



ASP Level 1 Authorisation Agreement

February 2021



SCOPE

This is an agreement between Ausgrid and a company or firm that has obtained *accreditation* as an *ASP/1*. It sets out the terms and conditions on which Ausgrid authorises the *ASP/1* company or firm and its employees to *work on or near Ausgrid's distribution system* and to construct and install assets that will become Ausgrid assets when they are electrified.

WARNING

It is the responsibility of the user of this document to ensure that only the current version is being used.

DOCUMENT AND AMENDMENT HISTORY

Issue No.	Date	Approved By	Summary of Changes
1	1 July 2013	Chief Engineer	Initial issue
2	17 October 2014	Chief Engineer	Added Annexure 3; Editorial changes
3	4 August 2017	Head of Asset Engineering Policy & Standards	Suspension and termination provisions, introduction of authorised field records, Security of Payments Act amends and other changes
4	5 February 2021	Head of Contract Delivery	Updates to ASP authorisation process and general updates.

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All correspondence should be directed to:
Head of Contract Delivery
Ausgrid
GPO Box 4009
SYDNEY NSW 2001

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THIS Agreement is made on the day of 20

BETWEEN

THE AUSGRID OPERATOR PARTNERSHIP, (ABN 78 508 211 731), trading as Ausgrid, a partnership carried on under that name by:

- (a) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
- (b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
- (c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
- (d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
- (e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4,

(Ausgrid)

AND

The Company or Firm Trading as an Accredited Service Provider Level 1 named in Item 1 of Annexure 1 (*ASP/1*)

Background

- A** Ausgrid operates and maintains electricity *distribution network* assets in New South Wales and supplies electricity to more than 1.7 million homes and businesses across Sydney, the Central Coast and the Hunter regions.
- B** The *ASP/1* has been *accredited* in accordance with the *Accreditation Scheme* to provide *contestable services*, including the construction or installation of underground or overhead *designed assets* required to extend Ausgrid's *distribution system* or to increase its capacity and to connect *premises* to the *distribution systems* of distributors in New South Wales.
- C** Before the *ASP/1* can *work on or near Ausgrid's distribution system*, it must be *authorised* by Ausgrid to do so.
- D** Ausgrid has agreed to *authorise* the *ASP/1* and employees and subcontractors of the *ASP/1* who are registered with the *accrediting agency* to *work on or near Ausgrid's distribution system* on the conditions set out in this agreement and the *ASP/1* has agreed to Ausgrid's conditions.
- E** The agreement also establishes the terms and conditions on which Ausgrid will *electrify* any *designed assets* constructed or installed by the *ASP/1* either as *contestable services* needed in order to *connect premises* to Ausgrid's *distribution network* or as *asset relocation works* which Ausgrid has agreed may be provided by the *ASP/1* (or both).
- F** Part A of the agreement sets out the initial and continuing conditions of *authorisation* with which the *ASP/1* must comply while the agreement is in force and (where relevant) after it expires or is terminated.
- G** Part B of the agreement sets out the terms and conditions on which Ausgrid will co-operate with the *ASP/1* in the performance of particular *projects* involving *contestable services* and *Ausgrid-funded assets works* provided by the *ASP/1* and *ancillary services* provided by Ausgrid.

Operative provisions

Part A - Conditions of continuing authorisation

1 Conditions of authorisation

1.1 All ASP/1 companies and firms to sign this agreement

Before an ASP/1 can renew an existing *authorisation*, the ASP/1 must sign this agreement.

An ASP/1 company or firm that does not have Ausgrid *authorisation* must sign this agreement before submitting an application in the form of Annexure 1 to this agreement.

1.2 Ausgrid to authorise ASP/1

To apply for *authorisation* or for an annual renewal of an existing *authorisation* the ASP/1 must submit to Ausgrid an application in the form of Annexure 1 to this agreement.

An ASP/1 will be *authorised* when:

- (a) the ASP/1 has:
 - (i) provided to Ausgrid the executed agreement;
 - (ii) provided to Ausgrid the correctly completed application in the form of Annexure 1 to this agreement;
 - (iii) provided to Ausgrid security as required by clause 1.9;
 - (iv) attended an interview with Ausgrid to discuss operational processes;
 - (v) complied with its obligations under this agreement to the extent that they needed to be performed at the application for *authorisation*; and
- (b) Ausgrid has executed this agreement and returned it to the ASP/1 together with a letter confirming *authorisation*, which execution must not be unreasonably delayed.

Where the ASP/1 has been *authorised* prior to the date of this agreement, Ausgrid will renew that *authorisation* each year provided the ASP/1 complies with the obligations set out in this agreement.

1.3 Compliance with Accreditation Scheme

The ASP/1:

- (a) undertakes that it will at all times comply with its responsibilities under the *Accreditation Scheme*;
- (b) acknowledges and agrees that if Ausgrid reasonably believes it has breached any of its responsibilities under the *Accreditation Scheme*, Ausgrid may suspend or terminate the *authorisation of the ASP/1* and its employees in accordance with clause 4, whether or not *accreditation* has not been suspended or terminated by the *accrediting agency*; and
- (c) acknowledges that if another ASP/1 company engages it to perform services as a subcontractor, the ASP/1 will remain responsible for ensuring the acts of its *authorised employees* comply with the *Accreditation Scheme*, whereas if another ASP/1 company engages individual employees of the ASP/1 to act as subcontractors but does not engage the ASP/1, that the other ASP/1 company will be responsible for the continuing *authorisation* of those employees for the term of the *subcontracts*.

1.4 Insurance

The ASP/1 warrants that:

- (a) it has obtained the insurance policies required under the *Accreditation Scheme*;
- (b) it has obtained or caused the *authorised field recorder* to effect and maintain, professional indemnity insurance in accordance with clause 2.12;
- (c) it will keep those policies current at all times until the expiry of the *defects liability period* under this agreement;
- (d) if requested by Ausgrid, it will provide evidence of the currency of those policies;
- (e) it will notify Ausgrid within one *business day* if any of the policies is cancelled or any term of any policy is changed;
- (f) it will notify Ausgrid within one *business day* of notifying its insurance company or broker of any occurrence that may give rise to a claim under any of the policies; and
- (g) its public/products liability policy cites “the electricity distributors of NSW” as interested parties.

Ausgrid may immediately suspend the ASP/1’s *authorisation* in accordance with clause 4 if:

- (h) any of the ASP/1’s insurance policies required to be held under this agreement has not been renewed or is cancelled; or
- (i) the ASP/1 has not complied with any obligation under this clause 1.4.

1.5 Annual fees

An *authorisation fee* is applicable for all accredited **companies and** individuals seeking *authorisation* or the renewal of *authorisation* for *work on or near* Ausgrid’s *distribution system*, other than *authorised field recorders* in respect of whom Ausgrid has agreed no *authorisation fee* shall be payable.

The *authorisation fee* is determined by legislation and the current fee may be ascertained by enquiry to Ausgrid or by consulting the current edition of Ausgrid’s *Connection Policy*.

1.6 Authorisation of employees and subcontractors

Provided any applicable *authorisation fee* has been paid, Ausgrid will *authorise* each employee of the ASP/1:

- (a) in accordance with Ausgrid’s procedures as they are set out from time to time in Ausgrid’s publication *ES4*; and
- (b) as soon as reasonably practicable after receiving from the employee a correctly completed and signed *Individual Agreement for Ausgrid Authorisation*.

To avoid doubt:

- (c) each of the owners and executives of an ASP/1 company requiring *authorisation* must sign an *Individual Agreement for Ausgrid Authorisation*;
- (d) the *Individual Agreement for Ausgrid Authorisation* has no expiry date and remains in effect unless, from time to time, there are changes to Ausgrid’s procedures that require employees to re-sign a new *Individual Agreement for Ausgrid Authorisation*; and
- (e) an individual’s *authorisation* will lapse unless Ausgrid has received a new, duly signed *Individual Agreement for Ausgrid Authorisation* before the requested date where the *Individual Agreement for Ausgrid Authorisation* is required to be re-signed.

1.7 Qualifications, training and conduct

The ASP/1 will ensure that no employee or subcontractor will *work on or near* Ausgrid’s *distribution system* unless that employee or subcontractor:

- (a) is currently *authorised* in accordance with clause 1.6;

- (b) holds the qualifications stipulated in Ausgrid's *ES4*; and
- (c) has completed:
 - (i) the mandatory training stipulated in the *Accreditation Scheme* as applying to the work categories for which the *ASP/1* is *accredited*;
 - (ii) training in Ausgrid's Electrical Safety Rules conducted by Ausgrid or by other training organisations on Ausgrid's behalf; and
 - (iii) all reasonable mandatory additional training and annual or other refresher training stipulated by Ausgrid from time to time, including but not limited to the training set out in *ES4*.

The *ASP/1* acknowledges that Ausgrid may:

- (d) suspend the *authorisation* of any employee or subcontractor of the *ASP/1* whose training is not current and in accordance with Ausgrid's training requirements current at the relevant time as required by this clause; and
- (e) require the *ASP/1* to prevent any employee or subcontractor whose *authorisation* is not current from *working on or near Ausgrid's distribution system*.

1.8 Annual renewal of authorisation and training

Where the *ASP/1* wishes to renew its authorisation, it:

- (a) will ensure that it, and each of its employees and (where relevant) subcontractors, annually renews all training and competency requirements for the authorisation on or before the due date; and
- (b) will not permit any employee or subcontractor whose *authorisation* is not current to *work on or near Ausgrid's distribution system* or on any *designed asset*.

1.9 Security

It is a condition of *authorisation* that the *ASP/1*:

- (a) provides Ausgrid with the security stipulated in clause 6.1 of this agreement; and
- (b) maintains that security and obtains and maintains any further security required by Ausgrid in accordance with clause 6.1 while this agreement is in force.

1.10 ASP/1's acknowledgements

The *ASP/1* acknowledges and agrees that:

- (a) it must ensure that each employee and subcontractor makes arrangements for annual training well in advance of the due date for renewal; and
- (b) Ausgrid is entitled to terminate this agreement or suspend the *authorisation* of the *ASP/1* or any of its employees or subcontractors who have failed to comply with Ausgrid's requirements for renewal of authorisation in accordance with clause 4 and may do so despite the fact that termination or suspension may result in the *ASP/1* breaching any contract for *contestable services* between the *ASP/1* and the *ASP/1's principal*.

1.11 Obligations under this clause are continuing obligations

The obligations under this clause 1 continue throughout the life of this agreement and are preconditions to its renewal year by year.

2 Working on or near Ausgrid's distribution system

2.1 Ausgrid's standards and other requirements

Whenever it engages in *contestable services*, the *ASP/1* will comply and will ensure that all employees and subcontractors comply at all times with all applicable provisions of:

- (a) Ausgrid's Electrical Safety Rules;
- (b) Ausgrid's Network Standards;
- (c) Ausgrid's Electricity Standards;
- (d) Ausgrid's /Electricity Network Safety Management System;
- (e) any other Ausgrid requirement the subject of a Customer Installation Advice, Safety Alert or General Information Notice posted on Ausgrid's website;
- (f) the Service and Installation Rules of New South Wales (where relevant);
- (g) the *certified design* applicable to a particular *project* involving *contestable services* provided by the *ASP/1* (as amended and re-certified from time to time);
- (h) all requirements stated in the *design information* relating to the *certified design*;
- (i) where they are relevant to the *designed assets*, any conditions of consent imposed in relation to a development or proposal under the Environmental Planning and Assessment Act (NSW) 1979, whether by:
 - (i) a local council or other consent authority;
 - (ii) Ausgrid or other determining authority; or
 - (iii) both of the above;
- (j) the *laws* relating to performing works in, on or over a road, including but not limited to obtaining the roads authority's consent to do such works and complying with the roads authority's conditions of consent;
- (k) the *laws* relating to the protection of the *environment* and the control of environmental pollution;
- (l) the *energy laws*;
- (m) the *work health and safety legislation*;
- (n) the provisions of clauses 2.2 to 2.12 of this agreement;
- (o) Part B of this agreement;
- (p) in respect of an *authorised field recorder* engaged by the *ASP/1*, the *competency requirements*; and
- (q) all other *laws* applicable to the performance of *contestable services* by the *ASP/1*.

2.2 ASP/1's acknowledgements

The *ASP/1* acknowledges that it must comply with Ausgrid's requirements as set out in this agreement and the documents referred to in this agreement and that a breach of any of the requirements of clause 2, including a breach by an employee or subcontractor, may have the following consequences.

- (a) A breach of any of the requirements of clause 2.1, including a breach by an employee or subcontractor, may lead to:
 - (i) an order to stop work on *contestable services* and/or *Ausgrid-funded assets*; and

- (ii) in the case of a *serious safety breach*, suspension of the *ASP/1's authorisation* and/or that of any of its employees or subcontractors in accordance with clause 4.

This clause applies even if the safety breach is discovered after the *defects liability period* has expired.

- (b) If Ausgrid requires, on reasonable safety grounds, that the *ASP/1* remove an employee or subcontractor from a workplace, the *ASP/1* will ensure that the employee or subcontractor takes no further part in *contestable services* and *Ausgrid-funded assets* at any workplace under the *ASP/1's* control unless and until Ausgrid, acting reasonably, is satisfied that all grounds for concern with the conduct of the employee or subcontractor have been removed.
- (c) The *ASP/1* acknowledges that:
 - (i) failure to comply with the requirements of clause 2 may have an adverse effect on the *ASP/1's* grading; and
 - (ii) a serious breach or repeated breaches of clause 2 may lead to the refusal or withdrawal of *accreditation* by the *accrediting agency*, which will in turn lead automatically to the suspension of *authorisation* in accordance with clause 4.

2.3 Work Health and Safety

When working on *contestable services* and *Ausgrid-funded assets* the *ASP/1* is required to comply with the relevant parts of Ausgrid's safety management system, electrical safety rules and other relevant policies.

The *ASP/1* is responsible for, and has control over, all aspects of health and safety for, or in connection with, the *contestable services* including ensuring the management and control of all safety hazards and risks, including undertaking a complete review and assessment of any hazards and risks associated with the authorised works and identifying and implementing appropriate measures to control all such hazards and risks.

The *ASP* must provide a system of safety documentation and incident reporting in order to maintain a safe workplace. This requirement includes that the hazard and risk control assessment carried out by the *ASP/1* before commencing authorised work be documented in the form of a Safe Work Method Statement (**SWMS**) and Job Site Risk Assessment.

Ausgrid may rely on the information the *ASP/1* may provide to discharge its obligations under the *work health and safety legislation* and facilitate consultation, cooperation and coordination with other duty holders the *work health and safety legislation* (including other accredited service providers). The *ASP/1* will at all times:

- (a) comply with its obligations under work health and safety legislation;
- (b) ensure that its employees comply at all times with their obligations under those *laws*;
- (c) ensure that its subcontractors comply with their obligations under those *laws* at all times the subcontractor engages in work relating to *contestable services* and the *Ausgrid-funded assets works* provided by the *ASP/1*;
- (d) ensure that its employees and subcontractors comply with the *SWMS*;
- (e) ensure appropriate arrangements are in place to provide for and maintain all necessary training, instruction and supervision to persons performing work in connection with the *contestable services*, including all safety and competency training required under the *work health and safety legislation* and as reasonably requested by Ausgrid;
- (f) provide its employees and subcontractors with all necessary safety equipment and personal protective equipment and ensure that at all times, every employee and subcontractor uses that equipment as required;
- (g) draw up, maintain and comply with a site safety plan for every work site;
- (h) co-operate with any person who has obligations under the *work health and safety legislation* that overlap with the *ASP/1's* obligations;

- (i) do whatever is necessary to ensure that its employees and subcontractors remain safe when they are present at the *ASP/1's* work site or a site where the *ASP/1* is, will be or has been engaged in *contestable services*. This may include notifying and co-ordinating with:
 - (i) the *principal contractor* at any site where the *ASP/1* and/or any of its employees or contractors are working; and/or
 - (ii) any other person who has possession, management and control of the site;
- (j) do whatever is necessary to ensure that Ausgrid's employees and subcontractors remain safe when they are present at the *ASP/1's* work site or a site where the *ASP/1* is, will be or has been engaged in *contestable services*. This may include notifying and co-ordinating with Ausgrid and the person who has possession, management and control of the site;
- (k) ensure that it has a documented safety management system for undertaking work on the network;
- (l) ensure that its employees and subcontractors have copies of, and have reviewed, the relevant systems/Electrical Safety Rules of Ausgrid (refer to section 2.1);
- (m) confirm that the *ASP/1* has reviewed the relevant systems/Electrical Safety Rules, as outlined in section 2.1, and is of the opinion that the relevant systems/ Electrical Safety Rules are consistent with the *ASP/1's* arrangements for managing health and safety of the authorised works;
- (n) ensure any materials and equipment used during the performance of the contestable services are safe, and without risks to health and safety, and are used safely and appropriately;

2.4 ensure all materials and equipment are installed, erected, constructed or commissioned in such a way that does not make the materials and equipment unsafe or a risk to health and safety when used for their intended purpose. Supervision of trainees and apprentices

The *ASP/1* will ensure that no trainee or apprentice carries out:

- (a) *work on or near Ausgrid's distribution system*;
- (b) work on any *designed asset* where the work requires authorisation; or
- (c) work on any *electrical installation* (regardless of who owns or will own that *electrical installation*),

unless that work is conducted:

- (d) in accordance with Ausgrid's Electrical Safety Rules; and
- (e) under the direct, immediate and constant on-site supervision of an *authorised* person who is appropriately qualified to supervise each relevant task.

2.5 Supervision of workers who are not authorised

The *ASP/1* will ensure that every person who works in a non-electrical capacity and is not authorised (such as under boring contractors and crane drivers) are supervised by an *authorised* person at all times when they *work on or near Ausgrid's distribution system*. The use of such workers who are not authorised shall be limited to non-routine or specialist tasks.

2.6 Requirements relating to supervision

Each person who has supervisory responsibilities under clauses 2.4 and 2.5 must be designated in the *ASP/1's* daily Hazard Assessment Check Sheet as the person responsible for providing the required on-site supervision to particular trainees and apprentices and particular non-authorised workers.

The *ASP/1* must ensure that it prepares Safe Work Method Statements and Job Site Risk Assessments detailing:

- (a) the names of all trainees or apprentices working on the work site;

- (b) the names of all non-*authorised* workers *working on or near Ausgrid's distribution system*; and
- (c) the name of the *authorised* employees who have been designated to provide supervision to each trainee, apprentice and non-*authorised* worker in accordance with this clause.

The *ASP/1* will at all times comply with the relevant provisions of Ausgrid's Electrical Safety Rules, Ausgrid's Network Standard NS156, *Working Near or Around Underground Cables* and all the provisions of *ES4* that relate to the conditions on which trainees and apprentices may be permitted to *work on or near Ausgrid's distribution system*.

The *ASP/1* acknowledges a breach of its obligations under this clause is a *serious safety breach*, giving Ausgrid grounds to suspend or terminate its *authorisation* immediately and without prior notice.

2.7 Contestable services are commissioned by the person who retains the ASP/1

In this clause "commission" is used in the sense it is used in the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

The *ASP/1* acknowledges that:

- (a) the person who retains and pays the *ASP/1* to perform *contestable services* or other works or services including *Ausgrid-funded assets works* performed in respect of an *asset relocation agreement* is the person who commissions those services;
- (b) Ausgrid commissions the *Ausgrid-funded assets works* performed in respect of a *connection contract*;
- (c) in the case of *connection services*, the person who commissions the *contestable services* performed by the *ASP/1* may be a *retail customer* or *real estate developer* who seeks to connect *premises* to Ausgrid's *distribution network* or a person acting on behalf of the *retail customer* or *real estate developer*; and
- (d) where Ausgrid has consented to the relocation of existing assets and the *ASP/1* performs the necessary *asset relocation works*, the person who commissions the *asset relocation works* is the person who retains and pays the *ASP/1*.

2.8 Duties with regard to principal contractor for contestable services

Except where the person commissioning *contestable services* has appointed another *principal contractor* for a particular *project* or part of a *project* and has authorised that person to have management and control of a workplace or workplaces, it is a condition of *authorisation* under this agreement that the *ASP/1* will, for the *contestable services*:

- (a) unless another *principal contractor* has been appointed and is performing the duties of *principal contractor* at a particular workplace or particular workplaces, perform the duties of a *principal contractor* under the *work health and safety legislation* regardless of the value of the relevant work;
- (b) at all times comply with section 20 of the *Work Health and Safety Act 2011* (NSW) as the person with the management and control of the workplace, and (to avoid doubt) with all of the *ASP/1's* obligations under the *work health and safety legislation*;
- (c) to the extent for a particular *project* or part of a *project* amount to a construction project under work health and safety legislation, the *ASP/1* will be the principal contractor for the workplace or workplaces and must manage and control the *ASP/1's* workplace or workplaces as *principal contractor*; and
- (d) if another person has been appointed as a principal contractor for a particular *project* or part of a *project*, the *ASP/1* must manage and control the *ASP/1's* workplace or workplaces as though it were *principal contractor* if another *principal contractor* (although appointed) is not present at any workplace at any time or is not performing its *principal contractor* duties.

For the purposes of this section "authorise" has the same meaning as under *work health and safety legislation*.

2.9 Duties with regard to principal contractor for Ausgrid-Funded assets work

- (a) If the *ASP/1* or another person has been appointed as *principal contractor* for a particular *project* or part of a *project* and has management and control of a workplace or workplaces that includes where *Ausgrid funded assets works* are being performed in respect of a *connection contract*, Ausgrid will use its best endeavours to appoint the same *principal contractor* for those *Ausgrid funded assets works*.
- (b) If another *principal contractor* has been appointed as *principal contractor* for the *Ausgrid funded assets works* performed in respect of a *connection contract* in accordance with clause 2.9(a) above or clause 2.9(e) below, the *ASP/1* must comply with all requirements of the *principal contractor* in executing the *Ausgrid funded assets works* performed in respect of a *connection contract* and its other obligations under the agreement so as to enable the *principal contractor* to meet its obligations under the *work health and safety legislation*.
- (c) If:
- (i) Ausgrid is not able to appoint the *ASP/1* or the other *principal contractor* as the *principal contractor* for the *Ausgrid funded assets works* performed in respect of a *connection contract*; or
 - (ii) the person commissioning *contestable services* has appointed the *ASP/1* as the *principal contractor* for the workplace or part of the workplace where the contestable works are to be performed,
- without limiting or in any way affecting the *ASP/1*'s obligations under this agreement, Ausgrid engages, and the *ASP/1* accepts its engagement, as *principal contractor* for the *Ausgrid-funded assets works* performed in respect of a *connection contract* and Ausgrid authorises the *ASP/1* to have management and control of the workplace where the *Ausgrid-funded assets works* performed in respect of a *connection contract* are to be performed and to exercise such authority as is necessary to enable the *ASP/1* to discharge its responsibilities as *principal contractor* under the *work health and safety legislation* as applicable.
- (d) If the *ASP/1* is appointed as *principal contractor* for a particular *project* or part of a *project*, the *ASP/1*:
- (i) agrees that as *principal contractor*, the *ASP/1* is responsible for the *Ausgrid-funded assets works* at all times until the *Ausgrid-funded assets works* performed in respect of a *connection contract* are completed;
 - (ii) accepts that it has management and control of the workplace in respect of the *Ausgrid-funded assets works* performed in respect of a *connection contract* for the purposes of the *work health and safety legislation*;
 - (iii) must ensure that in carrying out the *Ausgrid-funded assets works* performed in respect of a *connection contract*, or causing the *Ausgrid-funded assets works* performed in respect of a *connection contract* to be carried out, it complies with all its obligations under the *work health and safety legislation*, including as *principal contractor*;
 - (iv) is responsible for all costs associated with performing the role of *principal contractor*, and
 - (v) must ensure that signs that are clearly visible from outside the area of the *Ausgrid-funded assets works* performed in respect of a *connection contract* and on which the name and contact telephone numbers (including an afterhours emergency telephone number) of the *ASP/1* are stated, are placed at each boundary of the workplace,
- unless Ausgrid engages another person or party to be the *principal contractor* under clauses 2.9(a) or 2.9(e).
- (e) Ausgrid may, at its sole discretion, notify the *ASP/1* that it has terminated the *ASP/1*'s engagement as *principal contractor* and advise the *Contractor* of the new *principal contractor* for the *Ausgrid-funded assets works* performed in respect of a *connection contract*.

- (f) If the appointment or purported appointment of the *ASP/1* or another person as the *principal contractor* in accordance with this section is not valid for any reason, the *ASP/1* agrees to perform the role of the *principal contractor* and discharge the responsibilities of the *principal contractor* under *work health and safety legislation* for that work and workplace(s) as if it had been validly appointed.

2.10 Environmental management

For each *project* involving *contestable services* the *ASP/1* must:

- (a) adopt and implement all environmental management measures set out in Appendix A to the *accrediting agency's* document *Accreditation of Providers of Contestable Services*, ("Scheme Rules"), August 2016, as amended from time to time;
- (b) adopt and implement all site specific environmental measures recommended in the *Summary Environmental Report* for each *project* and/or all conditions of consent; and
- (c) comply with the requirements of Ausgrid's network standard NS174 Environmental Procedures.

The *ASP/1* acknowledges that failure to comply with the provisions of this clause will be reflected in the evaluation and grading of its performance as an *accredited service provider* and may in the case of repeated breaches or a serious breach of any *environmental legislation* lead Ausgrid to cancel the *ASP/1's* *authorisation*.

For the purpose of this clause 2.10, "serious breach" means an act or omission that has led or in Ausgrid's reasonable opinion may lead to an offence under any *environmental legislation*.

2.11 ASP Incident Investigations

Where an *ASP* incident as referred to in the *connection policy* requires an investigation or implementation of disciplinary or corrective action, Ausgrid may recover the costs associated with these works as per the *AER* approved quoted *ancillary service fees*. The rate for this service can be found in the *connection policy*, under the 'Investigation, review and implementation of remedial actions associated with *ASP's* *connection work*' service.

Ausgrid will notify the *ASP/1* prior to incurring charges for any investigation that will attract this fee.

2.12 Professional indemnity insurance

Before engaging an *authorised field recorder*, the *ASP/1* shall effect and maintain, or cause the *authorised field recorder* to effect and maintain, professional indemnity insurance with levels of cover not less than \$2,000,000.00. The insurance shall be maintained until 6 years after the termination or end of this agreement.

3 General provisions relating to designed assets

3.1 ASP/1's warranties concerning designed assets

The ASP/1 warrants to Ausgrid that:

- (a) it will arrange payment of all Ausgrid *ancillary fees* billed to it by Ausgrid for *connection services* performed by Ausgrid in relation to *contestable services* and the construction or installation of *designed assets* by the ASP/1;
- (b) it will complete all the *designed assets* it undertakes unless prevented by a *force majeure event*;
- (c) it will provide *designed assets* that conform with the *certified design* and with Ausgrid's Network Standards;
- (d) it will use only *approved materials* in the *designed assets*;
- (e) when the *designed assets* are ready for *electrification*, they will be in all respects fit for their intended purpose and free of *major defects*; and
- (f) during the *defect liability period*, it will rectify all defects in the *designed assets* within the times stipulated in clause 12.8.

The ASP/1 acknowledges that if it fails to pay any fees billed to it in accordance with this clause, Ausgrid may recover the sum owing by recourse to the security referred to in clause 6.

3.2 Emissions and energy data under the NGER legislation

The ASP/1 and Ausgrid acknowledge and agree that, for the purposes of the *NGER legislation*:

- (a) the ASP/1 has, as between Ausgrid and the ASP/1, the greater authority to introduce and implement operating policies, environmental policies and health and safety policies in respect of the work the ASP/1 (and any sub-contractor to the ASP/1) carries out under this agreement;
- (b) without prejudice to the other provisions of this agreement, the ASP/1 has overall control over the work carried out under the agreement; and
- (c) if required under the *NGER legislation*, the ASP/1 must report the greenhouse gas emissions and the production and consumption of energy attributable to the work carried out under this agreement.

3.3 ASP/1's indemnity to Ausgrid

The ASP/1 indemnifies Ausgrid and will keep it indemnified against all damages, claims, demands, reasonable expenses (including lawyer's fees and expenses on a solicitor/client basis), all losses (including financial losses) or liabilities of any nature suffered or incurred by Ausgrid in respect of:

- (a) damage to property of Ausgrid (including but not limited to *electricity works* and the *designed assets*) resulting from an act or omission of the ASP/1;
- (b) damage, expense, loss or liability in respect of loss or damage to the property of any other person resulting from an act or omission of the ASP/1;
- (c) damage, expense, loss or liability in respect of personal injury, disease, injury or death resulting from an act or omission of the ASP/1;
- (d) any unreasonable delay caused by the ASP/1 (other than as a result of a *force majeure event* or as a result of any event beyond the control of the ASP/1) in performing the *contestable services* which causes Ausgrid to delay *electrification* of the *designed assets*;
- (e) failure by Ausgrid to perform any of its statutory duties or delay in performing them as a consequence of any act or omission of the ASP/1 or breach of this agreement by the ASP/1 in connection with *contestable services* or the *Ausgrid-funded assets*; or

- (f) damage, expense, loss or liability arising out of or as a consequence of poor quality or inaccurate field recordings prepared by an *authorised field recorder* and provided to Ausgrid in accordance with clause 17.2(l),

but the indemnity shall be reduced proportionately to the extent that the act or omission of Ausgrid or its consultants, agents or other contractors (not being employed by the *ASP/1*) may have contributed to the injury, death, loss, damage, claims demands, liabilities or reasonable expenses incurred by Ausgrid.

This clause shall not apply to:

- (g) the extent that the *ASP/1*'s liability is limited by another provision of this agreement;
- (h) exclude any other right of Ausgrid to be indemnified by the *ASP/1*.

Each party must use reasonable endeavours to mitigate any damage, expense, loss or liability it suffers or incurs.

4 Term and termination

4.1 The term of this agreement

Unless terminated at an earlier date, this agreement expires on the first anniversary of its execution unless:

- (a) the *accrediting agency* has renewed the *ASP/1's accreditation*;
- (b) the *ASP/1* applies to Ausgrid for renewal of its *authorisation* in accordance with this agreement; and
- (c) authorisation occurs in accordance with clause 1 of this agreement.

This clause does not limit any right Ausgrid may have under other clauses of this agreement to terminate the agreement.

4.2 Individual authorisation agreements

Unless terminated at an earlier date, each *Individual Agreement for Ausgrid Authorisation* has no expiry date and remains in effect provided:

- (a) the *accrediting agency* has renewed the *ASP/1's accreditation*;
- (b) the individual employee or subcontractor maintains his or her *authorisation* in accordance with Ausgrid's requirements as set out in *ES4*, including but not limited to payment of all applicable *authorisation fees*;
- (c) the employee or subcontractor has complied with all Ausgrid's conditions of *authorisation* and conditions of continuing *authorisation* as they are set out in this agreement and *ES4*; and
- (d) authorisation occurs in accordance with clause 1 of this agreement.

This clause does not limit any right Ausgrid may have under other clauses of this agreement or *ES4* to terminate an *Individual Agreement for Ausgrid Authorisation*.

4.3 Suspension by Ausgrid

Ausgrid may suspend the *ASP/1's authorisation* immediately by notice to the *ASP/1* (with immediate effect) if:

- (a) the *ASP/1* has failed to renew its *accreditation* with the *accrediting agency* on the due date;
- (b) the *ASP/1* fails to provide *additional security* required in accordance with clause 6.1 within the time stipulated in that clause;
- (c) the *ASP/1* suffers an *insolvency event*;
- (d) the *ASP/1* breaches its responsibilities under the *Accreditation Scheme*;
- (e) the *ASP/1* (or its employees or subcontractors) cause a *serious safety breach*;
- (f) the *accrediting agency* suspends or terminates the *ASP/1's accreditation*; and/or
- (g) the circumstances in clauses 1.4(g) or (h) arise.

Ausgrid may suspend an individual employee's or subcontractor's *authorisation under the Individual Agreement for Ausgrid Authorisation* immediately by notice to the individual employee or subcontractor (with immediate effect) if the individual employee or subcontractor:

- (h) has failed to renew its *accreditation* with the *accrediting agency* on the due date;
- (i) suffers an *insolvency event*;
- (j) the circumstances in clause 1.7(d) have arisen; and
- (k) the circumstances in clause 1.10(b) have arisen.

4.4 Consequences of suspension

If Ausgrid exercises its rights under this agreement to suspend the *authorisation* of the *ASP/1* Ausgrid will identify in the notice pursuant to clause 4.3:

- (a) the reasons for the suspension in the notice of suspension; and
- (b) the issues that need to be rectified and the steps to be undertaken by the *ASP/1* before the suspensions is lifted including steps necessary to prove that issues will not arise in the future.

On receipt of a notice of suspension of *authorisation* the *ASP/1* must immediately cease *working on or near* the Ausgrid *distribution system* and *distribution network*.

When the *ASP/1* considers that it has rectified the issues and undertaken the steps identified in Ausgrid's notice above it may apply in writing for the lifting of the suspension providing evidence satisfactory to Ausgrid that it has rectified the issues and undertaken the steps identified in Ausgrid's notice.

Within 10 *business days* of notification by the *ASP/1* that it considers that it has rectified the issues and undertaken the steps identified in Ausgrid's notice, Ausgrid must notify (in writing) the *ASP/1* that it considers that:

- (c) the *ASP/1* has rectified the issues and undertaken the steps identified in Ausgrid's notice and Ausgrid hereby lifts the suspension; or
- (d) Ausgrid is not satisfied that the *ASP/1* has rectified the issue and undertaken the steps identified in Ausgrid's notice, setting out in what respects the *ASP/1* has failed, and the provisions of this clause 4.4 will, without prejudice to Ausgrid's rights under clause 4, reapply until Ausgrid is satisfied and the suspension is lifted.

If the cause of the suspension is the suspension or termination of the *ASP/1's accreditation* by the *accrediting authority*, the suspension will not be lifted until such *accreditation* is restored, even if all other issues and steps have been rectified and undertaken.

If Ausgrid exercises its rights under this agreement to suspend the *authorisation* of the any employee or subcontractor Ausgrid will identify in the notice pursuant to clause 4.5:

- (e) the reasons for the suspension in the notice of suspension; and
- (f) the issues that need to be rectified and the steps to be undertaken by the employee or subcontractor before the suspensions is lifted including steps necessary to prove that issues will not arise in the future.

On receipt of a notice of suspension of *authorisation* the employee or subcontractor must immediately cease *working on or near* the Ausgrid *distribution system* and *distribution network*.

When the employee or subcontractor considers that it has rectified the issues and undertaken the steps identified in Ausgrid's notice above the *ASP/1* may apply in writing for the lifting of the suspension providing evidence satisfactory to Ausgrid that the employee or subcontractor has rectified the issues and undertaken the steps identified in Ausgrid's notice.

Within 10 *business days* of notification by the *ASP/1* that it considers that the employee or subcontractor has rectified the issues and undertaken the steps identified in Ausgrid's notice, Ausgrid must notify (in writing) the *ASP/1* that it considers that the employee or subcontractor:

- (g) has rectified the issues and undertaken the steps identified in Ausgrid 's notice and Ausgrid hereby lifts the suspension; or
- (h) Ausgrid is not satisfied that the employee or subcontractor has rectified the issues and undertaken the steps identified in Ausgrid's notice, setting out in what respects the employee or subcontractor has failed and the provisions of this clause 4.4 will, without prejudice to Ausgrid 's rights under clause 4, reapply until Ausgrid is satisfied and the suspension is lifted.

4.5 Termination by Ausgrid

Ausgrid may terminate this agreement immediately by notice to the *ASP/1* (with immediate effect) if the *ASP/1*:

- (a) has failed to lift a suspension of its *authorisation* pursuant to clause 4.3 in accordance with clause 4.4 within 90 days after notice of the suspension by Ausgrid; or
- (b) suffers an *insolvency event*.

Ausgrid may terminate an Individual Agreement for Ausgrid Authorisation immediately by notice to the individual employee or subcontractor (with immediate effect) if the individual employee or subcontractor:

- (c) has failed to lift a suspension of its *authorisation* pursuant to clause 4.3, in accordance with clause 4.4, within 90 days after notice of the suspension by Ausgrid; or
- (d) suffers an *insolvency event*.

4.6 Consequences of termination

If Ausgrid exercises its right to terminate this agreement Ausgrid will identify the reasons for the termination in the notice of termination.

On receipt of a notice of termination of this agreement the *ASP/1* must immediately cease *working on or near* the Ausgrid *distribution system* and *distribution network*.

The *ASP/1* can only reapply for authorisation in accordance with clause 1 after 12 months from the date of termination. Any reapplication must provide evidence that the reasons for the termination have been addressed and are unlikely to occur in the future.

If Ausgrid exercises its right to terminate an *Individual Agreement for Ausgrid Authorisation* Ausgrid will identify the reasons for the termination in the notice of termination.

On receipt of a notice of termination of this agreement the employee or the subcontractor must immediately cease *working on or near* the Ausgrid *distribution system* and *distribution network*.

The employee or subcontractor can only reapply for authorisation in accordance with clause 1 after 12 months from the date of termination. Any reapplication must provide evidence that the reasons for the termination have been addressed and are unlikely to occur in the future.

4.7 Termination of *Ausgrid-funded assets works*

If Ausgrid exercises its rights to terminate the *ASP/1*'s authorisation or this agreement, the agreement to do any *Ausgrid-funded assets work* is also terminated.

On such termination the *ASP/1* shall:

- (a) secure the *Ausgrid-funded assets*;
- (b) tidy the site and then leave the site and not be entitled to return;
- (c) immediately return any material and equipment provided by Ausgrid for incorporation into or performance of the *Ausgrid-funded assets* whether or not incorporated into the *Ausgrid-funded assets* or not; and
- (d) be entitled to payment of the *Ausgrid-funded sums* less the prices charged by other *ASP/1*s or by Ausgrid to complete the *Ausgrid-funded assets works* performed in respect of *connection contracts* (if multiple *projects*) if such sum is positive. If such sum is negative the *ASP/1* will be liable to pay such amount to Ausgrid within 10 *business days* of notification of the sum to the *ASP/1*.

Notwithstanding any provision in this agreement, Ausgrid may terminate the *ASP/1*'s obligation and entitlement to perform the *Ausgrid-funded assets works* performed in respect of a *connection contract* in respect of any *project* or *projects* at any time and for any reason by written notice to the *ASP/1* stating that it is terminating the provision of *Ausgrid-funded assets works* performed in respect of a

connection contract for convenience and identifying those *Ausgrid-funded assets works* performed in respect of a *connection contract*.

If the performance of any *Ausgrid-funded assets works* performed in respect of a *connection contract* are terminated for convenience the *ASP/1* will comply with paragraphs (a) to (c) above and be entitled to payment of that part of the *Ausgrid-funded sum* representing the value of the work done to the date of termination plus 10% of the portion of the *Ausgrid-funded sum* not expended as lost profit on the work. This payment shall be the sole remedy of the *ASP/1* for the termination of the performance of the *Ausgrid-funded assets works* performed in respect of a *connection contract*.

5 Dispute resolution

5.1 Disputes concerning authorisation, suspension or termination

If the *ASP/1* wishes to appeal to Ausgrid against a decision:

- (a) not to *authorise* any person;
- (b) to suspend or not to renew any *authorisation*; or
- (c) to terminate any *authorisation*,

the *ASP/1* may appeal in writing within 20 *business days* of being notified of the decision. The notice of appeal must:

- (d) set out the legal basis of the appeal; and
- (e) set out the facts upon which the appeal is based; and
- (f) annexe copies of correspondence and any relevant background material.

Within 20 *business days* of receipt of a notice of appeal described above Ausgrid must notify the *ASP/1* that it:

- (g) affirms its previous decision;
- (h) reverses its previous decision; or
- (i) modifies its previous decision setting out the terms of the modification.

5.2 Other disputes

Either party may notify the other of a dispute arising out of or in connection with this agreement (including in connection with a *project* involving *contestable services* (including the provision of *Ausgrid-funded assets*) provided by the *ASP/1* in relation to Ausgrid's *distribution network* or a decision that has been appealed in accordance with clause 5.1) by sending to the other a notice in writing which:

- (a) sets out the legal basis of the dispute;
- (b) sets out the facts upon which the dispute is based; and
- (c) annexes copies of correspondence and any relevant background material.

5.3 Project representatives to negotiate

The parties' *project* representatives must meet within 2 *business days* after the notice of dispute is served and attempt in good faith to resolve the dispute.

If the *project* representatives are unable to resolve the dispute within 10 *business days* after the notice is given, each party will refer the dispute to a senior officer of their organisation, who has authority to resolve the dispute or difference.

5.4 Senior officers to negotiate

The senior officers to whom the dispute is referred must meet within 5 *business days* of the referral and if necessary, at subsequent times and attempt in good faith to resolve the dispute.

If they fail to resolve the dispute within 20 *business days* of the meeting referred to in the previous paragraph, the parties must refer the dispute to mediation.

5.5 Mediation

Any dispute or difference shall be submitted to mediation in accordance with this clause, and to the extent not inconsistent with this clause, in accordance with and subject to, the Resolution Institute Mediation Rules published at the date of notification of the dispute in accordance with clause 5.2.

The parties will attempt to agree upon a mediator within 10 *business days* of the dispute being referred to mediation. If they fail to agree on a mediator within those 10 business days, the President of the Resolution Institute will appoint a Resolution Institute accredited mediator.

If the parties are unable to resolve the dispute by mediation within 2 months of its referral to mediation, either party may, after giving written notice to the other party of its intention to do so, commence litigation in respect of such dispute or difference.

5.6 Litigation

The service of the notices under clauses 5.1 (if applicable), 5.2, 5.3, 5.4 and 5.5 is a condition precedent to the commencement of any litigation proceedings in respect of the dispute.

Notwithstanding the other provisions of this clause 5, the parties must continue to perform their obligations under this agreement, subject to Ausgrid's rights under the agreement to issue a *safety direction* to the *ASP/1* to cease work at any workplace.

Nothing in this clause 5 prevents a party from seeking urgent injunctive, declaratory or other interlocutory relief from a Court.

5.7 ASP/1 to attend meetings between Ausgrid and the ASP/1's principal

If the *ASP/1* is requested to attend any meetings or mediation in relation to a dispute between Ausgrid and the *ASP/1's principal* or the person on whose behalf the *ASP/1's principal* is acting, the *ASP/1* must, at no expense to Ausgrid, attend those meetings or mediation and must, if Ausgrid requests, produce any documents relevant to the dispute.

6 Security

6.1 ASP/1 to provide bank guarantees

- (a) At or before the time it signs this agreement, the *ASP/1* must provide to Ausgrid one or more *acceptable bank guarantees* to Ausgrid in an amount equal to the *amount required* at the date of this agreement.
- (b) If at any time during the *guarantee term* the total *uncalled amount* of all *bank guarantees* provided under or in connection with this agreement is less than the *amount required* at that time:
 - i) Ausgrid may issue the *ASP/1* with a notice requiring the *ASP/1* to provide one or more further *acceptable bank guarantees* so that the total *uncalled amount* of all *bank guarantees* held by Ausgrid will equal the *required amount (additional security)*; and
 - ii) within 20 *business days* of that notice, the *ASP/1* must provide the *additional security* to Ausgrid.

Should the *additional security* not be received in accordance with the above requirements, Ausgrid reserves the right to prevent the *ASP/1* from commencing construction on any new *projects* or existing *projects* being *electrified*, until the *additional security* is received.

Subject to clause 6.3, all *bank guarantees* provided to Ausgrid under or in connection with this agreement will remain in place until the *guarantee term* expires.

6.2 Purpose of bank guarantees

The *ASP/1* and Ausgrid acknowledge and agree that each *bank guarantee* provided under or in connection with this agreement is for the purpose of securing the due and proper performance of the *ASP/1*'s obligations to Ausgrid as set out in this agreement and all the *ASP/1*'s obligations to Ausgrid under any *existing agreement*.

6.3 Bank guarantees provided under existing agreements

- (a) On and from the date of this agreement, the provisions of this clause 6 replace Ausgrid's previous requirements for the provision of security by *ASP/1s* under any *existing agreement*.
- (b) Before the parties execute this agreement, Ausgrid will review all *bank guarantees* provided to it under or in connection with any *existing agreement* (if any).
- (c) Where one or more *bank guarantees* provided under or in connection with any *existing agreement* (each an '*existing bank guarantee*') are acceptable to Ausgrid and equal to or exceed the *amount required*, then, on and from the date of this agreement:
 - i) those existing *bank guarantees* will be deemed to be *acceptable bank guarantees* provided under or in connection with this agreement;
 - ii) those existing *bank guarantees* will remain in place until the *guarantee term* expires, and Ausgrid may call on those *bank guarantees* in the circumstances contemplated by this agreement; and
 - iii) any previous agreement between the *ASP/1* and Ausgrid in respect of those *existing bank guarantees* is replaced by this agreement, except in respect of any outstanding amounts due for payment by the *ASP/1* under that previous agreement.
- (d) If Ausgrid does not approve the application of any *existing bank guarantee* to the new agreement, the *ASP/1* must obtain a new or replacement *acceptable bank guarantees* such that it complies with clause 6.1. Ausgrid will return any *existing bank guarantees* that were not approved when it receives the new or replacement *acceptable bank guarantees*.
- (e) Ausgrid will not renew the *ASP/1*'s *authorisation* until the *ASP/1* has delivered any further or replacement *bank guarantees* required in accordance with clause 6.6 and this clause 6.3.

- (f) Where the *ASP/1* has provided cash to Ausgrid under an *existing agreement*, Ausgrid will return the sum held in cash as security (less any amount to which Ausgrid is entitled under the *existing agreement*) in return for the *ASP/1* providing the *acceptable bank guarantees* as required by this agreement.

6.4 Ausgrid's right to call on a bank guarantee

- (a) If the *ASP/1*:
- (i) fails to pay Ausgrid an amount payable under this agreement (or any *existing agreement*);
 - (ii) fails to complete any *designed asset*;
 - (iii) fails to rectify any defect in a *designed asset*; or
 - (iv) is responsible for any loss or damage stipulated in clause 3.3,
- then Ausgrid may call for payment under any *bank guarantee* held by it for the purpose of paying that amount, covering its costs incurred or to be incurred in completing that *designed asset*, rectifying the defect or making good the loss or damage. In these instances, the *ASP* will be notified that Ausgrid will be taking this action.
- (b) To avoid doubt, Ausgrid may at its own discretion call upon any *bank guarantee* provided under or in connection with this agreement regardless of the date of the *bank guarantee*.
- (c) Ausgrid may call upon any or all of the *bank guarantees* provided under or in connection with this agreement even in respect of a loss or claim that occurred prior to the date of a particular *bank guarantee*.
- (d) Ausgrid's right to call on a *bank guarantee* under this agreement is without prejudice to any other rights Ausgrid may have against the *ASP/1* under this agreement, under any *existing agreement* or at law.

6.5 No steps to seek injunction

The *ASP/1* must not take any steps to seek an injunction or otherwise restrain:

- (a) the issuing bank from paying Ausgrid under a *bank guarantee*;
- (b) Ausgrid from taking any steps for the purposes of calling on a *bank guarantee*; or
- (c) Ausgrid from using the money obtained from calling on the *bank guarantee*.

6.6 Notice of call on a bank guarantee and top up requirement

Ausgrid must provide the *ASP/1* with a notice setting out the details of any call made on a *bank guarantee* within 5 *business days* of receiving payment from the issuing bank in response to the call.

In that notice Ausgrid will require the *ASP/1* to top up its *bank guarantee* to the *amount required* at the date of the notice.

6.7 Return or replacement of bank guarantees

- (a) Subject to its entitlement to exercise any rights it may still have in relation to any *bank guarantee* under this agreement, Ausgrid will return all *bank guarantees* to the *ASP/1* within 20 *business days* of any written request to do so made by *ASP/1* after the expiry of the *guarantee term*.
- (b) Subject to its entitlement to exercise any rights it may still have in relation to any *bank guarantee* under this agreement, if Ausgrid holds more than one *bank guarantee* under this agreement and during the *guarantee term* the *amount required* falls below the total *uncalled amount* by more than the *guarantee increment*, then, within 20 *business days* of any written request to do so made by *ASP/1*, Ausgrid will either:
 - i) return one or more *bank guarantees*; or
 - ii) allow the *ASP/1* to replace *bank guarantees* with *acceptable bank guarantees*,

such that the amount of all *acceptable bank guarantees* held by it under or in connection with this agreement is equal to or greater than the next *guarantee increment* above the *amount required* as at the date of the return or replacement.

Part B - Performance of Individual Projects

7 Contestable services and Ausgrid-funded assets

7.1 Ausgrid appoints a project officer

For each project in relation to which the *ASP/1* has been retained by the *ASP/1's principal* to perform *contestable services* (a **project**), Ausgrid will appoint one or more officers to liaise with the *ASP/1* regarding the *ASP/1's contestable services*, *asset relocation works* and *Ausgrid-funded assets works* and monitor performance of Ausgrid's obligations under both this agreement and the *connection contract* or *assets relocation agreement* to which the *ASP/1's contestable services*, *asset relocation works* and *Ausgrid-funded assets works* relate.

7.2 Role of project representatives

Subject to clause 7.4, all communications between the parties in relation to the *project* will be made in the first instance by and addressed to the project officer nominated in accordance with clause 7.1 and the *ASP/1's* project representative nominated in accordance with clause 7.5.

7.3 Role of Ausgrid compliance officers

Ausgrid's *compliance officers* co-ordinate *ASP/1* works from day to day and arrange access permits and the *electrification* of assets provided by *ASPs*.

Any Ausgrid *compliance officer* may at any time conduct any inspection at any workplace and may at any time give any *safety direction*, *technical direction* or *environmental direction* to the *ASP/1* or its employees or subcontractors in accordance with the requirements of clause 2.1.

7.4 Project control group

If Ausgrid, acting reasonably, considers that a project control group is needed, it may require the *ASP/1* to convene and the *ASP/1* and the *ASP/1's principal* to attend a meeting to set up the group.

The role of the project control group is to provide a forum for discussing issues of common interest in relation to the *project*.

Ausgrid's Contract Officer and an Ausgrid Compliance Officer will be members of the project control group. The *ASP/1* and the *ASP/1's principal* will each appoint one representative to the group. If the *ASP/1's principal* is not the other party to an Ausgrid *connection contract* or *assets relocation agreement*, the party to that contract or agreement will also appoint a representative to the group.

At its first meeting, the project control group will establish its own scope of activities, provided that no activity is inconsistent with any right or obligation any party may have under any contract or agreement relating to the *project*.

Any member of the project control group may withdraw from the group at any time after the first meeting by giving written notice to all the other members.

7.5 When the *ASP/1* is retained

The *ASP/1* will notify Ausgrid in writing as soon as practicable after it has been retained to perform *contestable services*, by sending Ausgrid written confirmation to the Contestable Project Co-ordinator (CPC) that includes:

- (a) the *certified* design number;
- (b) Ausgrid's project number (if available);
- (c) the name of the *ASP/1's principal*;
- (d) the location of the workplace or workplaces where the *contestable services* will be carried out;
- (e) the name and contact details of a person who will act as the *ASP/1's* project representative.

- (f) if the *certified design* includes any assets marked as *Ausgrid-funded assets*, notice of whether the *ASP/1* will construct the *Ausgrid-funded assets* for the sum marked on the *certified design*.

Within a reasonable time of receiving the above written confirmation Ausgrid will notify the *ASP/1* in writing of the following using the proforma in Annexure 4:

- (g) the Ausgrid officer(s) for the *project* including the officer who will be Ausgrid's first contact point for communications relating to the *project*;
- (h) the address for personal service referred to in clause 14.2(h);
- (i) Ausgrid's ordinary place of business referred to in clause 14.2(i);
- (j) the email addresses for service of payment claims referred to in clause 14.2(j); and
- (k) any proposed additional milestones that will constitute *reference dates*.

7.6 Relevant documents

The *ASP/1* warrants that it has read or as soon as practicable after it has been retained by the *ASP/1's principal*, it will obtain and read:

- (a) the *certified design*; and
- (b) the *connection contract* or the *assets relocation agreement* (as applicable) between Ausgrid and the *ASP/1's principal* or the person on whose behalf the *ASP/1's principal* is acting.

If the *ASP/1* considers that the *certified design* may conflict with any of the provisions of any of the above documents, it should raise the matter at the pre-construction meeting referred to in clause 8.1.

Ausgrid's determination of any matter raised by the *ASP/1* before, during or after the pre-construction meeting is final and binding on the *ASP/1*.

7.7 Ausgrid may request the ASP/1 to perform Ausgrid-funded works

The *ASP/1* acknowledges that if the *certified design* performed in respect of a *connection contract* includes any assets marked as *Ausgrid-funded assets*, the *ASP/1's principal* is required under the *connection contract* to ascertain whether the *ASP/1* is willing to construct the *Ausgrid-funded assets* performed in respect of a *connection contract* for the sum marked on the *certified design*.

The *ASP/1* and Ausgrid agree that either:

- (a) the *ASP/1* will construct the *Ausgrid-funded assets* performed in respect of a *connection contract* for the sum marked on the *certified design*; or
- (b) the *ASP/1* and Ausgrid will in good faith negotiate towards an alternative price,

the agreed sum/price being the ***Ausgrid-funded sum***.

The *ASP/1* acknowledges that if an alternative price for the *Ausgrid-funded assets* performed in respect of a *connection contract* has not been agreed within a reasonable time, Ausgrid may:

- (c) construct the *Ausgrid-funded assets* performed in respect of a *connection contract* itself; or
- (d) decide not to construct them.

Ausgrid will notify the *ASP/1* of its decision as soon as is reasonably practicable after making it.

7.8 Where the ASP/1 constructs Ausgrid-funded assets

If the *Ausgrid-funded assets* performed in respect of a *connection contract* are constructed by the *ASP/1*, the *ASP/1* will schedule its work on those assets to co-ordinate with its *contestable services* and to ensure that both are delivered in a timely manner.

7.9 Co-operation with regard to Ausgrid-funded assets

If the *Ausgrid-funded assets* performed in respect of a *connection contract* are not constructed by the *ASP/1*:

- (a) Ausgrid and the *ASP/1* must do everything necessary to ensure that the *contestable services* and the construction of the *Ausgrid-funded assets* performed in respect of a *connection contract* are co-ordinated and completed in a safe and timely manner; and
- (b) the *ASP/1* must work co-operatively with the persons constructing the *Ausgrid-funded assets* performed in respect of a *connection contract* to ensure the safety of any workplace and the timely delivery of the *Ausgrid-funded assets* performed in respect of a *connection contract* and the *contestable services*.

8 Before work commences on a new project

8.1 ASP/1 to convene a pre-construction meeting

The ASP/1 acknowledges that:

- (a) under its *connection contract* with the ASP/1's *principal* or the person for whom the ASP/1's *principal* acts, Ausgrid may impose various preconditions that must be satisfied before *contestable services* can commence; and
- (b) the ASP/1 must satisfy the provisions of this clause and clause 9 before it can commence work on any *project* involving *contestable services*.

As soon as reasonably practicable after the ASP/1's *principal* notifies the ASP/1 that it has satisfied the preconditions referred to above, the ASP/1 will convene a pre-construction meeting to be held between the ASP/1, the ASP/3 and a representative of Ausgrid on the *premises* that will be *connected* to Ausgrid's *distribution system* or the site of *asset relocation works* (whichever is applicable). The ASP/1's *principal* may, if it chooses, also attend that meeting.

The ASP/1 must give Ausgrid, the ASP/3 and the ASP/1's *principal* no less than ten *business days'* notice of the meeting and must ensure that it is scheduled for a date and time suitable to all participants.

The ASP/1 acknowledges that the meeting may not proceed if Ausgrid, acting reasonably, considers and notifies the other participants that the ASP/1's *principal* or the person on whose behalf it is acting has not satisfied the preconditions to commencement of the *contestable services*.

8.2 Documents the ASP/1 must bring to the meeting

The ASP/1 must bring to the pre-construction meeting:

- (a) the *certified design*;
- (b) *DBYD plans* obtained no more than 20 *business days* prior to the date of the meeting;
- (c) the *Summary Environmental Report*;
- (d) the ASP/1's site-specific environmental management plan;
- (e) Ausgrid's NS174C Environmental Handbook; and
- (f) the conditions of development consent (if they include conditions relevant to the *project*).

8.3 Purpose of meeting

At the pre-construction meeting, the participants will consider the *certified design* in the context of site conditions, including conditions revealed by the *DBYD plan* and the *Summary Environmental Report*, and any other issues raised before or during the meeting.

If the ASP/1 has concerns about any aspect of the *certified design* or the *DBYD plans* or any issue referred to in clause 7.6, it will raise them for discussion at the meeting.

8.4 Outcome

If as a result of the meeting:

- (a) Ausgrid, acting reasonably, considers that for environmental, technical or safety reasons, modifications have to be made to the *certified design*; or
- (b) the ASP/1, acting reasonably, considers that the *certified design* is deficient in any particular and Ausgrid, acting reasonably, agrees,

Ausgrid may impose further preconditions to the performance of any *contestable services*, provided those preconditions reasonably relate to Ausgrid's *environmental, technical or safety requirements*.

If Ausgrid does impose such preconditions, it will notify the *ASP/1* and the *ASP/1's principal* of them in writing within one *business day* of the meeting and the *ASP/1* may not commence work on the *contestable services* until:

- (c) if required, a new design has been certified or the *certified design* has been re-submitted and re-certified;
- (d) any other preconditions imposed by Ausgrid under this clause have been satisfied; and
- (e) the other requirements of this agreement relating to commencement of work have been satisfied.

8.5 Further pre-construction meeting after new design is certified

In accordance with the procedure set out in clause 8.1, the *ASP/1* must convene and the parties must attend a further pre-construction meeting after any preconditions imposed in accordance with clause 8.4 have been satisfied.

9 Critical dates

9.1 ASP/1 to submit critical dates

As soon as reasonably practicable and in any case within 10 *business days* of the meeting referred to in clause 8.1 or 8.5 (as applicable) the *ASP/1* will submit to Ausgrid a list of the following *critical dates*:

- (a) Start of *ASP/1* works;
- (b) Final Delivery of Ausgrid material;
- (c) Paperwork for electrification;
- (d) Ready for electrification; and
- (e) Electrification.

These dates will be provided to Ausgrid using the Level 1 ASP Project Planning Form published on Ausgrid's web site or provided by Ausgrid to the *ASP/1*.

The *critical dates* will form the basis of the *Table of Critical Dates* in Annexure 2 of the *connection contract* and the *ASP/1* must complete and submit the *Table of Critical Dates* in accordance with the *connection contract*.

If Ausgrid, acting reasonably, considers that the list of *critical dates* submitted by the *ASP/1* under this agreement or the *Table of Critical Dates* submitted under the *connection contract* is inadequate or incorrect in any detail or it sets out a timetable that is impossible for Ausgrid or the *ASP/1* to meet, it will return the documents to the *ASP/1* with an explanation in writing of what amendments it requires.

9.2 Commencement of work

As soon as Ausgrid, acting reasonably, is satisfied that:

- (a) the list of *critical dates* and the *Table of Critical Dates* submitted by the *ASP/1* are correct and complete;
- (b) the *ASP/1* has paid to Ausgrid all *ancillary service fees* due to date and payable by the *ASP/1* in relation to the *contestable services*; and
- (c) all *ancillary service fees* due and payable to Ausgrid by any person other than the *ASP/1* have been paid,

it will give written notice to the *ASP/1* and the *ASP/1's principal* that work on the *contestable services* and (if applicable) the *Ausgrid-funded assets* performed in respect of a *connection contract* may commence.

To avoid doubt:

- (d) *ancillary service fees* payable in respect of the *certified design* and re-certification of the *certified design* are not payable by the *ASP/1* except in accordance with a written agreement to the contrary signed by the *ASP/1* and Ausgrid; and
- (e) additional *ancillary service fees*, including fees billed to the *ASP/1*, will be incurred during the term of the contract and must be paid prior to *connection*.

9.3 Ausgrid to reserve proposed electrification date

When the *Table of Critical Dates* is adopted, Ausgrid will make a reservation for the date appearing in the table as the *proposed electrification date*.

9.4 Events affecting table of critical dates

Whenever the *ASP/1* fails to meet a *critical date* set out in the *Table of Critical Dates*, it must revise the table to show new *critical dates*. A new Level 1 ASP Project Planning Form must be completed incorporating the new *critical dates* and sent to the *ASP/1's principal* with a copy to Ausgrid.

The *ASP/1* acknowledges that where the revision affects the *proposed electrification date*, the *ASP/1's principal* must submit a written application to Ausgrid requesting Ausgrid to reserve a new *proposed electrification date*.

9.5 Revising the critical dates

The *ASP/1* acknowledges and agrees that whenever it fails to meet a *critical date* set out in the *Table of Critical Dates*:

- (a) it will revise the table to show a new *critical date* and send it to the *ASP/1's principal*, with a copy to Ausgrid; and
- (b) where the revision affects the *proposed electrification date*, the *ASP/1's principal* will submit a written application to Ausgrid (with a copy to the *ASP/1*) requesting Ausgrid to reserve a new *proposed electrification date* and listing suitable alternate dates;
- (c) Ausgrid will, subject to clause 10.3, make reasonable attempts to reserve a new *proposed electrification date* on or close to a date listed but may not be able to do so;
- (d) if it cannot reserve the date the *ASP/1's principal* has requested, Ausgrid will provide a written list of alternative dates;
- (e) in that event, the *ASP/1's principal* must respond in writing to Ausgrid, either accepting one of Ausgrid's alternative dates or proposing further dates;
- (f) when a new *proposed electrification date* has been agreed in accordance with this clause, the *ASP/1's principal* will notify the *ASP/1*, who must revise the *Table of Critical Dates* accordingly and provide a copy to Ausgrid and the *ASP/1's principal*.

9.6 ASP/1's indemnity

The *ASP/1* indemnifies Ausgrid and will keep it indemnified against any claim made on Ausgrid by a third party, arising out of any delay to the *proposed electrification date* resulting from any act or omission of the *ASP/1* under this clause 9 except to the extent that the delay results from a negligent act or omission by Ausgrid or a *force majeure event*.

10 Delay to the proposed electrification date and force majeure

10.1 Acknowledgements concerning the proposed electrification date

The ASP/1 acknowledges and agrees that:

- (a) Ausgrid may be prevented by a *force majeure event* from *electrifying* the *designed assets* on the *proposed electrification date* (as extended under clause 9.4);
- (b) In an emergency, Ausgrid may not be in a position to notify the ASP/1 of a *force majeure event* until after the time set for *electrification*;
- (c) Ausgrid may be prevented by *adverse network circumstances* from reserving a date for electrification proposed by the ASP/1's *principal*; and
- (d) Ausgrid will not *electrify* the *designed assets* on the *proposed electrification date* if either the ASP/1 or the ASP/1's *principal* has failed to comply with any of its contractual obligations that must be performed as a *precondition to electrification*.

10.2 Force majeure event

A *force majeure event* means any event outside a party's reasonable control, including:

- (a) *adverse network circumstances*, including but not limited to:
 - (i) load conditions, equipment faults, failures or major incidents in Ausgrid's *distribution system*;
 - (ii) third party damage to Ausgrid's assets;
 - (iii) safety incidents;
 - (iv) industrial action;
 - (v) delay by any telecommunications or utility company or authority to relocate or otherwise deal with their assets as contemplated in clause 7.7;
 - (vi) Ausgrid's inability to obtain appropriate equipment, including meters, substation kiosks, transformers, switchgear, other substation equipment or cables unless Ausgrid's failure to obtain the equipment arose from Ausgrid's negligence;
- (b) *adverse weather conditions*, including but not limited to storms, cyclones, fire, flood, earthquake and weather conditions that lead Ausgrid, acting reasonably, to decide in the interests of customer comfort or customer safety that it should not interrupt electricity to the *premises* of other customers in order to *electrify* the *premises*;
- (c) a delay to Ausgrid's *connection services* resulting from an act or failure to act by an authority that has rights to consultation or rights of consent in relation to Ausgrid's *augmentation works* under this agreement; and
- (d) any other event outside a party's reasonable control, including but not limited to explosion, natural disaster, sabotage, riots, malicious damage, act of a public or foreign enemy, terrorism, hostilities, invasion, war (declared or undeclared), civil war, rebellion, revolution, insurrection, military or usurped power, radioactive or toxic or dangerous chemical contamination, industrial action including strikes and boycotts, civil commotion, government directive, confiscation, nationalisation, requisition or damage to property by or under the order of any government.

10.3 Delay caused by a force majeure event

Ausgrid will not be responsible for any delay to any of Ausgrid's *connection services* or any delay to the ASP/1's *contestable services* resulting from a *force majeure event*.

11 Non-electrical works performed by another contractor

Where under the terms of its agreement with the *ASP/1's principal*, the *ASP/1* is not required to construct or perform certain works on which *designed assets* depend (including but not limited to the civil components of *electricity works*, trenches, ducts, jointing bays, retaining walls and site works (all collectively referred to as *civil works*)) then before it commences work on the *designed assets*, the *ASP/1* must satisfy itself that the *civil works* on which the *designed assets* depend are without defects and are *fit for purpose*.

The *ASP/1* acknowledges and agrees that where it does not construct or perform such works, it must ensure that its contract with the *ASP/1's principal* will give it the right to:

- (a) inspect the *civil works*;
- (b) monitor the construction or installation of the *civil works*;
- (c) ensure that all civil works comply with the *certified design*;
- (d) require that no *civil works* interfere or damage existing Ausgrid *electricity works* on site; and
- (e) require any *civil works* to be rectified if the *ASP/1*, acting reasonably, considers that they are defective or do not comply with the *certified design* or Ausgrid's technical or safety requirements.

The *ASP/1* acknowledges that as soon as it commences work on the *designed assets* to which this clause relates, then as between itself and Ausgrid, it will bear the risk of defects in the works on which the *designed assets* depend and will be responsible to Ausgrid for remedying any defect in those works.

The *ASP/1* further acknowledges that if it does not remedy any defect in those works, Ausgrid may recover the cost of remediation by calling on the *bank guarantee* referred to in clause 6.

12 Construction of designed assets

12.1 Ausgrid may supply materials at the ASP/1's request and cost

If requested by the *ASP/1*, Ausgrid may supply to the *ASP/1* equipment which Ausgrid has approved for use in relation to *designed assets* and which Ausgrid utilises in the ordinary course of its business.

Unless otherwise agreed, the *ASP/1* is required to pay for any such equipment.

12.2 Supply of materials required by Ausgrid at Ausgrid's cost

Ausgrid may require the *ASP/1* to use, for the purpose of *designed assets*, certain equipment (the **Ausgrid material**) that Ausgrid will supply at no additional cost to the *ASP/1's principal* or the *ASP/1*.
Ausgrid material:

- (a) remains the property of Ausgrid at all times; and
- (b) will be unavailable if six months have elapsed from the date on which Ausgrid has notified the *ASP/1* that the *Ausgrid material* is available.

Ausgrid gives no undertaking as to when any substitute material can be provided after this period has elapsed.

In respect of any *Ausgrid material* to which this clause applies, Ausgrid will not be liable to the *ASP/1* for any loss or damage arising from:

- (c) any delay in the supply of *Ausgrid material*; or
- (d) any mis-description of the equipment or quantities in the purchase order for the *Ausgrid material submitted* by the *ASP/1*,

except to the extent that the delay or error results from a negligent act or omission by Ausgrid.

12.3 Title and risk

Title in all *Ausgrid material* supplied under clause 12.2 remains at all times with Ausgrid and does not pass to the *ASP/1* at any time.

The risk in respect of all *Ausgrid material* passes to the *ASP/1* when the *ASP/1* takes delivery of it.

12.4 Storage of equipment

If the *Ausgrid material* is stored by the *ASP/1* prior to installation or use, it must be stored safely, securely and in a manner that ensures its condition does not deteriorate.

12.5 Inspection

Ausgrid may inspect and examine the *ASP/1's* works and the *designed assets* on which it is or has been engaged to monitor the *ASP/1's* compliance with its obligations under this agreement and under the *accreditation scheme* and the *energy laws*.

In carrying out any such inspections, Ausgrid assumes no responsibility in relation to the design or construction of the *designed assets*. Ausgrid is not responsible for any aspect of the *designed assets* until ownership passes to it in accordance with this agreement.

In particular, but without limiting the generality of this clause, Ausgrid accepts no liability for:

- (a) identification and rectification of *defects*;
- (b) identification of any non-compliance with the *certified design*; or
- (c) errors or omissions in the *certified design*.

12.6 Notification for Inspection

The *ASP/1* will give Ausgrid at least four *business days'* written notice of the date and time of the following where applicable to any *designed assets*:

- (a) erection of any pole;
- (b) commencement of any cable laying;
- (c) commencement of any cable jointing;
- (d) proving any duct;
- (e) backfilling any trench;
- (f) installing any substation footing;
- (g) pouring any concrete;
- (h) installing any earthing system;
- (i) final substation construction or site acceptance;
- (j) testing any network asset; and
- (k) any other aspects of construction stipulated in writing by Ausgrid from time to time.

12.7 Ausgrid inspection

Ausgrid may but is not obliged to inspect any of the works referred to in clause 12.6. A decision not to inspect is without prejudice to any right or power Ausgrid may have under this agreement or at law in relation to any relevant *designed asset*.

No inspection by Ausgrid is to be construed as *approval* or acceptance of the *ASP/1's* works.

12.8 Rectification of defects

If, before *electrification* of the *designed assets* or before the expiration of the *defects liability period*, the *ASP/1* becomes aware, including by receiving notification from Ausgrid, that there is a defect in the *designed assets*, the *ASP/1* will promptly rectify that defect.

Major defects must be rectified immediately. The *ASP/1* acknowledges and agrees that *electrification* will not occur if any *major defect* identified prior to the *proposed electrification date* has not been rectified.

Minor defects must be rectified within two weeks of notification. The *ASP/1* acknowledges and agrees that *electrification* will not occur if any *minor defect* identified prior to the *proposed electrification date* has not been rectified.

The rectification work must be done in accordance with Ausgrid's requirements.

If rectification work is not commenced or is not completed by the time required by Ausgrid or where urgent action is necessary, Ausgrid may carry out the rectification work at the *ASP/1's* expense.

Ausgrid may elect to recover its costs of rectification under this clause by:

- (a) invoicing the *ASP/1* for its costs of rectification; or
- (b) if the *ASP/1* has not paid Ausgrid's invoiced costs within the period required in the invoice, drawing on the *bank guarantee* referred to in clause 6; or
- (c) offsetting the costs from any payment due to the *ASP/1*.

If Ausgrid elects to invoice the *ASP/1* in accordance with clause 12.8(b), the *ASP/1* must promptly pay the invoiced sum, which if not paid is recoverable as a debt.

If the invoiced sum is not paid within the time for payment shown on the invoice, Ausgrid may either draw on the *bank guarantee* or recover the debt by action in court.

12.9 Liabilities due to defects

The *ASP/1* indemnifies Ausgrid and will keep Ausgrid indemnified for any loss, damage, liability, claim or expense suffered by Ausgrid:

- (a) arising during the *defects liability period*; and
- (b) where circumstances giving rise to the loss, damage, liability, claim or expense occur during the *defects liability period*,

as a result of any defects in the *designed assets*, including any works not performed by the *ASP/1* for which the *ASP/1* has assumed responsibility under clause 11.

12.10 Ensure Ausgrid obtains clear title to the designed assets

Ownership of the *designed assets* will pass to the *Network Owner* when they are *electrified*.

The *ASP/1* will do all things necessary to ensure that there will be no competing claims to ownership of the *designed assets*, including but not limited to:

- (a) ensuring that appropriate transfer of title provisions are contained in its contracts with the *ASP/1's principal*, the *ASP/1's* subcontractors and any person who supplies materials or equipment to the *ASP/1* for use in the *designed assets*;
- (b) making appropriate enquiries to ensure that there are no competing claims to ownership of the *designed assets* or any component of them; and
- (c) assisting Ausgrid and the *Network Owner* to resist claims to title or interests from third parties.

12.11 Acknowledgments

The *ASP/1* acknowledges that:

- (a) any *approved materials* to be provided by Ausgrid will only be provided following notice from the *ASP/1* to Ausgrid that it requires those materials;
- (b) Ausgrid must comply with notice requirements stipulated in the *energy laws* before it is able to effect any interruption to another customer's supply that may be necessary in accordance with *the certified design*;
- (c) in the event of a failure to remedy a *major defect* promptly or failure to observe proper safety standards the *ASP/1's principal* may of its own volition or at the request of Ausgrid terminate its contract with the *ASP/1*; and
- (d) where clause 12.11(c) applies, Ausgrid may withdraw the *ASP/1's authorisation* with respect to the *contestable services* that the *ASP/1's principal* retained the *ASP/1* to perform.

12.12 PPSA

The *ASP/1* agrees that the terms of this agreement may constitute one or more *Security Interests* for the purpose of the *PPSA* and that:

- (a) to perfect any such *Security Interest* Ausgrid may register a financing statement(s) on the Personal Property Securities Register;
- (b) the *ASP/1* shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the *PPSA*;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the *PPSA* is contracted out of if that Part would apply by virtue of section 116(2) of the *PPSA*;
- (d) the *ASP/1* waives its right to receive notice of a verification statement under section 157 of the *PPSA*; and
- (e) the *ASP/1* must, promptly on request by Ausgrid, provide any such information and execute and deliver any such documents as Ausgrid may reasonably require to protect the *Security Interests* granted to Ausgrid by the *ASP/1* under or in relation to this agreement.

13 Ausgrid access to premises and site safety

For the purposes of this clause:

- (a) *premises controller* means the occupier of *premises* or if the *premises* are unoccupied, the person who has control of the *premises* whether under a construction contract or otherwise and whether or not that person is a *principal contractor* for the purposes of the *Work Health and Safety Regulation 2011* (NSW);
- (b) *premises* means any private or public land on which any *network asset* or *electrical installation* to which this agreement applies is being, will be or has been constructed;
- (c) if the *ASP/1* is not *premises controller*, it must take reasonable steps to ensure that the *premises controller* complies with this clause during construction of the *project*;
- (d) the *ASP/1* will co-operate and ensure that its employees, subcontractors and agents co-operate with Ausgrid in relation to the provision of Ausgrid's *connection services* to the owner or occupier of the *premises*; and
- (e) Ausgrid acknowledges that it has obligations under the work *health and safety legislation* and will do all things reasonably necessary to co-operate with the *premises controller* to ensure that Ausgrid's officers remain safe when they access the *premises*.

14 Payment

14.1 Payment generally

- (a) For the performance of the *Ausgrid-funded asset works* performed in respect of a *connection contract* Ausgrid will pay the *ASP/1* the *Ausgrid-funded sum*, as the *Ausgrid-funded sum* may be amended in accordance with clause 15, in accordance with this clause 14.
- (b) Ausgrid is not liable to the *ASP/1* for payment of any amount in respect of the *contestable services* or in respect of any other work or services performed by the *ASP/1* including *Ausgrid-funded assets work* performed in respect of an *asset relocation agreement* (other than *Ausgrid-funded assets work* performed in respect of a *connection contract*) whether or not the *ASP/1's principal* or the person who engaged the *ASP/1's principal* pays (either in part or full) the *ASP/1* for the *contestable services* or other work or services including *Ausgrid-funded assets work* performed in respect of an *asset relocation agreement* or is able to pay the *ASP/1* for the *contestable services* or other work or services including *Ausgrid-funded assets work* performed in respect of an *asset relocation agreement*. The *ASP/1* releases Ausgrid from any claim whether in *law*, at equity, under statute or otherwise that it may have against Ausgrid (either now or in the future) to payment in respect of the *contestable services* or other work or services including *Ausgrid-funded assets work* performed in respect of an *asset relocation agreement*.
- (c) The *ASP/1* must deliver to Ausgrid on each *reference date* a claim for a progress payment in respect of the *Ausgrid-funded sum*, as the *Ausgrid-funded sum* maybe amended in accordance with clause 15, in compliance with the requirements of this clause (**'payment claim'**). Each *payment claim* must include evidence of the amount due to the *ASP/1* and such information as Ausgrid may reasonably require and must identify the *Ausgrid-funded assets work* performed in respect of a *connection contract* carried out by the *ASP/1* to that time and its total value.
- (d) For each *payment claim* made under clause 14.1(c), the *ASP/1* must give Ausgrid (at the same time as the *payment claim* is made):
 - (i) a statutory declaration in the form of Annexure 5;
 - (ii) a duly completed and executed supporting statement in accordance with the Building and Construction Industry Security of Payment Act 1999 (NSW) (**'SOP Act'**); and
 - (iii) any other information requested by Ausgrid.
- (e) Within 10 *business days* after receipt of a *payment claim* that complies with clauses 14.1(c) and 14.1(d), Ausgrid shall assess the *payment claim* and issue to the *ASP/1* a payment schedule (**'payment schedule'**) identifying the *payment claim* to which it relates and stating the amount of the payment (if any) which is to be made by Ausgrid to the *ASP/1* or by the *ASP/1* to Ausgrid.
- (f) Ausgrid shall set out in the *payment schedule* the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the *ASP/1*, the reasons for the difference and if the difference is because the payment is withheld for any reason, the reasons for withholding payment.
- (g) If the *ASP/1* fails to make a *payment claim* under this clause 14.1, Ausgrid may nevertheless at any time issue a *payment schedule*.
- (h) Ausgrid may if the *ASP/1* fails to comply with any of its obligations under clauses 14(d) or 14(l) and has not remedied the failure, withhold the whole amount assessed by Ausgrid as payable by Ausgrid to the *ASP/1* in a *payment schedule* for the *ASP/1's* failure to comply with its obligations under clauses 14.1(d) or 14.1(l).
- (i) Ausgrid shall pay to the *ASP/1* or the *ASP/1* shall pay to Ausgrid, as the case may be, the amount shown in the *payment schedule* as due to the *ASP/1* or to Ausgrid, as the case may be (**'payment amount'**), or if no *payment schedule* has been issued, Ausgrid shall pay the amount of the *ASP/1's payment claim* (**'payment amount'**) on the due date for payment of a

payment amount. The due date for payment of a *payment amount* is 15 *business days* after the day on which the *payment claim* under clause 14.1(c) was received by Ausgrid.

- (j) A *payment amount* made pursuant to this clause 14.1 shall not prejudice the right of either party to dispute under clause 5 whether the amount of the *payment amount* is the amount properly due and payable and, on determination of the amount so properly due and payable, Ausgrid or the *ASP/1*, as the case may be, shall be liable to pay the difference between the amount of the *payment amount* and the amount so properly due and payable.
- (k) *Payment amounts* and payment of any moneys (whether under the agreement or pursuant to an adjudication determination under the *SOP Act*) shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.
- (l) The *ASP/1* must provide to Ausgrid a tax invoice in accordance with the meaning of that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) for the supply to which the *payment amount* relates within 2 days of the issue of the *payment schedule*, or if no *payment schedule* has been issued, within 2 days of the expiration of the 10 *business days* referred to in clause 14.1(e).
- (m) Ausgrid may deduct and set off from moneys due or to become due to the *ASP/1* any amount necessary to satisfy any claim or any entitlement Ausgrid may have against the *ASP/1*, whether under the agreement or otherwise, and if those moneys are insufficient Ausgrid may have recourse to the security under the agreement.

14.2 Security of payment

- (a) In determining the amounts paid previously under the agreement as required by clause 14.1, Ausgrid may include, in that amount, the following:
 - (i) any amount which has been paid to the *ASP/1* pursuant to the *SOP Act*;
 - (ii) any amount that has been the subject of a judgment or adjudication certificate within the meaning of the *SOP Act* which relates to *Ausgrid-funded assets works* performed in respect of a *connection contract*;
- (b) For the purpose of section 17(3)(b) of the *SOP Act*, the *ASP/1* chooses the Resolution Institute (or such other body that replaces the Resolution Institute) as the authorised nominating authority for receiving adjudication applications;
- (c) The *ASP/1* must, promptly and without delay, give Ausgrid a copy of any written communication of whatever nature that the *ASP/1*:
 - (i) receives from a *subcontractor* under the *SOP Act* or any other similar legislation in operation in Australia which relates to *Ausgrid-funded assets works* performed in respect of a *connection contract*;
 - (ii) gives under the *SOP Act* or any other similar legislation in operation in Australia which relates to *Ausgrid-funded assets works* performed in respect of a *connection contract*;
 - (iii) has been required to supply to a *subcontractor* under the *Contractors Debts Act 1997* (NSW) or any other similar legislation in operation in Australia setting out Ausgrid's name; or
 - (iv) gives or receives that shows an intention to suspend any *Ausgrid-funded assets works* performed in respect of a *connection contract*.
- (d) The *ASP/1* must promptly notify Ausgrid if it becomes aware that a *subcontractor* intends to exercise a statutory lien, under section 11(3) of the *SOP Act*, over unfixed plant and materials supplied by the *subcontractor* for use in carrying out *subcontractor work*.
- (e) If Ausgrid becomes aware that a *subcontractor* is entitled to suspend *subcontractor work* pursuant to the *SOP Act* or any other similar legislation in operation in Australia, Ausgrid may (in its absolute discretion) pay the *subcontractor* such money that is or may be owing to the

subcontractor in respect of *Ausgrid-funded assets works* performed in respect of a *connection contract*, and any amount paid by Ausgrid is a debt due from the *ASP/1* to Ausgrid.

- (f) If Ausgrid receives a payment withholding request from a *subcontractor* under section 26A of the *SOP Act*, Ausgrid will be entitled to withhold the amount in the request from any payment due to the *ASP/1* without any obligation on Ausgrid to consider whether the notice is valid and whether section 26B(2) of the *SOP Act* applies.
- (g) The *ASP/1* must indemnify Ausgrid against all damage, loss or liability suffered or incurred by Ausgrid (including legal costs incurred by Ausgrid on an indemnity basis) arising out of or in connection with:
 - (i) a suspension pursuant to the *SOP Act* by a *subcontractor* of *subcontractor work*;
 - (ii) a failure by the *ASP/1* to comply with this clause 14.2;
 - (iii) any lien or charge claimed over unfixed plant or equipment forming part of the *Ausgrid-funded assets works* performed in respect of a *connection contract* under section 11(3) of the *SOP Act* by a *subcontractor*;
 - (iv) any claim made by a *subcontractor* under the *Contractors Debts Act 1997* (NSW); and
 - (v) a payment withholding request being served on Ausgrid under section 26A of the *SOP Act* in respect of money that is or may become payable by Ausgrid to the *ASP/1* for *Ausgrid-funded assets works* performed in respect of a *connection contract*.
- (h) Personal delivery as referred to in section 31(1)(a) of the *SOP Act* can only be effected by delivery to Ausgrid at the address set out in this agreement or such other address notified in writing;
- (i) Ausgrid's ordinary place of business as referred to in sections 31(1)(b) and (c) of the *SOP Act* is as set out in the notice referred to in clause or if there is no address set out in the notice the address set out in this agreement or such other address notified in writing;
- (j) To serve a payment claim, as defined in the *SOP Act*, by email it must be served on the address or if more than one then all addresses notified to the *ASP/1* in accordance with clause 7.5 and will be deemed not to be served if an out of office notification is received by the *ASP/1*;
- (k) No *reference date* arises after the termination of this agreement or the termination of the provision of the *Ausgrid-funded assets works* performed in respect of a *connection contract*;
- (l) The parties agree that there is no 'contract or other arrangement' as referred to in the definition of 'construction contract' in the *SOP Act* between Ausgrid and the *ASP/1* in respect of the *contestable services* or in respect of any other work or services performed by the *ASP/1* including *Ausgrid-funded assets work* performed in respect of an *asset relocation agreement* (other than *Ausgrid-funded assets work* performed in respect of a *connection contract*);
- (m) For the purpose of this clause:
 - (i) '**subcontractor**' means any person engaged by the *ASP/1*, its subcontractors or any other person to do work which forms part of the *Ausgrid-funded assets works* performed in respect of a *connection contract*, including consultants and suppliers; and
 - (ii) '**subcontractor work**' means any work performed, or to be performed, by a *subcontractor*.

15 Variations

15.1 ASP/1 may not propose variations to Ausgrid

The ASP/1 acknowledges that:

- (a) it is not entitled to request Ausgrid to consider any variation to the *certified design*; and
- (b) all variation proposals, whether for a *major variation* or a *minor variation*, are to be made to Ausgrid in writing by the ASP/1's *principal* or the person on whose behalf the ASP/1's *principal* acts.

Ausgrid will consider a request for a *minor variation* made by the ASP/1 to the ASP/1's *principal* as a request from the ASP/1's *principal* if it is countersigned by the ASP/1's *principal* and forwarded to Ausgrid by fax or email from the office of the ASP/1's *principal*.

15.2 ASP/1's acknowledgements concerning the scope of this clause

The ASP/1 acknowledges that:

- (a) if the ASP/1's *principal* proposes a *major variation* or becomes aware that a *major variation* is required, the ASP/1's *principal* will promptly notify Ausgrid and will order the ASP/1 to suspend all work in respect of the *project* affected by that variation until Ausgrid has re-certified the design or *certified* a new design;
- (b) the *certified design* must be re-certified to record any *variation*;
- (c) it may be necessary to submit an additional *Summary Environmental Report* in relation to the *variation*;
- (d) this may affect the *critical dates*, the *Table of Critical Dates* and the *proposed electrification date*, in which case the provisions of clause 9.4 apply.

15.3 Minor variation

A *minor variation* is a variation to *certified design* made with Ausgrid's agreement before the *certified design* is amended and re-certified. *Minor variations* usually affect the *certified design* at one location only, or concern only one component or element of the *certified design*.

The ASP/1 acknowledges and agree that where the ASP/1's *principal* proposes a *minor variation*, Ausgrid, acting reasonably, may:

- (a) agree to the work proceeding, with amendments to the *certified design* being submitted for re-certification at a later date;
- (b) agree to the work proceeding with the relevant amendments to the *certified design* being recorded "as-built" in Ausgrid's GIS;
- (c) require the ASP/3 to submit an amended design for re-certification before the work proceeds;
- (d) decline the proposed *minor variation*, which it may do only on grounds that the proposal fails to comply with Ausgrid's *environmental, technical and safety requirements*; or
- (e) disagree that the proposed variation is a *minor variation* and request the ASP/1's *principal* to propose a *major variation*.

If either clause 15.3(c) or (d) applies, the ASP/1's *principal* will order the ASP/1 to suspend any *contestable services* affected by the proposed variation.

15.4 Major variation

A *major variation* is a variation to the *certified design* so substantial that no *contestable services* or *Ausgrid-funded assets works* affected by the variation may proceed until the *certified design* has been amended and re-certified or a new design has been submitted and *certified*.

15.5 Approval of Variations that affect the *Ausgrid-funded assets*

If a proposed variation (whether minor or major) adversely affects the *Ausgrid-funded assets* in the original *certified design* Ausgrid may reject the proposed variation in its absolute discretion.

15.6 Cost of Variations

Ausgrid will not be liable for the cost of any variation (whether a *minor variation* or *major variation*) except to the extent the variation results in a change to the *Ausgrid-funded assets* and Ausgrid has not rejected the variation in accordance with clause 15.5. In such circumstance Ausgrid will nominate the new *Ausgrid-funded sum* and the provisions of clause 7.7 will apply.

16 Environmental, technical and safety requirements

16.1 The ASP/1's obligations

The *ASP/1* must do everything necessary to ensure that it, its employees and subcontractors working on the *designed assets* comply with the environmental, technical and safety requirements set out in or imposed in accordance with this clause.

16.2 Electrical Safety Rules

Work on or near Ausgrid's distribution system must be done in accordance with Ausgrid's Electrical Safety Rules.

16.3 Compliance with the certified design

The *designed assets* as built must comply in all respects with the *certified design* (as amended and re-certified in accordance with the provisions of any relevant contract between Ausgrid and the *ASP/1's principal*).

16.4 Technical compliance

The *designed assets* must comply with the requirements of (as applicable):

- (a) the Service and Installation Rules of New South Wales;
- (b) the National Electricity Rules, the market operations *rules* and any applicable metrology or other procedures made under the National Electricity Rules or the market operations *rules*;
- (c) any requirements specified by Ausgrid under the Electricity Supply Act 1995, the Electricity Supply (General) Regulation 2014, the Electricity Supply (Safety and Network Management) Regulation 2014, the Electricity (Consumer Safety) Act 2004 or the Electricity (Consumer Safety) Regulation 2015;
- (d) any requirements or standards specified by Ausgrid from time to time to ensure compliance with the requirements and obligations referred to in sub-clauses (a)-(c); and
- (e) all applicable Ausgrid Network Standards.

16.5 Environmental requirements

The *ASP/1* must comply with:

- (a) the *Summary Environmental Report* and all relevant conditions of consent under the Environmental Planning and Assessment Act;
- (b) any site-specific environmental management plans; and
- (c) the requirements of Ausgrid's network standard NUS 174 Environmental Procedures, including NUS174C Environmental Handbook.

The *ASP/1* acknowledges and agrees that it must comply with any Ausgrid directives, including oral directives, concerning the management of environmental site conditions, the control of environmental emissions and pollutants and compliance with conditions of consent under Part 5 of the Environmental Planning and Assessment Act (1979). Following an oral directive, the *ASP* may request that directive from Ausgrid in writing if required.

Clause 2.9 also applies.

16.6 Premises safety and network safety

The *ASP/1* must comply and ensure that its employees and subcontractors comply with any reasonable requirement imposed by Ausgrid before or after the *connection* is *electrified* if Ausgrid becomes aware of any defect or other matter or thing that in its reasonable opinion may:

- (a) cause the *electrical installation* to be unsafe;

- (b) cause the *designed assets* not to comply with the *certified design*; or
- (c) damage Ausgrid's *distribution system* or any customer's *electrical installation* or electrical goods or equipment utilising that *electrical installation*.

16.7 Fitness for safe operation

The *electrical installation* and the *premises connection* assets must be fit to:

- (a) operate safely in accordance with the Electricity (Consumer Safety) Act 2004 (NSW) and the Electricity (Consumer Safety) Regulation 2015 (NSW);
- (b) pose no fire risk to the *environment* that surrounds the *premises*;
- (c) operate safely in accordance with *customers'* responsibilities identified in Ausgrid's Customer Installation Safety Plan and Bush Fire Risk Management Plan; both of which are published in accordance with the Electricity Supply (Safety and Network Management) Regulation 2014,

and all live parts must remain properly insulated and protected against inadvertent contact with any person.

The *electrical installation* and *premises connection assets* must also be installed so as to ensure that they cannot be used in a manner that exceeds the operating limits imposed by the relevant *certified design* or the Service and Installation Rules of New South Wales.

16.8 Termination of consumer's mains

- (a) The main switchboard and the *consumer's mains* must be compliant with the relevant standards, *fit for purpose* and ready to be energised at least 10 *business days* prior to *electrification* of the *designed assets*.
- (b) The *ASP/1* acknowledges that Ausgrid will not *electrify* any relevant substation unless the consumer's mains and the main switchboard meet condition (a) in this clause.

17 Electrification

17.1 Ausgrid will electrify the designed assets

This clause 17 does not limit or exclude the operation of any clause contained in a *connection contract* in relation to *electrification*.

Ausgrid will *electrify* the *designed assets* on the *proposed electrification date* (as adjusted in accordance with clause 9.4, if applicable) if the *ASP/1*, the *ASP/1's principal* and (if the *ASP/1's principal* is not party to a contract with Ausgrid) the person who is party to the Ausgrid *connection contract* or *assets relocation agreement* relating to the *project* have complied with all their respective contractual obligations that constitute *preconditions to electrification* or are otherwise identified as a requirement for *electrification*.

The *ASP/1* acknowledges that Ausgrid will not *electrify* any *designed assets* if the parties to other contracts or agreements with Ausgrid have not satisfied the *preconditions to electrification* contained in those contracts or agreements.

17.2 Preconditions to electrification

The *ASP/1* acknowledges that Ausgrid will not *electrify designed assets* unless:

- (a) where the *project* is for a multi-unit development, there is a *retail contract* in place for the *electrical installation* in the common areas being *connected*;
- (b) where the *project* is for a *retail customer*, that customer has entered into a *retail contract*;
- (c) all approvals necessary or desirable for the *designed assets* are in place;
- (d) the *designed assets* have been completed in accordance with those approvals, all applicable *laws* and this agreement;
- (e) all manifest *major defects* and *minor defects* have been rectified;
- (f) the *designed assets* are free of any *encumbrance*;
- (g) all fees and charges payable in respect of the *designed assets* have been paid to Ausgrid;
- (h) unless Ausgrid notifies you otherwise in writing, any *interest in land* required by Ausgrid has been provided in accordance with any relevant *connection contract* or *assets relocation agreement* to which Ausgrid is a party;
- (i) Ausgrid has received a *survey plan*, prepared by a *registered surveyor*, of any such *interest in land*, together with a copy of the *survey plan* containing a *red line diagram*;
- (j) the *electrical installation* to be *connected* to Ausgrid's *distribution system* complies with the requirements of the Service and Installation Rules of NSW and with AS/NZS 3000 *Electrical installations* (known as the Australian/New Zealand Wiring Rules) as amended from time to time;
- (k) the *ASP/1* has provided such test certificates as Ausgrid requires by notice in writing to the *ASP/1*;
- (l) subject to clause 17.3, as built civil and electrical drawings of the *designed assets* and any other drawings required by Ausgrid have been provided. These must include field recordings prepared by an *authorised field recorder* engaged by the *ASP/1*, of the exact locations of all constructed *designed assets*, underground cable ducts, cables and joints prepared after trenching and prior to backfilling of the trenches;
- (m) the *ASP/1* has submitted the *ASP/1 Statement of Compliance* in accordance with Annexure 3;
- (n) the *connecting customer* has submitted the *Connection Customer Statement of Payment* in accordance with the *Table of Critical Dates*.

17.3 As built drawings

The *ASP/1* must submit as built drawings of *designed assets* constructed immediately prior to *electrification* within two *business days* following *electrification*.

Part C – Interpretation and General

18 General provisions

18.1 Amendment

This agreement may only be varied or replaced by a document duly executed by both parties.

18.2 Entire understanding

No oral explanation or undertaking given by one party to another shall:

- (a) affect the meaning or interpretation of this document; or
- (b) constitute any collateral agreement or arrangement between the parties.

18.3 Governing law

This agreement is governed by the *law* of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to the agreement.

18.4 Civil Liability Act

To the maximum extent permitted by *law* the parties agree that:

- (a) the *Civil Liability Act 2002* (NSW) will not have any application to the agreement, the performance of any of the obligations of the *ASP/1* under the agreement or at *law*; and
- (b) their rights, obligations and liabilities will be those which would exist if the *Civil Liability Act 2002* (NSW) did not apply.

19 Interpretation

19.1 Definitions

Definitions are found in the Dictionary at clause 19. All words in italics are defined in the Dictionary.

19.2 Interpretation

In this agreement, unless there is an express provision to the contrary:

- (a) except for the definition of *energy laws*, departures in this agreement from terms defined in the *energy laws* are for convenience only;
- (b) words importing the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) all parts of speech apply to defined terms;
- (e) a reference to a person includes a natural person, firm, unincorporated association, corporation, government body, statutory body or authority;
- (f) a reference to a person includes its legal personal representatives, successors and assigns;
- (g) a reference to legislation, a statute, ordinance, policy, Ausgrid document, code or other *law* includes regulations, *rules* and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) a reference to The Service and Installation Rules of NSW, Ausgrid's Network Standards, Electricity Standards or Electrical Safety Rules is a reference to the version of the document in force when the reference applies;
- (i) a reference to a right includes a benefit, remedy, discretion, authority or power;
- (j) a reference to a "clause" is to a clause of this agreement;
- (k) headings are for convenience only and do not affect interpretation;
- (l) a reference to a "contract" includes an agreement and vice versa and includes any amended or varied contract or agreement.

Part D – Dictionary

20 Dictionary

Subject to clause 18.2, the following words have the following meanings:

acceptable bank guarantee means an unconditional undertaking to pay money:

- (a) issued by an Australian bank; and
- (b) substantially in the form of the *bank guarantee* at Annexure 2 to this agreement, or otherwise in form and substance satisfactory to Ausgrid.

accreditation means *approval* given by the *accrediting agency* to an *ASP* to offer and provide electrical or other services to customers who are entitled under section 31 of the Electricity Supply Act (NSW) 1995 to obtain goods and services in a competitive market.

Accreditation Scheme means the Scheme for Accreditation of Service Providers administered by the *accrediting agency* in accordance with the Electricity Supply (Safety and Network Management) Regulation 2014 (NSW).

accredited service provider means a person accredited under the *Accreditation Scheme* as an *ASP/1*, an *ASP/2* or *ASP/3*.

accrediting agency means the instrumentality of the New South Wales government that administers the *Accreditation Scheme* and has accredited the *ASP/1* to provide *contestable services* to customers or prospective customers of *DNSPs* in New South Wales.

additional security has the meaning in clause 6.1(b).

AER means Australian Energy Regulator.

amount required means, where the value (including GST) (as assessed by Ausgrid) of all *designed assets* to be provided by the *ASP/1*, whether as *contestable services* or *Ausgrid-funded assets*, in respect of all *projects*, for which the *ASP/1* has been engaged where the *defects liability period* has not expired, is:

- (a) between \$0.01 and \$500,000 - Fifty Thousand Dollars (\$50,000.00);
- (b) between \$500,000.01 and \$3,000,000.00 - One Hundred Thousand Dollars (\$100,000.00);
- (c) between \$3,000,000.01 and \$12,000,000.00 – Two Hundred Thousand Dollars (\$200,000.00);
- (d) over \$12,000,000.00 – Four Hundred Thousand Dollars (\$400,000.00).

ancillary service fees means the charges Ausgrid is permitted by the regulator to impose for performing ancillary services.

ancillary services means services determined by the regulator to be "Ancillary Services", and are performed by Ausgrid in relation to *connection services*. This includes services provided by Ausgrid to facilitate the installation of *designed assets* by an *ASP* who provides *contestable services* and to *electrify* those assets.

annexure means an annexure to this agreement.

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

approved materials include those available from Ausgrid's stores, those listed in Ausgrid Network Standards, and any other materials and equipment approved by Ausgrid. The term "approved" must

not be taken to permit substitution where materials have been approved for a specified purpose by materials approved for another purpose unless this substitution is explicitly permitted by the relevant Ausgrid design, Standard, guideline or procedure.

ASP means an *accredited service provider*.

ASP/1 means a person accredited as a level 1 *accredited service provider* in accordance with the *Accreditation Scheme* to provide *contestable services* that include construction or installation of *designed assets* forming part of a *distribution network* and for the purposes of this agreement means the *accredited service provider* level 1 who is party to the agreement.

ASP/1's principal means the person who has retained the *ASP/1* to perform *contestable services*.

ASP/2 means a person accredited as a level 2 *accredited service provider* in accordance with the *Accreditation Scheme* to provide *contestable services* that include installing a meter and constructing and connecting *service mains* to a *distribution system*.

ASP/3 means a person accredited as a level 3 *accredited service provider* in accordance with the *Accreditation Scheme* to provide *contestable services* that include the design of *designed assets* and for the purposes of this agreement means the *accredited service provider* level 3 who designed the *certified design* or designs amendments to it.

asset relocation agreement means an agreement between Ausgrid and a proponent for the removal of existing Ausgrid *electricity works* from one place and the installation of *electricity works* in another place at the proponent's expense and for the purposes of this agreement includes an agreement by Ausgrid that the *relocation works* may be performed by an *ASP/1* holding Ausgrid *authorisation*.

asset relocation works means the works relating to the relocation of existing Ausgrid *electricity works* and includes *Ausgrid-funded assets* procured pursuant to an asset relocation agreement.

Ausgrid-funded assets means *designed assets* marked by Ausgrid as assets that Ausgrid requires and will fund.

Ausgrid-funded assets works means the work in performing the construction, installation and electrification of *Ausgrid-funded assets*.

Ausgrid-funded sum has the meaning given in clause 7.7.

Ausgrid materials means materials for which Ausgrid does not impose a *connection charge* and supplies for use in the provision of *designed assets*.

Ausgrid's offered price means the price marked on the *certified design* as the sum Ausgrid is prepared to offer the *ASP/1* to construct or install the *Ausgrid-funded assets* performed in respect of a *connection contract*.

authorisation means Ausgrid's consent to the *ASP/1* and those if its employees and subcontractors who are registered with the *accrediting agency* to *work on or near* Ausgrid's *distribution system* and to construct and install *designed assets*.

authorisation fee means the annual fee imposed in accordance with the *Accreditation Scheme* for individual employees.

authorised field recorder means a person capable of conducting field recordings which meets Ausgrid's *competency requirements*.

authority means any Government or regulatory department, body, instrumentality, minister, agency or any other authority.

bank guarantee means an unconditional guarantee given by an Australian bank in a form substantially in accordance with this agreement.

business day means any week day, excluding week days that are gazetted public holidays in New South Wales and also excluding December 27, 28, 29, 30 and 31.

certified design means a design of electricity assets certified by Ausgrid prior to the publication of Ausgrid's Design Contract – Connection Assets or Ausgrid's Design Contract – Asset Relocations or,

if certified after their publication, in accordance with the relevant contract and includes a design as amended and re-certified from time to time, but does not include a design in relation to which Ausgrid has withdrawn certification.

competency requirements means the requirements for authorisation of an Authorised Field Recorder contained in Ausgrid's document *ES4* as amended from time to time.

compliance officer means an employee of Ausgrid who monitors the *ASP/1's* performance of *contestable services*, including but not limited to the performance of the *ASP/1's* obligations under this agreement and to avoid doubt, includes members of Ausgrid's Environmental Services Unit.

connecting customer means a *retail customer* or a *real estate developer*.

connection means a physical link between a *distribution system* and *premises* to allow the flow of electricity and **connect** has a corresponding meaning.

connection alteration means an alteration to an existing *connection*, including an addition, upgrade, extension, expansion, augmentation or any other kind of alteration.

connection assets means the components of a *distribution system* that are used to provide *connection services*.

connection charge means a charge imposed by Ausgrid in relation to the services it provides under a *connection contract*.

connection contract in the context of this agreement means Ausgrid's Contract for *ASP/1* Connections between Ausgrid and the *connecting customer*.

connection policy means a document approved as a *connection policy* by the *regulator* under Chapter 6, Part E of the *rules*, setting out the circumstances in which *connection charges* are payable and the basis for determining the amount of such charges. Ausgrid's *connection policy* is available on our website.

connection service means either or both, a service relating to a *new connection* for *premises* or a service relating to a *connection alteration* for *premises* provided by Ausgrid under a *connection contract*

consumer's mains means conductors between the *point of supply* and the main switchboard. *Consumer's mains* form part of an *electrical installation*.

contestable service means a *connection service* that can be provided by an *ASP* on a competitive basis and for the purpose of this agreement means such a service provided by the *ASP/1*.

critical dates means dates set out in the list of *critical dates* required under this agreement and the *Table of Critical Dates* required under the Contract for *ASP/1* Connections, as amended from time to time in accordance with this agreement and that contract.

current contract for contestable services means a contract between the *ASP/1* and a third party for the provision of *designed assets* by the *ASP/1*, under which, at the time the *amount required* is assessed, the *defects liability period* has not yet commenced or the *defects liability period* has commenced but not yet expired.

defects liability period means a period of three years from the date of *electrification* of any *designed asset* constructed or installed by the *ASP/1* under or in accordance with an *existing agreement* or this agreement.

designed assets means an asset shown in a *certified design* but does not include an asset shown in a design for which certification has been withdrawn.

distribution network means the apparatus, equipment, plant and buildings used to convey and control the conveyance of electricity between generators' points of *connection* and customers' points of *connection* excluding any customer *connection assets*. To avoid doubt, for the purposes of this agreement Ausgrid's *distribution network* includes transmission and sub-transmission assets operated by Ausgrid.

distribution system means the apparatus, equipment, plant and buildings comprising a *distribution network* and includes any customer *connection assets*.

DNSP means *distribution network service provider*.

DBYD plans includes all plans and other documents obtained from Dial Before You Dig in relation to the *premises*.

electrical installation has the meaning it is given from time to time in the Electricity (Consumer Safety) Act 2004 (NSW) and at the date of this agreement means the electrical wiring and associated equipment that are used to convey and control the conveyance of electricity within *premises* to which electricity is supplied from a *distribution system*, but does not include Ausgrid's *designed assets* or anything connected to and extending or situated beyond an electrical outlet socket.

electrical wiring work means the actual physical work of installing, repairing, altering, removing or adding to an *electrical installation* or the supervising of that work.

electricity works means any electricity power lines (including overhead and underground lines) or associated equipment or electricity structures that form part of Ausgrid's *distribution system*.

electrify means apply electric current to an *electricity work* and *electrification* has a corresponding meaning.

energy laws includes (as applicable and as amended from time to time) National energy legislation; New South Wales energy legislation; The National Energy Retail Rules and the National Electricity Rules; instruments made under the National Energy Retail Law, National Energy Retail Rules and New South Wales energy legislation; The Service and Installation Rules of New South Wales and instruments made by Ausgrid as permitted under those *rules*; AS/NZ3000 Wiring Rules; Ausgrid's Electrical Safety Rules; Ausgrid's Network Standards; and Ausgrid's plans made under the Electricity Supply (Safety and Network Management) Regulation 2014.

environment includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings and all components of the earth, including:

- (a) *land*, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in (a) to (c) above.

environmental direction means a direction given by an Ausgrid *compliance officer* to the *ASP/1* or any employee or subcontractor of the *ASP/1* in relation to the *environment* and, to avoid doubt, includes an oral direction given at a workplace without prior notice. Following an oral directive, the *ASP* may request that directive from Ausgrid in writing if required.

environmental legislation means all legislation (including subordinate legislation) of New South Wales and the Commonwealth (as amended from time to time) that relates in any way to the *environment* and to avoid doubt includes the Environmental Planning and Assessment Act (NSW) 1979 or any Act replacing that Act.

environmental requirements means a system of environmental management to be drawn up and adopted by the *ASP/1*, taking into account Ausgrid's obligations under *environmental legislation* and the Summary Environmental Report prepared on behalf of and verified by Ausgrid.

ES4 means Ausgrid's publication Network Standard NW000-S0140 *ES4 Accredited Service Provider Authorisation* (as amended from time to time).

existing agreement means any existing ES9 Agreement.

existing bank guarantee has the meaning given in clause 6.30.

fit for purpose includes but is not limited to complying with the *certified design* and Ausgrid's safety and technical requirements and being free of *major defects* and *minor defects*.

force majeure event is defined in clause 10.2.

guarantee increment means the relevant increment of the *amount required*.

guarantee term means the period of time commencing on the date of this agreement and ending on the date the last *defects liability period* expires.

Individual Agreement for Ausgrid Authorisation means the agreement entered into by Ausgrid and the employees and subcontractors working under the *ASP/1's authorisation* in accordance with the requirements of *ES4*.

insolvency event means, in respect of an entity:

- (a) the entity informs Ausgrid in writing (or creditors generally) that the entity is insolvent or is financially unable to proceed with any *project*;
- (b) a creditor executes against the entity;
- (c) a mortgagee of any of the entity's property takes possession of that property;
- (d) if the entity is a corporation:
 - it enters a deed of company arrangement with creditors;
 - a controller or administrator is appointed;
 - a winding up application is made to a court and not stayed within 14 days;
 - a winding up order is made;
 - it resolves that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
- (e) if the entity is an individual person or a partnership including an individual person, and:
 - commits an act of bankruptcy;
 - presents or is the subject of a bankruptcy petition;
 - is made bankrupt;
 - makes a proposal for a scheme of arrangement or a composition; or
 - enters into a deed of assignment or deed of arrangement, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cwth) or like provision under Australian *law*.

interests in land include leases and easements.

land means a lot in which Ausgrid is entitled to acquire a registered interest to protect *premises connection assets* placed on that lot in accordance with a deed of agreement with respect to the *premises*.

law means any legislation, delegated legislation, regulations or any *rules*, instruments, notices or directions published by an Authority including the *energy laws*.

live work means work on an electricity asset through which electric current is passing.

major defect means a defect in any *network asset* or other asset constructed or installed by the *ASP/1* which in Ausgrid's reasonable opinion is likely to make the asset unsafe to *electrify* or leave *electrified*.

major variation means a variation to the *certified design* that in Ausgrid's reasonable opinion is so substantial that no work affected by the variation may proceed until the *certified design* has been amended and re-certified or a new design has been submitted and certified.

minor defect means a defect in any *network asset* or other asset constructed or installed by the *ASP/1* which in Ausgrid's reasonable opinion requires rectification but is not a *major defect*.

minor variation means a variation that Ausgrid consents to being made before the *certified design* is amended and re-certified.

Network Owner means Alpha Distribution Ministerial Holding Corporation (ABN 67 505 337 385) and its successors and assigns, that owns the assets which form part of the *distribution system* which are operated and maintained by *Ausgrid*.

NGER legislation means the National Greenhouse and Energy Reporting Act (2007) (Cth).

payment amount has the meaning given in clause 14(i).

PCBU means *person conducting a business or undertaking* as defined in the *Work Health and Safety Act 2011* (NSW).

point of supply is the point at which Ausgrid's *distribution system* is connected to the *electrical installation* at the *premises* and to avoid doubt, is the *connection point* for the purposes of the *rules*.

PPSA means the Personal Property Securities Act 2009 (Cth) and any regulation made at any time under that Act, including the Personal Property Securities Regulations 2010 (Cth) (each as amended from time to time).

premises includes any building or part of a building, any structure or part of a structure, any *land* (whether built on or not) and any river, lake or other waters and for the purposes of this agreement means the *premises* in relation to which the *ASP/1* provides *contestable services*.

premises controller has the meaning given in clause 13.

principal means the person for whom a *connection applicant* acts as agent for the purposes of a *connection contract*.

principal contractor bears the meaning given in the *Work Health and Safety Regulation 2011* (NSW).

project has the meaning set out in clause 7.1.

proposed electrification date means the date (as adjusted in accordance with clause 9.4) on which Ausgrid has agreed to *electrify* the *designed assets*.

reference date means 5 *business days* after the:

- (a) date of the *electrification* of the last of the *Ausgrid-funded assets* performed in respect of a *connection contract*; or
- (b) if Ausgrid agrees to pay the *ASP/1* in respect of a particular *project* after the achievement of milestones but before electrification or where *electrification* may not occur in respect of the *Ausgrid-funded assets* performed in respect of a *connection contract*, achievement of the milestones as set out in the notice issued by Ausgrid in accordance with clause 7.5. **regulator** means the *Australian Energy Regulator*.

retailer means a person permitted under the *rules* to sell electricity to *retail customers*.

retail customer means a person who purchases electricity from an electricity *retailer* and includes a *non-registered embedded generator* and a *micro embedded generator*.

rules means the National Electricity Rules established (and amended from time to time) under the National Electricity Law.

Safe Work Method Statement (SWMS) has the same meaning as under *work health and safety legislation*.

safety direction means a direction given by an Ausgrid *compliance officer* to the *ASP/1* or any employee or subcontractor of the *ASP/1* in relation to workplace safety or electrical safety and, to avoid doubt, includes an oral direction given at a workplace without prior notice. Following an oral directive, the ASP may request that directive from Ausgrid in writing if required.

Security Interest has the meaning given under the *PPSA*.

serious safety breach means a breach of the *ASP/1*'s safety obligations under this contract and the *work health and safety laws* that in Ausgrid's opinion constitutes a threat to the health or safety of any person or the safe operation of Ausgrid's *distribution system*.

SOP Act has the meaning given in clause 14.1(d).

Summary Environmental Report means the assessment of the environmental impacts of a proposal conducted for the purposes of satisfying Ausgrid's obligations under section 112 of the *Environmental Planning and Assessment Act 1979 (NSW)*.

survey plan means a plan prepared by a *registered surveyor* for the purpose of registration of a lease or easement and satisfactory for registration purposes.

Table of Critical Dates means with the table referred to in clause 9.

technical direction means a direction given by an Ausgrid *compliance officer* to the *ASP/1* or any employee or subcontractor of the *ASP/1* in relation to the *designed assets* and, to avoid doubt, includes an oral direction given at a workplace without prior notice. Following an oral directive, the ASP may request that directive from Ausgrid in writing if required.

uncalled amount means the amount remaining available under all *bank guarantees* provided by the *ASP/1* to Ausgrid after deducting any amounts necessary to meet any calls Ausgrid may be entitled to make on those guarantees.

work health and safety legislation means the *Work Health and Safety Act 2011 (NSW)*, the *Work Health and Safety Regulation 2011 (NSW)*, the *Electricity (Consumer Safety) Act 2004 (NSW)* and the *Electricity (Consumer Safety) Regulation 2006 (NSW)* as amended from time to time.

work on or near Ausgrid's distribution system includes work on any part of Ausgrid's *distribution system* where there is a reasonable possibility that a part of a person's body, or any moveable object (not designed for safe use on live conductors of the same or higher voltage) that the person might be wearing, touching, or carrying may come closer to a live exposed conductor than the minimum safe working distance stipulated in Ausgrid's *Electrical Safety Rules*.

ASP/1 Company/Firm Name:

ASP/1 Accreditation Number:

This agreement is executed the day of 20

Executed for and on behalf of
Ausgrid by its authorised officer
in the presence of

.....
Signature of Witness

.....
Signature of authorised officer

.....
Name of Witness (print name)

.....
Name of authorised officer (print name)

.....
Position and sub-delegation of authorised officer

[Select appropriate execution clause]
Executed for and on behalf of
the ASP/1 in accordance with section 127(1)
of the Corporations Act 2001:

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary (print name)

.....
Name of Director (print name)

OR

Executed for and on behalf of
the ASP/1 by its Authorised Representative
in the presence of

.....
Signature of Witness

.....
Signature of authorised officer

.....
Name of Witness (print name)

.....
Name of authorised officer (print name)

.....
Position of authorised representative

A copy of the signatory's authority must be attached.

ANNEXURE 1 – Authorisation of ASP/1 Company or Firm



PART 1: Company ASP/1 Details *(Please use BLOCK LETTERS)*

Name of company/firm:	
ABN:	ASP/1 Accreditation No:
Company Postal address:	
Company E-mail:	Company Phone No:

Company Legal Representative and Primary Contact Details

Name:	Title:
Company position: <i>(Director, etc)</i>	
E-mail:	Phone no:
Signature:	Date:

PART 2: Security Details

Security – amount required (clause 6.1) (initially):	\$
Is there a current Bank Guarantee in place?	<input type="checkbox"/> YES <input type="checkbox"/> NO

PART 3: Professional Indemnity Insurance

Is evidence of current Professional Indemnity Insurance in accordance with Clause 2.12 attached?	<input type="checkbox"/> YES <input type="checkbox"/> NO
--	--

PART 4: Agreement Validity (Ausgrid Use Only)

Agreement valid until date: <i>(12 months from existing agreement expiry)</i>
--

ANNEXURE 2 – Form of Bank Guarantee

At the request of ACN (“the ASP/1”)
and in consideration of **THE AUSGRID OPERATOR PARTNERSHIP**, (ABN 78 508 211 731), trading as Ausgrid,
, a partnership carried on under that name by:
- Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
- ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
- ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
- ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
- ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.

(“Ausgrid”
accepting this undertaking in respect of the contract for Authorisation as an ASP/1
.....ACN..... (“the Bank”)
unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by
Ausgrid to a maximum aggregate sum of \$
(.....).

The undertaking is to continue until notification has been received from Ausgrid that the sum is no longer required by Ausgrid or until this undertaking is returned to the Bank or until payment to Ausgrid by the Bank of the whole of the sum or such part as Ausgrid may require.

Should the Bank be notified in writing at any time and from time to time, by Ausgrid that Ausgrid desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Bank will make the payment or payments to Ausgrid forthwith without reference to the ASP/1 and notwithstanding any notice given by the ASP/1 not to pay same.

Provided always that the Bank may at any time without being required so to do pay to Ausgrid the amount of this undertaking less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by Ausgrid and thereupon the liability of the Bank hereunder shall immediately cease.

DATED at this day of 20

ANNEXURE 3 – Pre-electrification Statement of Compliance



To be completed by the on-site representative of ASP/1 party to this Agreement.

On behalf of the ASP/1 Company identified below, I hereby state:

1. The constructed assets detailed in Certified Design No. _____

OR

the following specific parts of the Certified Design: _____

are compliant with the Certified Design and with Ausgrid’s environmental, technical and safety requirements and are safe to electrify.

2. All required pre-electrification tests and checks have been carried out,

3. All ASP staff and contractors involved with the construction have been notified that the works have been submitted for electrification, all work has ceased and future access can only be arranged with Ausgrid permission and

4. Satisfactory arrangements have been made with the ASP/1 Company’s client/s for payment upon final electrification of the works.

5. There are no unfulfilled contract obligations and no current or threatened disputes (whether under a contract or under any law) that will prevent the ASP/1 Company making final payment to its subcontractors upon electrification of the works.

(With reference to clause 1 & 4 only)

ASP/1 Company:	Customer/Client:
Representative’s name:	Representative’s name:
Representative’s position:	Representative’s position:
Signed:	Signed:
Date:	Date:

ANNEXURE 4 – Notice under clause 7.5

To: **[Insert name of ASP/1]**

In accordance with clause 7.5 Ausgrid hereby notifies:

[Insert name and contact details] and **[Insert name and contact details]** are the Ausgrid officer(s) for the *project* **[Insert name]** will be the officer who will be Ausgrid's first contact point for communications relating to the *project*;

the address for personal service referred to in clause 14.2(h) is **[Insert address]**;

Ausgrid's ordinary place of business referred to in clause 14.2(i) is **[Insert address]**;

the email addresses for service of payment claims referred to in clause 14.2(j) are both **accountspayable@ausgrid.com.au** and **contestability@ausgrid.com.au**; and

the following additional milestones will constitute *reference dates*:

[Insert milestone dates for payment in respect of a project where payment is not on electrification].

ANNEXURE 5 – Statutory Declaration

Statutory Declaration

[Name of your ASP/1]

[Name of Project]

STATUTORY DECLARATION

Statutory declaration in the matter of Contract dated [insert date] (Contract)
between

THE AUSGRID OPERATOR PARTNERSHIP, (ABN 78 508 211 731), trading as Ausgrid, , a partnership carried on under that name by:

- Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
- ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
- ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
- ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
- ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.

(Principal)

and

[insert name of your ASP/1] (Contractor)

I, [insert name], of [insert place] in the state of New South Wales, [occupation], do solemnly and sincerely declare that:

1. I have knowledge of the relevant facts and am authorised by the Contractor to make this statutory declaration on its behalf.
2. This statutory declaration is made pursuant to clause 17.18 of the Contract in relation to Payment Claim No. [insert] submitted by the Contractor on [insert date].
3. Attached to and forming part of this declaration is a completed Subcontractor's Statement given by the Contractor in its capacity as 'Subcontractor' (as that term is defined in the *Workers Compensation Act 1987* (NSW), *Payroll Tax Act 2007* (NSW) and *Industrial Relations Act 1996* (NSW)) which is a written statement:
 - (a) under the *Workers Compensation Act 1987* (NSW) (**WC Act**), section 175B, in the form and providing the detail required by that legislation;
 - (b) under the *Payroll Tax Act 2007* (NSW) (**PT Act**), Schedule 2, Part 5, in the form and providing the detail required by that legislation; and
 - (c) under the *Industrial Relations Act 1996* (NSW), section 127, in the form and providing the detail required by that legislation.
4. All remuneration payable to employees of the Contractor for the Services during the period from the date of commencement of any Works to the date of this statutory declaration has been paid.
5. All amounts properly payable by the Contractor to consultants, suppliers and subcontractors in respect of the Works have been paid.
6. The following consultants, suppliers and subcontractors have invoked the dispute resolution procedure under their subcontract or supply agreement:

Date: [insert date]



SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) **(Note 2)**

Contract number/identifier **(Note 3)**

This Statement applies for work between:/...../..... and/...../..... inclusive, **(Note 4)**

subject of the payment claim dated:/...../..... **(Note 5)**

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature Full name.....

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.