

CS ENERGY LIMITED - GROUP

SERVICE & PURCHASE CONDITIONS

PART A – GENERAL

This Part A applies to both the delivery of Goods and/or the provision of Services by the Contractor under this Agreement.

1. DEFINITIONS

In these Conditions:

'Agreement' means the agreement between the Principal and the Contractor for the Supply and comprises the relevant Purchase Order, these Conditions and any other contract documents referred to in the Purchase Order.

'Business Day' means a day that is not a Saturday or Sunday or a public holiday, special holiday or bank holiday in Brisbane and does not include 22, 23, 24, 27, 28, 29, 30 and 31 December and 2 to 10 January.

'Completion' means final completion of the performance of the Services.

'Completion Date' means the date for completion of the Services, as specified in the Purchase Order.

'Commencement Date' means the date for commencement of the Services, as specified in the Purchase Order.

'Conditions' mean these Service & Purchase Conditions.

'Confidential Information' has the meaning given in clause 15.

'Contractor' means the Vendor / Contractor stated on the Purchase Order, and the Contractor's Personnel.

'CS Energy Entity' means any of:

- (a) CS Energy Limited (ABN 54 078 848 745);
- (b) Aberdare Collieries Pty Ltd (ABN 64 009 659 367);
- (c) BCWF 2 Pty Limited (ABN 77 670 206 256);
- (d) Callide Energy Pty Ltd (ABN 86 082 468 746);
- (e) CS Energy Financial Services Pty Ltd (ABN 73 095 322 508);
- (f) CSE BESS Pty Ltd (ABN 68 662 866 908);
- (g) CSE H2 Operations Pty Ltd (ABN 12 128 970 034);
- (h) CSE H2 Pty Ltd (ABN 74 659 177 385);
- (i) Kogan Creek Power Station Pty Ltd (ABN 82 088 229 832);
- (j) Kogan Creek Power Pty Ltd (ABN 57 088 229);
- (k) Lotus Creek Wind Farm Pty Ltd (ABN 51 633 724 571);
- (l) any other related body corporate (as that term is defined in the Corporations Act) of CS Energy Limited; and
- (m) any other entity or person whom the Contractor and the Principal agree in writing is a CS Energy Entity.

'Force Majeure' means circumstances, including but not limited to the following, which are deemed to be outside a party's control: perils of the sea; acts of God; war or warlike measures whether threatened, declared or anticipated; the outbreak of hostilities between nations or countries; trade sanctions or Government directives; failure by the Principal to acquire any necessary licenses; explosions; riot, strike or lockout (where the riot, strike or lockout is not initiated or caused by the Contractor or its Personnel).

'Goods' means the goods to be delivered by the Contractor under the Agreement as described in the relevant Purchase Order.

'Incident Management Procedure' means the Principal's procedure which details the management of incidents as set out in clause 24.

'Law' means any act, regulation, statute, by-law, ordinance, order or Proclamation whether Federal, State or Local.

'Modern Slavery Laws' means any anti-slavery and human trafficking Laws (in any relevant jurisdiction), including:

- (a) Divisions 270 and 271 of the Criminal Code Act 1995 (Cth);
- (b) Modern Slavery Act 2018 (Cth);
- (c) the Human Rights Act 2019 (Qld); and
- (d) laws equivalent to any of the Laws referred to in paragraphs (a) and (b) in the relevant jurisdictions.

'MSDS' means material safety data sheets.

'Offer' means the offer or quotation for the Supply obtained from the Contractor by the Principal.

'Payment Certificate' has the meaning given to that term in clause 3.4 and shall be a 'payment schedule' for the purposes of the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

'Payment Claim' has the meaning given to that term in clause 3.3.

'Personal Information' has the meaning given in the Privacy Act 1988 (Cth).

'Personnel' means directors, officers, employees, contractors, consultants, sub-contractors and sub-consultants and agents.

'Preservation Requirements' means the "CS Energy Guidelines Requirements for Initial Preservation" by the Principal as in force from time to time, available from the Principal's website, or alternatively, on request from the Principal's Representative.

'Price' means the price for the Supply stated in or calculated in accordance with the Purchase Order.

'Principal' means the CS Energy Entity/s stated on the Purchase Order.

'Principal's Representative' means the person identified in the relevant Purchase Order as the Designated Lead for the purposes of this Agreement.

'Principal's Requirements' means the Principals' requirements, directions, standards, systems, practices and policies applicable to the Supply, including the Site Conditions, which have been provided to the Contractor prior to the Commencement Date.

'Privacy Laws' means:

- (a) the Privacy Act 1988 (Cth); and
- (b) any legislation (to the extent that such legislation applies to the Contractor or the Principal or any other recipient of Personal Information) from time to time in force in any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia) affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data, and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments having the force of law, made or issued thereunder, as amended from time to time.

'Purchase Order' means a purchase order or service order issued by the Principal to the Contractor authorising the Contractor to perform the Supply subject to these Conditions and any special conditions stated in the Purchase Order.

'Reimbursable Expenses' means the expenses listed as 'Reimbursable Expenses' in the Purchase Order or otherwise as approved in writing (which approval must not be unreasonably withheld or delayed) by the Principal's Representative prior to the expense being incurred.

'Sanction' means a specifically designated nationals or blocked persons lists or any replacements lists that relate to the enforcement of economic and trade sanctions which are

maintained, amended and imposed by any Sanction Authority.

'Sanction Authority' means the United Nations, the European Union, His Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the Commonwealth of Australia, Switzerland, South Africa, Canada or any replacement or other regulatory body enforcing economic and trade sanctions legislation in such country or by any state, supranational or international government organisation.

'Sanctioned Person' means any person, being an individual, corporation, company, association, government or other entity who:

- (a) is the subject or target of a Sanction or in respect of which a Sanction has been imposed or targeted; or
- (b) is owned, operated or controlled by any person who is the subject or target of a Sanction or in respect of which a Sanction has been imposed or is targeted.

'Services' mean the services to be performed and the materials to be provided by the Contractor as detailed in the Purchase Order.

'Site Conditions' means the Principal's Site Conditions as in force from time to time, available from the Principal's website, or alternatively, on request from the Principal's Representative.

'Specification' means the specification for the Goods and/or Services contained (or referred to) in the relevant Purchase Order together with any measurements, performance data, plans, drawings or other information either referred to in the Purchase Order or contained in the relevant Offer or any catalogues, brochures or descriptive literature produced by the Contractor.

'Supply' means the supply of Goods and/or Services as detailed in a Purchase Order.

'Warranties' means the Contractor's warranties set out in clause 5, 21 and 28.

'Work Program' means a written document, which forms part of the Agreement, whether prepared by the Principal or the Contractor setting out the chronological order for performance of the Supply according to an assigned time schedule.

2. FORMATION OF THE AGREEMENT

- 2.1 The delivery of a Purchase Order by the Principal to the Contractor constitutes an offer by the Principal to engage the Contractor to perform the Supply described in that Purchase Order on the terms contained in that Purchase Order and these Conditions.
- 2.2 The Agreement for the Supply is formed between the Principal and the Contractor when the Contractor:
 - (a) confirms acceptance of the Purchase Order or informs the Principal in writing that the Supply will be performed; or
 - (b) performs the Supply.
- 2.3 No other conditions notified by the Contractor to the Principal either verbally or in writing or in any other way prior to or subsequent to the delivery of a Purchase Order will have any application to or form part of this Agreement unless and until specifically accepted in writing by the Principal's Representative.

3. PRICE & PAYMENT

- 3.1 The Price is a fixed price, is the maximum amount payable by the Principal for the Supply, is not subject to rise and fall or any other adjustment and includes:
 - (a) all necessary packaging and delivery costs;
 - (b) all unloading and installation costs (where stipulated by the Purchase Order);
 - (c) all duty, excise, sales or other taxes (excluding GST):
 - i. imposed on the supply, sale or use of the Supply or any part of them; and / or
 - ii. measured with reference to the price of the Supply.

- 3.2 The Contractor may submit Payment Claims progressively on the last Business Day of the month for the Supply completed up to and including the 25th day of the month.
- 3.3 The Contractor's Payment Claim must be in the form of a valid tax invoice and must contain:
 - (a) an adequate description of the Supply;
 - (b) particulars of any Reimbursable Expenses;
 - (c) particulars of the date and time of carrying out of the Services or delivery of the Goods;
 - (d) a signature of an authorised representative of the Principal acknowledging the carrying out of the Services or delivery of the Goods;
 - (e) the Purchase Order number; and
 - (f) all documentation and other material required by this Agreement or any Law to be provided by the Contractor, including but not limited to MSDS.

(Payment Claim).

- 3.4 If the Principal disputes the amount of the Contractor's Payment Claim, the Principal shall within the 10 Business Days after receiving the Contractor's Payment Claim issue to the Contractor a written statement of the Principal's assessment of the amount due and payable from the Principal to the Contractor for the Supply that is the subject of the Payment Claim and reasons for the difference (**Payment Certificate**).
- 3.5 Subject to clause 3.7, the Principal will pay the amount of the Contractor's Payment Claim (or the amount stated in the Payment Certificate if a Payment Certificate is issued under clause 3.4) to the Contractor within thirty (30) days after receipt of a Payment Claim by the Principal.
- 3.6 Neither a payment of monies nor issue of a Payment Certificate shall be evidence that the Supply has been executed satisfactorily.
- 3.7 In the event that:
 - (a) the Contractor is a foreign resident;
 - (b) the Principal believes, or has reasonable grounds to believe, that the Contractor is a foreign resident; or
 - (c) the Contractor has a foreign address (including a payment address), and the Principal does not have reasonable grounds to believe the Contractor is a resident;

then the Principal will be entitled to withhold from the amount/s payable to the Contractor such amount as is required to be withheld for the purposes of compliance with Australian taxation Laws.

- 3.8 If the Contractor disputes that the Principal should be entitled to withhold any amount under clause 3.7, then the Contractor must either provide the Principal with a certified copy of:
 - (a) the exemption the Contractor has obtained from the Commissioner of Taxation; or
 - (b) such evidence (for example, a tax return) to verify to the Principal that the Contractor is an Australian resident for the purposes of Australian taxation Laws.
- 3.9 Subject to clause 3.8, the Principal will remit any amounts withheld under clause 3.7 to the Commissioner of Taxation or such other relevant government authority or agency, as required by Australian taxation Laws.
- 3.10 In addition to the Price, the Contractor is entitled to be paid for the Reimbursable Expenses; such payment is to be made at the same time as the Price is paid.
- 3.11 Non-inclusion of the Purchase Order number in the Payment Claim(s) may delay the processing of payment for the Supply.

4. INTELLECTUAL PROPERTY

- 4.1 All rights to any intellectual property created by the Contractor in performing the Supply shall, upon creation of the intellectual property, vest in the Principal and the Principal grants the Contractor a license to use the intellectual property only for the purpose of performing the Supply.

- 4.2 Nothing in this Agreement prevents the Principal from transferring a license established in accordance with the above clause 4.1 to another party at a future point in time.
- 4.3 The Contractor shall do everything necessary to protect the Principal's intellectual property, including any intellectual property created under the above clause 4.1.
- 4.4 Intellectual property in any items introduced by the Contractor for use in performing the Supply remains with the Contractor and the Contractor grants to the Principal an irrevocable license to use the intellectual property for the purpose of its operations.
- 4.5 Notwithstanding any provision of this Agreement, the Contractor indemnifies the Principal against any claims made by a third party in respect of the use of any intellectual property for or in connection with any Goods or Services supplied by the Contractor under this Agreement.

5. WARRANTIES (General)

- 5.1 The Contractor has given the following warranties to the Principal which are accepted by the Principal:
- (a) the Contractor has knowledge of all applicable Laws, business practices and standards which must be followed in performing the Supply and will perform the Supply in compliance with all applicable Laws, business practices and standards; and
 - (b) all consents, and a non-exclusive, irrevocable, royalty free, transferable, paid up license for the use of any third party intellectual property have been obtained by the Contractor.

6. DEFECT RECTIFICATION

- 6.1 Any defect or shortcoming in relation to any Supply performed by the Contractor shall be rectified by the Contractor, at the Contractor's cost, when reasonably directed to do so by the Principal's Representative.
- 6.2 The Principal's Representative may, acting reasonably, direct the Contractor as to the dates by which the Contractor must commence and complete the rectification work.
- 6.3 If the rectification work ordered under clause 6.2 is not commenced or completed by the stated dates, the Principal may, without prejudice to any other rights it may have, carry out or engage another party to carry out the rectification work, and the costs incurred by the Principal shall be a debt due from the Contractor.

7. INDEMNITIES

- 7.1 The Contractor shall indemnify the Principal from and against any and all claims, demands, suits, liabilities, causes of action, costs, fines, losses, expenses, damages or penalties, including, without limitation court costs and reasonable legal fees, in respect of injuries (personal or bodily) to any person, or property damage to any property, to the extent that it arises or results from, or is caused by:
- (a) an act or omission of the Contractor;
 - (b) defective Goods or Services; or
 - (c) any failure by the Contractor to comply with the provisions of any Law or this Agreement (including the Preservation Requirements).
- 7.2 The Contractor agrees to extend the benefit of the indemnity in clause 7.1 to the Principal's officers, directors, employees, agents, consultants and representatives.
- 7.3 The Contractor's liability in relation to property damage under clause 7.1 is limited to \$10 million unless otherwise specified in the Purchase Order.
- 7.4 Except where covered under an insurance policy, neither party will be liable to the other party for loss of profits or revenue or for any special, indirect or consequential loss sustained by that other party.
- 7.5 The indemnities and assumptions of liability contained in this clause and elsewhere in this Agreement will continue in full force and effect notwithstanding termination of this Agreement whether by effluxion of time or otherwise.

8. INSURANCE

- 8.1 Unless otherwise stated in the Purchase Order and prior to the Contractor commencing performance of the Supply, the Contractor will, and will ensure any sub-contractors will, at

its/their own expense in their name and for their benefit, procure and maintain:

- (a) workers compensation insurance as required by law;
- (b) public liability insurance of not less than \$20 million in respect of events occurring on the premises of the Principal, or in connection with the Supply;
- (c) where the Supply involves the provision of Services, professional indemnity insurance of not less than \$2 million for the provision of professional service or advice in connection with the Supply;
- (d) product liability insurance of not less than \$20 million for anything manufactured, constructed, erected, assembled, installed, repaired, serviced, treated, sold, supplied or distributed in connection with the Supply.

- 8.2 If any of the insurance policies required under clause 8.1 are subject to a deductible that is greater than \$25,000, the deductible must be approved by the Principal's Representative (which approval must not be unreasonably withheld or delayed) before commencing performance of the Supply.

- 8.3 The Contractor will provide evidence of the insurances required under clause 8.1 upon request by the Principal's Representative.

9. VARIATIONS

- 9.1 The Contractor will not vary the Supply or any part of the Supply without the written consent of the Principal.
- 9.2 The Principal may at any time direct the Contractor to vary the number, type, or composition of the Supply or supply different Goods or Services and to the extent that the Contractor can reasonably comply with that direction, it will do so.
- 9.3 The price and other terms of the variation will be agreed between the parties or, if not agreed, determined by the Principal's Representative acting reasonably by reference to any agreed pricing included or referred to in the Agreement.
- 9.4 Unless otherwise directed by the Principal, after receiving a variation direction under clause 9.2, the Contractor will not deliver the Goods or the varied Goods or provide the Services or the varied Services to the Principal until the terms of the variation have been agreed or determined by the Principal's Representative.

10. FORCE MAJEURE

- 10.1 Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligations under the Agreement and that party:
- (a) gives the other party prompt notice and reasonable particulars of that Force Majeure;
 - (b) uses all possible diligence to remove and mitigate the effect of Force Majeure; and
 - (c) has not caused or contributed to the Force Majeure, then that obligation is suspended so far as it is affected by Force Majeure during the continuance thereof.
- 10.2 Any costs, losses or savings due to Force Majeure including any costs, losses or savings caused by any frustration of this Agreement due to Force Majeure will be borne, incurred or retained as the case may be by the party incurring or receiving the same.
- 10.3 Where an event of Force Majeure continues for a period exceeding:
- (a) thirty (30) days, the Principal may, in its sole discretion, terminate this Agreement without any further liability to the Contractor; and
 - (b) ninety (90) days, the Contractor may, in its sole discretion, terminate this Agreement without any further liability to the Principal.

11. SUSPENSION & TERMINATION

- 11.1 The Principal may at any time, on giving seven (7) days (or other such reasonable lesser time if the duration of time for the performance of the Supply is less than four (4) weeks) notice to the Contractor, terminate this Agreement.

- 11.2 The Principal, by written notice to the Contractor, may suspend the performance of the Supply (or any portion of the Supply) if:
- (a) the Principal, acting reasonably determines that the Work Program is not being maintained or that the Contractor is refusing or failing to properly perform any Supply; or
 - (b) the Contractor is in material breach of any provision of the Agreement or fails to substantially perform any of its obligations under the Agreement.
- 11.3 The Principal, by written notice to the Contractor, may terminate the Contractor's engagement under this Agreement, and withhold any amounts otherwise due under the Agreement if the Contractor has failed to remedy its breach within 30 Business Days of the Principal issuing a notice to suspend the Supply under clause 11.2.
- 11.4 Either party may, by written notice to the other party, suspend performance of the Supply and/or terminate this Agreement, where it is permitted to do so by Law, if the other party becomes insolvent or unable to meet its debts as and when they fall due, or is adjudicated a bankrupt, or has a receiver, receiver and manager or similar official appointed over any of its assets, or makes an assignment for the benefit of creditors under any applicable Laws, or becomes externally administered, or has a trustee or other officer appointed to take charge of its assets.
- 11.5 Where the Principal has failed to make payment of an undisputed amount under this Agreement by the due date, the Contractor may give a written notice to the Principal of its intention to suspend the performance of the Supply and if the amount remains unpaid 20 Business Days after the date of the notice the Contractor may suspend performance of the Supply by notice in writing to the Principal.
- 11.6 The Contractor may, by written notice to the Principal, terminate this Agreement where the Contractor has suspended the Supply in accordance with clause 11.5 and the undisputed amount remains unpaid after 30 Business Days of the Contractor's notice of suspension.
- 11.7 Notwithstanding any other provision in this Agreement, if the Contractor's engagement under the Agreement is terminated under clause 11.3 or 11.4 the Contractor will be liable for and indemnifies the Principal against:
- (a) any costs or expenses incurred by the Principal in engaging others to complete the Supply which exceed the sum which would have been payable to the Contractor to complete the Supply; and
 - (b) any other losses suffered by the Principal as a result of the termination.
- 11.8 Where the Principal terminates this Agreement other than due to breach of the Contractor, the Contractor's insolvency or as a result of Force Majeure, the Principal will pay to the Contractor all costs necessarily and reasonably incurred by the Contractor in performing its obligations under this Agreement which the Contractor is legally liable to pay up to the date of termination, provided however that the Principal is not liable to compensate the Contractor for any loss of profit resulting from such termination. The Contractor will use all reasonable endeavours to mitigate its loss.
- 11.9 The procedure provided in this clause 11 for termination is concurrent with and in addition to and without prejudice to, and not in lieu of or in substitution for, any other rights or remedies at law or in equity which the Principal may have for the enforcement of its rights under the Agreement and its remedies for any default by the Contractor of the covenants, obligations or conditions of the Agreement.

12. AUDIT OF OPERATIONS

- 12.1 The Principal may conduct an audit of operations, information and records of the Contractor and its Personnel on seven (7) days written notice, to determine whether the Contractor and its Personnel have complied with the obligations in this Agreement. The Contractor must afford and must ensure its Personnel afford the Principal such access to their operations, information and records as the Principal reasonably requires for this purpose.

- 12.2 A failure to comply with the Contractor's obligations in clause 12.1 will amount to a breach entitling the Principal to terminate the Agreement under clause 11.2.

13. QUALITY ASSURANCE

- 13.1 The Contractor must:
- (a) comply with the Principal's quality assurance requirements, notified to the Contractor in the Purchase Order; and
 - (b) be quality assured and maintain its quality assurance certification for the duration of the Agreement.

14. GOODS AND SERVICES TAX

- 14.1 For the purposes of this clause, the terms 'GST', 'Registered', 'Supply', 'Supplier', 'Taxable Supply', 'Tax Invoice', and 'Value' have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended) (**the Act**) and on the basis the Price is the Value of the Taxable Supply.
- 14.2 If any Supply made under or in connection with this Agreement is a Taxable Supply, then in addition to the Price, the Principal shall pay the amount of GST in respect of that Supplier where the GST is calculated in accordance with the Act and on the basis the Price is the Value of the Taxable Supply.
- 14.3 The parties agree the Price payable under this Agreement is exclusive of GST.
- 14.4 The Supplier warrants that:
- (a) the Supplier is Registered; and
 - (b) each Supply made by the Supplier under this Agreement is a Taxable Supply.

15. CONFIDENTIALITY

- 15.1 This clause 15 applies to:
- (a) all information (whether of a scientific, engineering, industrial, mining, technical, business or financial nature or otherwise) in whatever form or media of or relating to the Principal disclosed to the Contractor and its Personnel or that the Contractor and its Personnel have access to in the course of the performance of the Supply; and
 - (b) all documents provided to the Principal or its Personnel in the performance of the Supply marked as confidential by the Contractor or that a reasonable person would deem confidential.
- (Confidential Information)**
- 15.2 Confidential Information does not include information, which a party can establish (by written record):
- (a) is or becomes widely known in the public domain, except through disclosure contrary to this Agreement;
 - (b) was already in its possession and was not otherwise acquired from the other party; or
 - (c) was lawfully received from another person having the unrestricted legal right to disclosure that information without requiring the maintenance of confidentiality.
- 15.3 Each party must ensure that its Personnel comply with the terms of this clause 15.
- 15.4 Each party must not disclose, directly or indirectly, any Confidential Information to any person without the prior written approval of the other party provided that the Principal may disclose Confidential Information that it is required to disclose to CS Energy Limited's shareholding Ministers or other government agency or entity.
- 15.5 The Contractor must not, use or make a copy of any Confidential Information otherwise than for the purposes of this Agreement.
- 15.6 Each party must immediately notify the other party, if it or its Personnel become aware of any unauthorised access to, or use or disclosure of, any Confidential Information.
- 15.7 The obligations in clause 15.3 do not apply where one party is required by Law to disclose any Confidential Information and immediately gives notice to the other party of that requirement and discloses only that portion of Confidential Information, which that party is legally required to disclose.

15.8 Each party at the reasonable written request of the other party, is required to immediately deliver all information and documents, including without limitation all copies (except one copy of the documents that the party may retain for its own records solely for the purposes of this Agreement) containing or recording the Confidential Information which are in the party's possession, power or control, or (at the other party's request) have such material deleted from its word processing machine and confirm such deletion promptly in writing.

15.9 This clause 15 survives the expiration or termination (for any reason) of this Agreement and is in addition to and not in derogation of obligations at Law or under any statute or trade profession custom or use.

16. DISPUTE RESOLUTION PROCEDURE

16.1 Unless a party to this Agreement has complied with this clause, that party may not commence court proceedings concerning any dispute between the parties arising from the Agreement (whether during the term or after termination of this Agreement) except where that party seeks urgent interlocutory relief.

16.2 Where a dispute between the parties has arisen from this Agreement a party claiming that a dispute has arisen must notify the other party, specifying the nature of the dispute.

16.3 The parties will meet within ten (10) Business Days of receipt of a dispute notice to negotiate in the utmost good faith and endeavour to reach agreement concerning the matter in dispute.

16.4 If the matter in dispute is not resolved pursuant to clause 16.3 within twenty (20) Business Days of the date of the dispute notice is received, or such longer period as the parties may agree in writing, as evidenced by signed statement given by each party, then either party may request an independent third party, approved by both parties be appointed for the purpose of resolving the dispute, failing agreement as appointed by the President of the Queensland Law Society.

16.5 The parties will submit to the independent third party, material particulars of the dispute and copies of any relevant documents within five (5) days of the independent third party's appointment. The parties acknowledge that the purpose of any exchange of documents or information or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties.

16.6 If either party is dissatisfied with the independent third party's determination and issues a notice to this effect within 20 Business Days of that determination, either party may commence court proceedings in respect of the dispute.

17. SET OFF

17.1 The Principal may set off from any moneys due to the Contractor under this Agreement, the amount of any debt or other liability of the Contractor to the Principal on any account whatsoever and without prejudice to the Principal other rights in respect of the recovery of such amounts.

18. GENERAL

18.1 This Agreement binds and benefits each party and their respective successors, assigns and legal personal representatives.

18.2 No variation to this Agreement shall be binding on the parties unless agreed in writing. The parties must agree to any variation in writing before commencement of the Supply the subject of the variation.

18.3 Each party must at its own cost do all things reasonable to give effect to this Agreement, including but not limited to bearing its own costs and disbursements of or incidental to the negotiation, preparation, execution, stamping and registration of this Agreement, and all other agreements and matters referred to in this Agreement.

18.4 This Agreement supersedes any and all prior (written or oral) agreements, arrangements, negotiations, discussions or understandings between the parties.

18.5 No oral explanation or information provided by a party to this Agreement to another party to this Agreement is to:

- (a) affect the meaning or interpretation of this Agreement; or
- (b) constitute any collateral agreement, warranty or understanding between any of the parties.

18.6 A notice or other communication given under the Agreement must be in writing and either hand delivered, sent by postage prepaid, or emailed to the parties specified herein.

18.7 If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from this Agreement and does not affect the validity, operation or enforceability of any provision of this Agreement.

18.8 Unless expressly agreed otherwise, in the event of any inconsistency between:

- (a) the Offer and this Agreement, this Agreement will prevail to the extent of the inconsistency;
- (b) this Agreement and the Site Conditions, the Site Conditions will prevail to the extent of the inconsistency;
- (c) these Conditions and the Purchase Order, the Conditions prevail to the extent of the inconsistency, unless the Purchase Order expressly makes note of any prevailing special conditions; and
- (d) this Agreement and a contract referenced by this Agreement, the contract referenced by the Agreement will prevail to the extent of the inconsistency.

18.9 The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.

18.10 The waiver by any party of a breach of a provision of this Agreement is not deemed a waiver of all or part of that provision or of any other provision or of the right of that party to avail itself of its rights subsequently.

18.11 The law of this Agreement is the law of the State of Queensland. The parties irrevocably and unconditionally submit themselves to the exclusive jurisdiction of the courts of Queensland.

PART B – TERMS APPLICABLE TO SERVICES

This Part B only applies where the Supply includes the provision of Services by the Contractor under the Agreement.

19. ENGAGEMENT

19.1 The Contractor will ensure that the Services are:

- (a) provided in a professional manner;
- (b) performed in accordance with this Agreement and all relevant Laws in force at the date of performance of the Services; and
- (c) completed by the Completion Date.

20. TIME FOR COMPLETION

20.1 The Principal may request that the Contractor submit to the Principal's Representative:

- (a) written notification of the methodology the Contractor intends to adopt in its performance of the Services; and
- (b) a Work Program for performance of the Services, which shows how the Contractor will complete the Services by the Completion Date,

before commencing performance of the Services.

20.2 The Principal's Representative may approve the methodology and Work Program (which approval must not be unreasonably withheld or delayed), or may require changes. The Contractor will comply with the approved or amended methodology and Work Program in completing the Services.

20.3 The Completion Date will only be extended:

- (a) where the Contractor is unable to complete the Services by the Completion Date due to an act, default or omission of the Principal;
- (b) in accordance with clause 9; or
- (c) if otherwise agreed in writing by the Principal's Representative.

21. WARRANTIES (Services)

21.1 The Contractor has given the following warranties to the Principal which are accepted by the Principal:

- (a) the Services will comply with the Offer and this Agreement, and will meet the Principal's requirements, as disclosed to the Contractor prior to the date of this Agreement subject to any amendments, in writing, and agreed by the parties prior to the Services being completed;
- (b) the Services will be carried out by competent, experienced, professional persons capable of properly and adequately performing their respective functions and duties;
- (c) all persons performing the Services on behalf of the Contractor will apply necessary and proper skill and judgement to the Services;
- (d) any materials, equipment, procedures, systems or methods used, prescribed, recommended or endorsed by the Contractor will be fit and suitable for their purpose and consistent with the stated requirements of the Principal;
- (e) the Contractor has sufficient resources to maintain efficient and timely provision of the Services; and
- (f) the Contractor has inspected any relevant premises of the Principal and is familiar with the conditions of the relevant premises and accepts them for performance of the Services.

22. ACCESS TO PREMISES AND FACILITIES

22.1 The Principal will provide the Contractor with reasonable access to premises occupied or controlled by the Principal, to enable the Contractor to perform the Services.

22.2 If the Services are not performed on a site occupied or controlled by the Principal, the Contractor will provide the Principal's Representative with reasonable access to any premises occupied by the Contractor to enable the Principal to inspect and test the Services, or any part thereof.

23. SAFETY AND ENVIRONMENTAL PLANS

23.1 Unless the parties agree otherwise, the Contractor must, on request, provide the Principal's Representative, with a copy of its health and safety plan and its environmental plan fourteen (14) days prior to the Commencement Date. Where no Commencement Date is specified, or the Commencement Date is specified but does not allow for the requisite fourteen (14) days, the Contractor must provide the Principal's Representative with a copy of both plans immediately upon formation of this Agreement.

23.2 If in the Principal's Representative's opinion (reasonably formed), a plan submitted under clause 23.1 by the Contractor is acceptable, the Principal's Representative will accept the plan. Where there is a non-conformance, omission or deficiency of a plan submitted by the Contractor under clause 23.1, the Principal's Representative will advise the Contractor of that non-conformance, omission and/or deficiency and the Contractor must within a reasonable period of time of being so advised, amend or revise its plan and re-submit it to the Principal's Representative for acceptance.

23.3 Notwithstanding clauses 23.1 and 23.2, whenever the Contractor or its Personnel are on premises controlled by the Principal, the Contractor must ensure that it and its Personnel comply with, the Principal's Requirements, as in force from time to time, in relation to:

- (a) entry and security to the Principal's premises;
- (b) safety at the Principal's premises;
- (c) environmental management at the Principal's premises;
- (d) co-operation with other contractors and Personnel; and
- (e) industrial relations matters affecting the Principal's premises.

23.4 Without limiting clause 23.3, the Contractor and its Personnel must attend the Principal's safety and environmental induction course and comply with directions

given by the Principal's Representative in relation to safety and the environment.

23.5 The Contractor will be given access to the relevant Principal's Requirements at the time the contract is entered into.

23.6 If the Principal amends the Principal's Requirements during the term and wishes to ensure that the Contractor complies with the updated version, the Principal will notify the Contractor of the change.

23.7 If the Contractor is unable to comply with the amended document, or doing so will create additional cost or hardship, the Contractor must inform the Principal of this fact and the reasons for it within 10 business days of receiving the notice.

23.8 Unless notice is received in accordance with clause 23.7 the Contractor will be taken to have agreed to comply with the extraneous documents as revised.

23.9 The Principal may, in its sole discretion, deny the Contractor's Personnel who do not comply with the requirements of clauses 23.3 and 23.4, access to premises occupied or controlled by the Principal.

24. HEALTH, SAFETY AND ENVIRONMENT INCIDENT MANAGEMENT

24.1 The Contractor must read and understand the Principal's Incident Management Procedure, which details the management of incidents, prior to commencing the Services.

24.2 The Principal's Incident Management Procedure is available from the Principal's website, or by request to the Principal's Representative.

24.3 If a "category 3" or a "category 4" incident, as defined in the Principal's Incident Management Procedure, (a significant health, safety or environmental incident) occurs resulting from, or involving the Contractor's Personnel, the Contractor undertakes and agrees that it will,

- (a) immediately advise the Principal's Representative of the incident and where this is not possible notification must be within eight (8) hours of the incident occurring;
- (b) notify the appropriate statutory authority as required by the relevant Law and supply a copy of the notification to the Principal within eight (8) hours of notifying that authority;
- (c) provide to the Principal an incident report within twelve (12) working hours of reporting the incident, as provided in subclause (a) above; and
- (d) provide an investigation report and incident action plan within seven (7) working days from the date of the incident occurring.

24.4 The Principal may amend the Principal's Incident Management Procedure from time to time. The Principal will notify the Contractor of any amendment which will significantly impact upon the Contractor's obligations under the Incident Management Procedure and this clause 24 and the Contractor will be deemed to have accepted the amendment on proof of notification (unless the Contractor disputes any aspect of the amendment within three (3) days of receipt of such notification).

25. PAYMENT OF WORKERS & SUBCONTRACTORS

25.1 Before making any payment to the Contractor, the Principal may request the Contractor to provide a statutory declaration in the form prescribed by the *Oaths Act 1867* (Qld) as follows:

"All employees engaged on the Services under this Agreement, in Australia, have been paid in full all amounts due to be paid on their behalf or due to them as wages and allowances or every kind required to be paid under statute, industrial award or industrial agreement, award of a Court or certified by a Court or an agreement approved by the Principal and all claims for every description whatsoever (and whether for damage or injury to property or persons) arising out of the Agreement have been satisfied. All amounts which are due and payable to all subcontractors have been duly paid."

25.2 In addition to clause 25.1 above, the Principal may require the Contractor to provide proof that all payments described in the statutory declaration referred to in clause 25.1 have been made.

PART C – TERMS APPLICABLE TO GOODS

This Part C applies where the Supply includes the delivery of Goods by the Contractor under the Agreement.

26. SPECIFICATION OF GOODS

The Contractor will ensure that the Goods delivered to the Principal:

- (a) strictly comply with the Agreement, including but not limited to the Specification, Preservation Requirements, and the Warranties; and
- (b) are in accordance with all relevant Laws in force at the date of delivery.

27. DELIVERY OF GOODS

27.1 The Contractor will deliver the Goods to the place nominated in the relevant Purchase Order on or before the date stipulated on that Purchase Order. All deliveries will be made within the Principal's normal working hours as notified by the Principal to the Contractor.

27.2 The Principal will be responsible for unloading the Goods unless the Goods (including packaging) weigh more than 1 tonne or are shipped on pallets exceeding the Australian Standard pallet size (whereupon the Contractor will unload the Goods) or unless otherwise stipulated in the relevant Purchase Order.

27.3 The Contractor will notify the Principal of its unloading requirements within a reasonable time prior to delivery.

27.4 The Contractor will provide with each delivery full documentation identifying the contents of each package delivered and each package and each delivery document will be endorsed with the number of the relevant Purchase Order.

27.5 Failure by the Contractor to deliver the Goods by the date and time stipulated on the relevant Purchase Order or in accordance with the requirements of this clause will be a substantial breach of this Agreement entitling the Principal to reject the Goods and terminate the Agreement.

27.6 Where packing is required to be returned by the Principal, the Contractor shall so stipulate on the relevant Offer and advise the amount of any deposit charges. All returnable packing shall be clearly marked as such, bear a return address and will be returned freight forward at the Principal's convenience by a transporter selected by the Principal unless otherwise agreed.

27.7 The Principal may inspect and test the Goods at any time after delivery. Where the Principal considers that the Goods are defective or do not comply with the Specification, Preservation Requirements or the Warranties, they will be rejected and the Contractor notified of their rejection and the reasons. If required by the Principal, the Contractor will forthwith replace the rejected Goods with Goods which comply with this Agreement. All rejected Goods must be promptly removed from the place of delivery by the Contractor, and in the interim, all rejected Goods are held by the Principal at the Contractor's risk.

28. WARRANTIES (Goods)

28.1 The Contractor has given the following warranties to the Principal which are accepted by the Principal:

- (a) the Goods are fit for the purposes communicated by the Principal to the Contractor prior to the date of the Purchase Order or, if no such purpose is communicated, for the purposes for which goods of that type are usually acquired and otherwise correspond to the description given in the relevant Offer and the Specification;
- (b) the Goods comply with the Preservation Requirements and incorporate only proven and reliable technology which complies with all Laws and any relevant Australian Standards;
- (c) the Contractor has good title to and the right to use free of interference or claim all of the intellectual property comprised in the Goods and the Principal will

be entitled and licensed to use such intellectual property and all such technologies in its own right in respect of the Goods free of claim or payment;

- (d) the Contractor will carry out the manufacture and (where required) the installation and commissioning of the Goods in a good, proper and workmanlike manner and to a standard of professional care, skill, judgment and diligence expected of a supplier experienced in carrying out such work;
- (e) any supplies and materials incorporated in the Goods will comprise the best available material suitable for purpose and will be of good and merchantable quality free from latent defects;
- (f) the Goods are of merchantable quality and are free from defects (including latent defects) in design, materials and workmanship; and
- (g) the Goods are free from encumbrance, the Contractor has the right to sell the Goods to the Principal and the Principal will enjoy quiet possession of the Goods.

29. PROPERTY AND RISK IN GOODS

29.1 Where the Goods are supplied from within Australia:

- (a) Delivery Duty Paid (**DDP**) – property and risk in the Goods passes to the Principal at the point of delivery into the Principal's stores;
- (b) Free Carrier (**FCA**) – the Contractor's obligation is to hand over the Goods, cleared for export, into the charge of the carrier named by the Principal at the named place or point. If no precise point is indicated by the Principal, the Contractor may choose within the place or range stipulated where the carrier shall take the goods into his charge. When the Contractor's assistance is required in making the contract with the carrier the Contractor may act at the Principal's risk and expense; or
- (c) where nominated accordingly by the Principal, risk in the Goods passes to the Principal upon unloading of the Goods whereas property in the Goods passes to the Principal upon payment being made to the Contractor.

29.2 Where the Goods are imported:

- (a) Delivery Duty Paid (**DDP**) - as in clause 27.1(a);
- (b) Free On Board Port of Dispatch (**FOB**) – provided that the Contractor has given adequate written notice to enable the Principal to insure the Goods for the whole of the transit period, property and risk passes to the Principal immediately after the Goods have been loaded on board ship, aircraft etc.; or
- (c) Carriage, Insurance Freight Port of Entry (**CIF**) – provided that the Contractor has given:
 - i. adequate written notice to enable the Principal to insure the Goods for the whole of the transit period after offloading at the port of entry; and
 - ii. (unless otherwise agreed) three (3) copies of 'Clean on board ocean Bills of Lading', with commercial invoices, packing lists and certificates of origin,

property and risk will pass to the Principal immediately after offloading at the port of entry.

29.3 If the Goods are lost or damaged whilst at the Contractor's risk, the Contractor will with all due diligence either replace the Goods or arrange repairs, whichever is acceptable to the Principal.

30. ACCESS TO THE PRINCIPAL'S PREMISES

30.1 The Contractor must ensure that it, and its carrier or delivery agent/s and all of the carrier or delivery agent/s employees and agents, comply with the Principal's reasonable requirements and directions, including the requirements stated in the Site Conditions, whilst on the Principal's premises.

PART D – Other Provisions

This Part D applies to both the delivery of Goods and/or the provision of Services by the Contractor under this Agreement.

31. ANTI-BRIBERY AND ANTI-CORRUPTION

- 31.1 Without limiting any other provision of this Agreement, the Contractor must:
- (a) comply with all applicable anti-bribery and anti-corruption legislation, including the Crimes Act 1914 (Cth), the Criminal Code Act 1995 (Cth) and similar Laws of other countries that are applicable;
 - (b) maintain and enforce its own policies and procedures to ensure compliance with all applicable anti-bribery and anti-corruption legislation; and
 - (c) ensure the Contractor's Personnel comply with this clause 31.1.
- 31.2 Without limiting any other provision of the Agreement, the Contractor must (and must ensure its Personnel must):
- (a) not engage in (and take reasonable steps to ensure that in the Contractor's operations and supply chains there are not) activities, practices or conduct:
 - (b) that would constitute an offence under Modern Slavery Laws; or
 - (c) which occurs outside of an Australian jurisdiction which would constitute an offence under Modern Slavery Laws if it had taken place within the relevant Australian jurisdiction;
 - (d) notify the Principal as soon as reasonably practicable after it becomes aware of any actual or suspected activity, practice or conduct of the kind described in clause (a);
 - (e) provide the Principal with all information and records reasonably requested by the Principal in order for the Principal to comply with its reporting obligations under the *Modern Slavery Act 2018* (Cth) and equivalent legislation in the other Australian states and territories, within thirty (30) days of the Principal's request; and
 - (f) warrant that it will comply with the mandatory reporting requirements under the *Modern Slavery Act 2018* (Cth) and equivalent legislation in the other states and territories, to the extent applicable, and provide a copy of its modern slavery statement produced in accordance with such legislation to the Principal within thirty (30) days of being required to produce such statement under the relevant legislation.

32. TRADE AND ECONOMIC SANCTIONS

- 32.1 The Contractor warrants as at the Commencement Date and on every day during the Agreement that the Contractor or its Personnel are not a Sanctioned Person.
- 32.2 From the Execution Date, the Contractor must:
- (a) immediately notify the Principal upon becoming aware that the Contractor or its Personnel has:
 - (i) become or is reasonably likely to become a Sanctioned Person; or
 - (ii) violated any Sanction; and
 - (b) provide all information that the Principal reasonably requires from time to time in order for the Principal to:
 - (i) determine whether the Contractor or its Personnel has become or is reasonably likely to become a Sanctioned Person; and
 - (ii) comply with laws or regulations applying in the jurisdictions in which the Services is performed, the parties are located or in any other country.

32.3 If, the Principal:

- (a) is notified by any Sanction Authority or the Contractor that the Contractor or its Personnel has or is reasonably likely to become a Sanctioned Person; or
- (b) has reasonable cause to believe that any member of the Contractor or its Personnel is a Sanctioned Person,

then the Principal may, at its election, do any one or more of the following:

- (i) suspend performance of the Agreement;
- (ii) withhold any payment due and owing under the Agreement; or
- (iii) terminate the Agreement with immediate effect.

32.4 Where the Principal exercises its rights under clause 32.3:

- (a) the Contractor is not relieved of its obligation to perform all or any part of the Services where the Principal has made payment for the Services (or any part of it) under the Agreement;
- (b) it will not be liable for any loss suffered by the Contractor; and
- (c) the Contractor hereby releases and indemnifies the Principal in respect of any loss incurred by the Principal, as a result of or in connection with the exercise of the rights by the Principal.

33. PRIVACY LAWS

- 33.1 This clause 33 applies if the Contractor collects or has access to Personal Information to perform its obligations under the Agreement.
- 33.2 The Contractor must ensure that all of its dealings with Personal Information in connection with this Agreement comply with:
- (a) applicable Privacy Laws; and
 - (b) to the extent that different Privacy Laws apply to the Contractor, the obligations applicable to the Principal under the Privacy Laws as if they were binding on the Contractor.
- 33.3 The Contractor must not disclose Personal Information collected for the purposes of the Agreement without the prior authority of the Principal unless the disclosure is required:
- (a) for the purposes of performing its obligations under the Agreement; or
 - (b) by Law.
- 33.4 The parties agree to immediately notify the other where it becomes aware that a disclosure of Personal Information may be required by Law.
- 33.5 The Contractor must not transfer or disclose any Personal Information to any recipient (including any Contractor Personnel) located outside of Australia without the Principal's consent.
- 33.6 If the Principal provides consent for Personal Information to be transferred, disclosed, accessed or received offshore under clause 33.5, the Contractor must ensure that any offshore recipient of the Personal Information complies with applicable Privacy Laws in relation to the Personal Information.
- 33.7 The Contractor is liable at all times for all acts or omissions of any offshore recipients of Personal Information, including where Personal Information is

transferred, disclosed, access or received in breach of this Agreement.

33.8 If reasonably requested by the Principal, to the extent permitted by Law, the Contractor must provide access to any Personal Information acquired by the Contractor under or in connection with this the Agreement.

33.9 Without limiting anything in this clause 33, the Contractor must comply with any reasonable request by the Principal made for the purpose of ensuring compliance with:

- (a) obligations arising under the Privacy Laws; and
- (b) any applicable guideline, recommendation, direction or determination issued by the Office of the Australian Information Commissioner (or such other privacy authority with jurisdiction over either party).

33.10 The Contractor must:

- (a) ensure that only Personnel who have a need to deal with Personal Information in connection with the Agreement are given access, only use the Personal Information for the purposes of the Agreement and are aware of, and comply with the Contractor's obligations under this Agreement;
- (b) immediately notify the Principal if it becomes aware of an actual or suspected breach of its obligations in relation to Personal Information or any unauthorised access, use or disclosure of Personal Information under the Agreement and immediately:
 - (i) minimise the actual or potential unauthorised use, modification, disclosure or misuse of Personal Information; and
 - (ii) follow any reasonable direction from the Principal in relation to the breach or alleged breach.

33.11 This clause 33 prevails to the extent of any conflict or inconsistency between this clause and the remainder of the Agreement.

PART E – SECURITY OF CRITICAL INFRASTRUCTURE (SOCI)

This Part E applies where specified in the Purchase Order.

34. SOCI Definitions

34.1 In this Part E:

Critical Electricity Asset has the meaning given in section 10 of the SOCI Act.

Critical Worker means a member of the Contractor's Personnel who the Principal determines is a 'critical worker' for the purposes of the SOCI Act.

Cyber Security Incident means one or more acts, events or circumstances involving:

- (a) unauthorised access to, or modification of, computer data or computer program;
- (b) unauthorised impairment of:
 - (i) electronic communications to or from a computer; or
 - (ii) the availability, reliability, security or operation of computer data, a computer program or a computer; or
- (c) any other 'cyber security incident' (or equivalent term) defined in the SOCI Act.

Protected Information has the meaning given to it in the SOCI Act.

Relevant Impact means:

- (a) an impact (whether direct or indirect) on the availability, integrity, or reliability of the Principal's assets or operations, the Services, the Deliverables or any data of the Principal;
 - (i) an impact (whether direct or indirect) on:
 - (ii) the confidentiality of data or information:
 - (A) about the Principal or the Principal's assets;
 - (B) stored by the Principal;
 - (iii) the Contractor's ability to perform its obligations under this Contract, or
 - (iv) the quality of the Services or Deliverables; or
- (b) any other 'relevant impact' (or equivalent term) defined in the SOCI Act.

Responsible Entity in respect of a Critical Electricity Asset is:

- (a) the entity that holds the licence, approval or authorisation (however described) to operate the asset to provide the service to be delivered by the asset; or
- (b) if another entity is prescribed by the Rules in relation to the asset, that other entity.

Rules means the rules made by the Minister of Home Affairs under section 61 of the SOCI Act.

Significant Impacts means:

- (a) a material disruption on the availability of essential goods or services provided to the Principal, including the Deliverables; or
- (b) any other circumstances specified in the SOCI Act as being a 'significant impact' (or equivalent term).

SOCI Act means the *Security of Critical Infrastructure Act 2018* (Cth) and all associated rules (including the Rules), directions, orders and regulations issued pursuant to the *Security of Critical Infrastructure Act 2018* (Cth), as may be updated or amended from time to time.

Specified Critical Infrastructure means the critical infrastructure present at the place where the Supply is performed.

35. GENERAL

35.1 The Contractor acknowledges and agrees that in relation to the Specified Critical Infrastructure the Principal is a Responsible Entity and/or Direct Interest Holder and is subject to obligations under the SOCI Act.

35.2 Without limiting any other obligations in the Contract, the Contractor must in relation to the Specified Critical Infrastructure:

- (a) inform itself of all applicable obligations under the SOCI Act (including in respect of any amendments to those obligations made from time to time);
- (b) do all things reasonably necessary to assist or enable the Principal to comply with the requirements of the SOCI Act (including providing all information requested by the Principal);
- (c) comply with any reasonable direction of the Principal relating to, or necessary to, ensure compliance by the Principal with the SOCI Act; and
- (d) not do anything, and ensure that its Personnel do not do anything, which would preclude or prevent

the Principal from complying with its obligations under the SOCI Act.

- 35.3 The Contractor may seek reimbursement from the Principal for any reasonable costs and expenses it occurs in assisting the Principal to comply with the SOCI Act. The Principal agrees to consider such request and will pay such reasonable costs and expenses. The Principal may require the Contractor to substantiate and provide evidence of any such costs or expenses.

36. SECURITY

- 36.1 Without in any way limiting the Contractor's obligations under the Contract, the Contractor must:
- (a) notify the Principal as soon as possible and in any case, no later than three hours, after becoming aware that:
 - (i) a Cyber Security Incident has occurred or is occurring; and
 - (ii) the Cyber Security Incident has had, or is having, a Significant Impact;
 - (b) notify the Principal as soon as possible and in any case, no later than 20 hours, after becoming aware that:
 - (i) a Cyber Security Incident has occurred, is occurring, or is imminent; and
 - (ii) the Cyber Security Incident has had, is having, or is likely to have, a Relevant Impact.
 - (c) provide the Principal with reasonable assistance in investigating, responding to and remedying the Cyber Security Incident referred to in clause 36.1(a) or 36.1(b) and its consequences.
- 36.2 Each notice provided by the Contractor to the Principal under this clause 36 must:
- (a) be in writing and substantially in the form prescribed by sections 30BC(4) and 30BD(4) of the SOCI Act respectively (being a form approved by the Secretary and available on the Australian Signals Directorate website); and
 - (b) include details about the nature and cause of Cyber Security Incident available to the Contractor at the relevant time including:
 - (i) the date and time the Cyber Security Incident was identified and whether it is ongoing;
 - (ii) how the Cyber Security Incident was discovered; and
 - (iii) the nature of the Cyber Security Incident and whether it affects data of the Principal and/or information security;
 - (c) detail the impact of the Cyber Security Incident and the steps taken by the Contractor to mitigate those impacts; and
 - (d) include any other information reasonably requested by the Principal.
- 36.3 Subject to any obligations the Contractor has under the SOCI Act, the Contractor must not notify any person of the existence or any details of an actual or potential Cyber Security Incident referred to in clause 36.1(a) or 36.1(b) without the Principal's prior written consent, unless it is required to do so that the Contractor can meet its legal and contractual obligations.
- 36.4 Without limiting any obligation of the Contractor under the Contract, the Contractor must upon reasonable request from the Principal and in relation to the Specified Critical Infrastructure:

- (a) assist the Principal with identifying hazards relevant to the Specified Critical Infrastructure, the Deliverables, the Services and any data or systems of the Principal;
- (b) assist the Principal with maintaining and complying with any incident response plan to the extent it relates to the Deliverables, Services or any data or systems of the Principal accessible by the Contractor;
- (c) undertake cyber security exercises to test the Contractor's ability and preparedness to respond to and mitigate Cyber Security Incidents that may impact the Deliverables, Services or any data or system of the Principal accessible by the Contractor;
- (d) undertake a vulnerability assessment in respect of the Deliverables, Services, and any data or systems of the Principal accessible by the Contractor;
- (e) provide the Principal with reports detailing:
 - (i) the outcomes of any exercise or vulnerability assessment undertaken in accordance with clause 36.4(d); and
 - (ii) the steps that the Contractor will take to address any security flaws and vulnerabilities uncovered through the exercise or assessment;
- (f) correct any security flaws and vulnerabilities uncovered through the exercise or assessment undertaken in accordance with clause 36.4.

37. PROTECTED INFORMATION

- 37.1 All information disclosed or generated (including by Principal or the Contractor) in connection with this Contract, the SOCI Act, reporting a Cyber Security Incident under clause 36, or that is otherwise Protected Information, is the Principal's confidential information, and must only be recorded, used or disclosed by the Contractor for the purposes of ensuring compliance with the SOCI Act.
- 37.2 Without limiting any obligation in the Contract, if the Contractor gains access to any Protected Information in connection with performing its obligations under the Contract, the Contractor must:
- (a) only use, and must ensure that its Personnel only use, Protected Information in accordance with the directions of the Principal and in accordance with the SOCI Act;
 - (b) ensure that Protected Information is not disclosed to, or accessed by, any persons other than those persons for which the Principal has provided prior written permission. The Principal confirms it has given permission for the Contractor to disclose Protected Information to its employees on a need to know basis for the purposes of performing their obligations under the Contract;
 - (c) obtain the Principal's prior consent (which may be withheld in its absolute discretion and/or subject to conditions) to disclose or access of Protected Information to or by any other persons other than those permitted by the Principal;
 - (d) promptly notify the Principal if the Contractor becomes aware of any misuse of the Protected Information by the Contractor or its Personnel or any other persons to whom the Contractor has granted access to the Protected Information;
 - (e) ensure that any person to whom it discloses Protected Information under this Contract complies with the obligations under this Contract as if that person were the Contractor;
 - (f) ensure that all Protected Information is marked as such and is protected by adequate Security

- Measures to protect it against unauthorised access; and
- (g) unless otherwise agreed by the Principal in writing, not hold, use, transmit, process or store any Protected Information outside of Australia.
- 37.3 The Contractor must within 3 Business Days of a request by the Principal, provide the Principal (or its auditor) with:
- (a) all information reasonably requested by the Principal related to its compliance with the provisions of this clause 37, including the identity of any persons to whom the Contractor has disclosed or allowed access to Protected Information; and
 - (b) reasonable access to the Contractor's premises, Personnel and records to audit the Contractor's compliance with this clause 37.

38. CRITICAL WORKERS

- 38.1 The nature of the Services may mean that the Principal needs to assess whether Contractor Personnel that the Contractor proposes to undertake the Services are Critical Workers. Where that is the case, the Principal will notify the Contractor of that and:
- (a) the Contractor must provide the Principal with a list of the Contractor Personnel that it proposes to perform the Services, and the part(s) of the Services that each Contractor Personnel will be responsible for (**Nominated Personnel**); and
 - (b) the Services (in whole or in part as notified by the Principal) must not commence until the Principal notifies the Contractor otherwise.
- 38.2 The Nominated Personnel must only perform the part(s) of the Services notified by the Contractor under clause 38.1(a).
- 38.3 The Principal will review the list of Nominated Personnel and the parts(s) of the Services that each Nominated Personnel will be responsible for in order to determine if it considers any of the Nominated Personnel to be Critical Workers (**Proposed Critical Workers**).
- 38.4 The Principal will notify the Contractor of any Proposed Critical Workers. The Proposed Critical Workers must not start providing the Services until the Principal notifies the Contractor otherwise.
- 38.5 On receipt of the notice under clause 38.4, the Contractor must immediately take steps to ensure that the Principal is provided with all information it requires in order for the Principal to assess if the Proposed Critical Worker is suitable to be a Critical Worker.
- 38.6 In order to comply with clause 38.5, the Contractor must at its cost:
- (a) undertake background checks under the AusCheck scheme or other checks requested by the Principal for the Proposed Critical Worker;
 - (b) provide the Principal with the results of the checks conducted under paragraph 38.6(a);
 - (c) provide the Principal with all information and do all things necessary in order to assist or enable the Principal to:
 - (i) undertake its suitability assessment for any Proposed Critical Worker; and

- (ii) periodically confirm the continued suitability of the Critical Worker to perform the Services allocated to them; and
- (d) procure all required consents and permissions from any Proposed Critical Workers:
- (i) to enable the Contractor to comply with clauses 38.6(a), 38.6(b) and 38.6(c); and
 - (ii) on behalf of the Principal, to enable the Principal to collect the information from the Contractor as contemplated by clauses 38.6(a), 38.6(b) and 38.6(c).

For clarity, the scope of this consent must enable the Contractor to conduct checks on a periodic basis as and when requested by the Principal in order to confirm the relevant Critical Worker's suitability during the period in which the relevant Critical Worker has access, to, control or management of, critical components of a Critical Electricity Asset.

- 38.7 The Principal will make a determination as to whether a Proposed Critical Worker is suitable to be a Critical Worker in its absolute discretion. If a Proposed Critical Worker:
- (a) is approved by the Principal as a Critical Worker (**Approved Critical Worker**), the Contractor must ensure that that the Approved Critical Worker only performs the Services allocated to them under clause 38.1. The Contractor must also ensure that no other Contractor Personnel perform Services allocated to the Approved Critical Worker; and
 - (b) is not approved by the Principal as a Critical Worker, the Contractor must remove the Proposed Critical Worker from providing the Services allocated to them under clause 38.1.
- 38.8 If clause 38.7(b) applies:
- (a) the Contractor must use its best efforts to submit an alternative member of Nominated Personnel for assessment by the Principal in accordance with this clause 38; and
 - (b) The parties will meet promptly to discuss whether the Contractor can submit another Nominated Personnel for assessment by the Principal under this clause 38; and
 - (c) For clarity, any alternative member of Nominated Personnel will not become an Approved Critical Worker until the Principal determines such in accordance with clause 38.7 and clauses 38.5 and 38.6 will apply to an alternative member of Nominated Personnel.
- 38.9 Without limiting the rest of clause 38, the Contractor must:
- (a) ensure that all Critical Workers are required to notify the Contractor as soon as possible of any matters that may affect the suitability of the Critical Worker to continue to access, control or manage critical components of a Critical Electricity Asset (**Relevant Matters**); and
 - (b) on becoming aware of any Relevant Matters, promptly notify the Principal of those Relevant Matters that may impact the Principal's assessment of whether a Critical Worker is suitable to continue to access, control or manage critical components of a Critical Electricity Asset.