

1. Application of these Conditions

1.1 Goods and Services covered

These Conditions apply to all arrangements for the supply of Goods or Services by the Supplier to ElectraNet, unless:

- (a) ElectraNet has expressly agreed in writing that these Conditions do not apply; or
- (b) ElectraNet and the Supplier have entered into a separate written contract covering that supply (for example by entering into contract terms provided as part of a request for tender or entering into a major works contract for design and construction).

1.2 Creation of Contract

The issue of a Purchase Order by ElectraNet and actual or implied acceptance by the Supplier (which may be given verbally, in writing, by commencing performance or otherwise) is conclusive evidence that these Conditions apply to the provision of the Goods and the Services.

Upon such acceptance of any Purchase Order, a separate contract is formed comprising the documents referred to in clause 1.3 (Contract).

1.3 Contract documents

The Contract contains the entire agreement between the parties for the supply of the Goods and Services and comprises:

- (a) the Purchase Order;
- (b) any written quote, rates, specifications, warranties or estimates provided by the Supplier to ElectraNet in connection with the Purchase Order which have been expressly accepted by ElectraNet;
- (c) these Conditions; and
- (d) any documents, terms or information attached to or expressly incorporated into the Purchase Order by reference.

BUT DOES NOT INCLUDE the Excluded Terms.

1.4 Excluded Terms

The parties agree that the following terms (Excluded Terms) will not form part of the Contract:

- (a) any standard terms and conditions of supply provided or referred to by the Supplier;
- (b) any purported variations to these Conditions, unless ElectraNet has expressly agreed in writing that those terms prevail over these Conditions; and
- (c) any additional, contrary or other terms referred to in the Supplier's quote, cart notes, bill of lading or otherwise.

1.5 Inconsistency

If there is any inconsistency between any of the documents forming part of the Contract, the

documents forming the Contract will be interpreted in the descending order of priority of documents referred to in clause 1.3, followed by any other terms which ElectraNet has specifically and expressly agreed in writing are included in the Contract.

2. Primary obligations

- (a) The Supplier agrees to supply the Goods and Services and perform its obligations under the Contract in consideration of ElectraNet agreeing to pay the Contract Price as and when required by the Contract.
- (b) Unless otherwise stated in the Contract:
 - (i) the Contract Price is the full and complete payment for performance of the Contract by the Supplier; and
 - (ii) nothing prevents ElectraNet from acquiring goods and services the same as or similar to the Goods and Services from any other person at any time.

3. Supply of Services

3.1 Standard of Services

The Supplier must ensure the Services are performed:

- (a) in all respects in accordance with the Contract, ElectraNet's Requirements and any directions of ElectraNet from time to time;
- (b) in compliance with all relevant laws, Australian Standards and good electricity industry practice;
- (c) with all due care and skill by appropriately qualified, experienced and skilled persons;
- (d) expeditiously and without delay and completed by the date stated in the Contract or such other date the parties may agree or, if no date has been stated or agreed, within a reasonable time from the date of the Purchase Order;
- (e) in accordance with ElectraNet's Policies and Procedures; and
- (f) so that, upon completion of the Services, any Goods to which the Services relate are:
 - (i) fit for the purpose stated in, or reasonably inferred from, the Contract and any other agreed purpose; and
 - (ii) delivered into the possession of ElectraNet.

3.2 Service-related obligations

The Supplier must:

- (a) unless stated otherwise in the Contract, obtain and maintain all approvals, permits, licences and other authorisations which are necessary for the Services; and
- (b) if the Contract requires or the Supplier requests a representative of ElectraNet to attend at or be involved with testing, inspecting or assessing any part of the Services, provide reasonable advance

notice to ElectraNet of any such request and comply with the reasonable requirements of ElectraNet in relation to such attendance or involvement.

3.3 Warranties about Services

The Supplier warrants to ElectraNet that the Services do not and will not infringe the Intellectual Property Rights of any person.

3.4 Personnel Vetting

- (a) This clause 3.4 applies if ElectraNet has notified the Supplier that some or all of the Supplier's Personnel are 'critical workers' of ElectraNet for the purposes of the *Security of Critical Infrastructure Act 2018* (Cth) (**Critical Personnel**).
- (b) The Supplier must ensure that all Critical Personnel have undergone a background check (**Background Check**) to the reasonable satisfaction of ElectraNet. A Background Check may include, but not be limited to, verification of:
- (i) the identity of the individual;
 - (ii) the individual's citizenship status, residency status or the individual's entitlement to work in Australia;
 - (iii) the individual's criminal history; and
 - (iv) matters relevant to a security assessment of the individual (as defined in subsection 35(1) of the *Australian Security Intelligence Organisation Act 1979*); and
 - (v) any additional screenings deemed necessary by ElectraNet to ascertain the individual's suitability for the work to be performed.
- (c) Background Checks on an individual must be performed:
- (i) prior to the relevant Critical Personnel performing any Services; and
 - (ii) at least every two years thereafter.
- (d) The Supplier must immediately notify ElectraNet in writing if:
- (i) any of the Critical Personnel refuses to obtain, or cannot obtain, a Background Check; or
 - (ii) any adverse information is discovered during or after the Background Check that may affect an individual's suitability to perform work under this Contract.
- (e) If a notification is made under clause 3.4(d), or if ElectraNet otherwise reasonably determines that an individual poses a security risk or is otherwise unsuitable to perform Services under this Contract, the Supplier agrees to promptly remove the individual from performing any Services and will provide a suitable replacement at no additional cost to ElectraNet.

(f) ElectraNet may, upon providing reasonable prior notice and at reasonable times, audit and inspect the Supplier's Background Check processes and related records to ensure compliance with requirements set forth in this clause 3.4.

(g) The Supplier indemnifies and holds harmless ElectraNet against any Loss arising out of the Supplier's failure to comply with this clause 3.4.

4. Supply of Goods

4.1 Sale, delivery and installation

Unless otherwise stated in the Contract, the Supplier must:

- (h) sell the Goods to ElectraNet free of encumbrances or other security interests;
- (i) without limiting Clause 8, deliver the Goods to ElectraNet at the Delivery Place and at the Supplier's cost in all respects within such time as is agreed, or if no time is agreed, within a reasonable time from the date of the Purchase Order;
- (j) unload the Goods and where ElectraNet carries out that unloading, it is carried out on behalf of the Supplier and is at the Supplier's risk;
- (k) install the Goods, in all respects as directed by ElectraNet;
- (l) ensure that all powered plant and equipment is accompanied by a risk assessment; and
- (m) obtain and maintain all approvals, permits, licences, clearances and other authorisations which are necessary for the supply, installation or use of the Goods.

4.2 Testing, acceptance and rejection

- (a) ElectraNet may test the Goods as it sees fit:
- (i) before delivery to ElectraNet, whether at the Supplier's premises or elsewhere; and
 - (ii) after the Goods have been delivered and installed in accordance with the Contract.
- (b) ElectraNet must accept the Goods upon being satisfied the Goods comply with the Contract, are fully functional and meet ElectraNet's requirements.
- (c) If ElectraNet is not satisfied as to the matters in clause 4.2(b), ElectraNet may reject the Goods by written notice to the Supplier. If it rejects the Goods, title to and risk in the Goods will revert to the Supplier and the Supplier must immediately remove the Goods from ElectraNet's premises and make good any damage at the Supplier's cost.

4.3 Warranties about Goods

- (a) The Supplier warrants that the Goods:
- (i) will, unless otherwise stated in the Contract, be new on delivery to

- ElectraNet;
- (ii) conform with any description applied to the Goods and any sample of them provided by the Supplier prior to the date of the Purchase Order;
 - (iii) meet ElectraNet's Requirements, and are fit for the purpose of those requirements;
 - (iv) are free of any defects in materials, workmanship or installation;
 - (v) conform to any legally applicable standards, relevant law, appropriate Australian Standards and good electricity industry practice;
 - (vi) are of merchantable quality;
 - (vii) are and will be manufactured or constructed in accordance with a quality assurance programme approved by ElectraNet before issuing the Purchase Order; and
 - (viii) do not and will not infringe the Intellectual Property Rights of any person.
- (b) The Supplier warrants and undertakes to ElectraNet that:
- (i) it has the benefit of all manufacturer's warranties in respect of the Goods;
 - (ii) it will not do anything which could void or prejudice any manufacturer's warranty in respect of the Goods; and
 - (iii) it will obtain an assignment of any manufacturer's warranties to ElectraNet in the form of a deed executed by the relevant manufacturer in favour of ElectraNet or its nominee, pursuant to which the relevant manufacturer must warrant that the relevant Goods will be free of defects.
- Services, will comply with the Contract in all respects and their intended use; and
- (iv) keep records containing reasonable details of the Free Issue Materials and such other details required by ElectraNet from time to time.
 - (c) Risk in Free Issue Materials passes to the Supplier upon loading and only passes back to ElectraNet if and when returned to ElectraNet and unloaded as required by the Contract.
 - (d) ElectraNet accepts no liability for the Free Issue Materials and makes no representation or warranty in respect of the Free Issue Materials.
 - (e) The Supplier warrants to ElectraNet that the Free Issue Materials will comply with ElectraNet's Requirements and the Contract and, once incorporated into the Goods or installed/commissioned pursuant to the Services, will not cause the Goods or Services to fail to comply with the Contract and will meet ElectraNet's stated purpose.
 - (f) Free Issue Materials will, upon incorporation into Goods, form part of the Goods for the purposes of the Contract.
 - (g) If the Supplier is in possession of the Free Issue Materials at any time, the Supplier agrees that it will:
 - (i) redeliver possession of the Free Issue Materials to ElectraNet as required by the Contract and, in any event, prior to the date that is two (2) years after the Supplier last obtained possession;
 - (ii) not grant or permit to subsist a security interest or any other interest in the Free Issue Materials (whether that interest arises by operation of law or otherwise); and
 - (iii) not sell, lease, give up possession, deal with or dispose of the Free Issue Materials in any way not expressly permitted by the Contract.

4.4 Free Issue Materials

- (a) If Free Issue Materials are involved, the Free Issue Materials will be made available for collection by the Supplier at the times and places specified in the Contract or as otherwise agreed by the parties.
- (b) The Supplier must:
 - (i) collect, load, transport and deliver to the Delivery Place (or such other agreed place) the Free Issue Materials;
 - (ii) return and unload any unused Free Issue Materials to ElectraNet or as ElectraNet directs;
 - (iii) prior to loading, inspect and, if necessary, test the Free Issue Materials in order to satisfy itself that they are satisfactory for the Supplier's purposes and, once incorporated into the Goods or installed/commissioned pursuant to the

5. Site access and risk

5.1 Non-exclusive access

- (a) The Supplier acknowledges and agrees that, except to the extent expressly stated otherwise in the Contract:
 - (i) it is not entitled to exclusive access to the Site or Delivery Place during the performance of its obligations under the Contract;
 - (ii) access to the Site will confer on the Supplier a right only to use and control as is necessary to enable the Supplier to deliver the Goods and perform the Services;
 - (iii) access to the Site will be in accordance with ElectraNet's Policies and Procedures; and

- (iv) the Supplier must not obstruct ElectraNet or any of its Personnel from accessing the Goods or any place where the Goods are being prepared or stored or Services are being performed.

5.2 Site risk

The Supplier is responsible for assessing and satisfying itself that the Delivery Place and all other places accessed by the Supplier in performing the Contract are suitable for the Goods and Services.

6. Delays

- (a) The Supplier must give ElectraNet written notice as soon as practicable upon becoming aware that it is not able to or is unlikely to be able to perform its obligations by the time required by the Contract.
- (b) ElectraNet will act reasonably in considering any request for an extension of time but may reject an extension of time where it considers that the Supplier has been, is or will be unreasonably delayed in the provision of the Goods or the Services.

7. Payment

7.1 Contract Price

Unless expressly stated otherwise in the Contract:

- (a) the Contract Price is inclusive of all costs, expenses, fees, duties, excises, imposts, levies and taxes (other than GST) incurred by the Supplier in performing the Contract; and
- (b) the Contract Price (including the basis on which it is calculated) is not subject to adjustment or rise and fall.

7.2 Customs, tariffs and duties

- (a) The Supplier must bear all customs and import duties (including antidumping duties) levied.
- (b) ElectraNet will make any applications for customs or import duty concessions that may be practicable. If it makes a successful application, and the Contract Price includes an amount for customs or import duty at a higher rate, then ElectraNet may deduct the difference from the amount payable to the Supplier under the Contract.
- (c) The Supplier will, promptly upon request, provide ElectraNet with a detailed breakdown of each cost item included in the Contract Price.

7.3 Currency

Except to the extent expressly agreed otherwise by ElectraNet:

- (a) all payments under the Contract are to be made in Australian dollars; and
- (b) to the extent the parties have agreed a payment will be made in any currency other than Australian dollars, the Supplier bears the

risk of foreign exchange rate fluctuations on and after the date of the Contract and is not entitled to demand payment of a higher amount due to any such fluctuations.

7.4 Invoicing

- (a) The Supplier must render tax invoices to ElectraNet in respect of the Contract Price payable by ElectraNet at the times stated in the Contract or, if no such times are stated, monthly in arrears in respect of each month in which Goods or Services are supplied.
- (b) Each invoice must:
 - (i) note the Purchase Order number;
 - (ii) specify the total amount payable in respect of the Goods, Services (including any milestone) in accordance with the Contract Price to which the invoice relates;
 - (iii) be in a form acceptable to ElectraNet;
 - (iv) include any other information reasonably required by ElectraNet; and
 - (v) be submitted to: accountspayable@electranet.com.au

7.5 Payment

- (a) Unless otherwise stated in the Contract, ElectraNet will pay each validly rendered invoice within 30 days of receipt.
- (b) Payment is made on account only and does not constitute acceptance by ElectraNet that Goods or Services comply with the Contract.

7.6 Disputed invoices

ElectraNet is not required to make payment under clause 7.5 in respect of any part of an invoice which is currently being disputed until that dispute is resolved or finally awarded under clause 16.

7.7 Set off

ElectraNet may set off against any amount owing by ElectraNet to the Supplier any amount which is owing by the Supplier to ElectraNet.

8. Title and risk

- (a) Unless otherwise stated in the Contract, title in the Goods will pass to ElectraNet on the earlier of acceptance or payment.
- (b) Risk in Goods passes to ElectraNet upon acceptance or when the Goods are delivered into ElectraNet's possession at the Delivery Place under clause 4.1(b) (whichever occurs last).

9. Variations

- (a) ElectraNet may request a Variation at any time.
- (b) The Supplier must act reasonably in considering any Variation requested by ElectraNet.
- (c) If a Variation is accepted by the Supplier, any

resulting adjustment to the Contract Price and any extension of time which the Supplier claims (if any) must be expressly agreed in writing by ElectraNet.

10. Defects

- (a) If ElectraNet discovers that all or any part of the Goods or Services are defective or do not conform to the Contract at any time during the Defects Liability Period, ElectraNet may direct the Supplier to rectify that defect or nonconformity. The Supplier must rectify the defect or nonconformity as soon as practicable in accordance with ElectraNet's direction.
- (b) The Supplier must notify ElectraNet if it becomes aware that any Goods or Services are defective or nonconforming with the Contract and must, as soon as practicable, rectify the defect or nonconformity.
- (c) If:
 - (i) the Supplier fails to promptly comply with clause 10(a)(a) or 10(b); or
 - (ii) ElectraNet considers it necessary to urgently rectify the defective or nonconforming Goods or Services in order to prevent risk to persons or property,

ElectraNet may (itself or via its Personnel) rectify the defective or nonconforming Goods or Services and/or remove, replace or store defective Goods and the Supplier is liable for all of ElectraNet's costs, expenses and liability incurred in doing so.
- (d) A further Defects Liability Period of twelve (12) months will apply to any rectification of defective or nonconforming Goods or Services commencing on the date such rectification is completed.

11. Intellectual Property

- (a) The Supplier warrants and represents to ElectraNet that:
 - (i) the supply of the Goods by the Supplier, the Goods and the use of the Goods by ElectraNet in accordance with the Contract will not infringe the Intellectual Property Rights of any person; and
 - (ii) in performing the Services and its other obligations under the Contract, it will not infringe the Intellectual Property Rights of any person.
- (b) The parties each retain ownership of their respective Intellectual Property Rights which arose prior to, or independently of, the Contract (Existing IP Rights).
- (c) The Supplier grants ElectraNet a non-exclusive, perpetual, irrevocable, non-transferrable, royalty-free licence (including the right to sub-licence) to deal with its Existing IP Rights to the extent necessary for ElectraNet to have the full use and benefit of the Goods and

Services.

- (d) All Intellectual Property Rights in the Contract Material and any other Intellectual Property Rights created in the performance of the Contract shall vest in ElectraNet immediately upon creation.
- (e) The Supplier shall ensure ElectraNet is irrevocably and perpetually licensed to use, modify and exploit all Intellectual Property Rights of third parties supplied by the Supplier or which are otherwise comprised in the Goods and Services to the extent necessary for ElectraNet to have the full enjoyment, use and benefit of the Goods and Services.

12. Information handling and security

12.1 Confidentiality

The Supplier must keep confidential, and must ensure that the Supplier's Personnel keep confidential, all information from or concerning ElectraNet that it acquires as a result of any dealings with ElectraNet, including as a result of the Contract. The Supplier's obligations under this clause will survive the expiry or termination of the Contract.

12.2 Confidential Information

- (a) Subject to clause 12.2(b), each party must not disclose Confidential Information of the other party without the prior written consent of the other party (which consent will not be unreasonably withheld).
- (b) Confidential Information of the other party may be disclosed if:
 - (i) at the time of disclosure, it is in the public domain, but not as a result of a breach of this clause 12 or some other obligation of confidentiality;
 - (ii) required to be disclosed for the purposes of performing its obligations under the Contract;
 - (iii) required to be disclosed to professional advisors, bankers or financial advisors in connection with the Contract;
 - (iv) required by government policy, law, court order or listing rules of the Australian Stock Exchange;
 - (v) required in order for ElectraNet to comply with the NER, the conditions of any electricity transmission licence or any direction of a regulatory body;
 - (vi) necessary or desirable to be disclosed to give effect to the licences of Intellectual Property Rights granted to a party under the Contract, subject to the restrictions on disclosure specified in these Conditions; or
 - (vii) required to be made in relation to any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.

- (c) If the Supplier requires disclosure of Confidential Information of ElectraNet to be made to its subcontractors for the purposes of performing its obligations under the Contract, the Supplier must procure confidentiality undertakings (on terms satisfactory to ElectraNet) from its subcontractors in relation to that disclosure prior to making such disclosure.

12.3 Privacy obligations

The Supplier must:

- (a) use Personal Information provided by ElectraNet or collected by the Supplier under the Contract only for the purposes of performing its obligations under the Contract;
- (b) not do any act or engage in any practice that would be a breach of an Australian Privacy Principle under the Privacy Act 1988 (Cth) if done or engaged in by ElectraNet and must not do or omit to do anything that causes ElectraNet to be in breach of an Australian Privacy Principle; and
- (c) comply with any directions, guidelines, determinations, or recommendations of any Authority in respect of Personal Information or privacy practices, to the extent that they are not inconsistent with the requirements of the Contract.

12.4 Data Breach requirements

- (a) The Supplier must immediately notify ElectraNet of any actual or suspected Data Breach relating to any Personal Information collected, stored or retained relating to the Supplier's obligations under the Contract and comply with all reasonable directions of ElectraNet in relation to any actual or suspected Data Breach.
- (b) The Supplier must provide ElectraNet with all assistance and information it reasonably requires in order to enable ElectraNet to comply with its obligations in relation to Personal Information.

12.5 Cyber security requirements

- (a) The Supplier undertakes to:
- (i) take precautions in accordance with best industry practice and otherwise use best endeavours to ensure that no Harmful Code subsists in or is introduced into any of its computer systems used to provide the Goods or the Services or ElectraNet's computer systems; and
- (ii) comply with any data or cyber security standards and policies which may from time to time be notified by ElectraNet.
- (b) If the Supplier becomes aware that Harmful Code subsists in any of its computer systems used to provide the Goods or Services or ElectraNet's systems, the Supplier must immediately notify ElectraNet and take all necessary remedial action to contain and

eliminate the Harmful Code and prevent any further introduction or propagation of Harmful Code.

- (c) The Supplier must promptly comply with all reasonable directions of ElectraNet which relate to cyber security.
- (d) ElectraNet may, from time to time, require the Supplier to provide evidence of its compliance with this clause 12.5 at its own cost and the Supplier must cooperate with the undertaking of any reasonable tests relating to cyber security required by ElectraNet in order to confirm the Supplier's compliance with this clause.

13. Compliance

13.1 General compliance

Without limiting any other provision in the Contract, the Supplier must comply with all relevant laws and Authorisations in performing the Contract and all requirements under any codes and standards which ElectraNet has made the Supplier aware are binding on ElectraNet or are otherwise required to be complied with in performing the Contract.

13.2 Chain of Responsibility Laws

To the extent heavy vehicles are used in the supply of the Goods or the provision of the Services, the Supplier:

- (a) acknowledges that it is the primary duty holder under the COR Laws with responsibility for developing chain or responsibility systems;
- (b) must ensure that any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits, are appropriately secured, and operators carrying freight containers have a valid "container weight declaration" (as defined under the COR Laws) and drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
- (c) must proactively provide reasonable assistance to ElectraNet to enable ElectraNet to satisfy its duties and responsibilities under COR Laws;
- (d) must obtain and maintain, and ensure the Supplier's Personnel obtain and maintain, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
- (e) must undertake any audits or monitoring as requested by ElectraNet to demonstrate compliance with this clause 13.2; and
- (f) warrants that it is familiar with and has the capability and resources to comply with COR Laws and will ensure that its Personnel will comply with all COR Laws.

13.3 Work health and safety

- (a) The Supplier shall have in place and maintain a safe system of work for the provision of the Goods and Services and have and maintain all

certificates, licenses and approvals required by law, Australian Standards and Codes of Practice specified under the Work Health and Safety Act 2012 (Cth), related regulations and legislative instruments and any equivalent laws in any jurisdiction relating to the protection or safety of workers.

- (b) The Supplier must comply with ElectraNet's Policies and Procedures and any directions given by ElectraNet as required under the Work Health and Safety Act 2012 (Cth) in relation to the supply of the Goods and the provision of the Services.

13.4 Modern Slavery Act

- (a) The Supplier must at all times comply with the requirements of the Modern Slavery Act including, without limitation:
 - (i) reviewing the Supplier's operations and supply chain and identifying those parts of the chain that are at risk of breaching the Modern Slavery Act;
 - (ii) assessing subcontractors and prospective subcontractors against identified categories of risk;
 - (iii) implementing processes and procedures to identify, remedy, manage, prevent and mitigate the risk of Modern Slavery Practices;
 - (iv) reporting on the matters outlined in clause 13.4(a) and assisting ElectraNet to comply with its reporting obligations under the Modern Slavery Act; and
 - (v) ensuring that the Supplier's Personnel and subcontractors also comply with the requirements of this clause 13.4.
- (b) The Supplier acknowledges and agrees that ElectraNet has the right to disclose the information specified in clause 13.4 to any Authority without prior notice or approval by the Supplier.
- (c) Where the Supplier identifies the occurrence or risk of Modern Slavery Practices in its own operations or within its own supply chains, it must as soon as reasonably practicable and at its own cost:
 - (i) take all reasonable steps to rectify the occurrence or to mitigate the risk; and
 - (ii) notify ElectraNet of the occurrence or risk and the steps undertaken to rectify the occurrence or to mitigate that risk.
- (d) The Supplier will indemnify and hold harmless ElectraNet in relation to any loss it suffers (including with respect to brand damage or loss of reputation and any consequential damages) or liabilities or penalties (including statutory penalties) it incurs as a result of any breach of any of this clause 13.4.

13.5 Environmental obligations

The Supplier must, in carrying out its obligations under the Contract, comply with all applicable environmental laws (including archaeological and cultural heritage laws) and perform its obligations in an environmentally sensitive manner that does not and is not likely to degrade the quality of the environment.

13.6 Compliance with Ring-Fencing Guideline

- (a) The Supplier acknowledges that ElectraNet must comply with the Ring-Fencing Guideline.
- (b) If the Contractor is providing Services that will enable or assist ElectraNet to provide Prescribed Transmission Services (as defined under the National Electricity Rules), the Supplier must:
 - (i) take all necessary steps to understand ElectraNet's obligations under the Ring-Fencing Guideline as they apply to the performance of the Services;
 - (ii) perform the Services in a manner that strictly complies with the obligations (including the non-discrimination and confidentiality obligations) set out in the Ring-Fencing Guideline as if the Supplier was acting as ElectraNet; and
 - (iii) not engage in any conduct that, if engaged in by ElectraNet, would breach or be contrary to ElectraNet's obligations under the Ring-Fencing Guideline (including, in particular, the obligations under clauses 4.1, 4.2.1, and 4.3 of the Ring-Fencing Guideline).
- (c) The Supplier must notify ElectraNet in writing as soon as reasonably possible after becoming aware of the occurrence, or the suspected or potential occurrence, of a breach of the Contractor's obligations under this clause.
- (d) The Supplier must cooperate with, and promptly provide assistance to, ElectraNet, to the extent reasonably required by ElectraNet to comply with ElectraNet's obligations under the Ring-Fencing Guideline, including any obligation to report or provide information to an Authority, or otherwise cooperate with any investigation conducted by an Authority.

13.7 Reporting

The Supplier must immediately report to ElectraNet, in writing, details of any accident, incident or near miss under this clause 13 that occurs in relation to the Supplier or the Supplier's Personnel or ElectraNet's Personnel whilst the Supplier is performing the Services or delivering the Goods.

14. Breach, indemnity and termination

14.1 Breach

- (a) If either party breaches the Contract, or if a party advises the other party that it is not or will not be able to or is not willing to perform all of its obligations under the Contract, then subject to any other provision of the Contract, and without limiting any other right or remedy the other party

may have arising from such breach or advice, the other party may immediately terminate the Contract by writing to the first party.

- (b) Where the Supplier has breached the Contract or advises ElectraNet that it is not or will not be able to or is not willing to perform all of its obligations under the Contract, ElectraNet may acquire the Goods or Services (or the nearest reasonably available substitute for the Goods or Services) from a third party.
- (c) Any additional cost to ElectraNet of acquiring substitute Goods or Services from a third party is immediately payable by the Supplier to ElectraNet on ElectraNet making demand for that amount.
- (d) Without limiting Clause 6, ElectraNet may at any time by notice in writing withdraw a Purchase Order where it considers that the Supplier has been, is or will be unreasonably delayed in the provision of the Goods or the Services. Where ElectraNet determines to withdraw a Purchase Order, the Supplier will be entitled to be paid:
 - (i) the amounts due to the Supplier for performing the Services or providing the Goods the subject of the withdrawn Purchase Order up to the date of withdrawal of the Purchase Order; and
 - (ii) costs reasonably incurred by the Supplier in the expectation of performing the Services or providing the Goods not included in any payment by ElectraNet to the Supplier,

provided that the Supplier has done all things reasonably necessary to mitigate its Loss arising from such withdrawal and has provided ElectraNet with reasonable written notice of those costs for ElectraNet's approval.

- (e) ElectraNet may terminate the Contract for convenience upon 30 days' written notice to the Supplier. Where ElectraNet determines to terminate the Contract pursuant to this clause 14.1(d), the Supplier will be entitled to be paid:
 - (i) the amounts due to the Supplier for performing the Services or providing the Goods the subject of the Purchase Order under the terminated Contract up to the date of termination; and
 - (ii) costs reasonably incurred by the Supplier in the expectation of performing the Services or providing the Goods not included in any payment by ElectraNet to the Supplier,

provided that the Supplier has done all things reasonably necessary to mitigate its Loss arising from such termination and has provided ElectraNet with reasonable written notice of those costs for ElectraNet's approval.

14.2 Indemnity

- (a) The Supplier shall indemnify and keep

indemnified ElectraNet and each of its Personnel (each an Indemnified Person) from and against any and all Liabilities suffered or incurred by the Indemnified Person in relation to:

- (i) loss of or damage to any real or personal property, or injury to, illness or death of any person;
- (ii) to the extent permitted by law, Liabilities under or resulting from any work health and safety laws or environmental laws; and/or
- (iii) infringement of any Intellectual Property Rights,

that arises out of or as a consequence of:

- (iv) any act, omission, fraud or wilful misconduct of the Supplier or any of its Personnel in connection with the performance of the Supplier's obligations under the Contract;
 - (v) any breach of the Contract (including any breach of a warranty or representation); or
 - (vi) any defect in or non-conformity of the Goods or the Services.
- (b) The Supplier must pay any amount under the indemnity in clause 14.2(a) on demand. It is not necessary for ElectraNet to incur a cost or make a payment before enforcing the indemnity.
 - (c) The Supplier's obligation to indemnify under this clause 14.2 is separate and independent of any other obligation and survives termination, completion or expiry of the Contract.

14.3 Liability cap

The aggregate liability of the Supplier to ElectraNet under the indemnity in clause 14.2 is limited to TEN MILLION DOLLARS (\$10,000,000.00) for each event, provided however that no limit applies in respect of any Liability of the Supplier for or in respect of:

- (a) any claims against ElectraNet in respect of personal injury, death, loss or damage to any property or any other third party liability;
- (b) events or circumstances in respect of which insurance proceeds are (or, if the Supplier had complied with the Contract, would have been) available to cover that Liability, and amounts so received will not be included when calculating whether the limit above has been reached; or
- (c) the wilful misconduct, fraud or gross negligence of the Supplier or its Personnel.

14.4 Consequential Loss

Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party in connection with the Contract, other than as a result of its wilful misconduct or fraud.

15. Insurance

The Supplier must effect and maintain public liability and professional indemnity insurance against the risks

referred to in clause 14.2 and any other insurance stated in the Contract with the type of policy coverage and limits of liability of such insurance policies to be reasonable, determined by the Supplier, having regard to the nature of the supply of Goods and Services the subject of the Contract., and will provide evidence to ElectraNet of the currency of such insurance upon request by ElectraNet.

16. Dispute Resolution

16.1 Notice of dispute

- (a) If a Dispute arises between the Supplier and ElectraNet, the Dispute must be dealt with in accordance with this clause 16.
- (b) Where a Dispute arises, either party may give a notice (Dispute Notice) to the other party specifying:
 - (i) the Dispute;
 - (ii) particulars of the party's reason for being dissatisfied; and
 - (iii) the position that the party believes is correct.

16.2 Negotiation

- (a) If a Dispute Notice is issued under clause 16.1(b), the Dispute will be referred to the Senior Negotiators.
- (b) Each party will appoint their respective Senior Negotiators to resolve the Dispute and notify the other party of these appointments within 10 Business Days of the Dispute Notice being issued under clause 16.1(b).
- (c) The Senior Negotiators must within:
 - (i) 20 Business Days of receipt of the Dispute Notice under clause 16.1(b); or
 - (ii) such longer period of time as the Senior Negotiators agree in writing,

meet and undertake genuine and good faith negotiations with a view to resolving the Dispute within 40 Business Days of receipt of the Dispute Notice under clause 16.1(b).

16.3 Litigation

- (a) If, within 80 days of the Dispute Notice being given under clause 16.1(b) or such longer period of time as the Senior Negotiators may agree in writing, the Senior Negotiators:
 - (i) refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the Dispute; or
 - (ii) cannot resolve the Dispute; or
 - (iii) cannot agree on a method of Alternative Dispute Resolution,

then the Dispute must be resolved by the courts of South Australia.

- (b) Unless a party and its Senior Negotiator has complied with the procedure to resolve the Dispute by negotiation of the Dispute under clause 16.2, that party may not commence litigation under this clause 16.3.

16.4 Continuity

Subject to clause 7.6, despite the existence of a Dispute, either party must continue to perform its obligations under the Contract (including continuing to carry out the Services and supply the Goods).

16.5 Injunctive or urgent relief

Nothing in this clause 16 prejudices either party's right to institute proceedings to seek injunctive or urgent declaratory relief in respect of a Dispute under this clause 16 or any other matter arising under the Contract.

17. Contracting

17.1 No subcontracting

- (a) The Supplier may not subcontract the performance of any matter or thing required by the Contract without the prior written consent of ElectraNet (which may be granted in its absolute discretion).
- (b) Without limiting clause 17.1(a), the Supplier must ensure that any subcontract it enters expressly requires the subcontractor:
 - (i) to have the same awareness and obligations as the Supplier under clause 12.3; and
 - (ii) to observe the same obligation as the Supplier under this clause 17.1(b) in relation to subcontracts.

17.2 Assignment

- (a) The Supplier must not directly or indirectly transfer or assign the Contract, or any part share or interest in it, without the prior written approval of ElectraNet.
- (b) ElectraNet may at any time, without having to obtain the Supplier's consent, assign any or all of its right, title and interest as ElectraNet under the Contract to any related body corporate or TLC, without cost or penalty.

17.3 Relationship

Except as expressly stated otherwise in the Contract, the Contract does not create a relationship of employment, trust, agency or partnership between the parties.

18. Miscellaneous

18.1 Notices

- (a) Notices required or permitted to be given under the Contract must be sent in writing by ordinary prepaid post to the address of the intended recipient set out on the front of the Purchase Order.
- (b) Notices given in accordance with this clause will

be deemed given when in the ordinary course of post such notice should have been delivered.

18.2 Goods and Services Tax

- (a) The Contract Price (and any other amounts payable for Goods or Services) is fixed, subject to clause 7.1, and exclusive of any goods and services tax (or other similar tax or impost) payable. ElectraNet must pay to the Supplier goods and services tax in addition to the Contract Price in respect of the Contract.
- (b) The Supplier must be registered and must provide its Australian Business Number and tax invoices promptly in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

18.3 Amendment

No amendment of, nor addition to, the Contract is binding unless it is in writing and executed by the parties to the Contract.

18.4 Counterparts

The Contract may be executed in any number of counterparts which when taken together form one instrument. A counterpart may be in electronic format.

18.5 Costs

Unless otherwise stated in the Contract, each party bears its own costs of negotiating, preparing and performing its obligations under the Contract.

18.6 Governing law

The Contract is governed by the laws of South Australia and the parties irrevocably consent to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them in respect of any proceedings arising out of or in connection with the Contract.

18.7 Defined terms

In these Conditions, unless a contrary intention is apparent:

Alternative Dispute Resolution means a form of dispute resolution (other than litigation) chosen by the parties to resolve any Dispute, including but not limited to negotiation, mediation and arbitration;

Authorisation means any approval, declaration, authorisation, certificate, consent, exemption, filing, licence, notarisation, permit, registration, ruling, statutorily required policy of insurance or waiver (and any renewal or variation of any of them) by or with an Authority;

Authority means:

- (a) any government or regulatory department, body, instrumentality, minister, agency or other authority; or
- (b) any other person exercising an authority granted to it under an applicable law;

Business Day means a day other than a Saturday or Sunday or a day that is partly or wholly observed

as a public holiday in the State of South Australia;

Conditions means these General Conditions for the Supply of Goods and Services;

Confidential Information means any information which is by its nature confidential or commercially sensitive and includes all technical, proprietary and operational information, drawings, techniques, processes, know-how, methods of working, data and specifications, trade secrets, customer information and other commercially valuable information of any kind, and the terms of the Contract;

Consequential Loss means any loss of business or production and any loss of actual or anticipated profit or revenue;

Contract means the contract between ElectraNet and the Supplier for the supply of the relevant Goods and Services referred to in clause 1.3;

Contract Material means those documents and materials created or required to be created under the Contract and to be handed over to ElectraNet;

Contract Price means the total amount payable by the ElectraNet for the supply of all Goods and the performance of all Services under the Contract, being either:

- (a) the fixed lump sum amount set out in the Contract; or
- (b) the total fees, charges and disbursements of the Supplier in performing the Contract calculated at the agreed rates or on the agreed basis set out in the Contract;

COR Laws means laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as "Chain of Responsibility" laws or "Heavy Vehicle" laws;

Data Breach means any deliberate or inadvertent unauthorised access to, use or disclosure of Personal Information including any "eligible data breach" as defined in the *Privacy Act 1988* (Cth);

Defects Liability Period means, unless otherwise stated in the Contract, a period of twelve (12) months commencing on the date the Goods were accepted or Services were performed under the Contract;

Delivery Place means the place for delivery of the Goods or Services (as applicable);

Dispute means any dispute, controversy, or claim of any kind or type, whether based in contract, tort, statute, regulation, or otherwise, arising out of, relating to, or connected with the Contract, the Goods or the Services, including any dispute concerning the formation, existence, validity, interpretation, performance, breach, or termination of the Contract;

ElectraNet means ElectraNet Pty Limited ABN 41 094 482 416;

ElectraNet's Policies and Procedures means all of ElectraNet's policies, procedures, guidelines and manuals, including the Transmission Asset Access Manual, and those specifically outlined in the Purchase

Order or otherwise stipulated from time to time.

ElectraNet's Requirements means those requirements of ElectraNet to be met by the supply of the Goods or the Services, as advised by ElectraNet to the Supplier on or prior to the date of the Purchase Order;

Excluded Terms has the meaning given by clause 1.4;

Free Issue Materials means any materials, equipment and machinery supplied by ElectraNet for the purpose of or in connection with the Supplier supplying the Goods or Services;

Goods means:

- (a) the goods referred to on the front of the Purchase Order;
- (b) any other goods expressly or impliedly agreed to be supplied to ElectraNet by the Supplier in connection with the Purchase Order; and
- (c) any other goods supplied to ElectraNet by the Supplier, to the extent these Conditions apply to the supply of those goods;

Harmful Code means any software, computer program or other code which is harmful or disruptive to a computer system or which may allow unauthorised transmission of data to, or access to or copying of data held on, a computer system;

Intellectual Property Rights means intellectual property and rights including any copyright, trademarks, patents, designs, circuit layout rights, the right to protect confidential information, know-how and trade secrets and any application or right to apply for registration of any of those rights;

Liability means all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including legal fees and expenses on a full indemnity basis), demands, claims and proceedings of any nature;

Modern Slavery Act means the *Modern Slavery Act 2018* (Cth) including any regulations or statutory instruments relating to that legislation.

Modern Slavery Practices means all conduct or practices that would constitute:

- (a) an offence under Divisions 270 and 271 of the *Commonwealth Criminal Code* (or that would constitute an offence if the conduct or practices had occurred in Australia) including, without limitation, slavery, servitude, forced labour, human trafficking, debt bondage, slavery-like practices, forced marriage and deceptive recruiting for labour or services;
- (b) trafficking in persons, as defined in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*, done at New York on 15 November 2000 [2005] ATS 27; or
- (c) the worst forms of child labour as defined in Article 3 of the *ILO Convention* (No. 182).

Personal Information has the meaning given to that

term in the *Privacy Act 1988* (Cth);

Personnel means, in relation to a party, any employee, officer, agent, contractor or subcontractor of that party (but excluding the other party and its Personnel);

Purchase Order means a purchase order or similar formal confirmation issued by ElectraNet to the Supplier including a unique invoicing number and confirmation of the maximum authorised value of Goods or Services to be procured by ElectraNet;

Ring-Fencing Guideline means the Australian Energy Regulator's Ring-Fencing Guideline for electricity transmission made under clause 6A.21.2 of the National Electricity Rules, as that guideline applies in South Australia from time to time;

Senior Negotiators means, in respect of a party, the senior negotiator appointed by that party in accordance with clause 16.2(b) or such replacement person as notified in writing to the other party from time to time;

Services means:

- (a) the services referred to on the front of the Purchase Order;
- (b) any other services expressly or impliedly agreed to be supplied to ElectraNet the Supplier in connection with the Purchase Order; and
- (c) any other services supplied to ElectraNet by the Supplier, to the extent these Conditions apply to the supply of those services;

Site means the places and locations to be made available and any other lands and places made available to the Supplier by ElectraNet for the purpose of the Supplier performing the Services or for any other purpose under the Contract;

Supplier means the supplier referred to on the front of the Purchase Order;

Transmission Asset Access Manual means the manual maintained by ElectraNet outlining information and procedures peculiar to all substations that includes, but is not limited to, access, requirements, defining work areas, special earthing requirements and safety observers;

Transmission Lessor Corporation means the Transmission Lessor Corporation, a subsidiary of RESI Corporation established under the *Public Corporations (Transmission Lessor Corporation) Regulations 1995* (SA); and

Variation means any one or more of the following:

- (a) an increase, decrease or omission to or from any part of the Goods or Services; or
- (b) any change in the nature or character of the Goods or Services to be supplied or performed under the Contract.

18.8 Interpretation

In the Contract, unless a contrary intention is apparent:

- (a) a reference to a clause number is a reference to a clause of these Conditions;

- (b) references to natural persons include corporations and vice versa;
- (c) a provision of these Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Conditions or the inclusion of the provision in the Contract;
- (d) words such as “include” or “including” are not words of limitation;
- (e) if a party includes two or more persons, an obligation of those persons is joint and several, a right of those persons is held by each of them separately, and any other reference to that party or term is a reference to each of those persons separately;
- (f) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning; and
- (g) the plural includes the singular and vice versa.