Additional Services	work and activities relating to the operation and maintenance of the Facility, other than Scheduled Maintenance, Unscheduled Maintenance and the rectification of Pre-Existing Facility Defects under clause 8.1.
Additional Services Fees	the meaning given in clause 5 of Schedule 2, as adjusted pursuant to this agreement.
AEMO	Australian Energy Market Operator Limited (ABN 94 072 010 327).
Applicable Regulatory Instruments	the meaning given in the National Electricity Rules and includes the National Electricity Law.
Apportionment Liability Legislation	Part 4 of the <i>Civil Liability Act 2002</i> (NSW).
Associate	<ol style="list-style-type: none"> 1 in relation to the Principal, any Principal Associate; and 2 in relation to the Contractor, any Contractor Associate.
Authorisation	any approval, authorisation, consent, exception, licence, permit, determination, certificate or registration of or from any Government Agency, including any renewal, variation or modification.
Availability Damages	the meaning given in Schedule 12.
Availability Guarantee	the meaning given in Schedule 12.

Term	Meaning
Base Fee	the meaning given in clause 3 of Schedule 2, as adjusted pursuant to this agreement.
BBSY Rate	for a period: <ol style="list-style-type: none"> the average bid rate displayed on the Reuters screen BBSY page at or about 10.30am (AEST) on the day the payment was due for a term closest to that period; or if that rate ceases to be published, any substantially equivalent rate that replaces it.
Business Day	means: <ol style="list-style-type: none"> a day on which banks are open for business in Sydney that is not a Saturday, Sunday or public holiday; and excluding 27, 28, 29, 30 or 31 December.
Change	<ol style="list-style-type: none"> an addition, omission, substitution or change to the scope of or requirements for: <ol style="list-style-type: none"> Scheduled Maintenance; Unscheduled Maintenance; or the methodology for the rectification of any Pre-Existing Facility Defect as such methodology may be documented in the Handover Condition Report; or an Additional Service.
Change Event	any of the following: <ol style="list-style-type: none"> any modification, alteration or upgrade of or to the Facility, unless performed by or on behalf of the Contractor; Latent Defect; an Excluded Mandatory Requirement which requires a Change to the Services; and the circumstances specified in clause 14.2(c)(2).
Change in Control	any change whatsoever in Control, whether effected directly or indirectly.
Change Order	a written direction given by the Principal to perform a Change that states it is a change order under clause 18.3.

Term	Meaning
Claim	<p>any claim, demand, action or proceedings of any nature whatsoever, whether actual or threatened, including a claim by the Contractor for:</p> <ol style="list-style-type: none"> 1 an adjustment to the Fees; 2 payment of an amount in addition to the Fees; or 3 suspension of, or relief from, an obligation under this agreement.
Commercial Terms	these commercial terms, consisting of clauses 1 to 43 (inclusive).
Compensation Event	<p>any of the following, in each case, except to the extent caused by the Contractor, a Contractor Associate or a Defect:</p> <ol style="list-style-type: none"> 1 a breach of this agreement by the Principal; 2 a negligent act or omission of the Principal or a Principal Associate; 3 any delay or disruption caused by the Principal or a Principal Associate, except to the extent: <ol style="list-style-type: none"> A. the Principal or a Principal Associate is acting in accordance with this agreement; or B. caused or contributed to by the Contractor's failure to comply with clause 12 (if applicable) or 19.3; 4 a suspension of Services or access by the Principal under clause 31.1 other than for a reason set out in clauses 31.1(a) to 31.1(e) (inclusive); 5 a suspension of Services by the Contractor under clause 31.2(b); 6 a breach of the Connection Agreement by the Network Service Provider; and 7 any delay or disruption caused by a previous operation and maintenance contractor of the Principal after the Execution Date at the Facility Land except to the extent that contractor is carrying out handover obligations as contemplated by this agreement or otherwise consistent with Good Industry Practice.
Confidential Information	the meaning given in clause 28.1.
Connection Agreement	the meaning given in clause Schedule 9.
Construction Work	any Services performed at the Facility Land that constitute 'construction work', as defined in the <i>Work Health and Safety Regulation 2017</i> (NSW).

Term	Meaning
Contamination	<p>the presence of a substance (whether solid, liquid or gas) in the environment:</p> <ol style="list-style-type: none"> 1 at a concentration above that normally present in the environment in the same locality; and 2 that creates a risk of harm to human health or any other aspect of the environment, <p>and Contaminate has a corresponding meaning.</p>
Contractor Associate	<ol style="list-style-type: none"> 1 any Related Body Corporate of the Contractor; 2 any Subcontractor; and 3 any officer, employee or agent of the Contractor or a person referred to in paragraph 1 or 2 of this definition.
Contractor Authorisations	all Authorisations required to perform the Services, other than the Principal Authorisations.
Contractor Deliverables	the physical works, equipment, goods, documents, software and other things provided, or to be provided, to the Principal in the Contractor's performance of this agreement, including the Contractor Goods, rectification work and Service Plans.
Contractor Event of Default	the meaning given in clause 30.1.
Contractor Goods	the physical works, equipment, goods and other tangible property (including software installed in them) provided, or to be provided, to the Principal in the Contractor's performance of this agreement, (including rectification work).
Contractor Parts	the parts, materials and Consumables required for the performance of the Services. For the avoidance of doubt, the Contractor Parts do not form part of the Spare Parts.
Contractor's Representative	the meaning given in clause 41.2.
Control	<ol style="list-style-type: none"> 1 control or influence of, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, in relation to the financial and operating policies;

Term	Meaning
	<ol style="list-style-type: none"> 2 being in a position to cast, or control the casting of, more than 50% of the maximum number of votes that may be cast at a general meeting; or 3 having a relevant interest in more than 50% of the equity, of a relevant entity.
CPI	the 'All Groups Consumer Price Index Weighted Average of Eight Capital Cities' published quarterly by the Australian Bureau of Statistics, or if the index is no longer published, any index that replaces it.
Default Interest Rate	the BBSY Rate plus 2% per annum.
Defect	<p>a defect, error, deficiency, omission, fault, failure, shrinkage, subsidence, malfunction, irregularity or other aspect in or of the Contractor Goods that does not comply with this agreement, except to the extent caused by:</p> <ol style="list-style-type: none"> 1 fair wear and tear; or 2 the operation or maintenance of the Facility by the Principal or a Principal Associate other than substantially in accordance with the Operation and Maintenance Manuals.
Defects Liability Period	a 'Defects Liability Period' specified in Item 9 or Item 10.
Design Life	the period of time set out in Item 11.
Dispute	any dispute, difference or disagreement between the Parties arising out of or in connection with this agreement or the performance of it. A reference to a Dispute which is partly resolved is a reference to the unresolved part of the Dispute.
Environmental Management Plan	the 'Environmental Management Plan' for the Services required by Schedule 7.
Environmental Requirements	<p>the requirements set out in Schedule 7 and any of the following related to the protection of the environment, land use, planning, pollution, Contamination and the handling or disposal of substances:</p> <ol style="list-style-type: none"> 1 Legislative Requirements; and

Term	Meaning
	<p>2 directions, notices and the like issued in accordance with any Legislative Requirement.</p>
Excluded Damage	<p>damage to the Facility that:</p> <ol style="list-style-type: none"> 1 was not caused or contributed to by the Contractor, a Contractor Associate or a failure by the Contractor to perform the Services in accordance with this agreement; and 2 has not been rectified and is not the subject of a Change Order in accordance with clause 24.1(d), <p>but excluding any equipment failure or fault or defect, wear, erosion, corrosion, deterioration and other adverse impacts that occur over time.</p>
Excluded Loss	<p>any of the following:</p> <ol style="list-style-type: none"> 1 Loss not arising naturally according to the usual course of things; 2 loss of use, generation, production or business; 3 loss of good will or damage to reputation; 4 loss of actual or anticipated profit or revenue or the opportunity to earn profit; and 5 increase in financing costs.
Excluded Mandatory Requirement	<p>any of the following:</p> <ol style="list-style-type: none"> 1 a change to, repeal of or new statute, regulation, by law, ordinance or subordinate legislation (including the National Electricity Rules); 2 a change to, withdrawal of or new standard or code which a Legislative Requirement requires the Contractor to comply with; or 3 a change to or the invalidity of a Principal Authorisation which was not requested, initiated or caused by the Contractor or a Contractor Associate, and was not made necessary as a result of the Contractor or a Contractor Associate, including a breach of this agreement by the Contractor, <p>in each case, which:</p> <ol style="list-style-type: none"> 4 comes into effect after the Execution Date; 5 in the case of legislation, is not in substantially the same form as a bill introduced or tabled in the parliament enacting the legislation prior to the Execution Date; 6 in the case of standards or codes, is not in substantially the same form as a draft standard or code published prior to the Execution Date; 7 applies in Australia or to Services performed in Australia;

Term	Meaning
	<p>8 is not for the purposes of harmonising work health and safety legislation between States and Territories; and</p> <p>9 is not in respect of a Tax.</p>
Execution Date	the date this agreement is executed by the last Party to do so.
Facility	the meaning given in Item 1.
Facility Land	the 'Facility Land' specified in Schedule 11.
Fees	the meaning given in Schedule 2.
Force Majeure Event	<p>any of the following occurring in Australia:</p> <ol style="list-style-type: none"> 1 act of God, including cyclone, flood, earthquake, tsunami and bushfire; 1a an extreme wind event, hail or lightning which causes damage to the Facility or Contractor Goods located at the Facility Land; 2 epidemic, pandemic or quarantine by order of a Government Agency; 3 war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, act of terrorism, rebellion, riot, revolution, insurrection, martial law or confiscation by order of any Government Agency; 4 ionising radiations or contamination by radioactivity from nuclear fuel or nuclear waste resulting from the combustion of nuclear fuel; and 5 industrial action or dispute which affects New South Wales or Australia generally and is not directed at the affected Party or any of its Associates, <p>to the extent it:</p> <ol style="list-style-type: none"> 6 was not caused by an act or omission of the affected Party or any of its Associates; 7 was beyond the reasonable control of the affected Party and its Associates; and 8 could not have been avoided or overcome by the affected Party or any of its Associates taking reasonable precautions or steps.
Good Industry Practices	the practices, procedures, methods, standards, skill and care that could reasonably be expected to be used by a prudent, competent and experienced contractor when performing services of a nature similar to the Services in Australia and includes compliance with

Term	Meaning
	good electricity industry practice as defined in the National Electricity Rules.
Government Agency	any government, governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, statutory or other, authority, local council, tribunal, agency or entity or minister of the Crown in any part of the world.
Green Rights	<ol style="list-style-type: none"> 1 large-scale generation certificates under the <i>Renewable Energy (Electricity) Act 2000</i> (Cth); and 2 any other rights, credits, certificates, incentives, concessions and benefits created, recognised or available by or under any Legislative Requirements that relate to solar energy, renewable energy, emissions trading or limiting or reducing greenhouse gas emissions.
GST	the meaning given in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Handover Condition Report	the report in the form set out in Schedule 4, as agreed between the Principal and the Contractor in accordance with clause 4.2(a)(2).
Health and Safety Management Plan	the 'Health and Safety Management Plan' for the Services required by Schedule 7.
Insolvency Event	<p>any of the following:</p> <ol style="list-style-type: none"> 1 a 'controller' (as defined in the <i>Corporations Act 2001</i> (Cth)), manager, trustee, receiver, receiver and manager, administrator or similar officer is appointed in respect of a body corporate or any asset of a body corporate; 2 a liquidator or provisional liquidator is appointed in respect of a body corporate; 3 any application is made to a court for an order, a court makes an order, a meeting is convened or a resolution is passed, for the purpose of: <ol style="list-style-type: none"> A. appointing a person referred to in paragraph 1 or 2 of this definition; B. winding up or de-registering a body corporate; or C. proposing or implementing a scheme of arrangement, other than an application that is withdrawn, dismissed or set aside within 21 days after it is made; 4 a body corporate enters into, resolves to enter into or proposes a reorganisation, moratorium or other form of administration

Term	Meaning
	<p>involving, an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of them, other than for the purposes of a reconstruction or amalgamation while solvent;</p> <p>5 a body corporate becomes, states in writing that it is, or is deemed under any Legislative Requirement to be, insolvent or unable to pay its debts as and when they fall due; and</p> <p>6 any act is done or event occurs which, under any applicable Legislative Requirement from time to time in any jurisdiction, has an analogous or similar effect to any act or event described in paragraphs 1 to 5 (inclusive) of this definition.</p>
Intellectual Property Rights	<p>all current and future intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including:</p> <p>1 patents, trademarks, domain names, design rights, copyright, circuit layout rights, trade secrets, know how and the right to confidentiality;</p> <p>2 applications for or right to apply for registration of any of them;</p> <p>3 rights under licences and consents in relation to any of them; and</p> <p>4 other forms of protection of a similar nature or having equivalent or similar effect to any of them,</p> <p>but excluding Moral Rights.</p>
Intended Purpose	<p>the purpose of generating and exporting electricity to the electricity network, and performing functions associated with that purpose, in accordance with the requirements of this agreement.</p>
Interim Period	<p>the period from (and including) the Execution Date until (and including) 19 April 2025, as may be extended by written agreement between the Parties.</p>
Item	<p>an item in Schedule 1.</p>
Landholder	<p>any owner, lessee or occupier of any land that forms part of the Facility Land.</p>
Latent Defect	<p>a material or systemic defect, error, deficiency, omission, fault, failure, shrinkage, subsidence, malfunction, irregularity or other non-compliance in or of any part of the Facility which exists at the Execution Date and which:</p> <p>1 is not identified in the Handover Condition Report; and</p>

Term	Meaning
	<p>2 could not reasonably be expected to have been identified through reasonable inspection procedures by the Contractor prior to the agreement on the Handover Condition Report with the Principal,</p> <p>but excluding any equipment failure or fault or defect, wear and tear, erosion, corrosion, deterioration.</p>
Legislative Requirement	<p>the following in force from time to time:</p> <p>1 statutes, regulations, by-laws, ordinances and subordinate legislation; and</p> <p>2 Authorisations,</p> <p>including the National Electricity Rules.</p>
Licence Agreement	<p>the licence agreement between the Principal and the NSP in respect of the Eulomongo and Mullengudery site.</p>
Loss	<p>any loss, cost, expense, damage, fine or liability of any kind.</p>
Manufacturer Warranties	<p>the meaning given in clause 8.4(a).</p>
Mobilisation Activities	<p>the activities which the Contractor must perform in order to prepare for the performance of the Services, including to:</p> <p>1 familiarise itself with the Facility and how it operates, including through inspections and attending any training provided;</p> <p>2 familiarise itself with the information regarding the Facility available to it (including the Technical Documents) and promptly notify the Principal of any additional information required;</p> <p>3 prepare and agree with the Principal the Handover Condition Report;</p> <p>4 establish the systems and processes and mobilise the equipment required for the performance of the Services in accordance with this agreement; and</p> <p>5 a stock take of the Spare Parts and a report detailing adherence to the Principal Inventory List.</p>
Modern Slavery	<p>any of the following:</p> <p>1 “modern slavery” as defined in the <i>Modern Slavery Act 2018</i> (Cth);</p> <p>2 the arranging or facilitating (or aiding the arranging or facilitating) of work conditions contravening the principles and labour</p>

Term	Meaning
	<p>objectives of International Labour Organisation conventions C029, C105, C138 or C182; and</p> <p>3 any analogous conduct prohibited by any other law which applies to the Principal, the Contractor or a Subcontractor.</p>
Modern Slavery Law	<p>any of the following:</p> <ol style="list-style-type: none"> 1 the <i>Modern Slavery Act 2018</i> (Cth); 2 Divisions 270 and 271 of the <i>Criminal Code 1995</i> (Cth); 3 any Legislative Requirements of the Commonwealth of Australia or any State or Territory of Australia pertaining to Modern Slavery; and 4 any law of a country other than Australia, pertaining to Modern Slavery, which applies to the Principal, the Contractor or a Subcontractor from time to time.
Moral Rights	any moral rights arising under Part IX of the <i>Copyright Act 1968</i> (Cth).
National Electricity Law	the law set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> (SA), as applicable to New South Wales, and the National Electricity Rules.
National Electricity Rules or NER	the rules made pursuant to the National Electricity Law, as amended from time to time.
National Pollutant Inventory	the national pollutant inventory reporting required by the <i>National Environment Protection (National Pollutant Inventory) Measure 1998</i> (Cth) (as amended from time to time) and implemented by legislation in the jurisdiction in which the Facility is located.
Network Service Provider	the person specified in Item 4.
Notifiable Incident	<p>any act, event or circumstance which occurs in connection with the performance of the Services that:</p> <ol style="list-style-type: none"> 1 is required by the Work Health and Safety Requirements or the Environmental Requirements to be notified to a regulator; 2 is in breach of any Work Health and Safety Requirements or Environmental Requirements; or 3 results in, or has the potential to result in, a serious injury to a person.

Term	Meaning
NSP Associate	the Network Service Provider and any of its officers, employees, contractors and agents.
Operation and Maintenance Manuals	the operation and maintenance manuals to be provided by the Contractor under clause 9, as updated by the Contractor under clause 12 of Schedule 3.
Party	a party to this agreement.
Permit Holder	means a person who holds an entry permit, however so described, under the relevant Work Health and Safety Requirements, or any other applicable Legislative Requirement which allows the person to enter the Facility Land to investigate a suspected contravention of the applicable Work Health and Safety Requirement, to consult on work health and safety matters or to hold discussions with workers.
Pre-Existing Facility Defect	a defect, error, deficiency, omission, fault, failure, shrinkage, subsidence, malfunction, irregularity or other non-compliance in or of any part of the Facility which exists at the Execution Date and which is identified in the Handover Condition Report.
Pre-Existing Facility Defect Rectification Fees	the meaning given in clause 4 of Schedule 2, as adjusted pursuant to this agreement.
Principal Associate	<ol style="list-style-type: none"> 1 a Related Body Corporate of the Principal; 2 any contractor, supplier or consultant of the Principal of any tier; and 3 any officer, employee or agent of the Principal or a person referred to in paragraph 1 or 2 of this definition, excluding the Contractor, any Contractor Associate and the NSP Associates.
Principal Authorisations	the list of Authorisations to be agreed during the Interim Period.
Principal Contractor	principal contractor for the purposes of the <i>Work Health and Safety Act 2011</i> (NSW) and the <i>Work Health and Safety Regulations 2017</i> (NSW).



Term	Meaning
Principal Event of Default	the meaning given in clause 30.4.
Principal Inventory	the Principal's inventory of parts, materials and consumables available at the Facility for use in the performance of the Services to be managed by the Contractor and includes the Spare Parts.
Principal Inventory List	the list of the Principal Inventory set out in Appendix A of Schedule 2, as updated in accordance with clause 9 of Schedule 3.
Principal Supplied Items	any equipment, materials, facilities, services, utilities, software, documents, information and other things provided or made available to the Contractor by or on behalf of the Principal in connection with this agreement, including the Technical Documents.
Principal Trust	the trust established under the deed entitled "Deed of Trust Establishing Elliott Nevertire Trust" dated 16 May 2018, as amended on 30 June 2022.
Principal's Representative	the meaning given in clause 41.1.
Related Activities	<p>any work or activities to be performed by or on behalf of the Principal, a Principal Associate, a Landholder or a NSP Associate at or in relation to:</p> <ol style="list-style-type: none">1 the Facility or Facility Land;2 infrastructure associated with the Facility; or3 access routes to the Facility, <p>that have the potential to impact or be impacted by the performance of the Services, but excluding the Services.</p>
Related Body Corporate	the meaning given in the <i>Corporations Act 2001</i> (Cth).
Reliance Information	the Technical Documents and any other information or documents agreed between the Parties in writing to be reliance material.
Relief Event	any of the following, in each case, except to the extent caused or contributed to by the Contractor, a Contractor Associate or a Defect:

Term	Meaning
	<ol style="list-style-type: none"> 1 any unscheduled, unplanned, reactive or corrective maintenance or repair work required to the Facility that: <ol style="list-style-type: none"> A. is not part of the Services; and B. the Principal does not have performed by a third party; 2 any maintenance, repair or other work to the Facility performed during the Service Term by a person other than the Contractor or a Contractor Associate except to the extent such work is being performed due to a failure of the Contractor or a Contractor Associate to perform the Services in accordance with this agreement; 3 a Pre-Existing Facility Defect but only during the period up to the earlier of: <ol style="list-style-type: none"> A. the date upon which the Pre-Existing Facility Defect is rectified in accordance with this agreement; and B. the date by which the Contractor must rectify the Pre-Existing Facility Defect as specified in the Handover Condition Report; 4 Excluded Damage or a Latent Defect; 5 the postponement of Services by the Principal under clause 3.2; 6 a suspension of the Services by the Contractor pursuant to the Security of Payment Act; 7 a Compensation Event; 8 any legally binding order of a Government Agency to stop or curtail operation of the Facility; 9 the suspension of an obligation of the Network Service Provider under the Connection Agreement in accordance with that agreement; 10 any constraint or outage of the electricity network to which the Facility connects which affects the generation performance of the Facility; or 11 any delay or disruption caused by a Related Activity except to the extent: <ol style="list-style-type: none"> A. the Principal Associate, Landholder or NSP Associate is acting in accordance with this agreement; or B. caused or contributed to by the Contractor's failure to comply with clause 12.
SCADA	the supervisory control and data acquisition systems which form part of the Facility.
Scheduled Maintenance	the work and activities described in Part A of Schedule 3.



Term	Meaning
Security of Payment Act	the <i>Building and Construction Industry Security of Payment Act 1999</i> (NSW).
Senior Dispute Representative	for each Party, the relevant senior dispute representative specified in Item 15, or such other member of the Party's senior management as the Party nominates from time to time by written notice to the other Party.
Service Plans	the service plans to be provided by the Contractor under this agreement, including those described in clause 10 of Schedule 3.
Service Term	the meaning given in clause 2.1(b).
Service Year	the 12 month period starting on the commencement of the Service Term and each successive 12 month period thereafter.
Services	<p>the work and activities undertaken or to be undertaken in the Contractor's performance of this agreement, including:</p> <ol style="list-style-type: none">1 Mobilisation Activities;2 Scheduled Maintenance;3 Unscheduled Maintenance;4 Additional Services directed pursuant to a Change Order; and5 rectification work (including the rectification of Pre-Existing Facility Defects).
SOCI Act	the <i>Security of Critical Infrastructure Act 2018</i> (Cth).
Spare Parts	the parts and items required for the performance of the Services, to be managed by the Contractor, including those listed in the Principal's Inventory set out in Appendix A of Schedule 2.
Subcontractor	any contractor, supplier or consultant of any tier involved in the performance of the Services.
Tax	any present or future tax, royalty, levy, impost, deduction, assessment, charge, excise, fee, withholding or duty of any nature imposed, assessed, charged, levied or collected by any Government Agency or other body authorised by Legislative Requirements.

Term	Meaning
Technical Documents	the meaning given in Schedule 5.
Unscheduled Maintenance	the work and activities described in Part B of Schedule 3.
Wilful Default	<p>an act or omission, resulting in material loss or damage, which:</p> <ol style="list-style-type: none"> 1 is malicious or wilful; or 2 is undertaken with the knowledge, or reckless disregard for the possibility, that loss or damage would result, <p>but does not mean any innocent act or omission, mistake, or error of judgement, whether in breach of this agreement or not.</p>
Work Health and Safety Requirements	<p>the requirements set out in Schedule 7 and any of the following related to work health and safety, dangerous goods or electricity safety:</p> <ol style="list-style-type: none"> 1 Legislative Requirements; 2 the National Standard for Construction Work, codes of practice, Australian Standards and compliance codes; and 3 directions, notices and the like issued in accordance with any Legislative Requirement, <p>including but not limited to the <i>Work Health and Safety Act 2011</i> (NSW) and the <i>Work Health and Safety Regulations 2017</i> (NSW), or any successor legislation in force from time to time.</p>

1.2 Interpretation

In this agreement, unless the context requires otherwise:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this agreement;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate, and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause, Party, schedule, attachment or exhibit of or to this agreement;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;



- (h) a reference to a document includes all amendments, supplements, replacements or novations to or of that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) a promise on the part of 2 or more people binds them jointly and severally;
- (k) a reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (l) a reference to '\$', 'AUD' or dollars is to Australian dollars, unless stated otherwise;
- (m) a reference to a 'day', 'month' and 'year' is a reference to a calendar day, month and year (respectively);
- (n) a reference to time is to local time in Sydney, New South Wales; and
- (o) a reference to a body, other than a Party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Inclusive expressions

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any payment under this agreement is to be made is not a Business Day, that payment must be made on or by the next Business Day.

1.5 No adverse presumption

No provision of this agreement will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this agreement or that provision.

1.6 Components of this agreement

This agreement comprises (in descending order of precedence):

- (a) Schedule 15 and Schedule 16;
- (b) these Commercial Terms and Schedule 1;
- (c) Schedule 2; and
- (d) Schedule 3 to Schedule 14 (inclusive).



1.7 Inconsistencies

- (a) The following principles (in descending order of precedence) apply to any inconsistencies, ambiguities and discrepancies in or between the documents forming this agreement:
 - (1) where the inconsistency, ambiguity or discrepancy is between figured and scaled dimensions, the figured dimension applies (unless obviously incorrect);
 - (2) where the inconsistency, ambiguity or discrepancy relates to the quality or standard required by this agreement, the higher quality or standard applies; and
 - (3) where the inconsistency, ambiguity or discrepancy is between documents forming this agreement, the order of precedence set out in clause 1.6 applies.
- (b) Each Party must promptly notify the other Party if it becomes aware of any inconsistency, ambiguity or discrepancy in or between the documents forming this agreement.
- (c) Where an inconsistency, ambiguity or discrepancy is not resolved under clause 1.7(a)(1), the Principal must (acting reasonably) determine the interpretation that is the most consistent with the Parties' intentions as ascertainable from this agreement and that interpretation will apply.
- (d) The Contractor may dispute under clause 35 whether the Principal has resolved an inconsistency, ambiguity or discrepancy as required by clause 1.7(c).

1.8 Changes to Connection Agreement and Access Documents

- (a) Subject to clause 1.8(b), to the extent the Parties' rights and obligations under this agreement depend on the Connection Agreement or Access Documents, those rights and obligations will be determined with reference to the versions of the Connection Agreement and the Access Documents specified in Schedule 9 and Schedule 11.
- (b) An amendment to the Connection Agreement or an Access Document will apply for the purposes of clause 1.8(a) only if the Principal directs the Contractor to comply with the amendment as a Change pursuant to a Change Order.

1.9 Language

Documents provided by the Parties or their representatives and communications between the Parties or their representatives, under or in connection with this agreement must be in English.

1.10 Adjustment for CPI

Where this agreement states an amount is to be 'CPI Indexed' on a date, the amount will be adjusted for changes to CPI on that date (**Adjustment Date**) in accordance with the following formula:

$$A_n = A_0 \times \left[\frac{CPI_n}{CPI_0} \right]$$

where:



- A_n = the adjusted amount;
- A_0 = the amount to be adjusted;
- CPI_n = the CPI most recently published on the Adjustment Date; and
- CPI_0 = the CPI most recently published 1 year before the Adjustment Date (adjusted for any CPI re-referencing).

2 Term

2.1 Term

- (a) Subject to clause 2A, this agreement comes into full force and effect on the Execution Date.
- (b) The Service Term consists of the period specified in Item 2, as extended under clause 2.1(c), unless this agreement is terminated earlier.
- (c) The Principal may, in its absolute discretion, exercise an option to extend the Service Term specified in Item 3 by written notice to the Contractor. The Principal's notice must be given at least six months before the expiry of the Service Term.
- (d) The Principal may only exercise an option under clause 2.1(c) twice. If the Principal exercises an option under 2.1(c), this agreement will continue on the same terms for the Service Term as extended.

2A Interim Period

2A.1 Negotiation of amendments

- (a) The Parties must, acting reasonably and in good faith, in the Interim Period negotiate and use their best endeavours to agree upon the amendments to this agreement.
- (b) The Parties acknowledge and agree that the negotiations under clause 2A.1(a) will be limited only to:
 - (1) the Contractor's departures set out in Schedule 15 (**Contractor's Departures**);
 - (2) any amendments necessarily consequential to any agreement on the Contractor's Departures; and
 - (3) any items in this agreement which are expressly specified as to be agreed during the Interim Period.
- (c) Following agreement between the Parties under clause 2A.1(a), the Parties must, as soon as possible, execute and deliver a deed of amendment, documenting the agreed amendments to this agreement.

2A.2 Termination upon expiry of Interim Period

- (a) Without limiting either Party's rights under clause 32 (but subject to clause 2A.4(a)), if the Parties are unable to agree upon the amendments to this agreement by the expiry of the Interim Period, then either Party may immediately terminate this agreement by giving the other Party written notice.



- (b) If this agreement is terminated under clause 2A.2(a), then neither Party will have a Claim against the other Party in respect of that termination, except the Principal must pay to the Contractor:
 - (1) any amount payable under clause 2A.3 for Services performed in accordance with this agreement prior to the termination date which the Principal has not already paid for;
 - (2) payment of the cost of Contractor Goods reasonably ordered by the Contractor which the Contractor is liable to accept, provided the Principal receives title to the Contractor Goods upon payment, and subject to the Contractor's duty to mitigate its loss any committed costs; and
 - (3) the Contractor's demobilisation costs.
- (c) For the avoidance of doubt, clauses 32.9 and 32.10 will apply following termination of this agreement under clause 2A.2(a).

2A.3 Payment for Services during Interim Period

The Parties agree that, during the Interim Period:

- (a) the Contractor will be entitled to payment for the Services on the basis of the rates set out in Schedule 16, and the Fees set out in sections 2, 3 and 4 of Schedule 2 will not apply; and
- (b) the payment process set out in clause 22 will apply as if the reference to "the Fees payable under Schedule 2" in clause 22.1(b)(1) was a reference to "the fees payable under clause 2A.3(a)".

2A.4 Contractor's liability during Interim Period

During the Interim Period, the Parties agree:

- (a) that clause 21, 32.1(e), 32.1(f), 34.3 and Schedule 12 will not apply; and
- (b) in addition to the Relief Events set out in paragraphs 1 to 11 (inclusive) of that definition, the Contractor will be entitled to a Relief Event for any defect, error, deficiency, omission, fault, failure, shrinkage, subsidence, malfunction, irregularity or other non-compliance in or of any part of the Facility which exists at the Execution Date.

3 Performance of services

3.1 Contractor to perform Services

- (a) The Contractor must perform the Services in accordance with this agreement.
- (b) The Contractor must promptly notify the Principal if it believes any Additional Service is required or recommended in accordance with Good Industry Practices in relation to the Facility.
- (c) The Principal has no duty under this agreement to warn or give advice in relation to the performance of the Services.

3.2 Principal may postpone Services

- (a) The Principal may, by written notice to the Contractor, postpone a Service on reasonable grounds.

- (b) A direction, request or other action by the Principal requiring the Contractor to comply with clause 19.5 (including any notice issued in connection with the enforcement by the Principal of its rights under clause 19.5), will not constitute a notice under clause 3.2(a).

3.3 Resources and other items provided by Contractor

- (a) Except as expressly stated in this agreement, the Contractor must provide all work, labour, supervision, equipment, parts, materials, facilities, services, utilities, communication, software, consumables and other things required to perform the Services (even if not expressly referenced).
- (b) The Contractor must, at all times, have and maintain adequate resources (including financial resources) to perform and discharge its obligations under this agreement.
- (c) The Contractor is responsible for the care of tools, equipment, machinery, vehicles and anything else brought to the Facility Land by or on behalf of the Contractor or a Contractor Associate which are not Contractor Goods.

3.4 Resources and other items provided by Principal

- (a) The Contractor must only use the Principal Supplied Items for the purposes of performing the Services.
- (b) The Contractor is responsible for the care of each Principal Supplied Item from the time when it is handed over to the Contractor at the Facility until it is handed back to the Principal.
- (c) As between the Principal and the Contractor, title in the Principal Supplied Items remains with the Principal.

3.5A Reliance Material

- (a) The Principal has made available, prior to the Execution Date, or will make available to the Contractor the Reliance Information.
- (b) The Principal acknowledges that the Contractor has relied, and will rely, on the Reliance Information in the planning and performance of the Services and the fulfilment of the Contractor's obligations under this agreement.
- (c) Notwithstanding anything else in this clause 3.5A, the Contractor will be responsible for its own interpretation of the Reliance Information.
- (d) The Contractor may, within 14 days after it receives any item of Reliance Information, give the Principal a written notice if it becomes aware of any material inaccuracy or error in that item of Reliance Information and such notice must contain:
 - (1) the details of the material inaccuracy or error;
 - (2) the additional work, resources and cost that the Contractor estimates to be necessary to deal with the relevant material inaccuracy or error;
 - (3) the time the Contractor anticipates will be required to deal with the material inaccuracy or error, and the expected impact the material inaccuracy or error will have on the performance of the Services;
 - (4) the effect (if any) the material inaccuracy or error in the Reliance Information will have on the Availability Guarantee; and

- (5) any other details reasonably required by the Principal.
- (e) Subject to the Contractor's right to dispute such decision in accordance with clause 35, the Principal must determine whether the Contractor's notification under clauses 3.5A(d) qualifies as a material inaccuracy or error in the Reliance Information.
- (f) If the Principal determines that a material inaccuracy or error exists in the Reliance Information under clause 3.5A(e), the Contractor's Claim will be determined as a Change Event under clause 17, provided that the Contractor has strictly complied with the requirements of this clause 3.5A.

3.5 No reliance

- (a) The Principal makes no representation and gives no warranty regarding the documents and other information (in any form) provided or made available by or on behalf of it to the Contractor in connection with the negotiation or performance of this agreement, including the accuracy, completeness and adequacy of such documents and information.
- (b) The Principal may not have verified such documents and information before providing them to the Contractor. The Contractor must review and check such documents and information before relying on them for the purposes of this agreement or the performance of it.
- (c) Subject to clause 3.5A, the Contractor warrants to the Principal that it has not relied on any such documents and information, including the accuracy, completeness and adequacy of them, for the purposes of entering into this agreement.
- (d) This clause 3.5 is subject to, and does not exclude or reduce the Contractor's rights under this agreement, including under clauses 3.5A, 15, 16 and 17.

3.6 Risks associated with Services

Subject to the Contractor's express rights under this agreement, the Contractor accepts all risks associated with its performance of this agreement, including the risks associated with:

- (a) the actual cost of performing the Services being greater than estimated;
- (b) the actual time required to perform the Services being greater than estimated;
- (c) changes to currency exchange rates; and
- (d) escalation of the cost of materials or labour.

3.7 Contractor's obligations unaffected

Except as expressly stated in this agreement, the Contractor's warranties and obligations under this agreement remain unaffected notwithstanding:

- (a) any receipt, review, comment, approval or silence by the Principal, a Principal Associate or in relation to:
 - (1) the documents prepared or provided by the Contractor or a Contractor Associate, including the Service Plans;
 - (2) the parts, materials and methods of working used by the Contractor;
 - (3) the Contractor Associates engaged by the Contractor; or

- (4) the performance of the Services or the way Services are performed;
- (b) the Contractor subcontracting any Services, or the Principal's approval of a Subcontractor or subcontract under clause 11.1;
- (c) any test or inspection carried out by the Principal or a Principal Associate; and
- (d) the Contractor's use of any information, design, goods, equipment or work methods prepared, provided or suggested by or on behalf of the Principal or a Principal Associate.

4 Handover from existing contractor

4.1 General

The Contractor must:

- (a) before the start of the Service Term, or within a period that the parties otherwise agree (acting reasonably), undertake the Mobilisation Activities;
 - (b) cooperate with the Principal and its previous operation and maintenance contractor; and
 - (c) take any other steps reasonably required by the Principal,
- to enable an orderly and efficient transfer of responsibility for the Services from the previous operation and maintenance contractor to the Contractor without disruption to the maintenance and operation of the Facility.

4.2 Handover inspection and Handover Condition Report

- (a) The Contractor warrants that it has, before the Execution Date, or will, within 30 days of the Execution Date:
 - (1) undertake a joint inspection of the Facility with the Principal in accordance with Good Industry Practices;
 - (2) following such inspection, submit a draft of the Handover Condition Report to the Principal; and
 - (3) undertake reasonable due diligence regarding the Facility.
- (b) Within 14 Business Days following the submission of the draft Handover Condition Report by the Contractor under clause 4.2(a)(2), the Parties will use best endeavours to agree on the Handover Condition Report.
- (c) The Contractor is not entitled to make any Claim against the Principal arising out of or in connection with the condition of the Facility, except as expressly permitted by this agreement, including clause 15.

4.3 Implementation Plan

- (a) The Implementation Plan describes how the Contractor will:
 - (1) mobilise people, materials and other resources required for the performance of the Services to the Facility; and
 - (2) take over the performance of the Services from the Principal's previous operation and maintenance contractor.

- (b) The Contractor must give the Principal a draft Implementation Plan within 30 Business Days (or such later date as agreed between the Parties) after the Execution Date.
- (c) The Contractor must promptly amend the Implementation Plan to address any reasonable comments provided by the Principal.
- (d) After finalising the Implementation Plan under clause 4.3(c), the Contractor must regularly review the Implementation Plan and update the Implementation Plan to reflect any changes proposed by either party and agreed by the parties (acting reasonably).
- (e) The Contractor must comply with the Implementation Plan.

5 Standards for maintenance

5.1 General

The Contractor warrants to the Principal that the Services will be performed in accordance with, and the Contractor Deliverables will comply with:

- (a) all applicable Legislative Requirements;
- (b) the requirements set out in Schedule 3;
- (c) the Technical Documents;
- (d) the standards and codes set out in Item 5, and:
 - (1) all other applicable Australian standards and codes; and
 - (2) where there is no other applicable Australian standard or code, applicable standards and codes published by International Electrotechnical Commission (IEC), International Organization for Standardization (ISO) or a similar international organisation;
- (e) the Service Plans which the Contractor must comply with under clause 6.2;
- (f) the Operation and Maintenance Manuals which the Contractor must comply with under clause 9.2; and
- (g) the other requirements of this agreement.

5.2 Materials and workmanship

- (a) The Contractor warrants to the Principal that the Services will be performed using:
 - (1) Contractor Goods and Contractor Parts which are new, unused, suitable and of good and merchantable quality;
 - (2) a high standard of skill, care and diligence and in accordance with Good Industry Practices; and
 - (3) proper and tradesman-like workmanship.

5.3 Facility

- (a) The Contractor must perform the Services:

- (1) so that the Facility continues to comply with all applicable Legislative Requirements;
 - (2) so as to not adversely affect the Facility's fitness for the Intended Purpose;
 - (3) so as to not adversely affect the Facility's capability of achieving the Design Life; and
 - (4) so that the Facility continues to be in good working condition, consistent with the Facility being maintained in accordance with the standards contemplated by this agreement and taking into account the age and condition of the Facility as at the Execution Date.
- (b) The Contractor must perform the Services so that any degradation of the Facility or reduction in the performance or standard of the Facility is minimised to a level that would reasonably be expected for parts of a similar nature and standard, taking into account the age of the Facility and maintenance assuming the Facility has been maintained in accordance with the standards contemplated by this agreement.
- (c) To the extent that the Contractor replaces, repairs, modifies or adjusts the Facility in the performance of the Services, the Contractor warrants to the Principal that:
 - (1) the Contractor Goods used to replace part of the Facility, will be of at least equivalent standard, performance and specification; and
 - (2) there will be no adverse reduction in the quality, functionality or other characteristics of the Facility as a result of the replacement, repair, modification or adjustment.

5.4 Delivery time for parts

- (a) Subject to clause 5.4(b), the Contractor must ensure that any part required for Unscheduled Maintenance or an Additional Service which is not contained in the Principal Inventory is:
 - (1) in respect of Unscheduled Maintenance, ordered on the date that the Contractor identifies the need for the part; and
 - (2) in respect of any Additional Service, ordered when the relevant Change Order is given.
- (b) If any part is required pursuant to clause 5.4(a), and the value of such part is equal to or greater than the value in Item 6, the Contractor must:
 - (1) as soon as possible, issue a request to the Principal in writing for its approval to order such part;
 - (2) not order such part prior to obtaining such approval; and
 - (3) within 1 Business Day of obtaining the Principal's approval, place the order for such approved part.

5.5 Skill and care

- (a) The Contractor warrants to the Principal that:
 - (1) the Contractor and Contractor Associates have the skill, expertise, resources and experience required to perform the Services; and

- (2) the Services will be performed using a high standard of skill, care and diligence and in accordance with Good Industry Practices.
- (b) The Contractor acknowledges that the Principal is relying on the Contractor's expertise, skill and judgment in the Contractor's performance of the Services.

6 Service Plans

6.1 Requirements

The Contractor must ensure that the Service Plans comply with, and will enable the Contractor to comply with, this agreement, including Schedule 3 and the Operation and Maintenance Manuals which the Contractor must comply with under clause 9.2.

6.2 Compliance

The Contractor must perform the Services in accordance with the Service Plans submitted under clause 6.3, 6.6 or 6.7 which the Principal does not comment on under clause 6.4(a)(1).

6.3 Submission

The Contractor must prepare and submit the Service Plans to the Principal for review within 10 Business Days following the Execution Date (or within any other period that is agreed with the Principal, acting reasonably).

6.4 Review

- (a) The Principal must, within 15 Business Days after a Service Plan is submitted under clause 6.3, 6.6 or 6.7, give the Contractor either:
 - (1) written comments on the Service Plan; or
 - (2) written notice that the Principal makes no comments on the Service Plan.
- (b) The Contractor must promptly provide any further information reasonably requested by the Principal for the purposes of reviewing a Service Plan.

6.5 Permitted comments

The Principal may only comment under clause 6.4(a)(1) on reasonable grounds, which include the following:

- (a) the Service Plan is incomplete; and
- (b) the Service Plan does not comply with this agreement.

6.6 Resubmission

Where the Principal comments on a Service Plan under clause 6.4(a)(1), the Contractor must promptly amend the Service Plan to address the comments and resubmit it to the Principal for review under clause 6.4.

6.7 Updates

- (a) The Contractor must prepare and submit updated Service Plans to the Principal at least 60 days before the end of each Service Year.
- (b) The Contractor must regularly review the Service Plans and propose any updates required to ensure they comply with this agreement. If an update to the Service Plans is required to ensure compliance with any new, or change to an existing, Legislative Requirement, the Contractor must propose those updates prior to the new or changed Legislative Requirement.
- (c) The Contractor must submit the updated Service Plans to the Principal for its review and clauses 6.4 to 6.6 (inclusive) will reapply.

7 Inspections and testing

7.1 Principal may inspect

- (a) The Contractor must allow the Principal and representatives nominated by the Principal, to inspect the Facility at any time.
- (b) The Contractor must allow the Principal and representatives nominated by the Principal, to inspect and observe Services and Contractor Goods:
 - (1) performed or located at the Facility Land at any time; and
 - (2) performed or located other than at the Facility Land at reasonable times and after reasonable notice.
- (c) The Contractor must ensure that any person inspecting or observing Services or Contractor Goods under clause 7.1(b)(2) receives access to the relevant workplace, subject to their compliance with the reasonable access requirements notified to them. The Contractor must provide any inductions or similar required to access the workplace.

7.2 Principal may direct additional tests

- (a) The Principal may:
 - (1) direct the Contractor to inspect or test any Contractor Goods at the Facility; or
 - (2) after giving the Contractor reasonable notice, have those Contractor Goods inspected or tested itself.
- (b) The Party responsible for the inspection or test must:
 - (1) give the other Party reasonable prior written notice of the time, date and place of the inspection or test;
 - (2) allow the other Party and its nominated representatives to observe the inspection or test; and
 - (3) give the other Party a copy of the inspection or test results promptly after the inspection or test is completed.
- (c) Inspections and tests directed under clause 7.2(a)(1) are in addition to the inspections and tests required by the other provisions of this agreement.

7.3 Cost of additional testing

- (a) The Contractor is responsible for the cost of any inspection or test under clause 7.2 if the inspection or test demonstrated that the relevant Contractor Goods do not comply with this agreement. The Principal is otherwise responsible for the cost of the inspection or test.
- (b) The Party responsible for the cost of the inspection or test must bear the cost of the inspection or test, or pay the other Party the reasonable cost of the inspection or test, as applicable.

8 Pre-Existing Facility Defects

8.1 Contractor to rectify Pre-Existing Facility Defects

- (a) The Contractor must rectify each Pre-Existing Facility Defect. The rectification work must comply with this agreement and any requirements specified in the Handover Condition Report.
- (b) The Contractor must complete the rectification work for each Pre-Existing Facility Defect within the time specified in the Handover Condition Report for the relevant Pre-Existing Facility Defect.
- (c) Unless otherwise specified in the Handover Condition Report, when performing the rectification work, the Contractor must replace the relevant part of the Facility where repairing or modifying part of the Facility (as applicable) would not be consistent with Good Industry Practices or would not comply with this agreement.
- (d) The parties agree that any defect or other matter that is the subject of an open insurance claim at the Execution Date will not be a Pre-Existing Facility Defect, and the Principal may direct the rectification of such defects or other matters as Additional Services in accordance with clause 18.

8.2 Failure to rectify Pre-Existing Facility Defects

- (a) If the Contractor fails to complete rectification work by the time required under clause 8.1(b), the Principal may, after giving the Contractor reasonable notice, have the rectification work carried out itself or by a third party.
- (b) The costs and expenses incurred by the Principal in having rectification work carried out itself or by a third party will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of those costs and expenses.
- (c) The Contractor is not responsible for any rectification work performed by the Principal or any third party engaged by the Principal under clause 8.2(a) to the extent that work is not performed in accordance with Good Industry Practices.

8.3 Contractor to minimise disruption

The Contractor must perform rectification work under clause 8.1 at times and in a manner which causes as little inconvenience and disruption to the operation of the Facility and people accessing or using the Facility Land and surrounding areas as is reasonably possible.



8.4 Manufacturer warranties

- (a) The Principal has obtained the manufacturer warranties, or the benefit of the manufacturer warranties, set out in Schedule 5 (**Manufacturer Warranties**).
- (b) The Contractor must:
 - (1) enforce each Manufacturer Warranty as the Principal's agent as required to perform Unscheduled Maintenance under this agreement; and
 - (2) not used.

9 Operation and Maintenance Manuals

9.1 Requirements

The Contractor must ensure that the Operation and Maintenance Manuals comply with, and will enable the Contractor to comply with, this agreement, including Schedule 3.

9.2 Compliance

The Contractor must perform the Services in accordance with the Operation and Maintenance Manuals submitted under clause 9.3 and 9.5 which the Principal does not comment on under clause 9.4(a)(1).

9.3 Submission

The Contractor must submit a draft Operation and Maintenance Manuals to the Principal no later than 30 Business Days after the Execution Date.

Within 20 Business Days following the completion of rectification of all Pre-Existing Facility Defects in accordance with clause 8.1, the Contractor must prepare and submit the Operation and Maintenance Manuals to the Principal for review.

9.4 Review

- (a) The Principal must, within 15 Business Days after the Operation and Maintenance Manuals are submitted under clause 9.3 or 9.5, give the Contractor either:
 - (1) written comments on the Operation and Maintenance Manuals; or
 - (2) written notice that the Principal makes no comments on the Operation and Maintenance Manuals.
- (b) The Contractor must promptly provide any further information reasonably requested by the Principal for the purposes of reviewing the Operation and Maintenance Manuals.

9.5 Resubmission

Where the Principal comments on the Operation and Maintenance Manuals under clause 9.4(a)(1), the Contractor must promptly amend the Operation and Maintenance Manuals to address the comments and resubmit it to the Principal for review under clause 9.4.



10 Defects and non-compliances in Contractor Goods and Services

10.1 Direction to rectify

- (a) Subject to clause 10.4, the Principal may direct the Contractor in writing to rectify:
 - (1) a Defect in any Contractor Goods at any time during the Service Term or a Defects Liability Period for the Contractor Goods; or
 - (2) any failure to perform Services in accordance with this agreement, other than a Defect.
- (b) The Principal's direction under clause 10.1(a) must identify the Defect or failure to perform Services and may specify a reasonable period within which the Contractor must rectify the Defect or failure (as applicable).

10.2 Contractor to rectify

- (a) After a direction under clause 10.1, subject to clause 10.4, the Contractor must rectify the relevant Defect or failure (as applicable), and any physical damage to the Facility caused by it. The rectification work must comply with this agreement.
- (b) Subject to clauses 10.2(c) and 10.2(d), the Contractor must complete the rectification work within the time specified by the Principal under clause 10.1 or, if the Principal has not specified a time, within a reasonable time.
- (c) Subject to clause 10.2(d), if the Contractor is unable to complete the rectification work within the time required under clause 10.2(b), but the Principal is satisfied (acting reasonably) that the Contractor is diligently progressing the rectification work, the Principal must, upon the Contractor's request, extend the time for completing the rectification work by a single further reasonable period having regard to the nature of the rectification required.
- (d) Where, in the Principal's reasonable opinion, a Defect or non-compliant Services endangers people, livestock, property or the environment, the Contractor must either complete rectification work, or a temporary fix which removes the danger, within 48 hours after a direction under clause 10.1.
- (e) When performing the rectification work, the Contractor must replace the Contractor Good or relevant part of the Facility where repairing or modifying the Contractor Good or part of the Facility (as applicable) would not be consistent with Good Industry Practices or would not comply with this agreement.

10.3 Failure to rectify

- (a) If the Contractor fails to complete rectification work by the time required under clause 10.2, the Principal may, after giving the Contractor reasonable notice, have the rectification work carried out.
- (b) The costs and expenses incurred by the Principal in having rectification work carried out will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of those costs and expenses.

- (c) The Contractor is not responsible for any rectification work performed by the Principal or any third party engaged by the Principal under clause 10.3(a) to the extent that work is not performed in accordance with Good Industry Practices.

10.4 Contractor to minimise disruption

The Contractor must perform rectification work under clause 10.1 at times and in a manner which causes as little inconvenience and disruption to the operation of the Facility and people accessing or using the Facility Land and surrounding areas as is reasonably possible.

10.5 Rights additional

The Principal's rights under this clause 10 are in addition to, and do not reduce or exclude, its other rights under this agreement and at law.

11 Subcontractors and personnel

11.1 Subcontracting

- (a) Subject to clause 11.1(b), the Contractor may subcontract part of the Services, provided the subcontract is on terms reasonably necessary to enable the Contractor to comply with its obligations under this agreement. The Contractor must not subcontract the whole of the Services
- (b) Subject to clause 11.1(c), the Contractor must obtain the Principal's prior written approval before subcontracting Services to a proposed Subcontractor if:
- (1) the Subcontractor will perform any high risk construction work as described in the *Work Health and Safety Regulation 2017* (NSW) and any other work that involves a high risk of serious injury; or
 - (2) the aggregate value of all Services subcontracted to the proposed Subcontractor, and any Related Body Corporate of the proposed Subcontractor, will exceed the amount specified in Item 7 (such approval not to be unreasonably withheld).
- (c) For the purpose of clause 11.1(b)(2), the Principal has approved the proposed Subcontractors listed in Item 8 for the relevant Services to be subcontracted. The Principal's approval under clause 11.1(b)(2) is not required where the proposed Subcontractor is a Related Body Corporate of the Contractor.
- (d) The Contractor must provide reasonable details of the following when requesting approval for a proposed Subcontractor:
- (1) the proposed Subcontractor's history and capabilities in performing services of a similar nature;
 - (2) the proposed Subcontractor's history and capabilities regarding health, safety and the environment; and
 - (3) the proposed Subcontractor's financial standing.

11.2 Exclusion of personnel

The Contractor must, if requested by the Principal in writing, ensure that any natural person who is a Contractor Associate that, in the Principal's reasonable opinion:

- (a) has engaged in illegal, fraudulent or negligent conduct;
 - (b) has performed Services whilst under the influence of alcohol or illegally obtained drugs;
 - (c) does not satisfy, or has not acted in a manner which satisfies, the standards required by clause 5.5; or
 - (d) is otherwise a risk to the safety of any person, property or the environment,
- has no further involvement in the performance of the Services without the Principal's prior written consent.

11.3 Industrial relations

- (a) Except to the extent expressly set out in this agreement, the Contractor accepts responsibility and risk for industrial relations relating to the Contractor Associates, including the management of industrial relations at the Facility.
- (b) The Contractor must keep the Principal informed of any industrial relations issues, disputes or action which do or are likely to affect the Services.
- (c) The Contractor must consult with the Principal before taking any act or making any omission which has the potential to affect industrial relations with Principal Associates or those performing any other work or activities at or near the Facility Land.
- (d) The Contractor must immediately notify the Principal of any industrial action or dispute affecting the Facility, the Services or the Contractor. The Contractor must provide reasonable details, and keep the Principal informed, in relation to such industrial action or dispute.

11.4 Payment of subcontractors and employees

Unless otherwise directed by the Principal, the Contractor must submit, with each payment claim under clause 22.1, a statutory declaration from an authorised officer or employee of the Contractor who is in a position to know the facts declared stating that the Contractor's employees and Subcontractors have received all amounts and entitlements due and payable to or on behalf of them in connection with the performance of the Services, other than amounts expressly stated in the statutory declaration to be subject to a bona fide dispute.

11.5 Notices under relevant legislation

The Contractor must, as soon as possible, give the Principal a copy of any written notice, application or communication under the Security of Payment Act received from a Subcontractor regarding any of the following in connection with the Services:

- (a) the exercise of a lien or a charge;
- (b) an application for adjudication;
- (c) the certification of a debt;
- (d) the recovery of an amount or debt; or
- (e) the suspension of work.

11.6 Contractor responsible

The Contractor is responsible and liable to the Principal for any act, omission, default or negligence of any Contractor Associate as if it were the act, omission, default or negligence of the Contractor.

12 Coordination with Related Activities

- (a) The Principal must provide reasonable advance notice to the Contractor of the Related Activities which the Principal is aware of, including details of the nature, extent and intended timing of the Related Activities.
- (b) The Contractor must:
 - (1) coordinate the performance of the Services with the performance of the Related Activities; and
 - (2) ensure that the performance of the Services does not delay, disrupt or interfere with the performance of the Related Activities.
- (c) Without limiting clause 12(b), the Contractor must:
 - (1) cooperate with the NSP Associates and any others performing Related Activities;
 - (2) plan and program the Services to avoid or minimise any impacts on the performance of the Related Activities;
 - (3) develop and implement systems and policies to avoid or minimise any impacts to the performance of the Related Activities;
 - (4) provide documents, information and assistance as reasonably requested by the Principal for the purposes of coordinating the performance of the Related Activities and Services; and
 - (5) attend meetings with the Principal and those involved in performing Related Activities as reasonably requested by the Principal or otherwise required to comply with this clause 12.
- (d) Where reasonably notified in writing by the Contractor, the Principal must act in good faith and use reasonable endeavours without the expenditure of additional costs to facilitate and assist with the coordination of the Related Activities and the Services.

13 Protection of people, property and environment

13.1 Work health and safety requirements

- (a) The Contractor has primary responsibility for managing health and safety for and in connection with the Services.
- (b) The Contractor must comply with, and ensure its Associates comply with:
 - (1) all Work Health and Safety Requirements;

- (2) the Principal's minimum work, health and safety requirements as advised to the Contractor from time to time (unless the Principal agrees otherwise); and
 - (3) the Contractor's policies and procedures relating to work health and safety, dangerous goods and electricity safety, including the Health and Safety Management Plan.
- (c) The Contractor must perform all duties and functions under the Work Health and Safety Requirements of a person with the management and control of the Services and the Facility, including to ensure a safe place to work for its Associates and the performance of the Services in a safe manner.
- (d) The Contractor acknowledges that in order to comply with its obligations under clause 13.1(b), there may be occasions in which it must carry out the Services out of business hours.
- (e) The Contractor must, and must ensure its Associates:
 - (1) only employ or engage persons who are appropriately qualified and competent to carry out the Services and, where requested by the Principal, promptly provide evidence of such qualifications and competency;
 - (2) provide appropriate information, training, instruction and supervision to all persons employed or engaged by it, or on behalf of it, as is necessary to carry out the Services safely and in accordance with Work Health and Safety Requirements;
 - (3) have systems in place to identify, assess and eliminate risks and hazards at the premises at which it undertakes the Services, which meet the Work Health and Safety Requirements;
 - (4) ensure that, where work health and safety risks and hazards cannot be eliminated, the risks and hazards are adequately controlled in a way which meets the Work Health and Safety Requirements; and
 - (5) ensure that the health and safety of other persons is not put at risk in connection with the performance of the Services.
- (f) The other provisions of this clause 13 do not limit this clause 13.1. Nothing in this clause 13 or elsewhere in this agreement in any way limits or excludes the obligations the Contractor has under Work Health and Safety Requirements.

13.2 Consultation, cooperation and coordination

The Contractor must:

- (a) consult, cooperate and coordinate activities relating to the Services with the Principal, Principal Associates, NSP Associates and any other concurrent duty holders under the *Work Health and Safety Act 2011* (NSW). This includes taking reasonable steps to:
 - (1) facilitate and participate in any meetings;
 - (2) furnish and maintain information; and
 - (3) take any other steps agreed between the Contractor and the Principal;
- (b) consult with workers who are, or are likely to be, affected by a matter relating to work health and safety in connection with the Services; and



- (c) assist the Principal to consult with workers who carry out work for it (including, but not limited to, Contractor Associates) who are, or are likely to be, affected by a matter relating to work health and safety in connection with the Services.

13.3 Assistance to the Principal

Without limiting any other provision of this agreement, the Contractor must, at its cost:

- (a) assist the Principal (including by way of provision of information and documents) to comply with the Work Health and Safety Requirements applicable to the Principal in relation to the Services or Facility; and
- (b) promptly comply, and ensure its Associates comply, with any directions given by the Principal that the Principal considers are necessary for the Principal to:
 - (1) deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons; or
 - (2) comply with any Work Health and Safety Requirements applicable to the Principal in relation to the Services or Facility.

13.4 Principal Contractor

- (a) The Contractor must, at least 10 Business Days before performing any Construction Work at the Facility, give the Principal a written notice setting out reasonable details of the Construction Work and when it is scheduled to be performed.
- (b) Unless the Principal notifies the Contractor otherwise, the Principal:
 - (1) engages the Contractor as the Principal Contractor for the Construction Work; and
 - (2) authorises the Contractor to have management or control of the workplace and discharge the duties of a Principal Contractor imposed under the Work Health and Safety Requirements.
- (c) The Contractor:
 - (1) accepts its engagement as the Principal Contractor under clause 13.4(b); and
 - (2) must perform the duties and functions of the Principal Contractor under the *Work Health and Safety Regulation 2017* (NSW), regardless of whether that engagement is effective.
- (d) Without limiting the Contractor's reporting or other obligations elsewhere under this agreement, the Contractor must promptly provide the Principal with a copy of:
 - (1) the Contractor's records in relation to the steps that the Contractor has taken to ensure that the Contractor Associates are aware of, and familiar with, the Health and Safety Management Plan;
 - (2) any entry reports, improvement notices, prohibition notices or similar documents issued by a Government Agency;
 - (3) any safe work method statements; and
 - (4) any other registers, records and documents,that the Contractor prepares, maintains, keeps or obtains in connection with its obligations as Principal Contractor.



13.5 Environmental requirements

- (a) The Contractor must, in performing the Services, comply with, and ensure its Associates comply with:
 - (1) all Environmental Requirements; and
 - (2) the Contractor's policies and procedures relating to the protection of the environment, pollution, Contamination and hazardous substances.
- (b) The Contractor must, in performing the Services, and must ensure its Associates:
 - (1) transport, store, use and dispose of hazardous substances in a way which:
 - (A) minimises the risk of Contamination, pollution and harm to the environment; and
 - (B) complies with all Environmental Requirements
 - (2) do not Contaminate, pollute or harm the Facility Land or the environment; and
 - (3) comply with any direction given by the Principal in respect of any environmental incident.
- (c) The other provisions of this clause 13 do not limit this clause 13.5. Nothing in this clause 13 or elsewhere in this agreement in any way limits or excludes the obligations the Contractor has under Environmental Requirements.

13.6 Precautions

The Contractor must, in performing the Services, provide all things and take all measures necessary to:

- (a) protect people, property, the environment and livestock;
- (b) minimise unnecessary interference to the passage of people, vehicles and livestock; and
- (c) minimise nuisance, noise and disturbance.

13.7 Assessment and training

- (a) The Contractor must, before and whilst performing the Services, on a continual basis:
 - (1) assess the risks to health, safety or the environment associated with the Services;
 - (2) identify and implement appropriate measures to control all such risks;
 - (3) ensure that the Services are performed in a manner that is safe and without risks to people, property or the environment; and
 - (4) only employ or engage persons who are appropriately qualified and competent to carry out the Services and, where requested by the Principal, promptly provide evidence of such qualifications and competency.
- (b) The Contractor must ensure its Associates:



- (1) understand their health, safety and environmental obligations and responsibilities, including under the Work Health and Safety Requirements and Environmental Requirements; and
 - (2) have been provided with all relevant information, and are appropriately inducted, instructed, trained and supervised,
- to ensure that the Services are performed in a manner that is safe and without risks to people, property or the environment.

13.8 Urgent protection

The Contractor must take any action urgently required to protect:

- (a) the Contractor Goods, Facility and things that the Contractor has risk in under this agreement; and
- (b) property, people, the environment and livestock endangered in connection with the operation and maintenance of the Facility or the performance of the Services.

13.9 Damage to property

The Contractor must notify the Principal as soon as reasonably possible of any damage to property caused by the Contractor or a Contractor Associate.

13.10 Incidents

- (a) The Contractor must immediately inform the Principal of any Notifiable Incident that occurs.
- (b) If a Notifiable Incident occurs in relation to the Services, the Contractor must:
 - (1) immediately report the matter to the Principal, including all relevant details that are known to the Contractor;
 - (2) as soon as possible after the Notifiable Incident:
 - (A) investigate the Notifiable Incident to determine, as far as it can reasonably be done, the facts, circumstances and causes giving rise to the Notifiable Incident;
 - (B) take all reasonable steps to remedy any effects of the Notifiable Incident on the health and safety of workers; and
 - (C) take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
 - (3) within seven Business Days after the Notifiable Incident, give the Principal further details of the Notifiable Incident, including the results of the investigations required by clause 13.10(b)(2)(A) and a statement of the steps the Contractor has taken or that the Contractor proposes to take as required by clauses 13.10(b)(2)(B) and 13.10(b)(2)(C); and
 - (4) as soon as practicable, but no later than one month after the Notifiable Incident, give the Principal a written report giving full details of its actions in relation to the Notifiable Incident.

- (c) The Contractor's obligations under this clause 13.10 are in addition to any reporting obligation that the Contractor has under Work Health and Safety Requirements and Environmental Requirements.

13.11 Entry by Permit Holders or inspectors

- (a) If the Contractor becomes aware that a Permit Holder has entered or proposes to enter the Facility Land, the Contractor must immediately notify the Principal and provide it with all relevant details of that entry.
- (b) If the Contractor becomes aware that a person appointed as an inspector, however so described, under the applicable Work Health and Safety Requirements has entered or proposes to enter the Facility Land, the Contractor shall immediately notify the Principal and provide it with all relevant details of that entry.

13.12 Enforcement measures

The Contractor shall notify the Principal immediately if:

- (a) the Contractor or any other person performing the Services is issued with any enforcement, infringement or other similar notice under Legislative Requirements relating to work health and safety, dangerous goods, electricity safety or the environment; or
- (b) the Contractor becomes aware that legal proceedings have been, or are likely to be, commenced against the Contractor or any other person performing the Services for an alleged contravention of a Work Health and Safety Requirement or Environmental Requirement.

13.13 Compliance

- (a) The Contractor warrants to the Principal that it is familiar with, and has the capability and resources to comply with, its obligations under clauses 13.1 to 13.10 (inclusive), including complying with all relevant Work Health and Safety Requirements and Environmental Requirements.
- (b) The Contractor must immediately notify the Principal in writing of any act, event or circumstance which:
 - (1) affects or is likely to affect the Contractor's ability to comply with; or
 - (2) gives rise to a potential breach of,
 clauses 13.1 to 13.10 (inclusive), including complying with all relevant Work Health and Safety Requirements and Environmental Requirements.
- (c) The Contractor must, if requested by the Principal:
 - (1) promptly provide reasonable evidence of the Contractor's compliance with clauses 13.1 to 13.10 (inclusive) (which may include copies of documents required by the Work Health and Safety Requirements and Environmental Requirements); and
 - (2) allow the Principal or a person nominated by the Principal to audit the Contractor's compliance with clauses 13.1 to 13.10 (inclusive).
- (d) If the Contractor fails to perform any of its obligations under clauses 13.1 to 13.9 (inclusive), the Principal may have the obligation performed. The Principal must, unless urgent action is required, give the Contractor reasonable written notice before doing so.



- (e) The costs and expenses incurred by the Principal in having the Contractor's obligations performed under clause 13.13(d) will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of the costs and expenses (such as invoices or receipts).

13.14 Indemnities

- (a) Subject to clause 13.14(c), the Contractor must indemnify the Principal and each Related Body Corporate of the Principal from and against any Claim or Loss, however arising, brought against, suffered or incurred by the Principal or its Related Body Corporate (as applicable) arising out of, or in connection with:
 - (1) damage to, or loss or destruction of, any real or personal property (but excluding Contractor Goods and the parts of the Facility which the Contractor is responsible for under clause 24.1 or 24.2);
 - (2) Contamination; or
 - (3) injury to, or death or disease of, any person,arising out of or in connection with the performance of the Services or the Contractor's breach of this agreement.
- (b) Subject to clause 13.14(c), the Contractor must indemnify the Principal and each Related Body Corporate of the Principal from and against:
 - (1) any Claim or Loss brought against, suffered or incurred by the Principal or its Related Body Corporate as a result of the Contractor or a Contractor Associate failing to comply the Work Health and Safety Requirements or Environmental Requirements;
 - (2) any Claim or Loss brought against, suffered or incurred by the Principal or its Related Body Corporate arising out of, or in connection with, a breach by the Contractor of clauses 13.1 to 13.11 (inclusive); and
 - (3) any Claim or Loss brought against, suffered or incurred by the Principal or its Related Body Corporate to the extent caused by the Contractor or a Contractor Associate failing to comply with a Legislative Requirement,including any fines or penalties to the extent permitted by law.
- (c) The Contractor's liability to indemnify the Principal, a Principal Associate or a Landholder under clauses 13.14(a) and 13.14(b) will be proportionately reduced to the extent that:
 - (1) an act or omission of the Principal, a Principal Associate, or Landholder (as applicable) caused or contributed to the Claim or Loss; or
 - (2) the Principal failed to take reasonable steps to mitigate the Claim or Loss.
- (d) The indemnities under this clause 13.14 benefit the Principal and each Related Body Corporate of the Principal. The Principal may enforce the indemnity in its own right and on behalf of each Related Body Corporate of the Principal.
- (e) Nothing in this clause 13.14 permits the Principal to recover the same Loss against the Contractor more than once.

- (f) The Contractor will have no liability to the Principal under this clause 13.14 from the date that is 6 years after the end of the Service Term (or earlier termination of this agreement), provided that this clause 13.14(f) will not apply to any Claims brought against the Principal or any of its Related Bodies Corporate by a third party and any Loss suffered or incurred by the Principal or its Related Body Corporate arising out of or in connection with such third party Claim. In respect of third party claims, the Principal will provide written notice to the Contractor of the Claim as soon as reasonably practicable.

14 Legislative Requirements

14.1 Contractor Authorisations

- (a) Subject to clause 14.3, the Contractor must ensure that the Contractor Authorisations are obtained and maintained.
- (b) The Principal must, as reasonably requested by the Contractor, assist the Contractor to obtain and maintain the Contractor Authorisations, including by signing any application which only the Principal may sign or having applications signed for the owner or operator of the Facility where required.
- (c) The Contractor must give the Principal a copy of each Contractor Authorisation promptly after it is obtained.

14.2 Principal Authorisations

- (a) Subject to clause 14.3, the Principal must ensure that the Principal Authorisations are obtained and maintained.
- (b) The Contractor must, as reasonably requested by the Principal, assist the Principal to obtain and maintain the Principal Authorisations, including by providing technical information relating to the Services, the Facility and how the Contractor will perform the Services.
- (c) The Parties:
 - (1) acknowledge that the list of Principal Authorisations is to be provided by the Principal to the Contractor after the Execution Date and during the Interim Period; and
 - (2) if the Contractor is required to obtain an Authorisation which, in accordance with market practice, would typically be obtained by an owner of a solar farm, the Contractor will be entitled to a Change Event.

14.3 Conditions of Authorisations

- (a) The Contractor is responsible for complying with and satisfying the conditions and requirements of all Authorisations to the extent relevant to the Services, except to the extent the Principal directs otherwise.
- (b) Without limiting clause 14.3(a), the Contractor is responsible for preparing and providing any ancillary agreements and documents required under all Authorisations, except to the extent the Principal directs otherwise.
- (a) The Contractor must ensure the Services are performed in a manner consistent with:

- (1) all Authorisations to the extent relevant to the Services; and
 - (2) all applications and submissions made by or on behalf of the relevant applicant in relation to those Authorisations,

except to the extent the Principal directs otherwise.
- (b) The Contractor must not, and must ensure that the Contractor Associates do not, cause the Principal to be in breach of an Authorisation.
- (c) Where:
 - (1) the Contractor must submit material to a Government Agency to perform its obligations under this agreement; and
 - (2) the Government Agency requires the Principal to submit the material personally because the Principal holds the relevant Authorisation,

as requested by the Contractor, the Principal must promptly submit the material prepared by the Contractor to the Government Agency. The Principal accepts no duty to ensure the material submitted is satisfactory to the Government Agency.
- (d) Where the Contractor is required to prepare a report, plan, notice or other information for the Principal to submit to a Government Agency, the Contractor must provide the relevant report, plan, notice or other information to the Principal by such time as to allow the Principal a reasonable opportunity to review and provide comments on the relevant report, plan, notice or other information before it is required to be submitted to the Government Agency.
- (c) The Contractor must give the Principal copies of any correspondence (including copies of any non-compliance notices) between the Contractor and any Government Agency relating to a Contractor Authorisation or Principal Authorisation promptly after the correspondence is sent or received.
- (d) The Principal must promptly give the Contractor copies of any notice or correspondence it receives from a Government Agency that relates to a Contractor Authorisation or Principal Authorisation and impacts the Services.
- (e) Each Party must, as reasonably requested by the other Party, assist that other Party to comply with and satisfy the conditions of the Contractor Authorisations or Principal Authorisations (as applicable).

14.4 Greenhouse and energy reporting

- (a) The Parties acknowledge and agree that the Principal has 'operational control' of the Facility for the purposes of the *National Greenhouse and Energy Reporting Act 2007* (Cth).
- (b) The Contractor must give the Principal any information relating to the Services reasonably required by the Principal or any Related Body Corporate of the Principal in order for such party to comply with its obligations under the *National Greenhouse and Energy Reporting Act 2007* (Cth) or its sustainability reporting obligations under the *Corporations Act 2001* (Cth).

14.5 National pollutant inventory reporting

- (a) The Parties acknowledge and agree that the Principal is the occupier of the Facility for the purposes of reporting under the National Pollutant Inventory.

- (b) The Contractor must give the Principal all information relating to the Services which the Principal reasonably requires to comply with its obligations under the National Pollutant Inventory.

14.6 Modern Slavery Law

- (a) The Contractor must, and must ensure that the Contractor Associates:
 - (1) comply with Modern Slavery Laws; and
 - (2) not do anything that would constitute Modern Slavery or put the Principal in breach of the Modern Slavery Laws.
- (b) Before any Subcontractor is engaged by the Contractor or any other Subcontractor that has been pre-approved or requires approval under clause 11.1(b) is engaged, the Contractor must carry out reasonable due diligence on the Subcontractor's historical compliance, and ability to comply, with the Modern Slavery Laws.
- (c) The Contractor must notify the Principal in writing as soon as possible after it becomes aware of any actual or potential breach of the Modern Slavery Laws. The notice must set out full details of the actual or potential breach.
- (d) The Contractor must provide the Principal with all information and assistance reasonably requested by the Principal in connection with:
 - (1) the Contractor's compliance with clauses 14.6(a), 14.6(b) and 14.6(c); and
 - (2) the Principal's reporting obligations under the Modern Slavery Law in relation to the Services.
- (e) The Principal may, on reasonable notice and at its sole expense, conduct an audit of books and records held by the Contractor to determine whether the Contractor has breached any Modern Slavery Law.

14.7 SOCI Act and AESCSF

- (a) The Contractor must, in performing the Services, comply with the SOCI Act and not cause the Principal to breach the SOCI Act.
- (b) Without limiting clause 14.7(a), the Contractor must:
 - (1) promptly provide any information and assistance requested by the Principal regarding the performance of the Services and the Facility in order for the Principal to comply with any requirements under the SOCI Act; and
 - (2) comply with any direction given by the Principal regarding the performance of the Services in order for the Principal to comply with any requirements under the SOCI Act.
- (c) The Contractor will perform the Services so as to ensure that all requirements and practices of the Australian Energy Sector Cyber Security Framework (**AESCSF**) are complied with for the Facility to the extent applicable to the Services.
- (d) The Contractor agrees to immediately notify the Principal of any critical and other cyber security incidents required to be notified by the Principal to the Australian Cyber Security Centre's online cyber incident reporting portal (found at cyber.gov.au).

15 Relief Events

15.1 Relief

- (a) The Contractor will be relieved of its obligations under this agreement to the extent that a Relief Event prevents their performance.
- (b) It is a condition precedent to relief under clause 15.1(a) that the Contractor gives notice of the Relief Event under clause 15.3.
- (c) A reference in this clause 15 to the Contractor's obligations under this agreement includes the achievement of any warranties given by the Contractor under this agreement and the performance of the Services but does not include the achievement of the Availability Guarantee.

15.2 Notice of proposed event

- (a) The Contractor must, if requested by the Principal, promptly give the Principal a written notice regarding a proposed Relief Event.
- (b) Notices under clause 15.2(a) must include reasonable detail of the following:
 - (1) the Relief Event;
 - (2) the obligations that the Contractor will be unable to perform as a result of the Relief Event;
 - (3) any adverse impacts that the Relief Event or relief of the Contractor's obligations is having or likely to have on the Facility or operation of it; and
 - (4) the steps which the Contractor could take to avoid or mitigate the adverse effects that the Relief Event has on its obligations, the Facility and operation of the Facility.
- (c) Where the Principal proceeds with a proposed Relief Event within 15 Business Days after receiving notice under clause 15.2(a), the obligations which the Contractor is relieved of under clause 15.1 will not exceed those described in the notice given in respect of the same Relief Event, provided that Relief Event does not differ from the Relief Event the subject of the Principal's request under clause 15.2(a).

15.3 Notice of event

- (a) The Contractor must give the Principal written notice of a Relief Event as soon as reasonably possible (and no later than 5 Business Days) after the Contractor first becomes aware that the Relief Event is preventing or will prevent the performance of its obligations.
- (b) Notices under clause 15.3(a) must include reasonable detail of the following:
 - (1) the Relief Event;
 - (2) the obligations that the Contractor is or will be unable to perform as a result of the Relief Event;
 - (3) any adverse impacts that the Relief Event or relief of the Contractor's obligations is having or likely to have on the Facility or operation of it; and

- (4) the steps which the Contractor is taking or will take to avoid or mitigate the adverse effects that the Relief Event has on its obligations, the Facility and operation of the Facility.
- (c) Notices under:
 - (1) clauses 15.2 and 16.2; and
 - (2) clauses 15.3 and 16.3,
 may be given in the same communication, provided the details required by the respective clauses have been provided.

15.4 Updates

After giving notice under clause 15.3, the Contractor must give the Principal a written update on the Relief Event at least every 10 Business Days until it no longer prevents the performance of the Services. Updates must include the detail required by clause 15.3(b).

15.5 Recommencement

The Contractor must resume performance of the Services as soon as possible after the relevant Relief Event no longer prevents their performance.

15.6 Mitigation

The Contractor must take all reasonable steps to avoid or mitigate any adverse effects that a Relief Event has on its obligations, the Facility and operation of the Facility.

16 Compensation Events

16.1 Compensation

- (a) The Principal must pay to the Contractor any reasonable additional costs and expenses directly incurred by the Contractor in performing the Services as a result of a Compensation Event.
- (b) The Contractor is not entitled to be paid any amount under clause 16.1(a) to the extent included in any other payment under this agreement, including any increase to the Fees for a Change.
- (c) It is a condition precedent to the Contractor's right to be paid amounts under clause 16.1(a) that:
 - (1) the Contractor gives notice of the Compensation Event under clause 16.3; and
 - (2) provides to the Principal reasonable written evidence to substantiate the amounts to be paid.

16.2 Notice of proposed event

- (a) The Contractor must, if requested by the Principal, promptly give the Principal a written notice regarding a proposed Compensation Event.
- (b) Notices under clause 16.2(a) must include reasonable detail of the following:

- (1) the Compensation Event;
 - (2) amounts under clause 16.1 that the Contractor reasonably estimates it will incur; and
 - (3) the steps which the Contractor could take to avoid or mitigate the amounts under clause 16.1.
- (c) Where the Principal proceeds with a proposed Compensation Event within 15 Business Days after receiving notice under clause 16.2(a), the amounts under clause 16.1 will not exceed the aggregate of those described in the notice , provided that Compensation Event does not differ from the Compensation Event the subject of the Principal's request under clause 16.2(a).

16.3 Notice of event

- (a) The Contractor must give the Principal written notice of the Compensation Event as soon as reasonably possible after the Contractor first becomes aware that it will incur an amount under clause 16.1.
- (b) Notices under clause 16.3(a) must include reasonable detail of the following:
 - (1) the Compensation Event;
 - (2) amounts under clause 16.1 that the Contractor reasonably estimates it has incurred or will incur; and
 - (3) the steps which the Contractor is taking or will take to avoid or mitigate the amounts under clause 16.1.
- (c) Notices under:
 - (1) clauses 15.2 and 16.2; and
 - (2) clauses 15.3 and 16.3,
 may be given in the same communication, provided the details required by the respective clauses have been provided.

16.4 Updates

After giving notice under clause 16.3, the Contractor must give the Principal a written update on the Compensation Event at least every 10 Business Days until it ceases to incur amounts under clause 16.1. Updates must include the detail required by clause 16.3(b).

16.5 Mitigation

The Contractor must take all reasonable steps to avoid or mitigate any amounts under clause 16.1.

17 Change Events

17.1 Notice of Change Event

- (a) The Contractor must give the Principal written notice as soon as possible after it becomes aware that a Change is required as a result of a Change Event.

- (b) Notices under clause 17.1(a) must include reasonable detail of the Change Event and why a Change is required.

17.2 Change proposal

The Contractor must, as soon as possible after giving notice under clause 17.1, give the Principal a proposal which complies with clause 18.2 for the Change proposed by the Contractor to deal with or overcome the Change Event.

17.3 Change Order

- (a) The Principal must, promptly after the Contractor gives a Change proposal under clause 17.2, either:
 - (1) subject to clause 17.3(b), give the Contractor a Change Order for a Change which enables the Change Event to be dealt with or overcome; or
 - (2) provide written notice to the Contractor that it does not consider (acting reasonably) that a Change is required, providing reasons for this determination.
- (b) The Change directed under clause 17.3(a)(1) may differ from the Change proposed by the Contractor under clause 17.2, in which case the Principal may request a Change proposal under clause 18.1(a) before giving the Change Order.

18 Changes to Services

18.1 Change proposals

- (a) The Principal may, at any time before or during the Service Term, request the Contractor to provide a proposal for a Change.
- (b) The Contractor must give the Principal a written Change proposal which complies with clause 18.2 as soon as reasonably practicable and, in any event, within 10 Business Days after a request.
- (c) The Contractor may, at any time, give the Principal a written proposal for a Change which complies with clause 18.2. The Principal has no obligation to give a Change Order for the convenience of the Contractor.

18.2 Proposal requirements

- (a) A Change proposal under clause 18.1(a) or 18.1(c) must state it is a Change proposal under the relevant clause and set out, in reasonable detail:
 - (1) the proposed scope and technical requirements for the Change;
 - (2) the proposed Additional Services Fees or adjustment to the Fees (as applicable) for the Change;
 - (3) any proposed adjustments to the Contractor's warranties and other obligations under this agreement required as a result of the Change, including to the Availability Guarantee and Service Plans;

- (4) a risk analysis for any potential impacts of the Change on the Facility and operation of it and the mitigation actions proposed; and
 - (5) for a proposal under clause 18.1(c), any benefits or detriments to the Principal associated with the Change.
- (b) The Change proposal must also include:
 - (1) reasonable details of how the matters set out in clauses 18.2(a)(2) and 18.2(a)(3) were determined;
 - (2) an itemised breakdown based on the categories of cost listed in clause 5.1(b) or 6 of Schedule 2, as applicable; and
 - (3) reasonable supporting evidence, including quotations from Subcontractors.
- (c) The Change proposal must be open for acceptance by the Principal for at least 30 Business Days after it is provided (or such later date as the Contractor consents to in writing).
- (d) The Contractor must promptly provide any further information reasonably requested by the Principal for the purposes of assessing a Change proposal.

18.3 Change Order

- (a) The Principal may, at any time before or during the Service Term, give the Contractor a Change Order to perform a Change. The Principal need not request a Change proposal before giving the Change Order.
- (b) Where the Principal gives the Contractor a Change Order, the Contractor must comply with the Change Order. However, the Contractor is not required to perform a Change that:
 - (1) is beyond the general scope of this agreement;
 - (2) is likely to endanger people or the Facility;
 - (3) is likely to contravene an applicable Legislative Requirement; or
 - (4) will decrease the Base Fee by more than 10%, unless the Principal agrees to pay to the Contractor an amount equal to the profit and overheads margin specified in section 8 of Schedule 2 applied to any decrease to the Base Fee beyond 10%.
- (c) The Change Order must specify the Change and detail the matters listed in clauses 18.2(a)(1) to 18.2(a)(3) (inclusive) to the extent they have been agreed or determined under this agreement.
- (d) Unless the Change Order requires otherwise, the Contractor must commence a Change directed pursuant to a Change Order regardless of whether the matters listed in clauses 18.2(a)(1) to 18.2(a)(3) (inclusive) have been agreed or determined.
- (e) The Contractor must not perform a Change, except in accordance with a Change Order given by the Principal. The Contractor is not entitled to make any Claim against the Principal in relation to a Change performed without a Change Order.

18.4 Change details

- (a) If the Principal directs the Contractor to perform a Change pursuant to a Change Order, the Parties must seek to agree the matters listed in clauses



- 18.2(a)(1) to 18.2(a)(3) (inclusive). The matters as agreed by the Parties will apply.
- (b) To the extent the Parties fail to agree the Additional Services Fees or adjustment to the Fees (as applicable) for the Change within 10 Business Days after the Principal gives a Change Order (or such other date as is agreed by the Parties), the Additional Services Fees or adjustment to the Fees will be determined under clause 5.1 or 6 of Schedule 2 (as applicable).
 - (c) To the extent the Parties fail to agree the adjustments to the Contractor's warranties and other obligations under this agreement required as a result of the Change within 10 Business Days after the Principal gives a Change Order (or such other date as is agreed by the Parties), the Contractor's warranties and other obligations will be adjusted as reasonably required to take into account the effect that the Change has on them, as determined in accordance with clause 35.
 - (d) There will be no increase to the Fees or amount payable by the Principal in addition to the Fees for a Change to the extent the Change is required to rectify or address the Contractor's non-compliance with this agreement (including any Defect).
 - (e) The Contractor may dispute under clause 35 whether a determination of the Principal under clause 18.4(b) or 18.4(c) was made in accordance with that clause.

18.5 Principal not restricted

- (a) Nothing in this clause 18 prevents the Principal engaging others to perform work which is additional to the Services, even if the Principal has requested a Change proposal for the additional work.
- (b) In the event that the Principal intends to engage a third party to perform work which is additional to the Services, the Contractor will be given an opportunity to match the offer of the third party in all respects or better such offer.

19 Access to Facility

19.1 Principal to provide access

- (a) Subject to clauses 19.2 and 31.1, the Principal must ensure that the Contractor and the Contractor Associates have the non-exclusive right to access the Facility to perform the Services.
- (b) The Contractor's and Contractor Associates' right to access the Facility Land under clause 19.1(a) is non-exclusive. Subject to clause 19.1(d), the Principal and any person authorised by the Principal may access the Facility Land at any time for any purpose.
- (c) The Contractor is responsible (at its own cost) for obtaining access to any land required to perform the Services in addition to the Facility Land.
- (d) The Principal must use its best endeavours to procure that the Landholder agrees with the Contractor (who must act reasonably, having regard to the nature and planned timing of the Services) times in which the Landholder may access the Facility Land.

19.2 Requirements for mobilisation

The Contractor must not commence the performance of the Services at the Facility Land until:

- (a) the Contractor has submitted the Service Plans under clause 6.3 and the Principal has given notice under clause 6.4(a)(2) that it makes no comments on them;
- (b) the Contractor has submitted the draft Operations and Maintenance Manual in accordance with clause 9.3;
- (c) the Contractor has provided a bank guarantee as required by clause 26;
- (d) insurance has been effected and maintained as required by clause 25.1(a), and the Contractor has provided evidence of that as required by clause 25.6(a); and
- (e) the Contractor has performed all other Mobilisation Activities that the Principal requires prior to accessing the Facility Land,

unless the Principal directs the Contractor in writing otherwise, in which case the Contractor must commence the performance of the Services at the Facility Land subject to any conditions that the Principal specifies in such direction.

19.3 Access requirements

- (a) The Contractor must, and must ensure the Contractor Associates, when accessing the Facility under clause 19.1(a), comply with the requirements set out in Schedule 11.
- (b) The Contractor must, in performing the Services, liaise with the Landholders and authorised representatives of them in consultation with the Principal on a regular basis and use its best endeavours to create and maintain good relations with those people.
- (c) The Contractor must:
 - (1) keep the parts of the Facility Land where Services are being performed clean and tidy at all times; and
 - (2) regularly remove rubbish and surplus material associated with the Services from the Facility Land.
- (d) The Principal must, and must ensure those authorised by it to access the Facility under clause 19.1(b), when accessing the Facility comply with the Contractor's reasonable access requirements, including in relation to work health and safety, the protection of the environment and security.

19.4 Services and utilities

The Contractor must pay or reimburse the Principal for all services and utilities used in the performance of the Services, including water, gas, fuel and communications, except to the extent this agreement expressly states the Principal is to provide the service or utility.

19.5 Contractor to minimise disruption

- (a) The Contractor must use all reasonable endeavours to maximise the electricity generated by the Facility and minimise disruption to the Facility during periods which the Principal notifies the Contractor, or the Contractor should reasonably



expect, will coincide with high National Electricity Market prices for electricity or high electricity production.

- (b) Without limiting clause 19.5(a), the Contractor must schedule and take outages of more than 10% of capacity on days during the year, and at times during the day, that the Contractor should reasonably expect (based on historical information) will coincide with low National Electricity Market prices for electricity and low electricity production.
- (c) The Contractor must give the Principal written notice of the scheduled days and times for:
 - (1) each planned outage to which clause 19.5(b) applies, at least 12 months in advance; and
 - (2) each outage for planned Unscheduled Maintenance where the need for the Unscheduled Maintenance is identified less than 12 months in advance, as soon as reasonably possible after the need for the planned Unscheduled Maintenance is identified,

and promptly notify the Principal in writing of any changes to those days and times.

19.6 Indemnity

- (a) Subject to clause 19.6(b), the Contractor must indemnify the Principal from and against any Claim brought against the Principal arising out of, or in connection with, a breach of an Access Document to the extent caused by the Contractor's failure to comply with clause 19.3(a).
- (b) The Contractor's liability to indemnify the Principal under clause 19.6(a) in respect of a Claim will be reduced to the extent that:
 - (1) an act or omission of the Principal, a Principal Associate, a counterparty to an Access Document or Landholder (as applicable) caused or contributed to the Claim; or
 - (2) the Principal failed to take reasonable steps to mitigate the Claim.

20 Electricity network

20.1 Connection requirements

The Contractor must:

- (a) in performing the Services, not cause the Principal to breach the Connection Agreement; and
- (b) comply with its obligations in relation to the Connection Agreement set out in Schedule 9.

20.2 National electricity market requirements

The Contractor must:

- (a) in performing the Services, not cause the Principal to breach the National Electricity Rules or Applicable Regulatory Instruments; and

- (b) comply with its obligations in relation to the National Electricity Rules and Applicable Regulatory Instruments set out in Schedule 10.

20.3 Indemnity

- (a) Subject to clause 20.3(b), the Contractor must indemnify the Principal from and against any Claim brought against the Principal arising out of, or in connection with, a breach of the Connection Agreement to the extent caused by the Contractor's failure to comply with this clause 20.
- (b) The Contractor's liability to indemnify the Principal under clause 19.6(a) in respect of a Claim will be reduced to the extent that:
 - (1) an act or omission of the Principal, a Principal Associate or a NSP Associate caused or contributed to the Claim; or
 - (2) the Principal failed to take reasonable steps to mitigate the Claim.

21 Guaranteed Availability

21.1 Availability Guarantee

The Contractor warrants that the Facility will achieve the Availability Guarantee in accordance with Schedule 12.

21.2 Liquidated damages payable

Subject to clause 34.3, if the Facility does not achieve the Availability Guarantee, the Contractor must pay the Availability Damages which are payable by the Contractor under Schedule 12.

21.3 Claim for Availability Damages

- (a) The Principal may at any time give the Contractor a written demand for Availability Damages payable under clause 21.2 up to (but excluding) the date of the demand.
- (b) Liquidated damages payable under clause 21.2 will become a debt due and payable to the Principal 10 Business Days after demanded under clause 21.3(a).

21.4 Failure to assess availability

- (a) If the Contractor fails to perform any calculation or other procedure required to determine Availability Damages payable by the Contractor under clause 21.2 within the time required by this agreement, the Principal may, after giving the Contractor at least 10 Business Days' notice of its intention to do so, have the calculation or procedure performed and the results will be used for the purposes of this agreement.
- (b) The costs and expenses incurred by the Principal in having a calculation or procedure performed under clause 21.4(a) will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of those costs and expenses.

21.5 Genuine pre-estimate

- (a) The Parties acknowledge and agree that:
 - (1) it is not possible to determine with precision the Loss which the Principal will suffer or incur if the Facility does not achieve the Availability Guarantee;
 - (2) it is in the Parties' economic and other interests to agree in advance the damages payable to the Principal in such circumstances, including by giving the Parties certainty as to the damages payable; and
 - (3) the Availability Damages payable by the Contractor under clause 21.2 are enforceable genuine pre-estimates of the Loss which the Principal will suffer or incur if the Facility does not achieve the Availability Guarantee.
- (b) If the Contractor's obligation to pay Availability Damages under clause 21.2 is unenforceable for any reason (including because the Availability Damages are a penalty), the Principal may claim general damages for the Facility's failure to achieve the Availability Guarantee.

21.6 Sole remedy

- (a) Subject to clause 21.6(b), the Principal's sole remedies for the Facility's failure to achieve the Availability Guarantee are:
 - (1) the payment of Availability Damages or general damages under clause 21.2 or 21.5(b) (as applicable) for that failure; and
 - (2) the Principal's rights to terminate this agreement, and in relation to the termination of this agreement, under clause 32.
- (b) Payment for the Facility's failure to achieve the Availability Guarantee does not relieve the Contractor from its obligations to rectify:
 - (1) any failure to perform Services in accordance with this agreement; or
 - (2) Defects.

22 Payment

22.1 Payment claim

- (a) The Contractor may submit a written payment claim to the Principal on the later of:
 - (1) the first Business Day of each calendar month during the Service Term and within 20 Business Days after the end of the Service Term; and
 - (2) the date the requirements set out in clause 22.5 are satisfied in relation to the payment claim.
- (b) In the payment claim, the Contractor may claim:
 - (1) the Fees payable under Schedule 2 for the previous calendar month; and



- (2) any other amount which has become payable to the Contractor under this agreement during the previous calendar month.
- (c) Each payment claim must:
 - (1) set out the total amount claimed and an itemised breakdown of that amount;
 - (2) include details and supporting information reasonably required to assess whether the amounts claimed are payable in accordance with this agreement;
 - (3) include a tax invoice for the amount claimed; and
 - (4) otherwise be in the form and include the information reasonably required by the Principal.
- (d) The Contractor must provide any further information and assistance reasonably requested by the Principal for the purposes of assessing a payment claim.

22.2 Payment schedule

- (a) Within 10 Business Days after receipt of a payment claim in compliance with clause 22.1, the Principal must assess the payment claim and, if the Principal believes the amount payable to the Contractor is different to the amount claimed, issue a payment schedule to the Contractor.
- (b) The payment schedule must identify the payment claim to which it relates (if any) and set out:
 - (1) the amount claimed which the Principal believes is payable to the Contractor; and
 - (2) the reasons for the difference (including, if applicable, the reasons for withholding or setting off any amount).
- (c) The Principal may, at any time, issue a payment schedule correcting any error discovered in a previous payment schedule.

22.3 Contractor to provide adjustment note

The Contractor must, within two Business Days after receipt of a payment schedule under clause 22.2, give the Principal an adjustment note to reflect the difference between the amount of the invoice provided under clause 22.1(c)(3) and the amount which the payment schedule states is payable to the Contractor.

22.4 Principal to pay

Subject to clauses 22.5 and 22.8, within 15 Business Days after receipt of the payment claim in compliance with clause 22.1, the Principal must pay to the Contractor:

- (a) where no payment schedule is issued under clause 22.2, the amount claimed by the Contractor in the payment claim; or
- (b) where a payment schedule is issued under clause 22.2, the amount stated as payable to the Contractor in the payment schedule.



22.5 Payment requirements

Despite any other provision of this agreement, the Principal is not obliged to pay any amount claimed by the Contractor in a payment claim unless and until 10 Business Days after the following conditions precedent to payment have been satisfied:

- (a) the Contractor has provided the tax invoice required by clause 22.1(c)(3);
- (b) the Contractor has provided the statements and statutory declaration required by clause 11.2, and the statements and statutory declaration are correct in all material respects;
- (c) for the purposes of this clause 22.5 only, the Contractor has provided the adjustment note required by clause 22.3;
- (d) the Contractor has provided a bank guarantee as required by clause 26;
- (e) the insurance has been effected and maintained as required by clause 25.1(a) and the Contractor has provided evidence of that as required by clause 25.6; and
- (f) no Insolvency Event subsists in relation to the Contractor.

22.6 Payment not approval

Payment by the Principal to the Contractor under this clause 21 is payment on account only and not approval of the Services to which the payment relates. The issue of a payment schedule and payment by the Principal does not, of itself, affect the Principal's rights to dispute whether an amount was payable under this agreement or whether the Services performed comply with this agreement.

22.7 Interest on overdue payments

If a Party fails to pay an amount due to the other Party under this agreement by the due date, the Party that failed to pay must pay the other Party interest on that amount at the Default Interest Rate for the period from (but excluding) the due date until (and including) the date payment is made.

22.8 Set off

The Principal may set-off from any amount due and payable from the Principal to the Contractor under or in connection with this agreement (including Availability Damages under 21.2), any amount due and payable from the Contractor to the Principal under or in connection with this agreement.

22.9 All costs included

Except as expressly stated in this agreement, the Fees are deemed to include provision for all costs, expenses and charges incurred by the Contractor in performing its obligations under this agreement.

23 Management and administration

23.1 Contractor to maintain records

- (a) The Contractor must, during the Service Term, create and maintain the following records and data relating to the Facility and the Services:
 - (1) records and data, as required by Schedule 3, the Service Plans and the Operation and Maintenance Manuals and as reasonably required by the Principal for the purposes of monitoring the performance of the Services or the operation of the Facility;
 - (2) maintenance records, including service reports, damage reports (i.e. component inspection report), inspection reports (e.g. gearbox inspection report) and fuel usage reports;
 - (3) SCADA data recorded by the equipment at the Facility; and
 - (4) any other records and data regarding the Facility and the performance and settings of the Facility which is recorded and available to the Contractor, as reasonably required by the Principal for the purposes of monitoring the performance of the Services or the operation of the Facility.
- (b) The Contractor must ensure that such records and data are reasonably detailed and kept accurate, complete and up to date during the Service Term.
- (c) The Contractor must ensure that all such records and data are available for inspection by the Principal at the Facility at all reasonable times during the Service Term.
- (d) The Contractor must only destroy, discard or otherwise give away possession of such records or data once the Service Term has expired and after first giving the Principal a reasonable opportunity to take the records and data.

23.2 Principal may audit performance

- (a) The Contractor must, if requested by the Principal, allow the Principal or a person nominated by the Principal to audit the records and data required under clause 23.1(a) to the extent reasonably necessary to determine whether:
 - (1) the Fees have been paid in accordance with this agreement; and
 - (2) the Contractor or the Services comply with this agreement.
- (b) Without limiting the Principal's other rights under this agreement, if an audit demonstrates that the Fees paid to the Contractor exceeds the Fees payable under this agreement, the excess will be a debt due and payable from the Contractor to the Principal.

23.3 Reporting

The Contractor must prepare and give the Principal:

- (a) monthly reports regarding the Services and Facility as required by Schedule 3;
- (b) other reports regarding the Services and Facility as required by Schedule 3 and the Service Plans; and
- (c) reports regarding the Services and Facility as reasonably required by the Principal.



23.4 Improvement plans

- (a) The Principal may, by written notice to the Contractor, require the Contractor to provide an improvement plan if:
 - (1) in the Principal's reasonable opinion, the Contractor has failed to comply with this agreement in a material respect; or
 - (2) in the Principal's reasonable opinion, multiple failures by the Contractor to comply with this agreement have occurred which, taken together, demonstrate a material failure to ensure compliance with this agreement.
- (b) Within 10 Business Days after receipt of notice under clause 23.4(a), the Contractor must give the Principal an improvement plan which sets out, in reasonable detail:
 - (1) the steps the Contractor will take to improve its compliance with this agreement; and
 - (2) the times within which those steps will be taken, which must be reasonable.
- (c) The Principal must, by written notice to the Contractor, promptly approve or provide comments on an improvement plan received under clause 23.4(b) or 23.4(d). The Principal must not unreasonably withhold its approval or comment on an improvement plan.
- (d) Where the Principal provides comments on an improvement plan under clause 23.4(c), the Contractor must, within five Business Days:
 - (1) revise the improvement plan to address those comments; and
 - (2) resubmit the revised improvement plan to the Principal, in which case clause 23.4(c) will reapply.
- (e) Where the Principal approves an improvement plan under clause 23.4(c), the Contractor must comply with the approved improvement plan.

24 Risk and title

24.1 Risk in Facility

- (a) The Contractor must, and must ensure the Contractor Associates, take reasonable precautions and steps to avoid and, where avoidance is not possible, minimise any damage to the Facility.
- (b) The Contractor must notify the Principal of any damage to or loss of the Facility (or any part of it) which the Contractor becomes aware of as soon as reasonably practicable and in any event within two Business Days after becoming so aware.
- (c) The Contractor must, as soon as reasonably practicable, rectify any damage to or loss of the Facility (or any part of it) to the extent caused or contributed to by the Contractor, a Contractor Associate or a failure by the Contractor to perform the Services in accordance with this agreement.
- (d) To the extent Excluded Damage occurs to the Facility (or any part of it), the Principal must promptly give the Contractor a Change Order which specifies the



Excluded Damage which the Principal does and does not require rectified as a Change.

24.2 Risk in work

- (a) The Contractor has risk in the Contractor Goods and the Contractor Parts until:
 - (1) the Contractor Goods are installed in the Facility; or
 - (2) in the case of Contractor Goods ordered by and to be supplied to the Principal without installation, the Contractor Goods are delivered to the Facility.
- (b) The Contractor has risk in any Contractor Goods or part of the Facility taken out of the Facility by or on behalf of the Contractor from the time the Contractor Goods or part is taken out until the Contractor Goods or part, or their replacement, is installed in the Facility.
- (c) The Contractor must secure, protect and maintain in good condition the things that it has risk in under this agreement.

24.3 Title in work

- (a) Title in the Contractor Goods will pass to the Principal upon the earlier of:
 - (1) payment for those Contractor Goods or the Services they relate to; and
 - (2) immediately before the Contractor Goods become a fixture to the Facility Land or the Facility.
- (b) Title in the Contractor Goods will pass to the Principal, to the extent it has not already passed, upon installation in the Facility.

24.4 Title in defective parts

Where this agreement requires the Contractor to replace part of the Facility, title in the part to be replaced will pass to the Contractor at no cost when the replacement part has been installed in the Facility.

24.5 Title in electricity and Green Rights

As between the Principal and the Contractor, title in all electricity and Green Rights produced by the Facility vests in the Principal upon creation (whenever produced). The Principal may sell or deal with such electricity and Green Rights at its discretion.

24.6 No security

The Contractor warrants that the Principal will receive good title in, and ownership of, Contractor Goods pursuant to clause 24.3, free and clear from all security interests, liens, encumbrances and claims.

24.7 Customs

- (a) As between the Parties, the Contractor is responsible for exporting and importing any Contractor Goods, and has control of such Contractor Goods whilst they are being imported into Australia.



- (b) The Contractor must, or must ensure that the relevant Subcontractor involved in the export or import of the Contractor Goods:
 - (1) declares itself as the importer of the Contractor Goods;
 - (2) satisfies all applicable export or import requirements relating to the Contractor Goods, including by providing all required information;
 - (3) deals with and ensures the Contractor Goods clear Australian customs; and
 - (4) pays any export or import duty, tariff, impost or other Tax relating to the export or import of the Contractor Goods.

25 Insurance

25.1 Parties to insure

- (a) The Contractor must ensure insurance policies are effected and maintained as required by clause 1 of Schedule 13.
- (b) The Principal must ensure insurance policies are effected and maintained as required by clause 2 of Schedule 13. The Parties agree that the list of the Principal's insurance policies will be agreed during the Interim Period.

25.2 Compliance

- (a) Each Party must comply with its obligations under the insurance policies required by clause 25.1 and this clause 25, including to disclose information.
- (b) Neither Party may take any action, or make any omission, which would prejudice its or the other Party's rights under the insurance policies required by insurance policies required by clause 25.1.

25.3 Insurance claims

- (a) The Contractor must notify the Principal in writing as soon as practicable after becoming aware of any event or circumstances that is or is likely to be an insured event under the insurance required by clause 1(a) of Schedule 13 (regardless of whether the value of any claim relating to the insured event is or is likely to be less than the relevant deductible).
- (b) The Contractor must cooperate with the Principal and any person representing an insurer of insurance required by clause 1(a) of Schedule 13 in relation to any potential claim or claim under the insurance, including by providing any information required to make or progress the claim.

25.4 Records

The Contractor must keep accurate and reasonably detailed records of any event or circumstances that is or is likely to be an insured event under the insurance required by clause 1(a) of Schedule 13 (regardless of whether the value of any claim relating to the insured event is or is likely to be less than the relevant deductible) until at least 6 years after the expiry of the last Defects Liability Period or earlier termination of this agreement.



25.5 Deductible

- (a) Subject to clause 25.5(b), the Contractor must pay any deductible payable under any insurance required by clauses 1 and 2 of Schedule 13.
- (b) The Principal must pay any deductible payable under the insurance required by clauses 1 and 2 of Schedule 13 to the extent the damage, loss or liability for which the relevant claim is made was caused by the negligence or Wilful Default of the Principal or a Principal Associate.

25.6 Evidence

- (a) The Contractor must, as soon as possible (and in any event, within 5 Business Days after the Execution Date) give the Principal reasonable evidence that the insurance policies described in clause 1 of Schedule 13 have been effected and maintained.
- (b) The Contractor must give the Principal reasonable evidence that an insurance policy described in clause 1 of Schedule 13 has been effected and maintained within 10 Business Days after:
 - (1) the insurance policy is renewed; or
 - (2) written request by the Principal.
- (c) The Principal must give the Contractor reasonable evidence that an insurance policy described in clause 2 of Schedule 13 has been effected and maintained within 10 Business Days after written request by the Contractor (or such later date agreed between the Parties in writing).
- (d) For the purposes of this clause 25.6, 'reasonable evidence' is:
 - (1) a certificate of currency that contains sufficient information to verify that the insurance policy has been effected and maintained as required by Schedule 13; and
 - (2) in relation to the insurance policy described in clause 1(c) of Schedule 13, evidence that the relevant motor vehicles, trailers and mobile plant have been registered in accordance with Legislative Requirements.

25.7 Failure to insure

- (a) If the Contractor fails to ensure that:
 - (1) insurance is effected and maintained as required by clause 25.1(a);
 - (2) premiums under each of the insurance policies required by clause 25.1(a) are paid; or
 - (3) the Principal receives evidence of insurance as required by clause 25.6,the Principal may, after giving the Contractor five Business Days' notice of its intention to do so, effect and maintain that insurance policy or pay those premiums (as applicable).
- (b) The costs and expenses incurred by the Principal in effecting and maintaining an insurance policy under clause 25.7(a), and any insurance premiums paid by the Principal under clause 25.7(a), will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of those amounts (such as invoices).

26 Security for performance

26.1 Provision of bank guarantee

- (a) The Contractor must, within 12 Business Days after the Execution Date, provide a bank guarantee which complies with clause 26.2 to the Principal for the relevant amount specified in Item 14.
- (b) The Contractor acknowledges and agrees that the bank guarantee is for the purpose of ensuring the Contractor's due and proper performance of its obligations under this agreement.

26.2 Requirements for bank guarantee

The bank guarantee must:

- (a) be an unconditional on demand bank guarantee substantially in the form set out in Schedule 14 or any other form pre-approved by the Principal in writing;
- (b) be issued by a bank listed in Item 14 or a bank approved by the Principal in writing with a long term Standard & Poor's credit rating of at least A- (or equivalent rating with another recognised international rating agency);
- (c) be presentable in Brisbane and Sydney; and
- (d) have no expiry date or an expiry date that is at least 3 months after the bank guarantee is reasonably expected to be returned under clause 26.5.

26.3 Recourse to bank guarantee

- (a) The Principal may make a demand under, and use the proceeds of, the bank guarantee in respect of:
 - (1) any amount due and payable, or which the Principal reasonably and in good faith believes is due and payable, by the Contractor to the Principal under or in connection with this agreement which remains unpaid;
 - (2) any Loss suffered or incurred by the Principal for which the Principal bona fide believes the Contractor is liable as a result of a breach of this agreement or negligence; and
 - (3) where the Principal terminates this agreement under clause 32.1, any other Loss suffered or incurred by the Principal as a result of the termination.
- (b) The Contractor covenants that it will not take any steps (including commencing proceedings or seeking an injunction or declaration) to prevent the issuer of a Performance Security paying a demand made by the Principal in accordance with this agreement.
- (c) The Principal may not make a demand under the bank guarantee under clause 26.3(a)(1) or 26.3(a)(2) in respect of an amount unless:
 - (1) the Principal has given the Contractor a written notice to pay the Principal that amount; and
 - (2) the Contractor has not paid the amount in full, or agreed other arrangements with the Principal, within 5 Business Days of the notice.
- (d) The Principal's notice under clause 26.3 is not required to state that:

- (1) the Principal intends to have recourse to the bank guarantee if the Contractor does not pay the amount in full or agree other arrangements with the Principal; or
 - (2) the notice is given for the purposes of this clause 26.3.
- (e) If the Principal makes a demand under the bank guarantee in respect of an amount and it is subsequently determined that the amount is not payable to the Principal, the Principal must repay that amount to the Contractor, together with interest at the Default Interest Rate from (and including) the date of that amount was paid by the issuer until (but excluding) the date of repayment to the Contractor.

26.4 Replacement bank guarantee

- (a) The Contractor must replace, or extend the expiry date of, the bank guarantee that the Principal is entitled to hold under this clause 26:
 - (1) at least 15 Business Days before the expiry of the bank guarantee; and
 - (2) within 15 Business Days after written request by the Principal if the issuer of the bank guarantee no longer satisfies the requirements of clause 26.2(b).
- (b) The replacement bank guarantee must be for the remaining amount of the bank guarantee being replaced and comply with clause 26.2.
- (c) This agreement will apply to the replacement bank guarantee as if it was the bank guarantee being replaced.
- (d) The Principal must return the bank guarantee to be replaced to the Contractor in exchange for the replacement bank guarantee.
- (e) If the Contractor does not replace the bank guarantee as required by clause 26.4(a), the Principal may make a demand for the full amount of the bank guarantee and hold the proceeds as cash retention on the same basis that the bank guarantee was held under this agreement.

26.5 Release of bank guarantee

- (a) The Contractor may, by written notice to the Principal, request the return of a Performance Security after the expiry of the last Defects Liability Period to expire under this agreement.
- (b) If this agreement is terminated, the Contractor may, by written notice to the Principal, request the return of all unreturned bank guarantees after the Contractor's liabilities under or in connection with this agreement have been agreed by the Parties or determined under clause 35 and the Contractor has satisfied those liabilities.
- (c) The Principal must return the bank guarantee to the Contractor within 15 Business Days after a request for its return in accordance with clause 26.5(a) or 26.5(b).
- (d) The Principal's obligations under this clause 26.5 to return the bank guarantee are subject to the Principal's rights to have recourse to them under clause 26.3.

26.6 Interest

The Principal is entitled to retain any interest it accrues on a bank guarantee or any proceeds of the bank guarantee.

26.7 No trust

The Principal does not hold the bank guarantee or any proceeds of the bank guarantee on trust for the Contractor. The Principal is not obliged to hold any proceeds of demands under the bank guarantee in a separate account to its other funds.

26.8 Financial monitoring

In order to support ongoing credit reviews of the Contractor by the Principal and its Related Bodies Corporate, the Contractor must, within 3 Business Days of a request by the Principal, provide reasonable financial and other information (including current management accounts) of the Contractor to the Principal or any of its Related Bodies Corporate and their professional advisers, bankers, insurers or auditors.

27 Intellectual property

27.1 Warranties

- (a) The Contractor warrants to the Principal that:
 - (1) in performing this agreement, it will not infringe the Intellectual Property Rights of any third party; and
 - (2) it is entitled to licence the Intellectual Property Rights subsisting in the Contractor Deliverables to the Principal in accordance with clause 27.2.
- (b) The Contractor warrants to the Principal that, as at the Execution Date, it is not aware of any Claim that:
 - (1) a Contractor Deliverable infringes the Intellectual Property Rights of any third party; or
 - (2) it is not entitled to licence the Intellectual Property Rights subsisting in the Contractor Deliverables to the Principal in accordance with clause 27.2.

27.2 Licence granted by Contractor

- (a) As between the Parties, all Intellectual Property Rights subsisting in the Contractor Deliverables remain the property of the Contractor.
- (b) The Contractor grants to the Principal a non-exclusive, perpetual, irrevocable, assignable, royalty free licence (including the right to sublicense) to use and exercise the Intellectual Property Rights subsisting in the Contractor Deliverables for the purposes of operating, maintaining, repairing, upgrading, altering, selling or financing the Facility.
- (c) The licence granted under clause 27.2(b) only relates to the Intellectual Property Rights subsisting in the Contractor Deliverables as they are provided by the Contractor to the Principal.



27.3 Licence granted by Principal

- (a) The Contractor acknowledges and agrees that, as between the Principal and the Contractor, all Intellectual Property Rights subsisting in the Principal Supplied Items and data generated by SCADA remain the property of the Principal.
- (b) The Principal grants to the Contractor a non-exclusive, royalty free licence (including the right to sub-license) to use the Principal Supplied Items solely for the purposes of performing the Services in accordance with this agreement.
- (c) The licence granted under clause 27.3(b) only relates to the Intellectual Property Rights subsisting in the Principal Supplied Items as they are provided by the Principal to the Contractor.

27.4 Moral Rights

The Contractor must, if requested by the Principal, procure and provide to the Principal a genuinely given, irrevocable, legally binding, written consent given by any person who has a Moral Right in the Contractor Deliverables to the Principal, and any person authorised by the Principal:

- (a) reproducing, communicating, publishing, using, adapting, modifying, destroying or failing to correctly attribute authorship in the Contractor Deliverable; or
- (b) taking any other action, or making any other omission, which would otherwise infringe that Moral Right.

27.5 Remedial action

- (a) If a Contractor Deliverable, or the use or exercise of any Intellectual Property Rights subsisting in a Contractor Deliverable in accordance with clause 27.2, infringes a third party's Intellectual Property Rights, the Contractor may (at its cost):
 - (1) obtain the rights necessary to avoid that infringement; or
 - (2) replace or modify that Contractor Deliverable to avoid that infringement.
- (b) Any Contractor Deliverable replaced or modified under clause 27.5(a) must comply with this agreement.
- (c) This clause 27.5 does not reduce or exclude the Contractor's obligation to indemnify the Principal under clause 27.6 in relation to the third party's Claim.

27.6 Indemnity by Contractor

- (a) Subject to clause 27.6(a)(1), the Contractor must indemnify the Principal from and against:
 - (1) any Claim that the Contractor's performance of this agreement infringes any Intellectual Property Rights or Moral Rights of a third party;
 - (2) any Claim that the use or exercise of any Intellectual Property Rights subsisting in the Contractor Deliverables in accordance with the licence granted under clause 27.2 infringes the Intellectual Property Rights of a third party; and



- (3) any Claim that an act or omission described in clause 27.4 infringes the Moral Rights of a third party.
- (b) The Contractor's liability to indemnify the Principal under clause 27.6(a) will be proportionately reduced to the extent that the use of Principal Supplied Items in accordance with the licence granted under 27.3 caused or contributed to the Claim.

27.7 Indemnity by Principal

- (a) Subject to clause 27.7(b), the Principal must indemnify the Contractor and Related Bodies Corporate of the Contractor from and against:
 - (1) any Claim that the Reliance Information infringes any Intellectual Property Rights or Moral Rights of a third party; and
 - (2) any Claim that the use or exercise of any Intellectual Property Rights subsisting in the Reliance Information in accordance with the licence granted under clause 27.3 infringes the Intellectual Property rights of a third party.
- (b) The Principal's liability to indemnify the Contractor and Related Bodies Corporate of the Contractor under clause 27.7(a) will be proportionately reduced to the extent that the use of Contractor Deliverables in accordance with the licence granted under clause 27.2 caused or contributed to the Claim.

28 Confidentiality and publicity

28.1 Definition

Confidential Information is any information (in any form) which is disclosed or made available by or on behalf of a Party to another Party during or in connection with the negotiation or performance of this agreement that is:

- (a) expressly provided or made available on a confidential basis; or
- (b) could reasonably be expected to have been provided or made available on a confidential basis,

but excluding information which is:

- (c) in the public domain, other than due to a breach of confidentiality; or
- (d) lawfully obtained by the receiving Party from a different source in circumstances which do not impose a duty of confidence.

The terms of this agreement are Confidential Information of both Parties.

28.2 Non-disclosure

Subject to clause 28.3, each Party must keep the Confidential Information of the other Party:

- (a) confidential and not directly or indirectly disclose or make available that Confidential Information to any other person; and
- (b) secure and protected from any use, disclosure or access which is not permitted by this clause 28.

28.3 Permitted disclosure

- (a) Subject to clauses 28.3(b) and 28.4, each Party may disclose Confidential Information of the other Party:
 - (1) with the prior written consent of that other Party;
 - (2) to comply with Legislative Requirements or the requirements of any recognised stock exchange;
 - (3) to the extent necessary to perform this agreement;
 - (4) to any potential financiers of the Facility;
 - (5) to any actual or potential investors in or purchasers of the Facility;
 - (6) where the Principal is disclosing the Confidential Information, for the purposes of the operation, maintenance, repair, upgrade, alteration, sale or financing of the Facility;
 - (7) to its Related Bodies Corporate;
 - (8) to its professional advisers, bankers, insurers or auditors; or
 - (9) to enforce its rights or defend any claim or action arising out of or in connection with its performance of this agreement or the Facility.
- (b) Each Party must, if practicable before disclosing Confidential Information of the other Party under clause 28.3(a)(2), give the other Party prior notice of the disclosure and consult with the other Party regarding the form and content of the disclosure.

28.4 Undertakings by third parties

- (a) Each Party must ensure that any person that it discloses Confidential Information to under clause 28.3(a)(3) to 28.3(a)(8) (inclusive) complies with the Party's obligations under this clause 28 as if it were the Party. However, each Party is only required to use its best endeavours to ensure that AEMO, a network services provider or a Government Agency complies.
- (b) The Contractor must, if requested by the Principal, ensure that a person to whom the Contractor has or will disclose Confidential Information of the Principal under clause 28.3(a)(3) to 28.3(a)(8) (inclusive) (other than AEMO, a network services provider or a Government Agency) executes and delivers to the Principal a confidentiality undertaking on terms no less onerous than this clause 28.

28.5 Publicity

- (a) The Contractor must not provide or issue any document or other information (of any kind, including media releases, photographs and film) concerning this agreement, the performance of it or the Facility to, or for publication in, any media or public forum, except:
 - (1) with the prior written consent of the Principal; or
 - (2) to the extent required by law or the requirements of any recognised stock exchange.
- (b) The Contractor must, if reasonably possible before providing or issuing any document or other information under clause 28.5(a)(2), give the Principal prior



notice and consult with the Principal regarding the form and content of the document or other information.

- (c) The Contractor must give the Principal notice of any enquiries it receives from any media concerning this agreement, the performance of it or the Facility as soon as reasonably practical.

29 Force Majeure

29.1 Notice

- (a) A Party whose performance of its non-financial obligations under this agreement is or will be affected by a Force Majeure Event must, if it wants to claim the benefit of a suspension under clause 29.2, promptly give the other Party a written Claim detailing:
 - (1) the nature and extent of the Force Majeure Event; and
 - (2) the effect the Party reasonably expects the Force Majeure Event will have on its obligations under this agreement.
- (b) If a Party gives notice under clause 29.1(a), that Party must:
 - (1) keep the other party informed of any material changes or developments to any of the matters referred to in its notice; and
 - (2) in any case, provide to the other Party on a monthly basis an updated notice which complies with the requirements of clause 29.1(a).

29.2 Suspension

- (a) If a Party gives notice under clause 29.1(a), the Party's non-financial obligations under this agreement are suspended to the extent that the Force Majeure Event prevents or delays their performance.
- (b) As soon as reasonably possible after a Force Majeure Event ceases to prevent or delay a Party's performance of obligations suspended under clause 29.2(a), the Party must notify the other Party in writing and resume performance of those obligations.

29.3 Mitigation

Each Party must take reasonable steps to mitigate or overcome the effects that a Force Majeure Event has on its obligations under this agreement.

30 Default

30.1 Contractor Events of Default

Each of the following is a Contractor Event of Default:

- (a) the Contractor suspends its performance of the Services, except as permitted or required by clause 31.2;



- (b) the Contractor provides a statutory declaration in accordance with clause 11.4 which it knows to be false or misleading in a material respect;
- (c) a Contractor Authorisation or Principal Authorisation is revoked, suspended or cancelled as a result of an act or omission of the Contractor or a Contractor Associate;
- (d) the Contractor fails to comply with its obligations under this agreement relating to Work Health and Safety Requirements or Environmental Requirements in a material respect;
- (e) the Contractor fails to:
 - (1) provide an improvement plan in accordance with clause 23.4(b);
 - (2) provide a revised improvement plan in accordance with clause 23.4(d) that addresses the Principal's comments as required by clause 23.4(d) in all material respects; or
 - (3) comply with an improvement plan approved by the Principal under clause 23.4(c) in a material respect;
- (f) the Contractor fails to pay an amount under this agreement within 10 Business Days after it is due, but only if the amount is not the subject of a bona fide Dispute;
- (g) the Contractor fails to ensure that insurance is effected and maintained in accordance with clause 25.1(a), or fails to provide evidence of such insurance in accordance with clause 25.6;
- (h) the Contractor fails to provide a bank guarantee in accordance with clause 26;
- (i) the Contractor assigns or transfers any of its rights arising out of or under this agreement, except as permitted by clause 38;
- (j) the Contractor commits multiple breaches of this agreement which, taken together, demonstrate a substantial failure to ensure compliance with this agreement; and
- (k) the Contractor otherwise commits a substantial breach of this agreement.

30.2 Principal may give default notice

- (a) The Principal may give the Contractor a written default notice if a Contractor Event of Default occurs.
- (b) The default notice must:
 - (1) expressly state that it is a default notice under this clause 30.2;
 - (2) describe the Contractor Event of Default in reasonable detail; and
 - (3) specify the cure period within which the Contractor must remedy the Contractor Event of Default or overcome its effects.
- (c) The cure period specified in the default notice must be reasonable having regard to the nature of the default, provided that the Principal may limit the cure period for the Contractor Events of Default listed in clauses 30.1(a), 30.1(b) and 30.1(d) to 30.1(i) (inclusive) to not more than 20 Business Days.

30.3 Principal may request cure plan

- (a) The Principal may, after giving a default notice under clause 30.2, request the Contractor to provide a cure plan by written notice to the Contractor.



- (b) The Contractor must, within 10 Business Days after such a request, give the Principal a written cure plan which sets out the actions that the Contractor will take to remedy the Contractor Event of Default or overcome its effects on the Principal within the cure period specified in the default notice.
- (c) The Contractor must:
 - (1) revise the cure plan to incorporate any changes reasonably required by the Principal to ensure the Contractor Event of Default will be remedied or its effects overcome within the cure period specified in the default notice; and
 - (2) submit the revised cure plan to the Principal, within 10 Business Days after receipt of the Principal's comments, in which case this clause 30.3(c) will reapply.
- (d) The Contractor must comply with any cure plan submitted under clause 30.3(b) as revised under clause 30.3(c).

30.4 Principal Events of Default

Each of the following is a Principal Event of Default:

- (a) the Principal fails to ensure the Contractor and Contractor Associates have a non-exclusive right of access to the Facility Land in accordance with clause 19.1 and such failure is not rectified within 15 Business Days after a written request by the Contractor;
- (b) the Principal fails to pay an amount on account of the Fees when due under clause 22.4, and has not rectified that failure within 15 Business Days after a written request by the Contractor, but only if the amount is not the subject of a bona fide Dispute; and
- (c) the Principal assigns or transfers any of its rights arising out of or under this agreement, except as expressly permitted by clause 38.

30.5 Contractor may give default notice

- (a) The Contractor may give the Principal a written default notice if a Principal Event of Default occurs.
- (b) The default notice must:
 - (1) expressly state that it is a default notice under this clause 30.5;
 - (2) describe the Principal Event of Default in reasonable detail; and
 - (3) specify the cure period within which the Principal must remedy the Principal Event of Default or overcome its effects.
- (c) The cure period specified in the default notice must be reasonable and be:
 - (1) for a Principal Event of Default described in clause 30.4(b), not less than 15 Business Days; or
 - (2) for any other Principal Event of Default, not less than 20 Business Days.

31 Suspension of Services

31.1 Suspension by Principal

The Principal may, by written notice to the Contractor, suspend the performance of all or part of the Services, or the Contractor's or a Contractor Associate's access to all or part of the Facility Land, for any reason, including if:

- (a) the Principal reasonably believes that the Contractor or the Contractor Associate is not complying or will not comply with clause 13.1 to 13.8 (inclusive);
- (b) the Principal reasonably believes that the Contractor or the Contractor Associate is or will endanger any person, property or the environment;
- (c) a Notifiable Incident occurs;
- (d) the Principal reasonably believes that the suspension is necessary to avoid any interference, impediment or delay with or to the Related Activity as a result of the Contractor's failure to comply with its coordination obligations under clause 12; or
- (e) the Contractor has failed to ensure that insurance is effected and maintained in accordance with clause 25.1(a), or fails to provide evidence of such insurance in accordance with clause 25.6.

The Principal's notice must state the Principal's reasons for the suspension.

31.2 Suspension by Contractor

- (a) The Contractor may, after giving a default notice under clause 30.5 in relation to a Principal Event of Default described in clause 30.4(b), notify the Principal in writing that the Contractor intends to suspend the performance of all or part of the Services.
- (b) The Contractor may, by written notice to the Principal, suspend the performance of all or part of the Services if the Principal has not paid the relevant amount within 15 Business Days after receipt of the notice under clause 31.2(a).
- (c) The Contractor must not suspend the performance of the Services, except:
 - (1) in accordance with clause 15.1;
 - (2) as directed by the Principal under clause 31.1;
 - (3) in accordance with clause 29.2 or 31.2(a);
 - (4) as permitted by the Security of Payment Act;
 - (5) if the Contractor reasonably believes that the suspension is required to protect people, property or the environment; or
 - (6) with the prior written approval of the Principal.

31.3 Recommencement

The Contractor must recommence any Services suspended under this clause 31 as soon as possible after the reason for the suspension has been resolved. The Contractor must notify the Principal in writing before re-commencing suspended Services.

31.4 Liability for suspension

The Contractor is not entitled to make any Claim against the Principal arising out of, or in connection with, a suspension under this clause 31.4, except to the extent the suspension entitles the Contractor to relief from its obligations under clause 15.1 or payment of amounts under clause 16.1.

32 Termination

32.1 Termination for Contractor default or insolvency

The Principal may immediately terminate this agreement by giving the Contractor written notice if, at the time notice is given:

- (a) any of the following has occurred in relation to a Contractor Event of Default:
 - (1) the Contractor has not provided a cure plan which complies with clause 30.3 within the time required by that clause;
 - (2) the Contractor has not provided a revised cure plan that incorporates the changes required by clause 30.3(c) within the time required by that clause; or
 - (3) the Contractor has not complied with a cure plan provided under clause 30.3, including within the timeframes specified in the cure plan, and the Contractor has not addressed or remedied the relevant occurrence referred to in clause 32.1(a)(1), 32.1(a)(2) or 32.1(a)(3) or the Contractor Event of Default within 10 Business Days after being requested to do so in writing by the Principal.
- (b) the Contractor has not remedied a Contractor Event of Default or overcome its effects on the Principal and the time specified under clause 30.2(b)(3) in relation to the Contractor Event of Default has expired;
- (c) an Insolvency Event exists in relation to the Contractor;
- (d) the Contractor is subject to a Change in Control in respect of which the Principal has not provided consent under clause 38(d).
- (e) the Contractor's aggregate liability for Availability Damages and general damages to which the limit under clause 34.3 applies reaches that limit and the limit is not increased under clause 34.3(b);
- (f) the Facility Availability is below 93% in any Service Year as calculated in accordance with the Availability Guarantee in Schedule 12;
- (g) the Contractor's aggregate liability to which the limit in clause 34.2 applies reaches that limit and the limit is not increased under clause 34.2(c); or
- (h) the Contractor has wholly or substantially abandoned the Services.

32.2 Termination for Principal default or insolvency

The Contractor may immediately terminate this agreement by giving the Principal written notice if, at the time notice is given:

- (a) the Principal has not remedied a Principal Event of Default or overcome its effects on the Contractor and the time specified under clause 30.5(b)(3) in relation to the Principal Event of Default has expired; or
- (b) an Insolvency Event exists in relation to the Principal.

32.3 Termination for force majeure

Either Party may terminate this agreement by written notice to the other Party if the performance of all or a substantial part of a Party's non-financial obligations under this agreement is or will be prevented or delayed by a Force Majeure Event for a continuous period of six months or more.

32.4 Termination for convenience

The Principal may terminate this agreement by giving at least 30 Business Days' written notice to the Contractor. The Principal may exercise its right of termination under this clause 32.4 for any reason and regardless of whether either Party is in breach of this agreement.

32.5 Not used

32.6 Additional rights on Insolvency Event

- (a) Without limiting any rights of the Principal arising under this agreement or otherwise, if an Insolvency Event occurs in respect of the Contractor, the Principal may do all or any of the following:
 - (1) assume total or partial management and control of the whole or any part of the Services, including to:
 - (A) perform, or do all things necessary to procure the performance of, the Contractor's obligations;
 - (B) engage any third party to perform the Contractor's obligations;
 - (C) make payments to any third party in respect of the third party's performance of the Contractor's obligations; and
 - (D) enforce rights or engage a third party to enforce rights of the Contractor,
 under this agreement and any other agreement entered into by the Contractor in relation to the Facility; or
 - (2) require that the rights and obligations of the Contractor under the Contract and any other agreement entered into by the Contractor in relation to the Facility are novated to a nominee of the Contractor acceptable to the Principal.
- (b) The Contractor indemnifies the Principal in respect of all Claims or Loss arising as a result of the Principal, or any charges or expenses incurred by Principal in, preserving or enforcing the rights described in clause 32.6(a).
- (c) If the rights and obligations of the Contractor are required to be novated as contemplated in clause 32.6(a), or the Principal engages another person to perform the obligations of the Contractor under this agreement or any other agreement entered into by the Contractor in relation to the Facility, the

Contractor will be liable to the Principal as if clause 32.1 applied to the circumstance rather than the circumstances described in that clause.

32.7 Rights on termination

- (a) If this agreement is terminated under clause 32.1, each Party's rights will be the same at common law as if the Contractor had repudiated this agreement and the Principal had accepted that repudiation and elected to treat this agreement as at an end and recover damages. The Principal must take reasonable steps to mitigate any Loss that it may incur arising from or in connection with the termination of this agreement under clause 32.1.
- (b) If this agreement is terminated under clause 32.2 or 32.4, the Contractor's sole and exclusive remedy will be:
 - (1) payment of any amount payable under this agreement for Services performed prior to the termination date which the Principal has not already paid for; and
 - (2) payment of any interest to which the Contractor is entitled under this agreement, calculated to the date of termination;
 - (3) payment of the cost of Contractor Goods reasonably ordered by the Contractor which the Contractor is liable to accept, provided the Principal receives title to the Contractor Goods upon payment, and subject to the Contractor's duty to mitigate its loss;
 - (4) the reasonable costs and expenses incurred by the Contractor in demobilising from the Facility; and
 - (5) where this agreement is terminated under clause 32.4 only, payment of an amount equal to 5% of the unpaid portion of the Base Fee remaining to the expiry of the current Service Term as at the date of termination.
- (c) If this agreement is terminated under clause 32.3, neither Party will have a Claim against the other Party in respect of that termination, except the Principal must pay to the Contractor:
 - (1) any amount payable under this agreement for Services performed prior to the termination date which the Principal has not already paid for;
 - (2) the cost of Contractor Goods reasonably ordered by the Contractor which the Contractor is liable to accept, provided the Principal receives title to the Contractor Goods upon payment; and
 - (3) the reasonable costs and expenses incurred by the Contractor in demobilising from the Facility.

The Contractor must take all reasonable steps to mitigate the amounts referred to in clause 32.7(c)(2) and 32.7(c)(3).

32.8 Principal not restricted

- (a) The Principal may commence discussions and negotiations with potential replacement contractors to take over the Services if the Principal believes it is possible that this agreement will terminate (including before this agreement is terminated).
- (b) If this agreement is terminated under clause 32.1 or 32.3, including where an Insolvency Event exists in relation to the Contractor, the Contractor agrees that

will not take any steps to prevent the Principal from making any offers of employment to the Contractor's employees.

32.9 Accrued rights and obligations unaffected

The termination of this agreement does not affect the Parties' rights or obligations under this agreement which accrued prior to the termination date.

32.10 Provisions surviving termination

- (a) Clauses 1, 13.14, 19.6, 20.3, 21.6, 22.7, 22.8, 25.1, 25.2, 25.6(b), 26, 27, 28, 32.7, 32.8, 32.10, 33, 34, 35, 36.1, 37, 39, 41, 42, 43 and any other obligations which are expressed to or, by their nature, survive expiry or termination of this agreement, survive expiry or termination of this agreement and are enforceable at any time at law or in equity.
- (b) The provisions of this agreement survive expiry or termination of this agreement to the extent necessary to give effect to clause 32.10(a).

33 End of Service Term

33.1 Contractor to cease performance

On the expiry of the Service Term or earlier termination of this agreement, the Contractor must, except to the extent necessary to comply with its continuing obligations under this agreement:

- (a) cease performing the Services;
- (b) after ensuring the Facility is safe and secure, demobilise from the Facility;
- (c) remove any property of the Contractor or the Contractor Associates from the Facility Land; and
- (d) return any Principal Supplied Items, and any property of the Principal in the possession or control of the Contractor, or a Contractor Associate, to the Principal.

33.2 Contractor to provide documents

- (a) The Contractor must:
 - (1) ensure the Service Plans and all records, documents and information required by this agreement are up to date and comply with this agreement; and
 - (2) give the Principal a copy of those Service Plans, records, documents and information,
 before:
 - (3) the date that is 20 Business Days prior to the expiry of the Service Term; or
 - (4) where this agreement terminates before the Service Term expires, as soon as reasonably possible and, in any event, within 15 Business Days after the date of termination.



- (b) For 6 months after the expiry of the Service Term or earlier termination of this agreement, the Contractor must, as soon as reasonably possible, give the Principal copies of all records, documents or information that the Contractor is required to maintain under this agreement in the possession or control of the Contractor reasonably requested by the Principal.

33.3 Option to purchase Contractor parts

- (a) The Contractor grants to the Principal the right to, on the expiry of the Service Term or earlier termination of this agreement, purchase some or all of the Contractor Parts.
- (b) The Principal must give the Contractor written notice of the Contractor Parts which the Principal elects to purchase:
 - (1) at least 3 months before the expiry of the Service Term; or
 - (2) where this agreement terminates before the Service Term expires, within 15 Business Days after the date of termination.
- (c) If the Principal elects to purchase some or all of the Contractor Parts under clause 33.3(b), the Parties must, acting in good faith, use their reasonable endeavours to agree a reasonable market price for the Contractor Parts to be purchased by the Principal.
- (d) If the Parties are unable to agree a price under clause 33.3(c) within 15 Business Days after the Principal elects to purchase Contractor Parts under clause 33.3(b), either Party may require the price to be determined by a valuer.
- (e) If either Party requires the price to be determined by a valuer under clause 33.3(d), the Principal must engage an independent experienced valuer to determine a reasonable market price for the Contractor Parts to be purchased by the Principal.
- (f) The Principal must pay the Contractor for the Contractor Parts purchased by the Principal within 20 Business Days after the price is agreed under clause 33.3(c) or determined under clause 33.3(e).
- (g) Title in the Contractor Parts purchased by the Principal will transfer to the Principal upon payment under clause 33.3(f). The Contractor warrants to the Principal that it will receive good title in, and ownership of, the relevant Contractor Parts pursuant to this clause 33.3(g), free and clear from all security interests, liens, encumbrances and claims.
- (h) The Contractor warrants to the Principal that, at the time title transfers under clause 33.3(g), the Contractor Parts will comply with the requirements of this agreement.
- (i) The Contractor must not remove from the Facility:
 - (1) the Contractor Parts that the Principal elects to purchase under clause 33.3(b); or
 - (2) where this agreement terminates before the Service Term expires, any part of the Contractor Parts until the time for the Principal to give notice under clause 33.3(b)(2) has expired.

33.4 Handover review

- (a) The Principal may carry out a review of the following for compliance with this agreement:

- (1) the condition of the Facility;
 - (2) the Services performed, including that the Scheduled Maintenance is up to date;
 - (3) the Service Plans and all records, documents and information required by this agreement;
 - (4) the condition of the Principal Supplied Items;
 - (5) the Principal Inventory;
 - (6) the Contractor Parts; and
 - (7) any other aspect of the Services reasonably required by the Principal.
- (b) The Principal may conduct reviews under clause 33.4(a):
- (1) at any time within 6 months before or up to one month after the expiry of the Service Term; or
 - (2) where this agreement terminates before the Service Term expires, within one month after the date of termination,
- provided that the Principal has first given the Contractor five Business Days' written notice of the date that the review is to be carried out under clause 33.4(a).
- (c) The Contractor must rectify or overcome any noncompliance identified during a review under clause 33.4(a):
- (1) where the review was carried out four months or more before the expiry of the Service Term, before the expiry of the Services Term; and
 - (2) otherwise within a reasonable period specified by the Principal, which may be after the expiry of the Service Term.

33.5 Contractor to assist with retendering

The Contractor must provide any information related to the Services reasonably requested by the Principal for the purposes of tendering the performance of all or part of the Services, or selecting and engaging a replacement contractor:

- (a) where the Service Term expires, for 12 months before the expiry of the Service Term; or
- (b) where this agreement terminates before the Service Term expires, for one month after the date of termination.

33.6 Contractor to provide familiarisation and training

- (a) For one month before the expiry of the Service Term, the Contractor must permit and facilitate inspections and tours of the Facility Land by the Principal and any replacement contractor nominated by it, to enable the Principal and replacement contractor to familiarise themselves with the Facility and the operation of the Facility.
- (b) The Contractor must provide the Principal, and any replacement contractor nominated by it, with the opportunity to attend reasonable training in the Facility and operation of it (being at least four training sessions):
 - (1) for at least one month before the expiry of the Service Term; or



- (2) where this agreement terminates before the Service Term expires other than under clause 32.2, for at least one month after the date of termination.

33.7 Contractor to provide assistance

The Contractor must, as reasonably requested by the Principal:

- (a) cooperate with the Principal and any replacement contractor nominated by the Principal;
- (b) provide reasonable assistance to the Principal and any replacement contractor nominated by the Principal; and
- (c) take any other steps reasonably required,

to enable an orderly and efficient transfer of responsibility for the Services from the Contractor to the replacement contractor and prevent or minimise disruption to the Facility:

- (d) for one month before and after the expiry of the Service Term; or
- (e) where this agreement terminates before the Service Term expires, for at least one month after the date of termination.

33.8 Principal may rectify non-compliance

- (a) If the Contractor fails to comply with clause 33.1, 33.2 or 33.4, the Principal may, after giving the Contractor reasonable notice, have the non-compliances rectified.
- (b) The costs and expenses incurred by the Principal in having the non-compliance rectified will be a debt due and payable from the Contractor to the Principal 10 Business Days after the Principal provides an invoice and reasonable evidence of those costs and expenses.

34 Claims and liability

34.1 Excluded Loss

- (a) To the extent permitted by law, despite any other provision of this agreement, but subject to clause 34.1(b), each Party will have no liability to the other Party arising out of or in connection with this agreement (however arising, including for negligence) for Excluded Loss.
- (b) A Party's liability for Excluded Loss in respect of the following is not excluded by clause 34.1(a):
 - (1) payment of the Fees by the Principal to the Contractor in consideration for Services performed by the Contractor;
 - (2) injury to, or illness or death of, any person;
 - (3) damage to, or loss or destruction of, any third party property (which does not include property of the Principal or the Contractor or their Related Body Corporates);
 - (4) the infringement of the Intellectual Property Rights or Moral Rights of a third party or the other Party;

- (5) a breach of the Party's obligations under this agreement relating to Intellectual Property Rights or confidentiality;
- (6) liability for Loss under an indemnity in clause 13.14(a)(1) (to the extent such Loss is attributable to damage to, or loss or destruction of, third party property), 13.14(a)(2), 13.14(a)(3), 13.14(b)(1), 13.14(b)(3) or 27.6;
- (7) to the extent the liable Party recovers insurance proceeds in respect of the liability, or would have recovered insurance proceeds if it had complied with this agreement and taken all reasonable steps to do so, in each case up to the limit or minimum value required to be held under this agreement;
- (8) Availability Damages payable under clause 21.2 or general damages referred to in clause 21.5(b);
- (9) the Contractor abandoning all or a substantial part of the Services; or
- (10) fraud, criminal offence, Wilful Default of the liable Party or any of its Associates.

34.2 Aggregate liability

- (a) To the extent permitted by law, despite any other provision of this agreement, but subject to clause 34.2(b), the aggregate liability of each Party to the other Party arising out of or in connection with this agreement (however arising, including for negligence) in each Service Year is limited to the amount set out in Item 12.
- (b) A Party's liability in respect of the following is not limited by clause 34.2(a), and is not counted towards the limit under clause 34.2(a):
 - (1) payment of the Fees by the Principal to the Contractor in consideration for Services performed by the Contractor;
 - (2) injury to, or illness or death of, any person;
 - (3) damage to, or loss or destruction of, any third party property (which does not include property of the Principal or the Contractor or their Related Body Corporates);
 - (4) the infringement of the Intellectual Property Rights or Moral Rights of a third party or the other Party;
 - (5) a breach of the Party's obligations under this agreement relating to Intellectual Property Rights or confidentiality;
 - (6) liability for Loss under an indemnity in clause 13.14(a)(1) (to the extent such Loss is attributable to damage to, or loss or destruction of, third party property), 13.14(a)(2), 13.14(a)(3), 13.14(b)(1), 13.14(b)(3), 20.3 or 27.6;
 - (7) to the extent the liable Party recovers insurance proceeds in respect of the liability, or would have recovered insurance proceeds if it had complied with this agreement, complied with the insurance policy and taken all reasonable steps to recover the proceeds, in each case up to the limit or minimum value required to be held under this agreement;
 - (8) the Contractor abandoning all or a substantial part of the Services; or
 - (9) fraud, criminal offence, Wilful Default of the liable Party or any of its Associates.



- (c) Within 10 Business Days of the Contractor's aggregate liability under clause 34.1(a) equalling the amount specified in Item 12, the Parties may agree to an increase to the amount specified in Item 12 by an amount that is equal to or greater than 10% of the amount specified in Item 12.

34.3 Liability for Availability Damages

- (a) To the extent permitted by the law, despite any other provision of this agreement, but subject to this clause 34.3(b), the aggregate liability of the Contractor to the Principal for Availability Damages under clause 21.2 and general damages referred to in clause 21.5(b) in each Service Year is limited to the amount set out in Item 13.
- (b) Within 10 Business Days of the Contractor's aggregate liability for Availability Damages payable under clause 21.2 equalling the amount specified in Item 13, the Parties may agree to an increase to the amount specified in Item 13 by an amount that is equal to or greater than 10% of the amount specified in Item 13.
- (c) The Contractor's liability for Availability Damages payable under clause 21.2, or general damages referred to in clause 21.5(b), resulting from the fraud, criminal offence, Wilful Default of the Contractor or its employees is not limited by clause 34.3(a), and is not counted towards the limit under clause 34.3(a).

34.4 Application of caps and exclusions

- (a) When determining the insurance proceeds that would have been recovered for the purposes of clauses 34.1(b)(7) and 34.2(b)(7), the exclusions and limits of liability under clauses 34.1(a) and 34.2(a) will not be taken into account.
- (b) Liability to which a limit under clause 34.2(a) or 34.3 applies is counted towards the limit when discharged by the Contractor.

34.5 Notice of claims

- (a) If the Contractor wishes to make a Claim against the Principal arising out of or in connection with this agreement (however arising, including for negligence), the Contractor must give the Principal written notice of the Claim within 30 days after the Contractor became aware, or ought reasonably to have become aware, of the event or circumstances on which the Claim is based.
- (b) A notice under clause 34.5(a) must include reasonable details of the following:
 - (1) the Claim which the Contractor intends to make, including any amount claimed and how that amount was calculated; and
 - (2) the factual and legal basis for the Claim, including any provisions of this agreement relied on.
- (c) If the Contractor does not give notice of a Claim as required by this clause 34.5, including within the time required by clause 34.5(a), the Contractor is not entitled to make the Claim.
- (d) This clause 34.5 does not apply to a payment claim under clause 22.1 for payment on account of the Fees (excluding any Claim for an adjustment to the Fees or payment in addition to the Fees) or a claim under clause 3.5A for a Change Event.

34.6 Defence of indemnified claims

- (a) Each Party (**Indemnified Party**) must, as soon as reasonably possible, notify the other Party (**Indemnifying Party**) of any third party Claim which it requires the Indemnifying Party to indemnify it against under this agreement.
- (b) The Indemnified Party must permit the Indemnifying Party to conduct the defence of, and any settlement negotiations in relation to, the Claim at the Indemnifying Party's cost.
- (c) In conducting a defence or settlement negotiations, the Indemnifying Party must:
 - (1) keep the Indemnified Party informed of the defence of the Claim and any settlement negotiations;
 - (2) consult with the Indemnified Party in relation to the defence of the Claim and any settlement negotiations;
 - (3) involve the Indemnified Party in the defence of the claim and any settlement negotiations to the extent reasonably practicable;
 - (4) allow the Indemnified Party to observe any dispute resolution proceeding or meetings with the third party in relation to the Claim; and
 - (5) take reasonable steps requested by the Indemnified Party to avoid any adverse impact on the Indemnified Party's reputation, public image or business relationships.
- (d) The Indemnified Party must give the Indemnifying Party information in the Indemnified Party's possession or control and assistance as reasonably required by the Indemnifying Party to defend or settle the Claim.
- (e) The Indemnifying Party must not settle the Claim without the Indemnified Party's prior written consent (not to be unreasonably withheld where the settlement requires the Indemnified Party to do anything other than pay money for which it is entitled to be indemnified by the Indemnified Party).
- (f) The Indemnified Party must not settle or prejudice its defence of the Claim without the Indemnifying Party's prior written consent.

34.7 Operation of the Apportionment Liability Act

- (a) The Parties agree that, to the extent permitted by law, the operation of the Apportionment Liability Legislation is excluded in relation to the Contractor's liability for or in respect of the Contractor Associates.
- (b) If, under the law governing this agreement, the operation of the Apportionment Liability Legislation cannot be excluded, the Contractor will indemnify the Principal for the difference (if any) between the amount the Principal could have recovered but for the operation of the Apportionment Liability Legislation and the liability of the Contractor to the Principal as determined by any court under the Apportionment Liability Legislation.



35 Dispute resolution

35.1 Procedure

Any Dispute which arises between the Parties must be dealt with in accordance with this clause 35. The Parties must continue to perform their obligations under this agreement despite the existence of any Dispute.

35.2 Negotiation

- (a) If a Dispute arises then either Party may, by written notice to the other Party, refer the Dispute to the Senior Dispute Representatives for resolution. The notice must expressly state that it is a notice under this clause 35.2 and set out reasonable particulars of the Dispute.
- (b) The Parties must ensure the Senior Dispute Representatives confer with each other in person, by phone or video conference within 10 Business Days after a Dispute is referred to them (or such later date as the Parties agree in writing) and, acting in good faith, seek to resolve the Dispute. Each Party must ensure its Senior Dispute Representative has the authority to resolve the Dispute.

35.3 Arbitration

- (a) If a Dispute is not wholly resolved within 30 Business Days after the Dispute is referred to the Senior Dispute Representatives under clause 35.2(a) (or such later date as the Parties agree in writing), either Party may refer the Dispute for final determination by arbitration and the Dispute will be determined in accordance with the Australian Centre for International Arbitration (**ACICA**) Arbitration Rules.
- (b) The number of arbitrators will be three. The seat of the arbitration will be Sydney, Australia. The language of the arbitration will be English.
- (c) The arbitration agreement set out in clauses 35.3(a) and 35.3(b) is governed by the law in force in Item 18.
- (d) Subject to clause 35.4, a Party must not commence arbitration in relation to a Dispute unless the Dispute has been referred to the Senior Dispute Representatives under clause 35.2(a) and the Party has complied with the procedure for resolving the Dispute under clause 35.2 (to the extent possible).

35.4 Urgent relief

Nothing in this clause 35 prejudices either Party's right to commence legal proceedings to seek urgent injunctive or urgent declaratory relief in respect of a Dispute.

36 Taxes and duties

36.1 Goods and Services Tax

- (a) In this clause:
 - (1) any reference to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**) is, unless the context



indicates otherwise, a reference to that term as defined or used in the GST Act; and

- (2) a reference to GST payable by or input tax credit of a Party includes the corresponding GST payable by or input tax credit of the representative member of the GST group of which that Party is a member.
- (b) Unless otherwise expressly stated, all amounts referred to in this agreement, including amounts used to determine a payment to be made by one Party to the other (other than an amount referred to in clause 36.1(g)), are exclusive of GST (**GST Exclusive Consideration**).
- (c) To the extent that GST is payable in respect of all or any part of a supply made by a party (**Supplier**) under or in connection with this agreement, the GST Exclusive Consideration to be provided under this agreement for that supply is increased by an amount equal to the GST payable by the Supplier (excluding any excess GST).
- (d) The recipient must pay the additional amount payable under clause 36.1(c) to the Supplier at the same time and in the same manner as the GST Exclusive Consideration for the supply is otherwise required to be provided.
- (e) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the additional amount on account of GST under clause 36.1(c) or at such other time as the Parties agree.
- (f) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment and excluding any excess GST) and if the net GST differs from the amount previously paid under clause 36.1(d), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (g) If one of the Parties is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 36.1(c).

36.2 Other taxes and duties

Subject to clause 36.1, the Contractor must pay, or reimburse the Principal for, any of the following and any interest, fine, penalty, charge, fee or other amount imposed on or in relation to the following:

- (a) any Tax on revenue or income received by the Contractor;
- (b) any Tax on any thing exported or imported in the performance of the Services;
- (c) any long service benefits levy or similar Tax relating to the Services;
- (d) payroll tax or similar Tax relating to Contractor Associates; and
- (e) any other Tax which the Contractor or a Contractor Associate is liable for under law, including as a result of or in connection with its performance of this agreement.

37 Security interests in personal property

- (a) Terms used in this clause 37 which are defined in the PPS Act have the same meaning. In addition, the meanings of the following terms used in this clause 37 are set out below:

Term	Meaning
PPS Act	the <i>Personal Property Securities Act 2009</i> (Cth) and any regulations under it.
Relevant Security Interest	the Principal's right to purchase some or all of the Contractor Parts under clause 33.3 and any other security interest held by the Principal in any part of the Facility, any Contractor Goods or any personal property provided to the Contractor by the Principal, or otherwise arising out of or in connection with this agreement or the performance of it.

- (b) The Contractor must, if requested by the Principal, promptly take any action and provide any information reasonably required for the Principal to:
- (1) ensure that any Relevant Security Interest, or the Principal's rights in relation to any Relevant Security Interest, are effective, enforceable against the Contractor and third parties and perfected with the contemplated priority; or
 - (2) exercise or enforce its rights in relation to any Relevant Security Interest.
- (c) Where the Principal has title to or a Relevant Security Interest in personal property, and the Contractor will obtain a security interest in the personal property because a third party will have or has possession of the personal property, the Contractor must perfect its security interest.
- (d) The Contractor must obtain the best priority achievable by it for security interests perfected under clause 37(c), including perfecting the security interest as a purchase money security interest with first ranking priority where possible.
- (e) Where the Principal receives title in any Contractor Deliverables or part of the Facility before possession, the Contractor warrants that the Contractor Deliverables or part of the Facility will be free from all security interests held by the Contractor or a third party when it enters the Principal's possession.
- (f) The Parties agree in accordance with section 115(1) of the PPS Act that the following provisions of the PPS Act will not apply in relation to any Relevant Security Interest:
- (1) section 95 (notice of removal or accession), to the extent that is requires the secured party to give notice to the grantor;
 - (2) subsection 121(4) (enforcement of liquid assets--notice to grantor);
 - (3) section 125 (obligation to dispose of or retain collateral);
 - (4) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor;
 - (5) paragraph 132(3)(d) (contents of statement of account after disposal);

- (6) subsection 132(4) (statement of account if no disposal); and
- (7) section 135 (notice of retention).
- (g) Except to the extent prohibited by the PPS Act, the Contractor waives its right to receive any notice otherwise required to be given by the Principal under section 157 or any other provision of the PPS Act in connection with any Relevant Security Interest.
- (h) Each Party agrees not to disclose, or authorise the disclosure of, any information of the kind mentioned in section 275(1) of the PPS Act in connection with any Relevant Security Interest for the purposes of section 275(1) of the PPS Act, except where section 275(7) of the PPS Act applies.

38 Assignment and other dealings

- (a) Subject to clause 38(b), rights arising out of or under this agreement are not assignable or transferable by a Party without the other Party's prior written consent.
- (b) The Principal may, without the Contractor's consent, assign all or part of its rights arising out of or under this agreement, or novate its rights and obligations under this agreement, to any person that has at least an equivalent financial capacity to perform the obligations to be assumed by it (or is guaranteed by a person who does).
- (c) The Contractor must execute any document reasonably required by the Principal to give effect to clause 38(b).
- (d) The Contractor must obtain the prior written consent of the Principal in respect of any Change in Control of the Contractor.

39 Liability of Principal as Trustee

39.1 Trustee limitation of liability

- (a) The Principal is a party to and performs this agreement and the transactions contemplated by it only in its capacity as trustee for the Principal Trust and in no other capacity.
- (b) A liability arising under or in connection with this agreement (whether that liability arises under a specific provision of this agreement, for breach of contract or otherwise) can be enforced against the Principal only to the extent to which it can be satisfied out of assets of the Principal Trust out of which the Principal is actually indemnified for the liability.
- (c) The Contractor may not:
 - (1) bring proceedings against the Principal (other than proceedings seeking relief or orders that are consistent with this clause 39.1);
 - (2) seek by any means (including set-off) to have a liability of the Principal to the party satisfied out of any assets of the Principal (other than the assets of the Principal Trust);

- (3) seek the appointment of a liquidator, administrator, receiver or similar person to the Principal; or
- (4) prove in, participate in or benefit from any liquidation, administration or arrangement of or affecting the Principal (other than in respect of the assets of the Principal Trust).
- (d) The limitations on the Principal's liability under this clause 39.1 apply despite any other provision of this agreement (other than clause 39.1(e)) and extend to all liabilities and obligations of the Principal in relation to any representation, warranty, conduct, omission, agreement or transaction related to this agreement, including for negligence.
- (e) This clause 39.1 will not apply to any obligation or liability of the Principal to the extent that it is not satisfied because there is a reduction in the extent, or an extinguishment, of the Principal's indemnification out of the assets of the Principal Trust, as a result of the Principal's fraud, gross negligence or breach of trust.

39.2 Trustee warranties

The Principal warrants to the Contractor that, on the Execution Date:

- (a) the Principal Trust has been duly established;
- (b) the Principal is the sole trustee for the Principal Trust;
- (c) the Principal has been validly appointed as trustee for the Principal Trust and no action has been taken, or to its knowledge has been proposed, to remove it as trustee for the Principal Trust;
- (d) the Principal has power under the trust deed which establishes the Principal Trust to be a party to and comply with its obligations under this agreement;
- (e) the Principal has taken all necessary action to authorise the performance of its obligations under this agreement (including any authorisation required under the trust deed which establishes the Principal Trust);
- (f) the Principal has a right to be indemnified out of the assets of the Principal Trust in respect of obligations and liabilities incurred by it under this agreement except to the extent of the Principal's fraud, gross negligence or breach of trust; and
- (g) no action has been taken, or to its knowledge has been proposed, to terminate the Principal Trust.

39.3 Trustee obligations

- (a) The Principal must not, without the consent of the Contractor, do anything which:
 - (1) reduces the Principal's right of indemnity from the assets of the Principal Trust in respect of the Principal's obligations and liabilities under this agreement; or
 - (2) effects or facilitates the termination or resettlement of the Principal Trust.
- (b) The Principal must exercise its right of indemnity under the trust deed which establishes the Principal Trust to the assets of the Principal Trust in respect of any liability to the Contractor to which clause 39.1(b) applies.

40 Enforceability

On the Execution Date, each Party warrants to the other Party that:

- (a) it is a company duly incorporated and validly existing under the laws of its place of incorporation;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this agreement in accordance with its terms;
- (c) the execution, delivery and performance of this agreement and the transactions contemplated by it do not:
 - (1) breach its constitution or other constituent documents;
 - (2) breach any law or decree of any court or official directive which is binding on it;
 - (3) violate any other document or agreement to which it is expressed to be a Party or which is binding on it or any of its assets; or
 - (4) exceed a limit on its powers or the powers of its directors or other officers;
- (d) its obligations under this agreement are valid and binding and are enforceable against it in accordance with their terms, subject to any necessary stamping and registration, the availability of equitable remedies and Legislative Requirements relating to the enforcement of creditor's rights;
- (e) in the case of the Contractor only, it enters into this agreement in its own right and not as trustee for any trust or as an agent on behalf of any other person; and
- (f) except as disclosed to the other Party in writing before the Execution Date, no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced, is pending or, to its knowledge, threatened in writing against it which is likely to have an adverse effect on its ability to perform its financial or other obligations under this agreement.

41 Parties' representatives

41.1 Principal's Representative

- (a) The Principal appoints the person specified in Item 16 as its representative under this agreement (**Principal's Representative**).
- (b) The Principal may, from time to time, replace the Principal's Representative with another natural person by written notice to the Contractor.
- (c) The Principal's Representative may exercise the rights of the Principal under this agreement on the Principal's behalf.
- (d) Communications given by, or to, the Principal's Representative under this agreement are deemed to have been given by, or to, the Principal.
- (e) The Principal's Representative must act fairly and without bias in:
 - (1) the assessment of any payment claims in accordance with clause 22.2; and

- (2) the determination of the Contractor's entitlement to relief under clauses 15, 16 and 17.

41.2 Contractor's Representative

- (a) The Contractor appoints the person specified in Item 17 as its representative under this agreement (**Contractor's Representative**).
- (b) The Contractor's Representative may be replaced with another natural person in accordance with the Principal's prior written consent (not to be unreasonably withheld).
- (c) The Contractor's Representative may exercise the rights of the Contractor under this agreement on the Contractor's behalf.
- (d) Communications given by, or to, the Contractor's Representative under this agreement are deemed to have been given by, or to, the Contractor.
- (e) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (f) The Contractor must ensure that the Contractor's Representative is available at all reasonable times for communication with the Principal's Representative.

41.3 Directions given by Principal

- (a) Subject to clause 41.3(b), all directions given by the Principal to the Contractor under this agreement must be in writing.
- (b) In an emergency, the Principal may give an oral direction to the Contractor under this agreement. However, the Principal must confirm the direction in writing as soon as reasonably possible.

42 Notices

42.1 Form of Notice

- (a) A notice or other communication to a Party under this agreement (**Notice**) must be:
 - (1) addressed to the Principal's Representative or Contractor's Representative using the relevant details set out in Item 16 or 17 (or any alternative details nominated by Notice to the sending Party); and
 - (2) in writing and signed by or on behalf of the sending Party.
- (b) The postal address for the Principal's Representative and Contractor's Representative must be within Australia.

42.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be



regarded as given and received at the start of the following business hours period:

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By trackable post or courier to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date sent.
By email to the nominated email address	<ol style="list-style-type: none">1. when the sender receives an automated message confirming delivery; or2. 2 hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed, whichever is earlier.

42.3 Notice must not be given by other electronic communication

A Notice must not be given by electronic means of communication, other than email as permitted by clause 42.2.

43 General

43.1 Governing law and jurisdiction

- (a) This agreement is governed by the laws of the jurisdiction set out in Item 18.
- (b) Subject to clause 35.3, the Parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in the place set out in Item 18, and courts of appeal from them, in respect of any proceedings arising out of or in connection with this agreement. Each Party irrevocably waives any objection to the venue of any legal process in those courts on the basis that it has been brought in an inconvenient forum.

43.2 Invalidity and enforceability

- (a) If any provision of this agreement is invalid under the law of any jurisdiction, the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 43.2(a) does not apply where enforcement of the provision of this agreement in accordance with clause 43.2(a) would materially affect the nature or effect of the Parties' obligations under this agreement.



43.3 Waivers

No Party may rely on the words or conduct of the other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.

The meanings of the terms used in this clause 43.3 are set out below:

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this agreement and includes the right to rely on this clause.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

43.4 Exercise of rights

- (a) Unless this agreement expressly requires otherwise, each Party may give or withhold any consent or approval, or exercise any other right, power, authority, discretion or remedy, under this agreement in its absolute discretion.
- (b) A Party may impose conditions on the grant by it of any consent or approval, or the waiver by it of any right, power, discretion or remedy, under or in connection with this agreement. The Party relying on the consent, approval or waiver must comply with the conditions imposed.
- (c) Where this agreement expressly restricts a Party's decision to grant a consent or approval under or in connection with this agreement (such as the requirement to act reasonably), the same restriction applies to any conditions imposed by the Party on its consent or approval.

43.5 Entire agreement

This agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the Parties in respect of its subject matter.

43.6 No reliance

The Contractor has not relied on any statement made by or on behalf of the Principal not expressly included in this agreement.

43.7 International Sale of Goods Convention excluded

To the extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to this agreement.

43.8 Variation

A variation to any term of this agreement must be in writing and signed by the parties.



43.9 Indemnities

- (a) Each indemnity given by a Party under this agreement is a continuing obligation, separate and independent from the Party's other obligations under this agreement.
- (b) An obligation under this agreement to indemnify a Party against a Claim includes the obligation to indemnify that Party against:
 - (1) any amount of the Claim which is payable; and
 - (2) any legal or other professional costs and disbursements incurred by the indemnified Party on a full indemnity basis, whether or not the Claim is successful.

43.10 Cumulative rights

Except as expressly provided in this agreement, the rights of a Party under this agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

43.11 Relationship of the parties

Nothing in this agreement:

- (a) will be construed as creating an agency, partnership or joint venture between the Parties;
- (b) gives a Party authority to bind the other Party in any way; or
- (c) imposes any fiduciary duties on a Party in relation to the other Party.

43.12 Costs and expenses

Each Party must pay its own legal costs and expenses in preparing, negotiating and entering into this agreement.

43.13 Further action

Each Party must do all things and execute all further documents necessary to give full effect to this agreement and the transactions contemplated by it.

43.14 Counterparts

- (a) This agreement may be executed in any number of counterparts. All counterparts together constitute one instrument.
- (b) A Party may execute this agreement by signing any counterpart, including in electronic form using electronic means.

Schedule 1

Agreement details

Item	Reference	Description
1 Facility	cl 1.1	<p>The Nevertire Solar Farm, which consists of:</p> <ol style="list-style-type: none"> the solar farm facility, including the PV modules, trackers, support structures, inverters, electrical system, SCADA system, 132/22kV MV substation, transformers for the substation, on-site and off-site communication systems, HVAC and other required services, and all other parts of the electrical system up to the point of connection to the network of the Network Service Provider, operations and maintenance facility including storeroom, switchroom building, amenities, other storage areas and facilities and associated utilities services; civil works and foundations; the land on which the assets described above are located as set out in Schedule 11; all roads, drainage, fences and gates including public roads on site; the STATCOM and related equipment as per the Licence Agreement; and all Principal Supplied Items provided under this agreement.
2 Initial Service Term	cl 2.1(b)	Commences on the Execution Date and expires 12 months thereafter.
3 Option to extend Service Term	cl 2.1(c)	Two options to extend the Service Term by 2 years each.
4 Network Service Provider	cl 1.1	Essential Energy (ABN 37 428 185 226).
5 Standards	cl 5.1(d)	<ul style="list-style-type: none"> AS/NZS 5033 Installation of photovoltaic (PV) arrays; AS/NZS 4777.1 Grid connection of energy systems via inverters – installation requirements; AS/NZS 4777.2 Grid connection of energy systems via inverters - inverter and grid connection requirements; AS/NZS 3000:2007 Electrical installations (Known as the Australian/New Zealand wiring rules); AS/NZS 3008 Electrical Installations-Selection of Cables;

Item	Reference	Description
		<ul style="list-style-type: none"> • AS/NZS 4961:2003 Electric cables - Polymeric insulated - For distribution and service applications; • AS/NZS 3439 Low Voltage Switchgear and Control-gear Assemblies; • AS 3439.1-2002 Low-voltage switchgear and control gear assemblies - Type-tested and partially type-tested assemblies; • AS 3439.2-2002 Low-voltage switchgear and control gear assemblies – Particular requirements for busbar trunking systems (bus ways); • AS 1939-1990 Degrees of protection provided by enclosures for electrical Equipment (IP Code); • AS 1543-1985 Electrical Equipment of industrial machines; • AS IEC 62271-1 High Voltage Switchgear and Control-gear- Part 1: Common specifications; • AS 2067 Substations and HV Installations greater than 1KV ac; • AS/NZ 1429.1:2006 Electric Cables-Polymeric insulated. Part 1: For working voltages 1.9/3.3(3.6) kV up to and including 19/33 (36) kV; • AS/NZS 1768 Lightning protection standard; • AS/NZS 60076.1 Power transformers -Part 1; • AS/NZS 60076.2 Power transformers -Part 2: Temperature rise for liquid-immersed transformers; • AS/NZS 60076.7 Power transformers -Part 7: Loading guide for oil-immersed power transformers; • AS/NZS 60076.99 Power transformers, Part 99: Minimum Energy Performance Standard (MEPS) requirements for distribution transformers; • AS 62053.(21)(22)(23)-2005(6) Electricity metering Equipment (AC) – Particular requirements; • IEC61215 Ed. 2; • IEC61730 (Safety Class II); • IEC 62817 Photovoltaic systems - Design qualification of solar trackers; • IEC 62093 Balance-of-system components for photovoltaic systems – Design qualification natural environments; • IEC/TS 62727 Photovoltaic systems –Specifications for solar trackers; • IEC 61724:1998 Photovoltaic system performance monitoring - Guidelines for measurement, data exchange and analysis; • IEC TS 61724-2:2016: Photovoltaic system performance - Part 2: Capacity evaluation method;



Item	Reference	Description
		<ul style="list-style-type: none">• IEC TS 61724-3:2016: Photovoltaic system performance - Part 3: Energy evaluation method; and• AS 3000 2007 SAA Wiring Rules (including rulings and supplements to this standard).
6	Threshold for Spare Parts procurement approval	cl 5.4(b) \$5,000 (excluding GST) per part.
7	Threshold for Subcontractor approval	cl 11.1(b)(2) \$500,000 (excluding GST) per annum.
8	Approved Subcontractors	cl 11.1(c) Not used.
9	Defects Liability Period for Contractor Goods	<p>cl 1.1 A Defects Liability Period will apply to all Contractor Goods completed during the final 24 months of the Service Term.</p> <p>The Defects Liability Period for any particular item of Contractor Goods will:</p> <ol style="list-style-type: none">1 start on the end of the Service Term; and2 end 24 months after the day the Services were completed for the relevant Contractor Goods.
10	Defects Liability Period for rectification work	<p>cl 1.1 A Defects Liability Period will apply to all rectification work performed under clause 10.2 of the Commercial Terms after the end of the Service Term.</p> <p>The Defects Liability Period for rectification work will:</p> <ol style="list-style-type: none">1 start on the day after the rectification work is complete; and2 end 12 months after that, or at the end of the Defects Liability Period under Item 9 for the relevant Contractor Goods, whichever is the later.
11	Design Life	cl 1.1 To be agreed during the Interim Period.
12	Contractor's aggregate liability cap	<p>cl 34.2(a) In respect of the Interim Period, AUD250,000</p> <p>In respect of a Service Year, 100% of the aggregate Fees paid or payable in respect of that Service Year.</p>



Item	Reference	Description
13 Contractor Availability Damages cap	cl 34.3(a)	In respect of a Service Year, 100% of the aggregate Fees paid or payable in respect of that Service Year.
14 Bank guarantee	cl 1.1 and 26	Bank guarantee amount 10% of the Base Fee. Approved issuers Australia and New Zealand Banking Group Commonwealth Bank of Australia National Australia Bank Westpac Banking Corporation
15 Senior Dispute Representative	cl 1.1	Principal: Jason Porter Contractor: Dustin Pengelly
16 Principal's representative	cl 41.1(a)	Jason Porter Level 9, Angel Place, 123 Pitt Street, Sydney NSW 2000 Jason.porter@atmosrenewables.com.au
17 Contractor's representative	cl 41.2(a)	Travis Pengelly 87 Farrell Street, Ouyen VIC 3490 Travis@omsolar.au
18 Governing law and jurisdiction	cl 43.1	New South Wales.

Schedule 2

Pricing details

1 Overview of Fees

The Fees consist of:

- (a) the Base Fee;
- (b) the Pre-Existing Facility Defect Rectification Fees; and
- (c) any Additional Services Fees.

2 Not used

3 Base Fee

3.1 Amount

- (a) The Base Fee is a fixed annual fee payable by the Principal for:
 - (1) the performance of Scheduled Maintenance; and
 - (2) the performance of Unscheduled Maintenance.
- (b) The Base Fee is AUD \$886,007.20 (excluding GST) per annum during the Service Term.
- (c) The Base Fee will be CPI Indexed at the commencement of each Service Year (excluding the first Service Year) for the duration of the Service Term.

3.2 Timing

The Base Fee is payable by the Principal in arrears in equal monthly instalments at the end of each calendar month during the Service Term (pro-rata for any part calendar month).

3.3 Adjustment for work not done

- (a) Where the Contractor has not completed any Scheduled Maintenance or Unscheduled Maintenance during a month in breach of this agreement (other than minor omissions), the Principal may reduce the Base Fee by:
 - (1) a reasonable amount based on the proportional value of the Scheduled Maintenance and Unscheduled Maintenance not completed as agreed by the Parties; or
 - (2) if the Parties are unable to agree, determined under clause 35.



- (b) The reduction to the Base Fee will become payable when the Scheduled Maintenance or Unscheduled Maintenance (as relevant) is completed (other than minor omissions).

3.4 Adjustment for suspension

- (a) Whilst all or part of the Scheduled Maintenance or Unscheduled Maintenance are suspended:
 - (1) under clause 29.2 of the Commercial Terms; or
 - (2) under clause 31.1 of the Commercial Terms for a reason set out in clauses 31.1(a) to 31.1(e) (inclusive) of the Commercial Term,the Base Fee will be reduced by:
 - (3) a reasonable amount based on the costs avoided by the Contractor due to the suspension as agreed by the Parties; or
 - (4) if the Parties are unable to agree, determined under clause 35.
- (b) The reduction to the Base Fee will become payable when the relevant Scheduled Maintenance or Unscheduled Maintenance (as relevant) is completed (other than minor omissions).
- (c) The Contractor must use its reasonable endeavours to avoid such costs.

4 Pre-Existing Facility Defect Rectification Fees

4.1 Amount

The Pre-Existing Facility Defect Rectification Fee for each Pre-Existing Facility Defect is specified in the Handover Condition Report (as agreed with the Principal).

4.2 Timing

Each Pre-Existing Facility Defect Rectification Fee is payable by the Principal following the completion of the rectification of the relevant Pre-Existing Facility Defect in accordance with this agreement.

5 Additional Services Fees

5.1 Amount

- (a) An Additional Services Fee is payable by the Principal for the performance of Additional Services.
- (b) The Additional Services Fee for Additional Services will be a reasonable fixed fee based on:
 - (1) for labour, the prices and rates specified in clause 7 (which include all on and off site overheads and profit), to the extent those rates and prices are applicable;

- (2) for parts and materials, the prices and rates specified in clause 7 (which include on and off site overheads and profit), to the extent those rates and prices are applicable;
 - (3) to the extent the prices and rates referred to in clauses 5.1(b)(1) and 5.1(b)(2) are not applicable, the reasonable additional costs or cost savings which will arise out of the Additional Services (excluding on and off site overheads and profit);
 - (4) where the amounts under clause 5.1(b)(3) are a net cost, the net cost will be increased by the margin set out in clause 8 for overheads and profit; and
 - (5) where the amounts under clause 5.1(b)(3) are a net saving, the net saving will be increased by the margin set out in clause 8 for overheads and profit avoided,
- as agreed by the Parties or, if the Parties are unable to agree, determined under clause 35 of the Commercial Terms.
- (c) Where it is not reasonably practicable to determine a fixed fee under clause 5.1(b), the Parties may agree that the Additional Services Fee will be determined applying clauses 5.1(b)(1) to 5.1(b)(5) (inclusive) as the Additional Services are performed.

5.2 Timing

The Additional Services Fees for Additional Services are payable by the Principal progressively at the end of each calendar month for Additional Services actually performed in accordance with this agreement during that calendar month.

6 Adjustments to Fees

Where a Change is not an Additional Service, the relevant Fees will be adjusted by a reasonable price or price reduction for the Change based on:

- (a) for labour, the prices and rates specified in clause 7 (which include all on and off site overheads and profit), to the extent those rates and prices are applicable;
- (b) for parts and materials, the prices and rates specified in clause 7 (which include on and off site overheads and profit), to the extent those rates and prices are applicable;
- (c) to the extent the prices and rates referred to in clauses 6(a) and 6(b) are not applicable, the reasonable additional costs or cost savings which will arise out of the Change (excluding on and off site overheads and profit);
- (d) where the amounts under clause 6(c) are a net cost, the net cost will be increased by the margin set out in clause 8 for overheads and profit; and
- (e) where the amounts under clause 6(c) are a net saving, the net saving will be increased by the margin set out in clause 8 for overheads and profit avoided,

as agreed by the Parties or, if the Parties are unable to agree, determined under clause 35 of the Commercial Terms.

7 Rates and prices

7.1 Labour

- (a) For the purposes of clauses 5.1(b)(1) and 6(a), labour will be valued using the rates and prices set out in Schedule 16.
- (b) The rates and prices in Schedule 16 allow for all on and off site overheads and profit.
- (c) The rates and prices set out in Schedule 16 will be CPI Indexed on 1 July of each year after the Execution Date for the duration of the Service Term.
- (d) The Parties may, from time to time, agree changes to the rates and prices in Schedule 16, or additional rates and prices for roles not covered.

8 Profit and overheads margin

For the purposes of clauses 5.1(b)(4), 5.1(b)(5), 6(d) and 6(e), the Contractor's margin for on and off site overheads and profit is 10%.



Appendix A – Principal Inventory List (including Spare Parts)

To be agreed during the Interim Period.

Schedule 3

Services details

Part A – Scheduled Maintenance

This Part A describes the Scheduled Maintenance to be performed by the Contractor during the Service Term.

1 General

- (a) The Contractor must provide all scheduled, planned, routine and predictive maintenance and services required in relation to the Facility in accordance with:
- (1) Legislative Requirements;
 - (2) Good Industry Practices;
 - (3) the Operation and Maintenance Manuals and the Technical Documents; and
 - (4) manufacturers' requirements and recommendations,
- and so that:
- (5) the Facility continues to comply with the standards contemplated by this agreement (including clause 5.3(a) of the Commercial Terms); and
 - (6) there is no adverse impact to warranties provided by contractors and suppliers for the Facility,
- including the maintenance and services required by this Part A.
- (b) The Contractor must:
- (1) establish a risk register that identifies all the foreseeable risks to the Contractor's ability to perform the Services in accordance with this agreement;
 - (2) include comments regarding the likelihood of such risks arising, and any measures the Contractor is taking to mitigate such risks arising or the consequences of such risks having arisen;
 - (3) continuously update the risk register including by adding new foreseeable risks and updating the comments;
 - (4) perform a regular review of the risk register with the Principal at intervals to be determined by the Principal (acting reasonably);
 - (5) ensure that the latest version of the risk register is housed on the Contractor's CMMS and any cloud-based file sharing system that is shared between the Principal and Contractor for the purposes of communication regarding the Facility; and

- (6) provide a copy of the then current risk register as an addendum with every the monthly report that is required to be submitted in accordance with clause 14.1 of this Schedule 3.

2 Scheduled maintenance

- (a) Maintenance scheduled and conducted in accordance with Appendix A of this Schedule 3 as updated by the Contractor from time to time.
- (b) Notwithstanding anything to the contrary in this agreement (including the services inspection checklists), Scheduled Maintenance does not include Unscheduled Maintenance (described in Part B of Schedule 3).

3 Remote monitoring and operation

- (a) The Contractor acknowledges that the Principal will remotely monitor and control the Facility via the SCADA system. This will include starting and stopping of inverter units.
- (b) The Principal will alert the Contractor to any priority one alarms where inverters are offline and require site investigation or where switchgear has opened.
- (c) The Contractor must establish appropriate phone and email systems by which the Principal is able to notify the Contractor of priority one alarms.
- (d) The Contractor must initiate the necessary steps to correct any faults it is advised of as soon as possible, including on weekends and public holidays.
- (e) The Contractor and the Principal agree to establish an operating and communications protocol within 30 Business Days after the Execution Date (or such later date agreed between the Parties) and review such protocol from time to time as agreed between the Parties.
- (f) Notwithstanding that the Principal is responsible for monitoring and control of the Facility, the Contractor must use the SCADA system to find DC faults in the Facility and promptly report any defaults, by written notice, to the Principal.

4 No modifications

- (a) The Contractor must not conduct any repair or modification to a component so as to alter the specification of that component without the prior approval of the Principal, unless such modification is necessary as a matter of urgency and it is not practicable to give such prior notice, in which event such notice will be given immediately after making any such modifications.
- (b) The Contractor will be responsible for making any available updates and upgrades to software for SCADA as part of the Services, subject to clause 4(a) above.
- (c) When requesting approval under clause 4(a) above, the Contractor must provide information regarding the alteration or change reasonably required by the Principal, which will include:

- (1) whether the alteration or change is permanent;
 - (2) the action required to reverse the alteration or change;
 - (3) any impact on other systems and procedures;
 - (4) the reason for the alteration or change;
 - (5) evidence that compliance with all applicable Legislative Requirements and standards, and the construction technical specification, is achieved; and
 - (6) whether the Contractor recommends the alteration or change for all similar components at the Facility.
- (d) The Principal must give the Contractor written notice if it wishes to inspect or investigate any part removed from the Facility by the Contractor, apart from wear parts. The Principal must give such notice within two months after the Contractor notifies the Principal in writing that the part has been removed.
- (e) If the Principal gives notice under clause 4(d) above in relation to a part, the Contractor must ensure that the part is available at a location in Australia for inspection and investigation by the Principal for at least two months after receipt of the Principal's notice, unless the Principal consents to earlier removal.
- (f) The Contractor must provide revised as built drawings and documents and change records on implementation of any alteration or change, in accordance with section 12 of this Schedule 3.

5 CMMS

- (a) The Contractor provide a computerised maintenance management system (**CMMS**) for programming and recording all Service activities.
- (b) The Contractor must ensure that the information regarding the Facility and the Services in the CMMS is accurate and up-to-date, including at the expiry of the Service Term.
- (c) Ownership of the CMMS will remain with the Contractor at all times.
- (d) The Contractor must provide the Principal with read access to the CMMS at all times.

6 Vehicles, tools and voice communications

- (a) The Contractor must supply and is fully responsible for all vehicles, tools and voice communications equipment required to enable the Contractor to perform its obligations under this agreement, excluding the Principal Supplied Items.
- (b) The Principal will provide the data connection to AEMO and NSP. The Contractor must provide any other connections.
- (c) The Principal will make electricity back-feed available to the Facility as required for the performance of the Services. The Contractor may use electricity generated by the Facility for the performance of the Services at no cost.
- (d) All vehicles used in the performance of Services at the Facility Land must be diesel, or where a risk assessment has been completed for the use of electric



vehicles at the Facility, electric, unless otherwise agreed in writing by the Principal.

- (e) The Contractor must supply all services, and utilities (excluding electricity other than charging costs for electric vehicle and equipment) used in the performance of the Services.

7 Personnel

- (a) The Contractor must provide all personnel required for the performance of its obligations under this agreement.
- (b) The Contractor must, in accordance with Good Industry Practices, utilise and supervise its personnel who must be medically, physically and mentally fit to carry out the duties required of them and have the proper qualifications, training, expertise and competence for performance of the Services. The Contractor is responsible for the cost of qualifications and training.
- (c) The Contractor must at all times maintain strict discipline and good order amongst the personnel it uses and will establish and operate all appropriate disciplinary procedures in accordance with the applicable laws and Good Industry Practices.
- (d) During the Service Term, the Contractor must train its personnel to be capable of assisting the Principal with electrical troubleshooting of protection relay trips. For the avoidance of doubt:
 - (1) the training of the Contractor's personnel in accordance with this clause 7(d) is included in the Services; and
 - (2) any actual assistance provided by the Contractor's personnel for electrical troubleshooting of protection relay trips will be an Additional Service.
- (e) Site manager, HSE officer, high voltage operators, supervisors and O&M engineers will have the consideration of **Key Personnel**. In the event any **Key Personnel** are dismissed (other than disciplinary reasons), resign or are moved to another project, the contractor must guarantee a minimum handover period of 15 days between the person leaving and the new person starting in the position.

8 Operational meetings

- (a) The Contractor must meet with representatives of the Principal on a monthly basis (or as otherwise agreed by the Parties) at a mutually agreed time and place to review and discuss the performance of the Services, provided that the Principal has given it sufficient advance notice of the proposed date and venue of the meeting.
- (b) The Principal will prepare minutes of any such meeting and will deliver them to the Contractor within 10 working days of the meeting. These minutes will be agreed at the next such meeting.
- (c) The Contractor must comply with all monthly reporting requirements irrespective of when the monthly meeting is held.



9 Principal Inventory

- (a) The draft Principal Inventory List at the Execution Date is set out in Appendix A of Schedule 2. The Parties must, within 30 Business Days after the Execution Date (or such later date agreed between the Parties), finalise the Principal Inventory List, including to reflect the quantities of Spare Parts in the Principal Inventory.
- (b) During the Service Term, the Contractor must regularly (and at a minimum, on a quarterly basis):
 - (1) review the Principal Inventory List in accordance with Good Industry Practices and propose, in writing, for the Principal's approval any changes to the Principal Inventory List including any new Spare Parts required for performing the Services; and
 - (2) review the Principal Inventory against the Principal Inventory List and notify the Principal in writing of any required replenishment.
- (c) If required by the Principal, the Contractor must procure the replenishment of the Principal Inventory within the period required by the Principal Inventory List and the Principal must pay for the for the cost of such Principal Inventory (provided that such cost in on reasonable market rates) plus freight with no markup, subject to the provision of a tax invoice.
- (d) Unless otherwise agreed with the Principal or expressly stated in this agreement, the Contractor must provide all tools, equipment, consumables, waste management, sampling, testing, and parts to perform the Services in accordance with this agreement.
- (e) The Contractor must ensure that the Principal-supplied storage areas at all times, are well organised, dry and dust-free storage.
- (f) In the case that the Contractor supplies storage areas, the Contractor will ensure that at all times, such storage areas are well organised, dry and dust-free.
- (g) The Contractor will have care of all Spare Parts at the storage site(s) and will prepare and keep up to date a full inventory of such Spare Parts in accordance with clause 9(b).

10 Service Plans

The Contractor must have the following Service Plans, as a minimum:

- (a) a maintenance plan for the Service Term which must:
 - (1) be consistent with the Operation and Maintenance Manuals and this agreement;
 - (2) set out the scope of Scheduled Maintenance;
 - (3) set out the timing for Scheduled Maintenance;
 - (4) include a quality assurance plan; and
 - (5) otherwise be acceptable to the Principal acting reasonably;
- (b) the Health and Safety Management Plan required by Schedule 7;
- (c) an emergency response plan;

- (d) a quality management plan;
- (e) a communications plan; and
- (f) the Contractor's site regulations.

11 Records

- (a) The Contractor will provide operation, service and maintenance records relating to the Services as required by the agreement, including data output from the SCADA system, in the format usually generated by the Contractor.
- (b) An annual service schedule, setting out Scheduled Maintenance for the following calendar year, will be provided in the October monthly report (or such other monthly report as is required by the Principal).

12 Updates

- (a) The Contractor must keep the Technical Documents, Operation and Maintenance Manuals and as built records for the Facility up to date in accordance with Good Industry Practices and make any amendments, revisions and updates required in accordance with Good Industry Practices.
- (b) If the Contractor believes, in its reasonable discretion, that an update, amendment or revision of an Operation and Maintenance Manual made in accordance with clause 12(a) above would enhance the overall performance or safety of the Facility, the Contractor will provide its recommendations with respect to the update, amendment or revision to the Principal and, if the Principal directs, make the update, amendment or revision to the applicable Operation and Maintenance Manual.
- (c) The Contractor acknowledges and agrees the cost incurred in relation to any update, amendment or revision to the applicable Operation and Maintenance Manual is included in the Base Fee.

13 Quality assurance

- (a) To the extent requested by the Principal, the Contractor must provide the Principal reasonable access to the Contractor's quality system and the information and documents created or maintained pursuant to the quality system for the purposes of monitoring and auditing the Contractor's compliance with the quality system and this agreement.
- (b) The Contractor must promptly notify the Principal of any change, improvement, enhancement or upgrade to the Facility or the Services recommended by the Contractor to improve the safety, environmental compliance, performance or reliability of the Facility or the Services. Subject to clauses 4(b), 12 and 13(c) of this Part A of Schedule 3, the Principal may request the Contractor to provide a proposal for any such change, improvement, enhancement or upgrade as either a Change or an Additional Service (as appropriate).

- (c) The Contractor must offer the Principal any optional improvements of a technical or organisational nature generally offered by the Contractor to its customers that is relevant to the Facility or the Services.

14 Content of Reporting

14.1 Monthly report

The Contractor must submit, within 10 Business Days of the last day of each month, a monthly report describing various aspects of the operations and maintenance. The monthly service reports submitted by the Contractor shall contain as a minimum (unless otherwise agreed with the Principal and to be discussed during the Interim Period):

- (a) Plant overview and details, including and not limited to:
 - (1) Plant coordinates;
 - (2) DC and AC capacity;
 - (3) Registered AC capacity;
 - (4) Orientation and pitch details;
 - (5) Date of commercial operation;
 - (6) PV module make and details;
 - (7) Inverter make and details; and
 - (8) Transformer make and details;
- (b) Summary of:
 - (1) Performance indices for the month (including year to date values);
 - (2) Irradiation measured vs. forecasted;
 - (3) Energy produced vs. forecasted at the connection point;
 - (4) Energy produced at inverter level;
 - (5) Performance Ratio;
 - (6) Facility availability vs. guaranteed availability;
 - (7) Grid unavailability (split into day and night);
 - (8) Major events summary; and
 - (9) Grid outage and Force Majeure Events summary;
- (c) Daily Performance indices:
 - (1) Daily export meter production values and graph;
 - (2) Daily irradiation values and graph;
 - (3) Daily Performance Ratio values (calculated as per IEC 61724-1) and graph;
 - (4) Inverter daily values (generation); and
 - (5) Brief observations/comments impacting the performance ratio, if any;
- (d) Availability (daily, monthly, and year to date values)

- (1) Facility availability vs. guaranteed availability (as per Schedule 12)
- (2) Grid availability (all events including reasons and evidence/communications from Network Service Provider)
- (3) Force Majeure Event exclusions; and
- (4) Evidence to be provided for excluded unavailability;
- (e) Weather conditions:
 - (1) Daily values of measured irradiance;
 - (2) Monthly values (with year to date values); and
 - (3) Pyranometer unavailability with start and stop times;
- (f) Maintenance:
 - (1) Performed Scheduled Maintenance vs. unperformed Scheduled Maintenance in the prior month;
 - (2) Unscheduled Maintenance performed in the prior month, including all faults experienced, steps taken to rectify faults, start time and resolved time of all the events with the all equipment and DC capacity affected;
 - (3) Scheduled Maintenance for the next month;
 - (4) Details on warranty claims and expiry dates of warranted components;
 - (5) Spare Parts used and available in the Principal Inventory;
 - (6) Maintenance photographs (as Appendix A of the monthly report); and
 - (7) Copies of service reports associated with maintenance activities;
- (g) Organisation:
 - (1) Key staff and any changes;
 - (2) Subcontractors used and changes;
 - (3) Claims / disputes between Contractor and Subcontractors; and
 - (4) Date and time logs of staff presence on site including purpose;
- (h) Health and Safety incidents and hour summary (man-hours, lost time, etc.); in accordance with the document titled "Atmos Renewables WHS & Environmental Reporting Requirements";
- (i) Cyber incidents
- (j) Environmental activities and incidents;
- (k) Any other issues of concern and issues carried forward from previous month;
- (l) Any major activity to be conducted in the next month; and
- (m) Appendix A: Photographs of maintenance and any other issues before and after resolution.

14.2 Annual report

The Contractor shall submit, one week after the end of each Service Year, an annual report which will compile and summarise the content of the previous twelve-monthly reports with the addition of:

- (a) Performance and availability test reports;

- (b) Any other issues of concern; and
- (c) Overview of any incidents/faults that have affected the performance of the Facility over the last Service Year.

14.3 Grid Event Reporting

The Contractor shall submit a Grid Event Report in accordance with the template at Appendix B within 2 business days of one or more of the following events:

- (a) There is an unplanned trip of a circuit breaker at the site;
- (b) There is a significant fault event on the network managed by the Network Service Provider;
- (c) The site does not perform in accordance with its Generator Performance Specification; and
- (d) There is a failure of primary communication or the control system.

15 Operation and Maintenance Manuals

The Principal must provide, and the Contractor must maintain currency of Operation and Maintenance Manuals in accordance with clause 9.



Part B – Unscheduled Maintenance

This Part B describes the Unscheduled Maintenance to be performed by the Contractor during the Service Term.

1 General

- (a) Unscheduled Maintenance consists of any maintenance, repairs, replacement or other corrective actions required to ensure the Facility continues to comply with the standards contemplated by this agreement (including clause 5.3(a) of the Commercial Terms) which are unscheduled, unplanned, reactive or corrective.
- (b) Subject to clause 1(c) of this Part B of Schedule 3, Unscheduled Maintenance will include the rectification of any part of the Facility which does not comply with the standards contemplated by this agreement (including clause 5.3(a) of the Commercial Terms).
- (c) Unscheduled Maintenance will not include the initial rectification of Pre-Existing Facility Defects in accordance with clause 8.1 of the Commercial Terms (but, for the avoidance of doubt, will include any defect in that rectification work).

2 Breakdown response

- (a) The breakdown response services generally consist of unplanned or random maintenance tasks undertaken in response to affected plant becoming inoperable or unusable.
- (b) The Contractor must provide a breakdown response service on a 24 hour-seven day basis, including a register of breakdowns and responses.
- (c) All breakdowns must be logged and notified to the Principal as soon as practicable and must include the following information as a minimum:
 - (1) equipment and services impacted;
 - (2) likely root cause of breakdown;
 - (3) the Contractor's classification of the breakdown (per tables below); and
 - (4) actions being taken by the Contractor to respond and rectify the breakdown.
- (d) During non-regular business hours an on-call service must be in place with a maximum response time of the following:
 - 2 hours response time- whole plant trip, PPC or SCADA system failure resulting in loss of remote control of plant or failure to follow dispatch targets;
 - 4 hours response time – AC feeder trip or fault; and
 - 6 hours response time – Inverter, or other Power Conversion Unit component, trip or fault.



Appendix A – Scheduled Maintenance

To be agreed during the Interim Period.

*Vegetation Management will be included in Scheduled Maintenance excluding broad acre spraying of chemicals.



Appendix B – Event Reporting Template

Event notes from site team			
<i>Please read the instructions on the "Read me" tab of this workbook before completing this page</i>			
Name		Company	
Sheet completed by:			
Site:	Site Name	DUID	
	Daydream Solar Farm	DAYDSF1	
Event Date:	Day	Month	Year
Event Time:	Hour	Minute	Timezone
Please save a copy of this sheet, using the filename shown below: YYYYMMDD_HHMMTZONE_DAYDSF1_event_note.xlsx <i>Tip - how to copy and paste the file name when saving: copy from the cell above, paste in a new email subject line, then copy and paste from there when saving this document.</i>			
And email it to: alan.wightman@atmosrenewables.com.au			
Brief description of event: <i>Note: we are interested in unplanned events which impact the output of the site, or other major network events. For example: trips, network fault events, control or communication</i>			
Page 1			
Weather conditions around the time of event: <i>For example: lightning, extreme high temperature, extreme wind, flooding, sunny/cloudy.</i>			
Site conditions around the time of event: <i>For example: what was in/out of service, any works in progress on site.</i>			
NSP control room comments: <i>Note: if the event was external to our site (i.e. a fault on the external network) then please call the NSP control room and ask for the following information:</i>			
Fault location:			
Fault type:			
Which CBs tripped:			
Any other comments from the NSP control room:			

Schedule 4

Handover Condition Report

Existing Defect	Description	Due Date	Quantity	Excludable from Availability	Action

Schedule 5

Technical Documents

The Technical Documents are the documents contained, as at the Execution Date, in the subfolder entitled “Schedule 5 – Technical Documents” in the Contract Data folder of the Principal’s cloud-based dataroom to which the Contractor has been given access.

Technical Documents list to be finalised during the Interim Period.

Schedule 6

Manufacturer Warranties

The Manufacturer Warranties are the documents contained, as at the Execution Date, in the subfolder entitled “Schedule 6 – Manufacturer Warranties” in the Contract Data folder of the Principal’s cloud-based dataroom to which the Contractor has been given access.

Schedule 7

Health, safety and environment minimum requirements

1 General

- (a) The Contractor must comply, and ensure all Contractor Associates comply with the following requirements relating to health, safety and the environment (**HSE**) in the performance of the Services.
- (b) The Contractor must provide documentary evidence where indicated in this Schedule 7 or as requested by the Principal.

2 HSE Management Systems

- (a) The Contractor must have an operational HSE management system. The Contractor must demonstrate how its management system is aligned with, or certified to, ISO 14001:2015 *Environmental Management System*, ISO45001:2018 *Occupational Health and Safety*, and AS/NZS 4804 *Occupational Health and Safety Management Systems*.
- (b) The Contractor must implement and ensure the Contractor and Contractor Associates comply with the Contractor's HSE management system.

3 HSE Management Plans

- (a) The Contractor must submit to the Principal:
 - (1) a Health and Safety Management Plan (**HSMP**); and
 - (2) an Environmental Management Strategy (**EMS**).
- (b) The Contractor's HSMP and EMS are Service Plans and must be submitted in accordance with clause 6 of the Commercial Terms.
- (c) The Contractor must ensure that both the HSMP and the EMS:
 - (1) are specific to this agreement and the Services;
 - (2) cover all HSE issues relevant to the Services; and
 - (3) consider and respond to the specific HSE hazards, risks and impacts identified in the HSE risk assessment and the planning approval for the Services.
- (d) The HSMP and EMS must be reviewed by the Contractor at regular intervals (minimum of 12 months) throughout the performance of the Services as required to ensure that it remains current, suitable for achieving its purpose and relevant to the Services.

- (e) The HSMP and EMS may be audited by the Principal at any time during the Service Term.

3.2 Health and Safety Management plan

- (a) The HSMP must:
- (1) provide a detailed description of the scope of work, associated hazards and assessment of the risk; and
 - (2) detail the site specific controls required to be implemented to ensure that the risks are eliminated or minimised to as low as reasonably practicable.
- (b) The HSMP must include, as a minimum, the following details:
- (1) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities;
 - (2) the arrangements in place for consultation, cooperation and coordination;
 - (3) the arrangements in place for managing workplace health and safety incidents;
 - (4) any project specific health and safety rules and the arrangements for ensuring that all persons at the workplace are informed of these rules;
 - (5) the arrangements to prepare, collect, assess, monitor and review safe work method statements;
 - (6) a comprehensive system for hazard identification, risk assessment and risk mitigation to be applied for the Services;
 - (7) the management and monitoring of Subcontractors including how any Principal Contractor required intends to implement and ensure compliance with the plan, for example, checking on the performance of Subcontractors and how non-compliance will be handled;
 - (8) the management of any high risk work that will take place;
 - (9) permit to work systems (i.e. electrical isolation, etc.);
 - (10) an emergency response plan;
 - (11) Disaster recovery and incident response plan
 - (12) an emergency evacuation plan;
 - (13) procedures for auditing HSE system compliance, including an HSE audit schedule; and
 - (14) monitoring the implementation of and compliance with the plan including update of details of the plan over the course of the Services Term.

3.3 Environmental Management Strategy

- (a) The EMS must consider and address:
- (1) the specific environmental hazards, risks and impacts that may result from the performance of the Services; and
 - (2) all environmental requirements imposed by Legislative Requirements.



- (b) The EMS must also set out:
 - (1) a detailed description of the risk assessment and risk mitigation process to be applied for the Services; and
 - (2) a process for environmental incident reporting.

4 HSE Roles and Responsibilities

The HSMP and EMS must clearly define the roles and responsibilities of the Principal, Contractor and Subcontractors, and their personnel in relation to HSE. Both the HSMP and EMS must include:

- (a) a description of the HSE roles and responsibilities for key management and supervisory personnel of the Contractor and Subcontractors, along with communications and reporting flows and mechanisms;
- (b) an organisation chart which identifies the HSE roles and responsibilities and communications flow between the Contractor, Subcontractors and the Principal;
- (c) details of the Contractor's key HSE personnel, who must have sufficient prior experience and training in HSE issues, and their application for similar services; and
- (d) the Contractor's arrangements for consultation and coordination with third party contractors.

5 HSE Risk Management

- (a) The Contractor must, throughout the performance of the Services, identify and assess risks associated with the Services and implement appropriate measures to control such risks.
- (b) The Contractor must take the following into consideration for the formulation and performance of the processes:
 - (1) Work Health and Safety Requirements;
 - (2) Environmental Requirements; and
 - (3) Specific requirements as directed by any Government Agency.

Schedule 8

Not used

Schedule 9

Connection requirements

1 Definitions

Unless the context requires otherwise:

- (a) terms used in this Schedule relating to the Connection Agreement, which are defined in the Connection Agreement have the same meaning; and
- (b) capitalised terms which are defined in the Commercial Terms to which this Schedule is attached have the same meaning.

2 General

- (a) The Contractor is responsible for complying with the Generator's obligations under the Connection Agreement which are relevant to the Facility or Services, or required to establish and maintain the Connection of the Facility to the electricity network during the Service Term except to the extent this Schedule expressly states, or the parties agree, otherwise.
- (b) The Contractor is responsible for complying with the Connection Agreement's scope of works including the design of the Facility and the procurement of all equipment and services necessary to ensure that the Facility meets the standards prescribed in the Connection Agreement.
- (c) The Principal is responsible for negotiating and agreeing on the modification of performance standards in accordance with clause 5.3 of the Rules.

3 Copies of correspondence

- (a) The Contractor must give the Principal a copy of all correspondence, documents and information (including reports, drawings and models) given by the Contractor to the Network Service Provider at the same time the correspondence, documents or information is given to the Network Service Provider.
- (b) The Contractor must give the Principal a copy of all correspondence, documents and information received by the Contractor from the Network Service Provider:
 - (1) in relation to an emergency, or any circumstance which does or has the potential to prevent the Connection of the Facility, as soon as reasonably possible; and
 - (2) otherwise, within two Business Days after the correspondence, documents or information is received.



4 Reference documents

The documents specified in the table below are referred to in this Schedule.

Name	Description
Connection Agreement	Agreement entitled the Embedded Generator Connection Agreement entered into by the Network Service Provider and the Principal on 21 December 2017.

Schedule 10

NER requirements

- (a) In this Schedule 10, unless the context otherwise requires:
- (1) capitalised terms which are defined in the Commercial Terms have the same meaning; and
 - (2) terms which are defined in the National Electricity Rules have the same meaning.
- (b) Subject to the exclusions set out in clause (c) of this Schedule 10, the Contractor is responsible for (at its cost) complying with all requirements under the National Electricity Rules and Applicable Regulatory Instruments relating to:
- (1) the Services or Facility;
 - (2) the *connection* of the Facility to the *network*;
 - (3) the generation and export of electricity by the Facility; and
 - (4) the operation of the Facility,
- in each case, to the satisfaction of AEMO and the Network Service Provider (as applicable).
- (c) Without limiting clause (b) of this Schedule 10, the Contractor's responsibilities include those set out in the following table.

Issue	Contractor's responsibility
Technical requirements	<p>The Contractor must maintain the Facility so it complies with, and is able to be operated in compliance with, all technical requirements and standards under the National Electricity Rules and Applicable Regulatory Instruments. Such requirements include the performance standards for the Facility and execute works outlined in the Generator Compliance Program (GCP) as updated from time to time and provided to the contractor.</p> <p><i>Exclusions:</i></p> <p>The Contractor is not required to perform any capital upgrades required as a result of changes to the technical requirements and standards under the National Electricity Rules and Applicable Regulatory Instruments which take effect after the start of the Service Term and could not reasonably have been anticipated at the start of the Service Term.</p>
Operation of the Facility	<p>The Contractor must:</p> <ul style="list-style-type: none"> ensure the Facility is operated in compliance with the National Electricity Rules and Applicable Regulatory Instruments;

Issue	Contractor's responsibility
	<ul style="list-style-type: none"> • satisfy all requirements relating to the operation of the Facility under the National Electricity Rules and Applicable Regulatory Instruments; and • comply with all dispatch instructions given by the Principal or their representatives in relation to the Facility. <p><i>Exclusions:</i></p> <p>The Contractor is not responsible for:</p> <ul style="list-style-type: none"> • bidding in relation to the Facility; • communications with AEMO regarding availability forecasting, bidding or dispatch; or • financial, prudential or administrative requirements.
Testing	<p>The Contractor must undertake protection relay testing in accordance with the preventive maintenance plan outlined in this agreement.</p> <p>This testing shall be undertaken to the satisfaction of the Network Service Provider, and, where applicable, AEMO.</p>
Compliance reporting	<p>The Contractor must investigate the cause of any plants protection trips and provide a report to the Principal in a reasonable timeframe outlining the finding of the investigation.</p> <p>Such reports and information must be in the form required by the National Electricity Rules, Applicable Regulatory Instruments, AEMO and the Network Service Provider (as applicable), and be satisfactory the Network Service Provider and, where applicable, AEMO.</p>
Provision of information	<p>The Contractor must obtain and provide all information regarding the Services, the Facility and its operation which is required under the National Electricity Rules or Applicable Regulatory Instruments, or requested by AEMO or the Network Service Provider.</p> <p>Such information must be in the form required by the National Electricity Rules, Applicable Regulatory Instruments, AEMO and the Network Service Provider (as applicable), and be satisfactory to AEMO and the Network Service Provider, and, where applicable, AEMO (as applicable).</p> <p>Such information may include technical information, operational information, compliance information and test results, such as generation forecasts and outage details.</p> <p><i>Exclusions:</i></p>

Issue	Contractor's responsibility
	The Contractor is not responsible for any information required to satisfy financial, prudential or administrative requirements.

- (d) The Contractor must:
- (1) promptly provide any information and assistance requested by the Principal for the purposes of satisfying the requirements under the National Electricity Rules and Applicable Regulatory Instruments for which the Contractor is not responsible under this agreement; and
 - (2) comply with any direction given by the Principal regarding the performance of the Services to the extent necessary to enable the Principal to satisfy the requirements under the National Electricity Rules and Applicable Regulatory Instruments for which the Contractor is not responsible under this agreement.

The obligations, works and activities which the Contractor is required to perform under this Schedule 10 are in addition to and do not reduce or limit the obligations, works and activities which the Contractor is required to perform under the other provisions of this agreement.

Schedule 11

Access requirements

1 Facility Land

The Facility Land is shown in the drawings included in Attachment 1 in this Schedule 11.

The boundaries shown in the drawings are approximate only. The Contractor must verify the title details, location and boundaries of each lot.

2 Details of Access Documents

The Access Documents are listed in the following table:

Name	Description
Lease	Lease Agreement between Elliott Nevertire Solar Pty Ltd as trustee for Elliott Nevertire Trust and Ingar (Nevertire) Pty Ltd.
Licence Agreement	Licence agreement between the Principal and the NSP in respect of the Eulomongo and Mullengudery site.

The Access Documents are the documents contained, as at the Execution Date, in the subfolder entitled "Schedule 11 – Lease" in the Contract Data folder of the Principal's cloud-based dataroom to which the Contractor has been given access.

3 Requirements relating to Facility Land

During the Interim Period, the Contractor must, when accessing the Facility Land, comply with the Principal's reasonable directions in relation to the Principal's obligations under the Access Document.

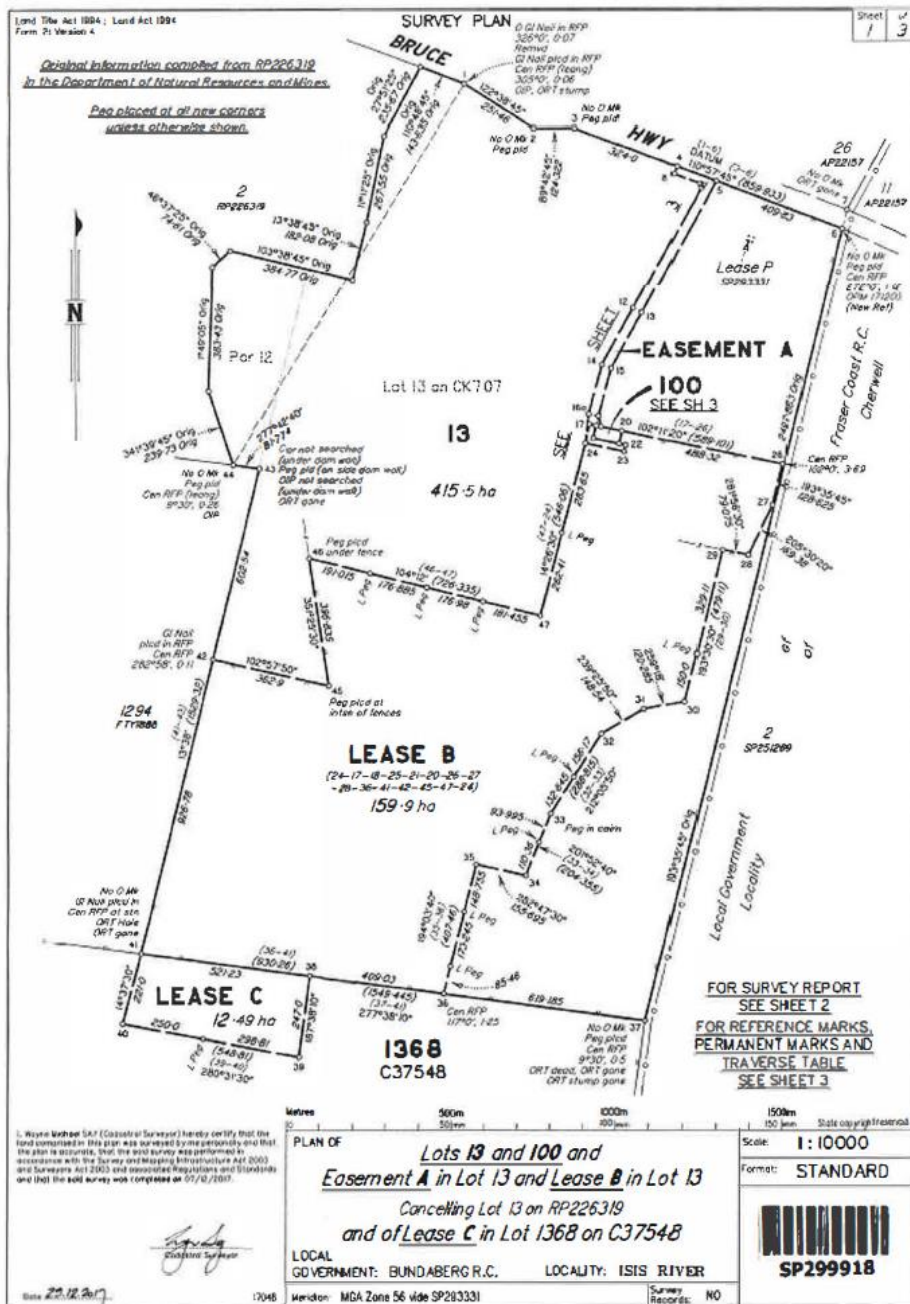
The parties must during the Interim Period agree the Contractor's obligations in relation to the Access Documents in connection with the Facility Land.

Attachment 1



Facility Land

Title Reference 15163150



Schedule 12

Availability Guarantee

1 Definitions

In this Schedule, defined terms have the meaning given to them in clause 1.1 of the Commercial Terms unless set out below:

Availability Calculation Period means each Service Year.

Availability Exclusion Event means any reductions, disruptions, outages and/or other adverse impact on Facility Availability caused in part or in whole by any of the following:

- (a) isolations carried out for third parties to perform works on the Facility that do not form part of the Contractor's Services.
- (b) a fault in the Distribution Network resulting in the inverters being unable to evacuate any power, or a zero-export limit imposed by AEMO or the Network Service Provider;
- (c) a Constraint Event;
- (d) a fluctuation in the network parameters (a difference of frequency or voltage) that triggers the protections of the Facility based on the parameters provided in the Generator Performance Standards. These trip settings shall be in accordance with the agreed GPS;
- (e) any Force Majeure Event;
- (f) any Excluded Damage;
- (g) theft, vandalism or criminal acts committed by third parties, including but not limited to wilful damage;
- (h) any breach of this agreement by the Principal;
- (i) a negligent act or omission of the Principal or a Principal Associate that has a material adverse impact on the Contractor's performance of the Services;
- (j) any direction by the Principal to reduce the output of the Facility, except to the extent the Principal is acting in accordance with this agreement;
- (k) any delay or disruption caused by the Principal or a Principal Associate, except to the extent the Principal or the Principal Associate is acting in accordance with this agreement;
- (l) a Pre-existing Facility Defect, but only up to 6 calendar months after the Execution Date. For the avoidance of doubt, a Pre-existing Facility Defect will not be considered an Availability Exclusion Event after the date which is 6 calendar months after the Execution Date; or
- (m) if for the performance of any of the Services, the approval of the Original Equipment Manufacturer (OEM) of any Equipment is required, the time until the OEM grants such approval or, if the OEM refuses such approval, the time until the OEM performs such works provided that:

- (1) the Operator has clearly notified the Principal and the Asset Manager of the circumstances not allowing the Operator to repair the fault; and
- (2) the Operator demonstrates to the Principal and Asset Manager regular correspondence with the OEM to drive the resolution of the Defect,

provided the occurrence of any of the events (as set out under paragraphs (a) to (l)):

- (n) is beyond the reasonable control of the Contractor (including any Contractor Associate);
- (o) is not caused or contributed to by any act or omission of the Contractor or any of the Contractor Associates; and
- (p) could not reasonably have been expected to be prevented, avoided or overcome by the Contractor by exercising Good Industry Practices.

Any reductions, disruptions, outages and/or other adverse impact on Facility Availability caused in whole or in part by any of the above events for which no reasonable evidence has been provided by the Contractor to the Principal will be deemed to not be an Availability Exclusion Event.

For the avoidance of doubt a semi dispatch constraint does not constitute either an Availability Exclusion Event or a Constraint Event.

Availability Guarantee means the Facility Availability is guaranteed at ninety-nine per cent (99%) for each Availability Calculation Period during the Service Term.

Availability Damages has the meaning given to that term in section 4 of this Schedule 12.

Combiner Boxes means the combiner boxes which combine the PV strings into a single DC feeder, each of which is an independent input to an inverter and the availability of which is monitored in the SCADA system at the input DC bus of the inverters.

Combiner Box Instantaneous Availability has the meaning given in section 3(c) of this Schedule 12.

Constraint Event means a constraint on the power exported by the Facility that is imposed by AEMO or the Network Service Provider, provided that the Contractor can demonstrate that the Facility was exporting the maximum possible power during the Constraint Event, and the portion of unavailable Facility was distributed evenly across the collector groups, or otherwise agreed with the Principal. The Facility or part thereof can be constrained due to any one or a combination of the following:

- (a) AEMO directed curtailment;
- (b) islanding due to network fault/network response not caused or contributed to by the Contractor;
- (c) delayed reactions caused by outages of telecommunications networks as part of the Interconnection Agreements that prevent the Contractor from being alerted of a system error (but only to the extent of the delay); or
- (d) the complete or partial unavailability of the Facility for the purpose of producing energy caused by any malfunction of HV Substation,

provided the occurrence of any of the constrained events (as set out under paragraphs (a) to (d)):

- (e) is beyond the reasonable control of the Contractor (including any Contractor Associate);
- (f) is not caused or contributed to by any act or omission of the Contractor or any of the Contractor Associates; and



- (g) could not reasonably have been expected to be prevented, avoided or overcome by the Contractor by exercising Good Industry Practices.

For the avoidance of doubt, if the Constraint Event consists of a power curtailment:

- (a) the Combiner Boxes in unavailable condition before the start of the Constraint Event will be considered as unavailable for the duration of the Constraint Event until the issue causing the unavailability is solved; and
- (b) the Constraint Event will be considered as an Availability Exclusion Event for the Combiner Boxes turned intentionally offline during the Constraint Event to carry out any maintenance activity.

Distribution Network means the system for the distribution of electrical energy, including the 132kV distribution line connected to the HV Substation.

Facility Instantaneous Availability has the meaning given in section 3(b) of this Schedule 13.

Facility Availability has the meaning given in section 3(a) of this Schedule 12.

HV Substation means the Nevertire 132/22kV MV substation that exports electrical energy from the Facility.

Test Data means all required signals recorded by the SCADA system, at intervals consistent with the defined Time Step, during the Availability Calculation Period.

Time Step means a ten (10) minute interval for which data from the Facility has been recorded in the SCADA system.

2 Availability Guarantee

- (a) The Principal will provide a report detailing the Facility Availability on a monthly basis during the Service Term.
- (b) The Contractor warrants that the Facility will achieve the Availability Guarantee during each Availability Calculation Period during the Service Term, using the availability calculations set out in section 3 of this Schedule 12.
- (c) Treatment of Availability Exclusion Events
- (1) Any Time Steps in which any Availability Exclusion Events that impacts the entire Facility (100% of Combiner Box Inputs) occur are to be removed from the calculation of Facility Availability in their entirety and not back filled.
- (2) For these Time Steps, all relevant inputs are to be excluded as if the Time Step did not happen, provided that the total quantity of corresponding excluded Time Steps for the Availability Calculation Period does not equal or exceed 5% of the total Time Steps for that Availability Calculation Period.
- (3) If the number of Time Steps in an Availability Calculation Period affected by Availability Exclusion Events that impact the entire Facility equals or exceeds 5%, the Contractor and the Principal shall discuss and agree an appropriate treatment of these Time Steps.
- (4) For any Time Steps in which any Availability Exclusion Events that impact less than 100% of Combiner Box occur, Combiner Box to which an Availability Exclusion Event applies shall be excluded from the calculations.



- (5) This means exclusion from the term *j* in both the numerator and denominator of the equation for the calculation of Facility Instantaneous Availability in 3(b) below.
- (6) For clarity, if an Availability Exclusion Event only affects one Combiner Box, then only that Combiner Box will be excluded from the calculation of the Facility Instantaneous Availability for that Time Step.
- (d) As multiple instruments will collect data during each measurement, the Contractor must carry out a data quality check to ensure that the Test Data is consistent and free from gaps and anomalies. The Contractor must ensure that data quality check methodology and criteria is approved by the Principal. For the avoidance of doubt, the Contractor must not apply any uncertainties or correction factors to the Test Data unless instructed to do so by the Principal.
- (e) The Facility Availability for each Availability Calculation Period shall be measured for the Time Steps when the in-plane irradiation of all operational pyranometers exceeds one hundred (100) W/m², subject to any Availability Exclusion Events as set out in this Schedule 12.
- (f) If it is not possible to calculate the Facility Availability for an Availability Calculation Period due to an equipment or communications system failure resulting in insufficient data being available, the Principal and the Contractor must within 10 Business Days meet and negotiate in good faith the methodology for calculating the Facility Availability for that Availability Calculation Period.
- (g) The Contractor shall comply with the requirements and procedures set out in this Schedule 12 to calculate the Facility Availability.

3 Availability Calculation

(a) Facility Availability

The availability of the Facility (**Facility Availability**) shall be calculated in accordance with the below formula as the GTI-weighted average of the Facility Instantaneous Availability (as defined in section (b) below) over the relevant Availability Calculation Period:

$$\tau_{avail} = \frac{\sum_i \tau_{i,avail} \times GTI_i}{\sum_i GTI_i}$$

where the parameters used in calculating Facility Availability are defined below:

Item	Definition
	Sum over “i” represents the sum of all Time Steps, provided that: any Time Steps affected by an Availability Exclusion Event shall be removed or adapted as set out in section 2 of this Schedule 12; and only Time Steps that meet the data quality and irradiation level criteria set out in section 2 of this Schedule 12 are included.
$\tau_{i,avail}$	Facility Instantaneous Availability during Time Step “i”



GTI_i	Global Tilted Irradiance - being the Global Tilted Irradiance as measured by the average of all operational pyranometers on Site measured in period "i"
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(b) Facility Instantaneous Availability

The Facility Instantaneous Availability shall be calculated in accordance with the below formula as the average of Combiner Box Instantaneous Availability across the Facility, weighted by their nominal DC watt peak power during a given period 'i':

$$\tau_{i,avail} = \frac{\sum_j C_j * \tau_{i,CBx j}}{\sum_j C_j}$$

where the parameters used in calculating Facility Instantaneous Availability are defined below:

Item	Definition
Sum over "j"	represents the sum of all Combiner Boxes in the Facility
$\tau_{i,CBx j}$	Combiner Box Instantaneous Availability "j"
C_j	installed capacity on Combiner Box "j" (kWp)

(c) Combiner Box Instantaneous Availability

The Combiner Box Instantaneous Availability is considered for each Time Step retained in the Test Data.

The Combiner Box will be considered as available during a Time Step if the Combiner Box is producing electricity during such Time Step and feeding energy into the grid measured at the corresponding input to the connected inverter.

When the Combiner Box "j" is available in period "i", $\tau_{i, CBxj} = 1$

The Combiner Box Input will be considered as unavailable in any other case.

When the Combiner Box "j" is unavailable in period "i", $\tau_{i, CBxj} = 0$

4 Availability Damages

4.1 Availability Calculation Period

Availability Damages are to be calculated as follows for each Availability Calculation Period:

$$Availability\ Damages = \left(E_{act,plant} \times \left(\frac{99\%}{\tau_{avail}} - 1 \right) \right) \times EP$$

Where:

τ_{avail} is Facility Availability for the relevant Availability Calculation Period

$E_{act,plant}$ is the total energy recorded at the point of export, which is the 132kV export terminals of the Nevertire Solar Farm MC substation



EP is the average New South Wales electricity spot price (5 minute settlement periods) applying during the periods in which the in-plane irradiation of all of the pyranometers at the Facility exceeds one hundred (100) W/m² during the relevant Availability Calculation Period.

5 Availability Guarantee Review

- (a) Within a reasonable time after the expiry of the first 12 months of the first Availability Calculation Period, the Parties must confer (in person, by phone or by video conference) to review the operation of this Schedule 12 and, acting in good faith, seek to agree any changes to this Schedule 12 required to reflect the agreed intent.
- (b) Any amendments to this Schedule 12 made in accordance with clause 5(a) of this Schedule 12 must comply with clause 43.8.

Schedule 13

Insurance requirements

1 Insurance effected by Contractor

The Contractor must ensure insurance policies are effected and maintained as required by the table below.

Insurance policy	Requirements
(a) Public and products liability insurance for Contractor	<p>Cover: Legal liability of the Contractor and Contractor Associates to third parties and each other (including the Principal) for damage to or loss of property, death or injury (except to the extent covered under workers' compensation insurance) arising out of the performance of the Services anywhere in the world, including the use of unregistered mobile plant.</p> <p>Minimum amount: For public liability, AUD 50,000,000 per occurrence and unlimited in the aggregate. For products liability, AUD 50,000,000 per claim and in the aggregate during the insurance term.</p> <p>Maximum deductible: AUD 100,000 for any one occurrence.</p> <p>Insured: The Contractor, Subcontractors and Principal, but, in respect of the Subcontractors and Principal, only to the extent of liability resulting from the negligent acts or omissions of the Contractor. No coverage is provided for liability arising out of the Subcontractors' or Principal's own negligence.</p> <p>Period required: Before commencing the Services until the Service Term expires and, after that, whenever Services are performed at or near the Facility Land.</p>
(b) Public and products liability insurance for Subcontractor	<p>Cover: Legal liability of the Subcontractor to third parties including the Principal for damage to or loss of property, death or injury (except to the extent covered under workers' compensation insurance) arising out of the performance of the Services anywhere in the world, including the use of unregistered mobile plant.</p> <p>Minimum amount: The same amount required by clause 1(b) or such lesser amount as is accepted by the Principal (acting reasonably) given the nature and extent of the Services to be performed by the Subcontractor.</p> <p>Insured: The relevant Subcontractor.</p> <p>Period required: Before the Subcontractor commences the Services and, after that, whenever the Subcontractor performs the Services at or near the Facility Land.</p>
(c) Motor vehicle CTP liability insurance	<p>Cover: Legal liability arising out of the use of all registered motor vehicles, trailers and mobile plant used in the performance of the Services for death or injury (whether owned by the Contractor, a Subcontractor or other).</p> <p>Minimum amount: As required by Legislative Requirements.</p>



Insurance policy Requirements

Period required: Before commencing the Services until the Service Term expires and, after that, whenever Services are performed at or near the Facility Land.

- (d) Motor vehicle TP liability insurance
- Cover:** Legal liability for property damage arising out of the use of all registered motor vehicles, trailers and mobile plant used in connection with the Services (whether owned by the Contractor, a Subcontractor or other) anywhere in Australia.
- Minimum amount:** AUD 30,000,000 per occurrence and unlimited in the aggregate.
- Insured:** The Contractor and any third party that either owns or leases vehicles used to perform the Services.
- Period required:** Before commencing the Services until the Service Term expires and, after that, whenever Services are performed at or near the Facility Land.
-

- (e) Workers compensation insurance
- Cover:** Liability for death of or injury to workers performing Services (including occupations disease and whether employed by the Contractor, a Subcontractor or other) as required by Legislative Requirements.
- Insured:** The employer of the relevant workers.
- Period required:**
- 1 In relation to the Contractor, before commencing the Services until the Service Term expires and, after that, whenever Services are performed at or near the Facility Land.
 - 2 In relation to all others required to effect the insurance, before the relevant workers commence Services and, after that, whenever the workers perform Services at or near the Facility Land.
-

- (f) Plant and equipment insurance
- Insured property:** All plant, equipment and other things used in the performance of the Services which are not Contractor Goods (which excludes the Facility).
- Minimum amount:** The full replacement value of the insured property:
- Insured:** The Contractor.
- Period required:** Before commencing the Services until the Service Term expires and, after that, whenever Services are performed at or near the Facility Land.
-

2 Required insurers

Each insurance policy required by clause 1 must be effected and maintained with an insurer which has a minimum Standard & Poor's long term credit rating of A- (or equivalent rating with another recognised international rating agency).

3 Required insurance terms

- (a) Each insurance policy required by clause 1 must be effected and maintained on standard industry terms, with only standard exclusions, unless the Principal otherwise consents in writing.
- (b) The Contractor must, after effecting, renewing or amending the terms of an insurance policy required by clause 1, promptly give the Principal a copy.

4 Waiver of subrogation

- (a) The public liability insurance policy required by clause 1(a) must include a waiver of subrogation and cross liability clause such that:
 - (1) the term 'insured' applies to each of the insureds as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased); and
 - (2) any non-disclosure, breach of duty or other act or omission of one insured does not prejudice the right of any of the insured to claim under the insurance.

5 Multiple insureds

The insurance policy required by clause 1(a) must include provisions which:

- (a) require the insurer to accept a notice of claim given by one insured as a notice of claim given by each of the insureds;
- (b) require the insurer to give the Principal and the Contractor notice in writing before giving a cancellation notice in relation to the insurance; and
- (c) require the insurer to, when giving a cancellation notice in relation to the insurance policy, give each of the insureds a copy.



Schedule 14

Performance Bond

To: **[insert name of Beneficiary for Nevertire SF]**

At the request of **[insert] (Contractor)** and in consideration of **[Insert full name, ABN and registered address of the Nevertire SF Beneficiary]** (a **Beneficiary**) accepting this bond in respect of the agreement entitled "Nevertire Solar Farm Operate and Maintain Agreement" (**Agreement**) between the Beneficiary and the Contractor dated on or around **[insert date]**, **[Insert name of bank and ABN] (Bank)** unconditionally undertakes to pay immediately on demand any sum or sums which may from time to time be demanded by the Beneficiary to a maximum aggregate sum of **[insert amount] (Sum)**.

The bond is to continue until:

- notification has been received by the Bank from the Beneficiary that the Sum is no longer required by the Beneficiary;
- this bond is returned to the Bank by the Beneficiary;
- payment by the Bank to the Beneficiary of the whole of the Sum; or
- **[insert expiry date]**,

whichever occurs first.

The Beneficiary may make one or more demands under this bond.

Should the Bank be notified in writing purporting to be signed by or on behalf of the Beneficiary that the Beneficiary desires payment to be made of the whole or any part of the Sum, it is unconditionally agreed that the Bank will immediately make such payment to the Beneficiary without reference to the Contractor or the Agreement and notwithstanding any notice given by the Contractor not to pay the same.

The Beneficiary may not transfer, assign or novate its rights, benefits or obligations under this bond, without the prior written consent of the Bank, except to such persons, and to the extent that, the Beneficiary transfers, assigns or novates its rights, benefits or obligations (as applicable) under the Agreement to those people in accordance with the Agreement.

Notwithstanding the foregoing, the Beneficiary may at any time, without the consent of, or notice to, the Bank or any other person, charge or otherwise create a security interest in or over (whether as collateral or otherwise) all or any of its rights under this bond in favour of its financiers or any agent or security trustee on its behalf.

This bond shall be governed and construed in accordance with the laws of New South Wales and each party submits to the exclusive jurisdiction of the courts of New South Wales in connection with matters arising out of or in connection with this bond.

The Bank will deal with this bond in accordance with any applicable anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations.



Executed as a deed

Signed, Sealed and Delivered this day of **[insert year]**.

[Bank Details]



Schedule 15

Contractor's Departures

DEPARTURE TABLE

SECTION 1			
Client:	Pengelly Electrical Pty Ltd T/A Penelec	ABN:	132 168 542
Form of Contract		Commencement Date:	
Project Type and Scope:		Completion Date:	
Project Value:	TBA	Tender Close:	N/A
Location:	TBA – Pending Purchase Orders	Tender Validity Period:	N/A

COMMERCIAL TERMS					
No.	Clause	Position	Justification	Response	Status
1.	19.1	<p>O&M Solar seek indemnity coverage for any:</p> <p>(1) damage to its equipment caused by the Landholder; and</p> <p>(2) personal injury to the Landholder.</p> <p>Landholder access to be discussed generally.</p>			
SCHEDULE 1 – AGREEMENT DETAILS					
2.	Item 13 Contractor Availability Damages Cap	10% of Fees	The Contractor cannot agree to a 100% Aggregate Availability Damages Cap.		
SCHEDULE 2 – PRICING DETAILS					
3.	Item 3(b) Base Fee	The figure proposed is to be revised following further understanding of maintenance required. For further discussions taking into account the exclusions proposed by O&M Solar.			
SCHEDULE 3 – SERVICES					
Subject to further review and agreement in Interim Period.					

COMMERCIAL TERMS					
No.	Clause	Position	Justification	Response	Status
SCHEDULE 5 – TECHNICAL DOCUMENTS					
4.	Subject to further review and agreement in Interim Period.				
SCHEDULE 6 – MANUFACTURER WARRANTIES					
5.	Subject to further review and agreement in Interim Period.				
SCHEDULE 9 – CONNECTION REQUIREMENTS					
6.	Subject to further review and agreement in Interim Period. Please provide the Connection Agreement.				
SCHEDULE 10 - NER					
7.	Please provide a copy of the Generator Compliance Program for review.				
SCHEDULE 11 – ACCESS REQUIREMENTS					
8.	Subject to further review and agreement in Interim Period. Please provide the Access Documents.				
9.	Note from O&M Solar: Discussion required regarding landholder access and ability to enter facility on own accord.				
SCHEDULE 12 – AVAILABILITY GUARANTEE					
Subject to further review and agreement in Interim Period.					

COMMERCIAL TERMS					
No.	Clause	Position	Justification	Response	Status
10.	1 Definitions	<p>Definition of Availability Exclusion Event:</p> <p>Insert new subclause (d) <i>'a Relief Event'</i></p> <p>Insert new subclause (e) <i>'a fault in the connection equipment (being the Synchronous Condenser, 33kV switchgear and/or 33/220kV transformer) resulting in the inverters being unable to evacuate any power, or a zero-export limit imposed by AEMO or the Network Service Provider'</i></p> <p>Insert new subclause (n) <i>'delayed reactions caused by outages of telecommunications networks securing connectivity between the Facility and the Principal's monitoring facility that prevent the Contractor from being alerted to a system error (but only to the extent of the downtime of the telecommunications network and to the extent that such outages are not caused or contributed to by acts or omissions of the Contractor); or'</i></p> <p>In subclause (l), amend as follows: <i>'a Pre-existing Facility Defect, but <u>only up rectification of the Pre-existing Facility Defect by the Contractor.</u> For the avoidance of doubt, a Pre-existing Facility Defect will not be considered an Availability Exclusion Event <u>after the date upon which the Pre-existing Facility Defect is rectified in accordance with this agreement.</u>'</i></p>	<p>The Contractor's achievement of the Availability Guarantee is excluded from any affected obligation under clause 15.1(c). Accordingly, the Contractor requires Sch 12 to capture all relief events.</p> <p>The Contractor is concerned about the operation of certain equipment which it is unable to rectify.</p> <p>It is the Principal's responsibility to monitor and provide reports regarding the Availability Guarantee.</p> <p>The Contractor is concerned that certain Pre-existing Facility Defects may take longer to rectify than six months. Open to discussion on wording.</p>		

COMMERCIAL TERMS					
No.	Clause	Position	Justification	Response	Status
11.	Item 6 – Failure to assess availability	<p>Insert new Item 6 as follows:</p> <p>‘6 Failure to assess availability</p> <p>(a) If the Principal fails to perform the Availability Calculation required to determine the Availability Damages under this Schedule 12 or within the time required, the Contractor may, after giving the Principal at least 10 Business Days’ notice, have the Availability Calculation performed and the results will be used for the purposes of this Agreement.</p> <p>(b) The Costs and expenses incurred by the Contractor in having the Availability Calculation performed will be a debit due and payable from the Principal to the Contractor within 10 Business Days after the Contractor provides an invoice and reasonable evidence of those costs and expenses.’</p>	The Contractor requires a mechanism to undertake the required calculations if the Principal fails to assess the availability or does not perform the calculation in accordance with the agreement.		
12.	Item 7 – Performance Incentive	<p>Insert new Item 7 as follows:</p> <p>‘7 Performance Incentive</p> <p>(a) If the Facility exceeds the availability Guarantee during an Availability Period, the Principal must pay the Contractor the availability performance incentive to the extent specified in, and as determined in accordance with, Schedule 12.</p> <p>(b) The Contractor may, after the end of an Availability Period claim payment of any availability performance incentive which is payable under this clause 7 and Schedule 12 in any subsequent payment claim under clause 22.</p>	The Contractor proposes implementing a performance incentive. Calculation to be discussed and agreed between the parties. Subject to the Contractor's review of availability calculation.		

COMMERCIAL TERMS						
No.	Clause		Position	Justification	Response	Status
SCHEDULE 13 – INSURANCE REQUIREMENTS						
13.	Subject to approval by Contractor’s Insurers.					
14.	New Item 2	Include new Item 2 detailing insurances to be affected by the Principal.		Mutual requirement for the Principal to effect insurances.		
15.	Item 3 – Required Insurance Terms	Include new subclause (c) as follows: ‘Each insurance policy required by clause 2 must be effected and maintained on standard industry terms, with only standard exclusions, unless the Contractor otherwise consents in writing.’				
SCHEDULE 14 – PERFORMANCE BOND						
16.	Subject to approval by Contractor’s Bank					



Schedule 16

Rates


Description	Quantity	Unit Price	Amount
Costs of items not mentioned below will be discussed before coming to site.			
Materials & Labour			
NORMAL TIME RATES			
Site Supervisor	1	\$170.00	\$170.00
A Grade Electrician	1	\$120.00	\$120.00
HV Operator	1	\$160.00	\$160.00
Apprentice Electrician	1	\$95.00	\$95.00
Plumber	1	\$145.00	\$145.00
Skilled Labourer	1	\$95.00	\$95.00
OHSE Manager	1	\$130.00	\$130.00
Administration	1	\$110.00	\$110.00
5T Excavator and Operator	1	\$170.00	\$170.00
Skid Steer Operator	1	\$170.00	\$170.00
Tip Truck and Operator	1	\$145.00	\$145.00
AFTER HOURS TIME RATES			\$1,910.00
Site Supervisor	1	\$220.00	\$220.00
A Grade Electrician	1	\$155.00	\$155.00
HV Operator	1	\$210.00	\$210.00
Apprentice Electrician	1	\$125.00	\$125.00
Plumber	1	\$185.00	\$185.00
Skilled Labourer	1	\$125.00	\$125.00
OHSE Manager	1	\$145.00	\$145.00
Administration	1	\$120.00	\$120.00
5T Excavator and Operator	1	\$220.00	\$220.00
Skid Steer Operator	1	\$220.00	\$220.00
Tip Truck and Operator	1	\$185.00	\$185.00
OTHER EXPENSES			\$220.00
On-call per day	1	\$220.00	\$220.00
	0	\$0.00	\$0.00
TRAVEL & ACCOMODATION			\$251.50
Per KM travelled (per LV) + Labour (applicable labour resource) - 1hr each way	1	\$1.50	\$1.50
Accommodation & Meal Costs per night per person	1	\$250.00	\$250.00



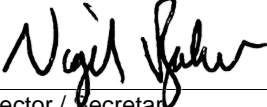
Signing page

Executed as an agreement

Signed for
Nevertire Solar Pty Ltd as trustee for the Nevertire Solar Trust
in accordance with section 127 of the
Corporations Act 2001 (Cth) by

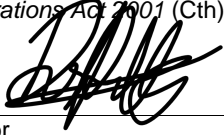
sign here ► 
Director

print name Jason Porter

sign here ► 
Director / ~~Secretary~~

print name Nigel Baker

Signed for
O&M Solar Pty Ltd
in accordance with section 127 of the
Corporations Act 2001 (Cth) by

sign here ► 
Director

print name Dustin Pengelly

sign here ► 
Director / Secretary

print name Travis Pengelly
