



ESSENTIAL ENERGY

# **Minor Works General Conditions - Panel Agreement Website Edition**

**Version: May 2024**

**ESSENTIAL ENERGY  
MINOR WORKS CONTRACT**

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## **GENERAL CONDITIONS**

### **1. INTERPRETATION AND DEFINITIONS**

#### **1.1 INTERPRETATION**

In these General Conditions, unless and to the extent that the context requires or indicates otherwise:

- (a) Reference to:
  - (i) one gender includes the other;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a person includes a body corporate and vice versa;
  - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
  - (v) a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (vi) a document includes all amendments or supplements to, or replacements or novations of, that document; and
  - (vii) money or \$ is to Australian dollars, unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Headings and the table of contents are for convenience only and do not form part of these General Conditions or a Purchase Order Contract or affect their interpretation.
- (d) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (e) A provision of these General Conditions or a Purchase Order Contract must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of these General Conditions or a Purchase Order Contract or the inclusion of the provision in these General Conditions or a Purchase Order Contract.
- (f) Unless these General Conditions or a Purchase Order Contract expressly provides otherwise, any and all of the Contractor's obligations under these General Conditions or a Purchase Order Contract are to be discharged by the Contractor at its own cost and expense.
- (g) Where these General Conditions or a Purchase Order Contract refers to all or part of another document not physically included with these General Conditions

or a Purchase Order Contract then the Contractor shall be deemed to have obtained a copy of that other document or relevant part thereof:

- (i) from Essential Energy; or
  - (ii) if the document is not a Project specific document, from the relevant source.
- (h) An obligation on or promise made by two or more persons binds them jointly and severally.

## 1.2 DEFINITIONS

Unless and to the extent that the context requires or indicates otherwise:

**“Approval”** means any licence, permit, consent, approval, certification, authorisation or other requirement of any person, authority, body or other organisation having jurisdiction in connection with the work under a Purchase Order Contract and/or use of the Works.

**“Australian Standards”** means the standards published by Standards Australia as amended from time to time.

**“Authority”** means any:

- (a) government department;
- (b) local government council;
- (c) government or statutory authority; or
- (d) other body or instrumentality,

which has a right to impose a requirement, which has jurisdiction, or whose approval is otherwise required in connection with the work under a Purchase Order Contract, the Site or the Works.

**“Bank Guarantee”** means an unconditional undertaking in a form and from a major Australian bank approved by Essential Energy and without an expiry date.

**“Best Industry Practice”** means construction practices which optimise efficiency, durability and performance, and minimise Environmental impacts, and are consistent with internationally recognised standards, methods, acts and the most up-to-date local and overseas practices as would be used by leading, skilled and experienced construction contractors and designers of work similar to the Works so as to satisfy the requirements of these General Conditions and a Purchase Order Contract.

**“Business Day”** means:

- (a) in the State of New South Wales, any day other than:
  - (i) a Saturday, Sunday or public holiday in the State of New South Wales; or
  - (ii) 27, 28, 29, 30 or 31 December; and

- (b) in the State of Queensland, any day other than:
  - (i) a Saturday or Sunday;
  - (ii) the 22nd, 23rd, 24th, 27th, 28th, 29th, 30th, 31st day of December or the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th or 10th day of January; or
  - (iii) a public holiday, special holiday or bank holiday in Queensland under the Holidays Act 1983 (QLD).

**“Certificate of Practical Completion”** means the certificate referred to in clause 23.2.

**“Change in Law”** has the meaning given to that expression under clause 17.2.

**“Claim”** means any request, demand or entitlement in relation to, arising out of or in connection with these General Conditions, a Purchase Order Contract, the work under a Purchase Order Contract or the Works for payment, for an Extension of Time, for damages (whether under these General Conditions, a Purchase Order Contract or otherwise, including in tort, for breach of contract or quasi contract, misrepresentation and under any statute except any part of a statute the provisions of which cannot be excluded by agreement), for unjust enrichment or restitution, or under any other principle of law or equity.

**“Contract Documents”** means the following documents:

- (a) Panel Agreement;
- (b) the General Conditions;
- (c) each individual RFQ; and
- (d) each individual Purchase Order.

**“Contractor’s Representative”** means the person identified as such in Schedule 1 of the Panel Agreement or a nominated replacement whose appointment has been approved in writing by Essential Energy.

**“Date for Practical Completion”** means, for each Purchase Order Contract, the date stated in the relevant Purchase Order Contract, as adjusted in accordance with the Purchase Order Contract.

**“Date of Practical Completion”** means, for each Purchase Order Contract, the date which Essential Energy’s Representative certifies as the date upon which Practical Completion was achieved or where another date is determined under the process referred to in clause 28 or in any litigation proceedings as the date upon which Practical Completion was achieved, that date.

**“day”** means a calendar day.

**“Defect”** means any work that is not in accordance with a Purchase Order Contract (including omissions) for which the Contractor, its employees, subcontractors or agents are responsible.

**“Defects Liability Period”** means, in respect of each Purchase Order Contract:



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- (a) the period commencing on the Date of Practical Completion and ending on the expiration of the period specified in the relevant Purchase Order Contract after the Date of Practical Completion (or if there are several such periods, the last to expire); and
- (b) in respect of Defect rectification work, any further period set under clause 19.2.

**“Environment”** means 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; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a) to (d), and **“Environmental”** has a similar meaning.

**“Essential Energy’s Project Requirements”** means Essential Energy’s requirements for the Works described in the documents attached at Schedule 2 of the Panel Agreement.

**“Essential Energy’s Representative”** means, in respect of each Purchase Order Contract, the person identified as such in the relevant Purchase Order Contract or a nominated replacement. A reference in any of the Contract Documents to “Contract Supervisor” is a reference to Essential Energy’s Representative.

**“Excepted Risk”** has the meaning set out in clause 12.6.

**“Extension of Time”** means an extension to the Date for Practical Completion.

**“Force Majeure Event”** means:

- (a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its subcontractors, or their employees or agents;
- (c) an Australia-wide or New South Wales-wide (or, to the extent the relevant works under a Purchase Order Contract are carried out or performed in the State of Queensland, then Queensland-wide) strike involving industry generally not caused or contributed to by the Contractor or its subcontractors or their employees or agents; or
- (d) act of God or natural catastrophe, such as earthquake, hurricane, tsunami, typhoon or volcanic activity.

**“Free Issue Material”** has the meaning set out in clause 12.9.

**“General Conditions”** means these general conditions of contract as may be amended or updated by Essential Energy from time to time in accordance with its terms.

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**“GST Act”** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“Intellectual Property Rights”** means any and all intellectual and industrial property rights, whether subsisting now or in the future, including rights of any kind in:

- (a) copyright;
- (b) design, patent, trademark or circuit layout (whether registered, unregistered or applied for);
- (c) trade, business, company or domain name;
- (d) know-how, inventions, processes; and
- (e) any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields,

in Australia and the world.

**“Latent Condition”** has the meaning given to that term under clause 13.2.

**“Law”** means:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, a State, a Territory or any other Authority in which the work under a Purchase Order Contract or any part thereof is being carried out;
- (b) Approvals; and
- (c) fees and charges payable in connection with the foregoing.

**“Moral Rights”** means the moral rights granted to an author under Part IX of the *Copyright Act 1968* (Cth).

**“Party”** means a party to these General Conditions.

**“Panel Agreement”** means the panel agreement entered into between Essential Energy and Contractor, which incorporates these General Conditions.

**“PPS Law”** means:

- (a) the PPSA and any regulations made under the PPSA, as amended from time to time; and
- (b) any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including, without limitation, amendments to the *Corporations Act 2001* (Cth).

**“PPSA”** means the Personal Property Securities Act 2009 (Cth).

**“Practical Completion”** means, for each Purchase Order Contract, that stage of the Works when Essential Energy’s Representative has certified that the Works are substantially complete in that the Works are reasonably fit for use except for minor Defects which Essential Energy’s Representative considers will not (and the rectification of which will not) inconvenience Essential Energy and which do not require immediate rectification and any

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other pre-condition to Practical Completion contained in these General Conditions or a Purchase Order Contract (including any requirement specified in the relevant Purchase Order Contract) is satisfied.

**“Program”** means the program supplied by the Contractor under clause 20.2 and in respect of which Essential Energy’s Representative notifies the Contractor it has no objection.

**“Project”** means, in respect of each Purchase Order Contract, the project specified in the relevant Purchase Order Contract.

**“Purchase Order”** means a purchase order issued under clause 2.4 substantially in the form of Schedule 4.

**“Purchase Order Acknowledgment”** means an unconditional and unqualified written communication by the Contractor to Essential Energy acknowledging the receipt of, and agreeing to the terms of, a Purchase Order.

**“Purchase Order Contract”** means an agreement between Essential Energy and the Contractor created under clause 13.

**“Purchase Order Price”** means, in respect of each Purchase Order Contract:

- (a) where the Purchase Order provides that a lump sum amount is payable, the lump sum stated in the Purchase Order;
- (b) where the Purchase Order provides that the Purchase Order Price is ascertained by application of a Schedule of Rates, the sum ascertained by calculating the products of the rates set out in the Schedule of Rates with the corresponding quantities performed in accordance with the Purchase Order Contract; or
- (c) where the Purchase Order provides that both a lump sum amount is payable and the Purchase Order Price is ascertained by application of a Schedule of Rates, the aggregate of the amounts referred to in paragraphs (a) and (b) above,

including provisional sums, but excluding any additions or deductions which may be required to be made under the relevant Purchase Order Contract.

**“Quotation”** has the meaning given in clause 2.3.

**“RFQ”** has the meaning given in clause 2.2.

**“Relevant Period”** means a 12 month period during the Term, the first period commencing on the date of the Panel Agreement and each subsequent period commencing on the anniversary of the date of the Panel Agreement.

**“Schedule”** means a schedule to these General Conditions.

**“Schedule of Rates”** means the schedule of rates (if any) which forms part of the relevant Purchase Order Contract in respect of the works under a Purchase Order Contract.

**“Security of Payment Act”** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

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**“Site”** means, in respect of each Purchase Order Contract, the land so described in the relevant Purchase Order Contract, and any other place where the Works are performed.

**“Site Conditions”** means physical conditions on, under, over or around the Site or characteristics of the Site or its surroundings, excluding weather conditions (and the effect of weather conditions) but including any:

- (a) adverse surface or sub-surface conditions;
- (b) artificial obstructions or unstable soil conditions which require the removal of soft spots or rock of any kind; and
- (c) contamination including prescribed waste and asbestos.

**“Special Conditions”** means the special conditions (if any) set out in an RFQ.

**“Tax Invoice”** has the meaning given to that expression under the GST Act.

**“Term”** means the period commencing on the date of the Panel Agreement and ending on the earlier of 20 years after the date of the Panel Agreement or the date this Panel Agreement is terminated in accordance with its terms.

**“Variation”** means any change in the work under a Purchase Order Contract, including an addition or omission in the scope, quality or character of the work under a Purchase Order Contract.

**“WHS Act”** means:

- (a) the Work Health and Safety Act 2011 (NSW); and
- (b) the Work Health and Safety Act 2011 (QLD).

**“WHS Regulations”** means:

- (a) the Work Health and Safety Regulations 2011 (NSW); and
- (b) the Work Health and Safety Regulations 2011 (QLD).

**“work under a Purchase Order Contract”** means, in respect of each Purchase Order Contract, the work which the Contractor is or may be required to execute under a Purchase Order Contract, including all Variations and temporary works.

**“Works”** means the whole of the work to be executed under a Purchase Order Contract, including all Variations, which is to be handed over to Essential Energy.

## **2. PROCUREMENT OF WORKS**

### **2.1 GENERAL**

Essential Energy has entered into the Panel Agreement with the Contractor to undertake projects of the nature described in the Panel Agreement.

The Contractor has represented to Essential Energy that it has the skill and expertise required to perform various services and work in conjunction with such projects.

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The Parties have negotiated, and the Panel Agreement includes, terms and rates pursuant to which the Contractor is prepared to provide services and work to Essential Energy.

Essential Energy may at any time and from time to time during the Term request an RFQ and issue a Purchase Order for works and services in accordance with clause 2 of these General Conditions.

## **2.2 RFQ**

The range of services and work which the Contractor has agreed to provide to Essential Energy is set out in Schedule 2 of the Panel Agreement.

If Essential Energy requires any of the services and work set out in Schedule 2 of the Panel Agreement, Essential Energy may at any time and from time to time during the Term issue to the Contractor a request for quotation ("**RFQ**") substantially in the form set out in Schedule 3 setting out details of the Project, the scope of services and work and other details relevant to a Purchase Order Contract in respect of which Essential Energy requires the Contractor to submit a Quotation.

Other than as expressly permitted under this clause 2, the Contractor must not undertake any Works and is not entitled to any payment from Essential Energy under or in connection with these General Conditions.

## **2.3 QUOTATION**

If the services and work the subject of the RFQ are services and work which the Contractor has represented that it can provide (including in respect of the geographic location of the services and work), then within the time specified in the RFQ, or if no time is specified, within 5 Business Days of receipt of the RFQ, the Contractor must submit a written quotation setting out:

- (a) the fee (lump sum or schedule of rates (or both), as required by the RFQ) for the performance of the services and work set out in the RFQ; and
- (b) any further details or information requested in the RFQ, ("**Quotation**").

The Quotation remains valid and binding on the Contractor until the expiry of the period referred to in clause 2.4.

## **2.4 PURCHASE ORDER**

Essential Energy may at any time within 120 days after receipt of the Quotation, issue to the Contractor a Purchase Order in respect of the services and work the subject of the RFQ.

The Purchase Order Price will be determined in accordance with the relevant RFQ and the Quotation.

## **2.5 PURCHASE ORDER CONTRACT**

Each Purchase Order will at the date of issue of that Purchase Order by Essential Energy to the Contractor, be deemed to create a separate contract between Essential Energy and the Contractor (referred to in these General Conditions as a Purchase Order Contract) comprising:

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- (a) any Special Conditions;
- (b) any other applicable terms, conditions or Schedules to the Panel Agreement (including exhibits) which are in effect as at the date of issue of the Purchase Order;
- (c) these General Conditions (including Schedules);
- (d) the relevant RFQ; and
- (e) the relevant Purchase Order.

Without limiting the above, on the issue of a Purchase Order to the Contractor:

- (f) the Contractor must carry out the work under the relevant Purchase Order Contract in accordance with the Purchase Order Contract;
- (g) Essential Energy must pay to the Contractor the Purchase Order Price, subject to and in accordance with the Purchase Order Contract; and
- (h) each of Essential Energy and the Contractor will be bound by the obligations and liabilities imposed on it by the Purchase Order Contract.

## **2.6 PURCHASE ORDER ACKNOWLEDGEMENT**

As soon as possible upon receipt of a Purchase Order (and in any event within 2 Business Days of receipt of a Purchase Order), the Contractor must issue to Essential Energy (marked to the attention of the contact person named in the relevant Purchase Order Contract) a Purchase Order Acknowledgement in respect of such Purchase Order.

The Parties acknowledge and agree that a failure by the Contractor to issue a Purchase Order Acknowledgment under this clause 2.6 will not affect the formation of a Purchase Order Contract.

## **2.6A AMENDMENTS TO THESE GENERAL CONDITIONS**

The Contractor acknowledges that amendments or updates may be made to these General Conditions from time to time and posted on Essential Energy's website (or otherwise notified by Essential Energy to the Contractor).

## **2.7 ACKNOWLEDGMENTS**

The Contractor acknowledges that:

- (a) Essential Energy will be under no obligation to issue an RFQ to the Contractor;
- (b) Essential Energy may issue to any number of third parties requests for quotation in respect of the services or work the subject of an RFQ issued under clause 2.2;
- (c) the issue of a Purchase Order pursuant to clause 2.4 in respect of services or work for a Project is not exclusive and Essential Energy may, at its option, appoint other contractors to provide services or work for that Project;

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- (d) Essential Energy does not, by inviting a Quotation from the Contractor bind itself to issuing a Purchase Order to the Contractor or accepting the Contractor's Quotation;
- (e) services and work undertaken other than pursuant to a Purchase Order shall not form a part of any services or work to be undertaken pursuant to these General Conditions and the Contractor shall not be entitled to any payment for or in connection with the same under these General Conditions;
- (f) if Essential Energy does not issue a Purchase Order in respect of the services and work the subject of an RFQ pursuant to this clause 2, the Contractor releases and discharges Essential Energy from any Claim it has or may have against Essential Energy arising out of or in connection with the RFQ, the Quotation and Essential Energy's assessment and determination of the same; and
- (g) Essential Energy does not guarantee and makes no representation that the Contractor will have an opportunity to perform any services or work under or in connection with the Panel Agreement and nor does Essential Energy make any specific quantity or monetary commitment to the Contractor other than as expressly set out in a Purchase Order Contract.

### **3. THE WORKS**

The Contractor must carry out the work under a Purchase Order Contract in a proper and workmanlike manner to the satisfaction of Essential Energy and in accordance with Best Industry Practice, in accordance with all Laws (including so as to ensure that the Works, upon Practical Completion, comply with all Laws) and otherwise in accordance with the requirements of the Panel Agreement, these General Conditions and each Purchase Order Contract.

Without limiting the above, the Contractor shall:

- (a) except where the Panel Agreement or a Purchase Order Contract states the required times, give reasonable advance notice in writing to Essential Energy of when the Contractor reasonably requires from Essential Energy any information, materials, plant, equipment or other things Essential Energy is expressly required under the Panel Agreement or a Purchase Order Contract to provide to the Contractor;
- (b) without limiting clause 12.9, inspect and check any materials, plant, equipment and other things supplied by Essential Energy with respect to the work under a Purchase Order Contract and advise Essential Energy promptly after receipt of any such materials, plant, equipment or other things which do not comply with the requirements of these General Conditions or a Purchase Order Contract;
- (c) promptly provide all information Essential Energy may request regarding the performance of the work under a Purchase Order Contract, including the preferred sequence and interface of activities, details of proposed labour, resources, materials, plant and equipment and all other matters relevant to the work under a Purchase Order Contract;
- (d) attend meetings as required by Essential Energy;

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- (e) ensure that Essential Energy, Essential Energy's Representative and other persons authorised by Essential Energy have access at all reasonable times to the Site and the work under a Purchase Order Contract (wherever it is being performed); And
- (f) ensure that all Works and any work under a Purchase Order Contract and all matters pertaining thereto are within, take place and are undertaken solely in Australia, except where it is required to arrange physical servicing of components of Essential Energy's distribution system offshore or the acquisition of replacement components is required from outside Australia.

## **4. SCHEDULE OF RATES**

This clause shall only apply where a Schedule of Rates forms part of a Purchase Order Contract.

Essential Energy's Representative is entitled to use the Schedule of Rates for the purposes of assisting Essential Energy's Representative in the valuation of any payment claim.

To the extent that the Purchase Order Price is ascertained by utilising the Schedule of Rates:

- (a) the Contractor shall have no Claim against Essential Energy, including any consultant of Essential Energy or Essential Energy's Representative, with respect to any incorrect quantity included in the Schedule of Rates or any item which should not have been included or the omission of an item which should have been included; and
- (b) where any item in the Schedule of Rates is not priced by the Contractor or where an item has been omitted from the Schedule of Rates, the Contractor shall be deemed nevertheless to have allowed for whatever remuneration it required or may require for such items within the rates or prices for other items which it priced in the Schedule of Rates.

Each item in the Schedule of Rates shall, without limiting the above, be deemed to include:

- (c) labour and all costs and on-costs in connection therewith;
- (d) materials and goods, and all costs in connection with handling, conveyance, delivery, unloading, storing, returning, packaging, hoisting and the like;
- (e) waste of material; and
- (f) establishment costs, overhead costs and profit.

## **5. ACCESS TO THE SITE**

### **5.1 ACCESS TO THE SITE**

Not later than the date stated in the relevant Purchase Order Contract, Essential Energy must grant non-exclusive access to the Site to the Contractor and the Contractor must promptly commence the performance of the Works. Any delay in giving the Contractor access to the Site will not be a breach of contract, but may entitle the Contractor to claim an Extension of Time under and subject to clause 21.



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Unless Essential Energy's Representative directs otherwise, the Contractor must only access the Site during the hours and on the days provided for in the relevant Purchase Order Contract.

Notwithstanding the above, if the Contractor has not complied with its obligations under clause 10.2 (if any), Essential Energy may refuse to give the Contractor access to the Site until the Contractor complies with the requirements of that clause.

The Contractor shall at all times be responsible for:

- (a) the means and methods of access to and from the Site; and
- (b) to the extent required to carry out the work under a Purchase Order Contract, obtaining all consents, permits and agreements from all adjoining land owners relating to access and use.

The Contractor must comply, and must ensure that its employees, subcontractors and agents comply, with all conditions and restrictions applying to the use or occupation of the Site and any adjoining land and the performance of any work on the Site.

The Contractor warrants that the Purchase Order Price and the Date for Practical Completion make sufficient allowance for the means of accessing and using the Site and land adjoining the Site and the constraints applying to such access and use and the Contractor shall have no Claim against Essential Energy in respect of or in connection with the same.

## **5.2 CO-ORDINATION**

The Contractor acknowledges that it is not entitled to possession of the Site and that Essential Energy and others may be carrying out work or performing activities on or about the Site at the same time as the Contractor is carrying out the work under a Purchase Order Contract and that the Contractor will sequence and co-ordinate the work under a Purchase Order Contract with the work and activities being carried out by any other entity on the Site.

## **6. WARRANTIES**

The Contractor represents and warrants, in addition to and without limiting any other warranty given by the Contractor pursuant to these General Conditions or a Purchase Order Contract that, at the time of providing its Quotation:

- (a) it has thoroughly examined all information and documentation made available to it by Essential Energy prior to entering into these General Conditions and prior to the issue of the relevant Purchase Order and has obtained all other information necessary to complete the work under a Purchase Order Contract and the Works;
- (b) it at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under a Purchase Order Contract;
- (c) it has thoroughly inspected the Site and its adjacent surroundings, including any prior work, existing structures or materials and physical conditions (whether naturally occurring or in consequence of human activity) on, in, over or under the Site and its surroundings;

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- (d) all materials, machinery, apparatus, goods, equipment and other items supplied or used by it in the execution of the work under a Purchase Order Contract will be suitable for the purpose for which they are used;
- (e) the Works will comply with all the requirements of or to be inferred from these General Conditions and any Purchase Order Contract, including the requirements of Laws and all relevant codes of practice and Australian Standards;
- (f) it has determined the nature and extent of the Works and assessed the amount of temporary works, materials, labour, plant and equipment necessary to complete the Works in accordance with its obligations under these General Conditions and a Purchase Order Contract and that both the Purchase Order Price and the Date for Practical Completion contain all necessary allowances, including allowance for the supply of all items not expressly mentioned in these General Conditions but which are necessary for the completion of the Works;
- (g) all registrations, permits, licences, qualifications and other requirements of its trade are in full force and effect at all relevant times; and
- (h) it is a GST registered entity.

## **7. DOCUMENTS**

### **7.1 DISCREPANCIES**

Should the Contractor encounter any discrepancies, contradictions, omissions, ambiguities, errors, faults or inconsistencies in or between the documents comprising a Purchase Order Contract ("**Discrepancy**"), the Contractor must promptly notify Essential Energy's Representative in writing.

Essential Energy's Representative will (acting reasonably), by direction to the Contractor, resolve any Discrepancy as follows:

- (a) where the Discrepancy is in relation to the standard or quality required in the Works, Essential Energy's Representative shall adopt the higher quality or standard;
- (b) where clause 7.1(a) does not apply, Essential Energy's Representative shall apply the following order of precedence (in descending order):
  - (i) Panel Agreement (including Schedules, but excluding Schedule 2 of the Panel Agreement);
  - (ii) the relevant Purchase Order;
  - (iii) the relevant RFQ (including any Special Conditions);
  - (iv) General Conditions; and
  - (v) Schedule 2 of the Panel Agreement.

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- (c) where clauses 7.1(a) and 7.1(b) do not apply, Essential Energy's Representative shall make a determination based on the Parties' intentions which can be ascertained from these General Conditions and the Purchase Order Contract.

The Contractor must comply with a direction of Essential Energy's Representative under this clause 7.1 as to the interpretation to be adopted in resolving the Discrepancy.

Notwithstanding clauses 7.1(a) to 7.1(c):

- (d) where the Discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail; and
- (e) where:
- (i) Essential Energy's Project Requirements; or
  - (ii) any document prepared by the Contractor which has been attached to the Panel Agreement or any Purchase Order Contract,
- contains a right or entitlement in the Contractor, then the Contractor will only be entitled to the benefit of that right or entitlement if:
- (iii) the relevant right or entitlement is also contained in the relevant Purchase Order Contract or these General Conditions (but excluding the Schedules to these General Conditions); and
  - (iv) the Contractor has satisfied any pre-conditions to that right or entitlement set out in the relevant Purchase Order Contract or these General Conditions (but excluding the Schedules to these General Conditions).

## **7.2 SUPPLY OF DOCUMENTS BY THE CONTRACTOR**

The Contractor must give Essential Energy the documents required by a Purchase Order Contract to be supplied by the Contractor to Essential Energy in the number of copies set out in the relevant Purchase Order Contract.

If the Contractor submits a document to Essential Energy then, except where a Purchase Order Contract otherwise provides:

- (a) Essential Energy is not required to check such documents for errors, discrepancies, contradictions, omissions, ambiguities, faults, inconsistencies or compliance with the relevant Purchase Order Contract; and
- (b) notwithstanding clause 7.2(a), any acknowledgement or approval by Essential Energy shall not prejudice the Contractor's obligations.

## **7.3 SUPPLY OF DOCUMENTS BY ESSENTIAL ENERGY**

Except in respect of any documents:

- (a) identified in the relevant item in the relevant RFQ (or any Purchase Order) as forming part of a Purchase Order Contract; or

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- (b) provided to the Contractor by Essential Energy for the purposes of setting out in accordance with clause 12.2,

information or documents of any nature provided by or on behalf of Essential Energy to the Contractor at any time, whether before or after the date of the Panel Agreement (other than the Contract Documents, a Purchase Order and notices issued by Essential Energy or Essential Energy's Representative under these General Conditions or a Purchase Order Contract) were furnished and are furnished to the Contractor for its convenience only and, to the extent permitted by law, were not and are not guaranteed whether in terms of their accuracy or otherwise. Essential Energy has no liability whatsoever to the Contractor in tort (including negligence), contract, statute or otherwise (except to the extent that such liability cannot be excluded) concerning or in any way connected with any interpretations, deductions, inferences drawn or conclusions made by the Contractor in relation to such information or documents or any errors, omissions, representations or misrepresentations contained in the same.

Any document supplied by Essential Energy to the Contractor remains (as between Essential Energy and the Contractor) the property of Essential Energy and must be returned to Essential Energy upon request. The Contractor may keep one copy of any such document for its own records.

## **8. ADMINISTRATION AND PERSONNEL**

### **8.1 ESSENTIAL ENERGY'S REPRESENTATIVE**

Essential Energy's Representative:

- (a) will give directions and at all times carry out its functions under these General Conditions and any Purchase Order Contract on behalf of and as the agent of Essential Energy and not as an independent certifier or assessor; and
- (b) may, by written notice to the Contractor, be replaced from time to time by Essential Energy, at its sole discretion.

### **8.2 COMPLIANCE WITH DIRECTIONS**

The Contractor must promptly comply with any direction given by Essential Energy or Essential Energy's Representative in connection with these General Conditions, a Purchase Order Contract or the work under a Purchase Order Contract.

### **8.3 CONTRACTOR'S REPRESENTATIVE**

The Contractor's Representative:

- (a) is acknowledged by the Contractor to have and has the full authority of the Contractor to receive instructions from and notices given by Essential Energy and Essential Energy's Representative in respect of all matters pertaining to the Panel Agreement, these General Conditions or the work under a Purchase Order Contract;
- (b) must be present on Site, or must ensure that a nominee approved by Essential Energy's Representative (acting reasonably) is present on Site, whenever any works are being undertaken and in any event during normal working hours;

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- (c) must attend any meetings as reasonably requested by Essential Energy's Representative;
- (d) may be replaced from time to time by the Contractor subject to Essential Energy's prior written consent, which consent will not be unreasonably withheld; and
- (e) must be replaced by an alternative Contractor's Representative upon receipt by the Contractor of a written notice by Essential Energy's Representative requesting the replacement pursuant to clause 15.2.

## **8.4 CONTRACTOR'S RESOURCES**

The Contractor must ensure that:

- (a) it employs sufficient suitable resources to carry out and complete the work under a Purchase Order Contract in a proper and workmanlike manner with due diligence and expedition in accordance with the Purchase Order Contract;
- (b) subject to clause 8.4(c), only persons who are careful, skilled, experienced and qualified in their respective trades and callings are employed on the work under a Purchase Order Contract and that where relevant, such persons hold relevant licences to legally perform that work; and
- (c) it employs apprentices and trainees on the work under a Purchase Order Contract as required by Law.

## **9. BANK GUARANTEES AND PARENT COMPANY GUARANTEE**

### **9.1 BANK GUARANTEES**

Within 7 days after the issue of a Purchase Order by Essential Energy, the Contractor must give Essential Energy two Bank Guarantees each for the amount stated in the relevant Purchase Order Contract and, subject to the Security of Payment Act, the Contractor will have no entitlement to payment, and Essential Energy is not obliged to make any payment to the Contractor, under or in connection with these General Conditions or the relevant Purchase Order Contract until Essential Energy receives the Bank Guarantees.

If a Bank Guarantee contains an expiry date then, not less than 30 days before the expiry of that Bank Guarantee, the Contractor must provide to Essential Energy a replacement Bank Guarantee in the same amount as the Bank Guarantee being replaced and which complies with the requirements of this clause 9.1. If the Contractor does not provide the replacement Bank Guarantee within the time required by this paragraph then, irrespective of anything contained in, and without limiting Essential Energy's rights under, these General Conditions or a Purchase Order Contract, Essential Energy may have recourse to the relevant Bank Guarantee and may hold or apply the proceeds as security until a replacement Bank Guarantee which complies with the requirements of this clause 9.1 has been provided.

### **9.2 RECOURSE TO BANK GUARANTEES**

If Essential Energy (acting reasonably) considers that it has incurred, or has a bona fide belief that it might in the future incur, any liability, costs, expenses, losses or damages of any kind as a consequence of any act, default, breach or omission of the Contractor, Essential Energy may have recourse to the Bank Guarantees.

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The Contractor is not entitled to and must not seek an injunction against or otherwise restrain either Essential Energy or the issuer(s) of the Bank Guarantees preventing a demand or payment under the Bank Guarantees (and whether the demand extends to the whole of the Bank Guarantees or part thereof).

### **9.3 REDUCTION OF SECURITY**

Subject to the exercise of any right of recourse that Essential Energy may have to the Bank Guarantees under clause 9.2, Essential Energy will return to the Contractor one of the Bank Guarantees then held by Essential Energy as security within 60 days after the Date of Practical Completion.

### **9.4 RELEASE OF BANK GUARANTEES**

Subject to the exercise of any right of recourse that Essential Energy may have to the Bank Guarantees under clause 9.2, Essential Energy will release to the Contractor the remaining Bank Guarantee within 45 days after the later of:

- (a) the issue of the final payment schedule under clause 22.6; and
- (b) the date on which all Defects identified during the Defects Liability Period have been rectified.

### **9.5 PARENT COMPANY GUARANTEE**

Where the Contractor is a corporation that is related to or is a subsidiary of another corporation as defined in the *Corporations Act 2001* (Cth), the Contractor shall, if requested by Essential Energy, provide Essential Energy within 14 days of that request having been made, a deed of guarantee, undertaking and indemnity in a form acceptable to Essential Energy (acting reasonably) and duly executed by the Contractor and the other corporation for the performance of the obligations and the discharge of the liabilities of the Contractor under these General Conditions.

The Contractor will have no entitlement to payment under or in connection with these General Conditions or the relevant Purchase Order Contract and Essential Energy is not obliged to make any payment to the Contractor until any deed of guarantee, undertaking and indemnity requested under this clause 9.5 has been so provided.

## **10. INDEMNITY AND INSURANCE**

### **10.1 INDEMNITY**

The Contractor is liable for and indemnifies and shall keep indemnified Essential Energy (to the maximum extent permitted by law) against:

- (a) all cost, loss, damage and expense (including legal fees on an indemnity basis) suffered by Essential Energy and any of its employees and agents; and
- (b) all liabilities Essential Energy has or may have to any third party in relation to, arising out of or in connection with the work under a separate contract or consultancy agreement,

arising as a result of or in connection with any negligence or wrongdoing of the Contractor, its employees, subcontractors or agents.

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Without limiting the above, the Contractor is liable for and indemnifies and shall keep indemnified Essential Energy (to the maximum extent permitted by law) against:

- (c) loss of or damage to property of Essential Energy, including existing property in or upon which the work under a Purchase Order Contract is being carried out; and
- (d) claims by any person against Essential Energy in respect of illness, personal injury or death or loss of or damage to any property,

arising out of, incidental to, or as a consequence of the carrying out by the Contractor of the work under a Purchase Order Contract including where there has been any failure by any subcontractor of the Contractor to take reasonable care.

The Contractor's liability to indemnify Essential Energy under this clause 10.1 shall be reduced proportionally to the extent that a wrongful act or wrongful omission of Essential Energy, its employees or agents caused or contributed to the loss, damage, death or injury.

## **10.2 INSURANCE REQUIRED BY CONTRACTOR**

Where the Contractor, pursuant to the RFQ the subject of the relevant Purchase Order Contract, is required to have in place policies of insurance, then the Contractor must, as a precondition to any entitlement to access the Site or to receive payment under or in connection with a Purchase Order Contract, have in place those insurance policies stated in the RFQ the subject of the relevant Purchase Order Contract in the amounts and for the periods stated in that RFQ, and with an insurer having a Standard and Poors, Moodys, A M Best, Fitch's or equivalent rating agency's financial strength rating of A- or better. The Contractor must ensure that its subcontractors are similarly insured or covered by the insurance required under this clause 10.2 for the relevant work to be performed by those subcontractors.

Without limiting the previous paragraph, all policies to be obtained by the Contractor pursuant to this clause 10.2 must require the insurer to notify Essential Energy in writing at the same time it gives a notice of cancellation or any other notice concerning the policy to the Contractor.

Where the Contractor is required to have in place one or both of contract works insurance and public liability insurance, the relevant policy must:

- (a) in the case of:
  - (i) contract works insurance (property section), note the interests of Essential Energy for its rights and liabilities under or in connection with the relevant Purchase Order Contract; and
  - (ii) public liability insurance, note the interests of Essential Energy for its rights and liabilities under or in connection with the relevant Purchase Order Contract and cover the Parties for their liabilities to third parties and cover the Contractor's liability to Essential Energy for death, personal injury or loss or damage to property arising out of the work under the relevant Purchase Order Contract;
- (b) include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any party comprising the insured and for the purposes of which the insurer accepts the term "insured" as applying to each



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party comprising the insured as if a separate insurance policy were issued to each of them; and

- (c) provide that a notice of claim given to the insurer by Essential Energy or the Contractor will be accepted by the insurer as a notice of claim given by the Contractor.

Before commencing any work and when requested by Essential Energy's Representative from time to time, the Contractor must promptly provide to Essential Energy's Representative:

- (d) in respect of contract works insurance, a certificate of currency; and
- (e) in respect of any other insurance policies required by this clause 10.2, a copy of the certificates of currency for those policies.

### **10.3 FAILURE TO PROVIDE EVIDENCE OF INSURANCES**

If the Contractor is required under clause 10.2 to have in place policies of insurance and fails to provide to Essential Energy:

- (a) in respect of contract works insurance, a copy of that policy together with the certificate of currency; and
- (b) in respect of all other insurance policies, a copy of the certificates of currency for those policies,

in accordance with the requirements of these General Conditions and/or an RFQ and/or a Purchase Order Contract, Essential Energy may (without being obliged to do so) effect and maintain such insurance and the cost incurred will be a debt due by the Contractor to Essential Energy.

### **10.4 NOTICE OF CLAIMS/LIKELY CLAIMS**

The Contractor must as soon as practicable inform Essential Energy's Representative in writing of any occurrence which it ought reasonably expect may give rise to a claim under an insurance policy required by these General Conditions or a Purchase Order Contract. The Contractor must give all information and assistance requested by Essential Energy's Representative in respect of any such claim or possible claim.

### **10.5 EFFECT OF INSURANCES**

The effecting or failure to effect insurance by the Contractor will not in any way limit or reduce any of the Contractor's obligations or liabilities under these General Conditions or a Purchase Order Contract or at law.

## **11. ASSIGNMENT, SUBCONTRACTING AND NOVATION**

### **11.1 ASSIGNMENT AND NOVATION**

The Contractor must not novate the Panel Agreement or any Purchase Order Contract or assign any right, benefit or interest under the Panel Agreement or a Purchase Order Contract without the prior written consent of Essential Energy (which may be given or



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withheld in Essential Energy's sole discretion). If such consent is given, it may be given in whole or in part and subject to whatever conditions Essential Energy requires.

Essential Energy may at any time assign or novate the Panel Agreement or a Purchase Order Contract or any right, benefit or interest under the Panel Agreement or a Purchase Order Contract, provided that the party to whom Essential Energy is assigning or novating has the financial capacity to perform Essential Energy's obligations under the Panel Agreement or a Purchase Order Contract and is not a direct competitor of the Contractor. Essential Energy must provide written notice of the assignment or novation to the Contractor as soon as reasonably practicable and the Contractor must promptly, upon request by Essential Energy, execute all documents required by Essential Energy to give effect to any such assignment or novation.

## **11.2 SUBCONTRACTING**

- (a) The Contractor must not engage any subcontractor in connection with the work under a Purchase Order Contract for an amount exceeding the amount specified in the relevant Purchase Order Contract or in respect of the work described the relevant Purchase Order Contract without obtaining the prior written consent of Essential Energy's Representative.
- (b) Approval to subcontract shall be at the absolute discretion of Essential Energy and may be conditional, including upon requiring that the subcontract contains:
  - (i) provision that the subcontractor shall not assign, novate or subcontract without the consent in writing of the Contractor;
  - (ii) provisions which may reasonably be necessary to enable the subcontractor to fulfil the Contractor's obligations to Essential Energy; and
  - (iii) requirements for collateral warranty deeds (including a deed proposed by Essential Energy).
- (c) Any subcontractor required to be approved but which is not approved in writing by Essential Energy shall not be permitted to enter upon the Site or perform any work under a Purchase Order Contract and the Contractor shall not be entitled to payment for any work under a Purchase Order Contract which has been performed by any such subcontractor.
- (d) Approval to subcontract will not relieve the Contractor from any liability or obligation under the Panel Agreement, these General Conditions or a Purchase Order Contract. Except to the extent expressly stated otherwise in the Panel Agreement, these General Conditions or a Purchase Order Contract, the Contractor agrees that it is, to the maximum extent permitted by law, fully liable for all acts and omissions (including the negligence) of its employees, subcontractors and agents and each other person within its contractual chain under or in any way in connection with the Panel Agreement, these General Conditions or a Purchase Order Contract.
- (e) If any subcontractor of the Contractor obtains a court order in respect of any moneys due to that subcontractor from the Contractor and produces to Essential Energy that court order and a statutory declaration that it remains unpaid, then Essential Energy may pay the amount of the order, and costs included in the

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order, to the subcontractor and the amount paid shall be a debt due from the Contractor to Essential Energy.

## **12. CONSTRUCTION**

### **12.1 CONTRACTOR'S OBLIGATIONS**

The Contractor must proceed with the work under a Purchase Order Contract with due expedition and without delay and within the times set out in the relevant Purchase Order Contract.

If the Contractor fails to perform any of its obligations under the Panel Agreement, these General Conditions or a Purchase Order Contract, Essential Energy may issue a notice to the Contractor requiring such performance and specifying a reasonable time for performance. If the Contractor does not comply with the notice, then, in addition to any other rights of Essential Energy under these General Conditions or a Purchase Order Contract or at law, Essential Energy may, by further notice to the Contractor, perform or have others perform that obligation. Essential Energy may recover the costs and expenses incurred by it or others performing the obligation as a debt due to Essential Energy by the Contractor. The Contractor acknowledges that any warranties under the relevant Purchase Order Contract remain unaffected notwithstanding that Essential Energy has performed or has had others perform the obligation under this clause 12.1.

### **12.2 SETTING OUT**

The Contractor must set out the Works in accordance with the relevant Purchase Order Contract. The Contractor must, if it considers information is necessary to enable it to set out the Works, promptly notify Essential Energy's Representative in writing.

If the Contractor discovers an error in the position, level, dimensions or alignment in any part of work under a Purchase Order Contract, the Contractor must promptly notify Essential Energy's Representative in writing. The Contractor must rectify the error (unless otherwise directed by Essential Energy's Representative) at its own risk, including cost and time risk, unless the error has been caused by incorrect information, survey marks or data supplied by Essential Energy, in which case the cost incurred by the Contractor in rectifying the error shall be valued under clause 14.3.

### **12.3 QUALITY**

The Contractor must implement its own quality assurance system and must do all things necessary to comply with that quality assurance system. The Contractor must submit the written component of such quality assurance to Essential Energy at any time as Essential Energy may reasonably request to enable it to be reviewed in Essential Energy's discretion.

The quality assurance system and any review by Essential Energy does not limit the Contractor's responsibility to comply with the Contractor's obligations under the Panel Agreement, these General Conditions or a Purchase Order Contract.

### **12.4 CORRECTION OF DEFECTIVE MATERIAL OR WORK**

Without prejudice to Essential Energy's rights and entitlements under any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract, Essential Energy may, at any time prior to Practical Completion, direct the Contractor to take any of the following actions with respect to any part of the material or work which are not in

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accordance with the Panel Agreement, these General Conditions or a Purchase Order Contract:

- (a) not deliver the material or work;
- (b) remove the material from the Site;
- (c) demolish the work; or
- (d) redesign, reconstruct, replace or rectify the material or work.

Essential Energy may at any time prior to Practical Completion by written notice to the Contractor accept any of the materials or work which are not in accordance with a Purchase Order Contract.

If Essential Energy gives a notice pursuant to the preceding paragraph of this clause 12.4, the Purchase Order Price will be reduced as reasonably determined by Essential Energy's Representative to reflect the reduction in value of the materials or work as a result of them not being in accordance with the relevant Purchase Order Contract.

## **12.5 PROTECTION**

The Contractor will:

- (a) until the Date of Practical Completion, be responsible for and protect from damage or loss the work under a Purchase Order Contract and other things and materials brought on to the Site by or for the Contractor; and
- (b) from the Date of Practical Completion until completion of outstanding work or compliance with the Contractor's obligations under clauses 12.4, 12.8 and 19, be responsible for and protect from damage or loss all outstanding work and items to be removed from the Site by the Contractor.

If such damage or loss occurs the Contractor must, except in respect of an Excepted Risk, at its own cost promptly make good the damage or loss.

## **12.6 EXCEPTED RISKS**

Where the damage or loss referred to in clause 12.5 is caused by an Excepted Risk, the Contractor must, if and to the extent directed by Essential Energy's Representative, make good the damage or loss and a valuation shall be made under clause 14.3.

The Excepted Risks are:

- (a) any negligent act or omission of Essential Energy, Essential Energy's Representative or Essential Energy's employees or agents;
- (b) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor, its employees, subcontractors or agents.

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## **12.7 URGENT PROTECTION**

If urgent action is necessary to protect the work under a Purchase Order Contract or other property or people and the Contractor fails to take the action, Essential Energy may, without notice to the Contractor, take necessary action to protect the work under a Purchase Order Contract, property or people. If the action taken by Essential Energy was, in the reasonable opinion of Essential Energy's Representative, action which the Contractor should have taken at the Contractor's cost, the costs incurred by Essential Energy will be a debt due from the Contractor to Essential Energy.

## **12.8 TESTING**

At any time prior to the expiry of the Defects Liability Period, Essential Energy's Representative may direct that any part of the work under a Purchase Order Contract or the Works be tested. If such direction requires the Contractor to perform the testing, Essential Energy's Representative may observe and must be promptly provided with the results of any test performed.

With respect to any such tests:

- (a) the Contractor shall provide such assistance and samples and make accessible such parts of the work under a Purchase Order Contract as may be required by Essential Energy;
- (b) Essential Energy may direct that any part of the work under a Purchase Order Contract shall not be covered up or made inaccessible without Essential Energy's prior approval;
- (c) the test shall be conducted as provided in the Panel Agreement, these General Conditions or a Purchase Order Contract, by Essential Energy or a person (which may include the Contractor) nominated by Essential Energy;
- (d) reasonable notice of the time, date and place of the test shall be given by the party conducting (or responsible for conducting) the test to the other party; and
- (e) on completion of the test, the Contractor shall make good the work under a Purchase Order Contract so that it fully complies with the relevant Purchase Order Contract.

The reasonable and actual costs of and incidental to testing will be added to the Purchase Order Price unless such testing:

- (f) reveals work or materials not in accordance with the relevant Purchase Order Contract;
- (g) is consequent upon a failure of the Contractor to comply with the relevant Purchase Order Contract;
- (h) was pursuant to any other provision of the relevant Purchase Order Contract required to be performed by the Contractor or has otherwise been included in the Purchase Order Price as part of the work to be undertaken by the Contractor; or
- (i) is in respect of work under a Purchase Order Contract covered up or made inaccessible without Essential Energy's prior approval where that was required.

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## **12.9 FREE ISSUE MATERIAL**

Where:

- (a) Essential Energy provides to the Contractor; or
- (b) a Purchase Order Contract requires the Contractor to receive from Essential Energy,

any materials or equipment or other thing for incorporation in the Works or use by the Contractor in the performance of the work under a Purchase Order Contract ("**Free Issue Material**"), then the Contractor shall:

- (c) promptly upon receipt of the Free Issue Material, be responsible for the care of the Free Issue Material and accordingly ensure the Free Issue Material is satisfactorily covered by insurance. The Contractor shall be liable for any loss or damage to the Free Issue Material as if the Free Issue Material had been provided by the Contractor itself for incorporation in the Works or use by the Contractor in the performance of the work under a Purchase Order Contract;
- (d) to the extent reasonably practicable without unpacking the Free Issue Material, carefully inspect the Free Issue Material and within 7 days of receipt, notify Essential Energy in writing of the quantity of Free Issue Materials provided or received and any damage, omission or defect existing in the Free Issue Material;
- (e) after receipt of the Free Issue Material, be responsible for the handling of the Free Issue Material and shall be liable to Essential Energy in respect of any cost, loss or expense incurred by Essential Energy as a consequence of or in connection with the leakage or escape of any material, liquid or gas from the Free Issue Material; and
- (f) prior to the Date of Practical Completion, carry out in conjunction with Essential Energy's Representative a reconciliation of the quantities of Free Issue Material used in connection with the Works. The Contractor shall as a condition of achieving Practical Completion return to Essential Energy in good order any Free Issue Material not incorporated into the Works together with appropriate documentation evidencing quantities and type.

## **12.10 SURVEY MARKS**

The Contractor shall keep in their true positions all survey marks. If a survey mark is disturbed or obliterated, the Contractor shall promptly notify Essential Energy's Representative. The Contractor must reinstate the survey mark unless otherwise directed by Essential Energy's Representative.

If the disturbance or obliteration is caused by Essential Energy's Representative or a person referred to in clause 3(e) other than the Contractor or its subcontractors, employees or agents, the cost incurred by the Contractor in reinstating the survey mark shall be valued under clause 14.3.

## **13. SITE CONDITIONS**

### **13.1 NOTIFICATION**

If during the execution of the work under a Purchase Order Contract, the Contractor becomes aware of a Site Condition which might cause the Contractor to incur delay or additional cost, the Contractor shall promptly and where possible before the Site Condition is disturbed, give written notice thereof to Essential Energy's Representative, including details of:

- (a) the Site Condition discovered or encountered;
- (b) the additional work and additional resources which the Contractor estimates to be necessary to deal with, remove or overcome the effects of the Site Condition;
- (c) the time the Contractor anticipates will be required to deal with, remove or overcome the effects of the Site Condition and the expected delay in achieving Practical Completion;
- (d) the Contractor's estimate of the cost of the measures necessary to deal with, remove or overcome the effects of the Site Condition; and
- (e) other details reasonably required by Essential Energy's Representative.

### **13.2 EXTENSION OF TIME AND COST FOR LATENT CONDITIONS**

A Latent Condition is a Site Condition which necessarily causes the Contractor to carry out additional work which the Contractor could not reasonably have anticipated at the date a Purchase Order is issued had the Contractor inspected the Site and its surroundings and examined all relevant information obtainable by the making of reasonable enquiries. A valuation shall be made under clause 14.3 in respect of all necessarily incurred direct costs as a consequence of the Latent Condition excluding any amount for profit and attendance.

A Latent Condition may constitute grounds for an Extension of Time under and subject to clause 21.1.

### **13.3 TIME BAR**

Where pursuant to clause 13.2 a valuation is to be made under clause 14.3, regard shall not be had to the value of work carried out or more cost incurred before the date on which the Contractor gives the written notice required by clause 13.1.

### **13.4 ARCHAEOLOGICAL OR OTHER FINDS**

Any things of value or archaeological or special interest found on or under the Site will, as between the Parties, be the property of Essential Energy. If such an item is found, the Contractor will:

- (a) take precautions to protect the item and prevent any loss or damage to the item; and
- (b) promptly notify Essential Energy's Representative in writing and the Contractor will comply with all directions of Essential Energy's Representative pertaining to the item.

## **14. VARIATIONS**

### **14.1 VARIATIONS**

Essential Energy's Representative may at any time direct the performance of a Variation by issuing a Variation Order in the form of Schedule 1. The Contractor must execute any Variation directed by Essential Energy's Representative in a Variation Order.

If the Contractor considers that any direction that is not stated in writing by Essential Energy's Representative to be a Variation is nevertheless a Variation, the Contractor must notify Essential Energy's Representative in writing within the time period stated in the relevant Purchase Order Contract and in any event before commencing the work the subject of the direction. If the Contractor fails to so notify Essential Energy's Representative or if Essential Energy does not respond with a Variation Order then the Contractor will have no Claim in connection with the direction or any extra work performed as a consequence.

The Contractor may request that Essential Energy direct or approve a Variation for the convenience of the Contractor. Any such approval will be given in writing by the issue of a Variation Order and may be conditional. Essential Energy will not be obliged to direct or approve a Variation for the convenience of the Contractor.

The Contractor shall not vary the work under a Purchase Order Contract except as directed or approved in writing by the issue of a Variation Order.

Essential Energy shall be entitled to execute and complete, or engage any other person to execute and complete, any part of the work under a Purchase Order Contract which Essential Energy's Representative directs the Contractor to omit from the work under a Purchase Order Contract or the Works.

### **14.2 QUOTATIONS FOR VARIATIONS**

If Essential Energy's Representative requests the Contractor to provide a quotation for a proposed Variation, the Contractor must provide a detailed quotation for complying with the Variation. The quotation must be supported by measurements or other evidence of cost, accompanied by details of any Extension of Time the Contractor seeks and must be provided within the period specified by Essential Energy, or if not specified, within 5 days of the request for quotation. In response to the quotation, Essential Energy's Representative may:

- (a) require the Contractor to execute the Variation on the terms of the quotation by issuing a Variation Order;
- (b) decline to proceed with the Variation; or
- (c) reject the quotation and require the Contractor to carry out the Variation by issuing a Variation Order, in which case the Variation will be valued by Essential Energy's Representative in accordance with clause 14.3 and any Extension of Time will be assessed by Essential Energy's Representative in accordance with clause 21.



### **14.3 VALUATION OF VARIATIONS**

The value of any Variation will be added to or deducted from the Purchase Order Price. If the Parties do not agree on the value of a Variation, Essential Energy's Representative must determine the value of the Variation as follows:

- (a) if a Schedule of Rates forms part of the relevant Purchase Order Contract or the relevant Purchase Order Contract prescribes specific rates or prices to be applied in determining the value of a Variation, those rates and prices shall be used;
- (b) if paragraph (a) above does not apply, and if the relevant Purchase Order Contract includes rates or prices for similar work, such rates and prices shall be used to the extent that it is reasonable to use them; and
- (c) to the extent that neither paragraphs (a) or (b) above apply, Essential Energy's Representative shall (acting reasonably) determine reasonable rates or prices.

In determining the deduction from the Purchase Order Price in respect of work which has been omitted from the work under a Purchase Order Contract or the Works, the deduction shall include a reasonable amount for profit and overheads.

If the valuation relates to extra costs incurred by the Contractor for delay or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit.

## **15. CONDUCT GENERALLY**

### **15.1 PROTECTION OF PEOPLE AND PROPERTY**

In the performance of the work under a Purchase Order Contract the Contractor must take all measures and provide all things necessary to protect people and property.

If the Contractor or its subcontractors, employees or agents damage any property, including property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the Contractor is required by law to pay.

### **15.2 REMOVAL OF PERSONS**

Essential Energy's Representative may direct the Contractor to remove from the Site or from the involvement in the work under a Purchase Order Contract any person whom Essential Energy's Representative considers to be disruptive, incompetent, negligent, guilty of misconduct or considered to be carrying out any work in an unsafe or unsatisfactory manner. The written approval of Essential Energy's Representative must be obtained by the Contractor before the Contractor subsequently re-employs the person on Site or has the person involved in activities in any way connected with the work under a Purchase Order Contract.

### **15.3 STATEMENT OF BUSINESS ETHICS AND CODE OF CONDUCT**

The Essential Energy Statement of Business Ethics (copies of which can be downloaded from the website [www.essentialenergy.com.au](http://www.essentialenergy.com.au)) (**Code**) sets the framework for all business relationships by:



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- (a) establishing the standards of behaviour expected from government agencies (as clients), employer and industry associations and unions; and
- (b) requiring a strong commitment to continuous improvement and best practice performance by all participants in the supply chain.

The Contractor must at all times comply with the Code. Failure by the Contractor to comply with the Code may be taken into account when considering the Contractor for future business opportunities with the Essential Energy.

Contractors must have a satisfactory record of compliance with the Code. This also includes ensuring that contractors and their subcontractors, consultants, and suppliers comply with their legal obligations regarding their employees.

## **16. INTELLECTUAL PROPERTY**

### **16.1 INTELLECTUAL PROPERTY RIGHTS**

As between Essential Energy and the Contractor, Intellectual Property Rights in the Works and all drawings, reports, specifications, calculations, documents and other goods or materials provided, developed, created or acquired by or on behalf of the Contractor in connection with the Panel Agreement, these General Conditions and each Purchase Order Contract including the performance of the Contractor's obligations under a Purchase Order Contract shall continue to vest in the Contractor.

The Contractor grants to Essential Energy, for the purposes of the work under a Purchase Order Contract, a perpetual, irrevocable and royalty free licence to use, adapt and modify (and sub-licence others to use, adapt and modify) all Intellectual Property Rights of the Contractor in the Works and all drawings, reports, specifications, calculations, documents and other goods or materials provided or prepared by the Contractor, its employees, subcontractors or agents in connection with the Works. Such licence shall also allow for facilitating or completing construction, operation of, any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to the Works.

### **16.2 CONTRACTOR'S WARRANTY AND INDEMNITY**

The Contractor warrants that it has the necessary rights to grant to Essential Energy the licence referred to in clause 16.1 and that the Works, the performance of the work under a Purchase Order Contract and the use of the work under a Purchase Order Contract in accordance with the rights granted to Essential Energy hereunder do not infringe any Intellectual Property Right belonging to any third party, and indemnifies Essential Energy and its employees, directors and agents against all losses, liabilities and legal costs arising directly or indirectly from any allegation or finding of infringement. The Contractor's liability to indemnify Essential Energy under this clause 16.2 shall be reduced proportionally to the extent the losses, liabilities and legal costs are caused or contributed to by a wrongful act or omission of Essential Energy, its employees, directors or agents.

### **16.3 ESSENTIAL ENERGY'S WARRANTY**

Essential Energy warrants that the Contract Documents (but not including any document provided by or on behalf of the Contractor) do not infringe any Intellectual Property Right belonging to any third party.

## **17. LAWS, REPORTS AND APPROVALS**

### **17.1 COMPLIANCE WITH LAWS**

The Contractor must comply, and must ensure that its employees, subcontractors and agents comply, with all Laws and the requirements of Authorities in performing the work under a Purchase Order Contract.

The Contractor must also comply, and must ensure that its employees, subcontractors and agents comply, with all relevant Australian Standards, to the extent that they are not inconsistent with the requirements of a Purchase Order Contract and any Laws.

### **17.2 CHANGES IN LAW**

If a change to any Law or a new Law comes into effect after the date of the issue of a Purchase Order and could not reasonably have been anticipated prior to the date of the issue of a Purchase Order by a competent and experienced contractor performing work in the nature of the Works ("**Change in Law**"), then, to the extent that the Change in Law requires a physical change to the Works, Essential Energy shall direct a Variation under clause 14.

A Change in Law may constitute grounds for an Extension of Time under and subject to clause 21.1.

The Contractor must use its best endeavours to minimise or mitigate the effects of a Change in Law.

### **17.3 REPORTS AND RECORDS**

Upon a direction from Essential Energy or Essential Energy's Representative, the Contractor must, within a reasonable time stated in the direction, submit a report or provide records to Essential Energy or Essential Energy's Representative containing such information as is reasonably requested by Essential Energy or Essential Energy's Representative.

### **17.4 APPROVALS**

The Contractor must obtain all Approvals applicable from time to time in connection with the work under a Purchase Order Contract (except those Approvals listed in the relevant Purchase Order Contract) and ensure that all such Approvals are in full force and effect at all times. The Contractor must comply, and must ensure that its employees, subcontractors and agents comply, with all Approvals, including those Approvals listed in the relevant Purchase Order Contract.

The Contractor must promptly provide to Essential Energy's Representative copies of all Approvals obtained by the Contractor and copies of any other documents issued to the Contractor by any Authority in respect of the work under a Purchase Order Contract.

### **17.5 INCONSISTENCIES**

If the conditions of an Approval or a Law or an Australian Standard are inconsistent with a provision of these General Conditions or a Purchase Order Contract, as soon as the Contractor discovers the inconsistency, the Contractor must notify Essential Energy in writing specifying that inconsistency.

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Where the conditions of an Approval are inconsistent with the performance of the work under a Purchase Order Contract, the Contractor shall, at no cost to Essential Energy, use its best endeavours to take all steps necessary to amend, supplement or replace the inconsistent Approval to comply with its obligations under the relevant Purchase Order Contract.

## **18. CLEANING UP**

The Contractor must keep the Site and the Works clean and tidy and must remove rubbish from the Site regularly or as directed by Essential Energy's Representative.

Within 14 days after the Date of Practical Completion the Contractor must remove any temporary works, plant and equipment unless directed otherwise by Essential Energy's Representative.

## **19. DEFECTS LIABILITY PERIOD**

### **19.1 RECTIFICATION**

The Contractor must promptly rectify any Defect that is found to exist in the Works at the Date of Practical Completion or at any time during the Defects Liability Period.

The Contractor shall, as and when directed by Essential Energy's Representative during the Defects Liability Period, rectify any Defect and the rectification is at the Contractor's risk and cost. The direction may, without limitation, require the Contractor to remove material from the Site, demolish work, reconstruct, replace (using new material) or correct the same. Essential Energy's Representative may (acting reasonably) direct the times within which the Contractor must commence and complete rectification of a Defect. The Contractor must notify Essential Energy's Representative when rectification of a Defect has been completed.

### **19.2 ESSENTIAL ENERGY'S REPRESENTATIVE MAY SET FURTHER DEFECTS LIABILITY PERIOD**

Essential Energy's Representative may set a further Defects Liability Period in respect of work to be rectified under clause 19.1 which will be effective from the date of rectification for a period of 12 months.

### **19.3 DEFECTS RECTIFIED BY OTHERS**

Without limiting clause 12.1, if the Contractor fails to rectify any Defect in accordance with clause 19.1, Essential Energy's Representative may have the Defect rectified by others (including Essential Energy) and Essential Energy may recover all costs of so doing (including of Essential Energy so doing) as a debt due from the Contractor to Essential Energy or accept the Defect and recover its assessment of any consequential reduction in the value of the Works as a debt due from the Contractor to Essential Energy.

## **20. TIME**

### **20.1 PRACTICAL COMPLETION**

The Contractor must achieve Practical Completion by the Date for Practical Completion.

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## **20.2 PROGRAM**

The Contractor must, if directed to do so by Essential Energy's Representative, supply to Essential Energy's Representative no later than 7 days after the direction or within such other period as directed by Essential Energy's Representative, a proposed program for the work under a Purchase Order Contract.

Upon review and notification in writing from Essential Energy's Representative to the Contractor that Essential Energy's Representative has no objection to the proposed program, the proposed program shall become the Program for the purposes of the relevant Purchase Order Contract. If Essential Energy's Representative does not accept the proposed program, the Contractor must promptly amend or revise the proposed program until Essential Energy's Representative accepts it.

The Contractor must not depart from the Program without reasonable cause. Essential Energy may direct the Contractor to re-sequence, reschedule or adjust activities. If such direction causes the Contractor to incur more or less cost than would have been incurred but for the direction, the difference shall be valued under clause 14.3, unless the event giving rise to the direction is due to an act or omission of the Contractor, its employees, subcontractors or agents, in which case any cost incurred by the Contractor in complying with the direction shall be borne by the Contractor.

Essential Energy's Representative may from time to time direct the Contractor to supply an updated Program and this clause 20.2 shall reapply as if each updated Program were the proposed program. The Contractor must within the time stated in such direction supply such further updated Program which must identify the changes made to the previous Program.

The Program (or any updated Program) and Essential Energy's program (if any) do not form part of these General Conditions or a Purchase Order Contract.

## **20.3 SUSPENSION**

Essential Energy's Representative may at any time and for any reason suspend the whole or any part of the work under a Purchase Order Contract by written notice to the Contractor. In such event, the Contractor must not recommence work on the whole or on the relevant part of the work under a Purchase Order Contract until Essential Energy's Representative by written notice, directs the Contractor to do so.

If the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under clause 14.3, unless the event giving rise to the direction to suspend is due to an act or omission of the Contractor or an employee, subcontractor or agent of the Contractor, in which case any cost incurred by the Contractor by reason of the suspension shall be borne by the Contractor (as determined by Essential Energy's Representative, acting reasonably).

The cause of the suspension may constitute grounds for an Extension of Time under and subject to clause 21.1.

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## **21. DELAY**

### **21.1 EXTENSION OF TIME**

The Contractor shall as soon as possible in the circumstances give written notice to Essential Energy upon the Contractor becoming aware of any event or circumstance which is causing or is likely to cause delay or disruption to the work under a Purchase Order Contract.

The Contractor shall be entitled to an Extension of Time, as assessed by Essential Energy's Representative (acting reasonably), if and only if:

- (a) the Contractor is or will be delayed in reaching Practical Completion by the Date for Practical Completion by any of the following events or circumstances:
  - (i) an act, wrongful omission, breach or default of these General Conditions or a Purchase Order Contract by Essential Energy or Essential Energy's Representative or an employee, consultant, other contractor or agent of Essential Energy (except for acts by Essential Energy or Essential Energy's Representative acting in accordance with these General Conditions or a Purchase Order Contract);
  - (ii) a Variation;
  - (iii) suspension of the work under a Purchase Order Contract by Essential Energy unless the event giving rise to the direction to suspend is due to an act or omission of the Contractor or an employee, subcontractor or agent of the Contractor;
  - (iv) a Latent Condition;
  - (v) a Change in Law;
  - (vi) a Force Majeure Event; or
  - (vii) any other Event set out in the relevant Purchase Order Contract, (“Delay Event”);
- (b) within 10 days after the Contractor first became aware or ought reasonably to have become aware of the cause of the delay, the Contractor gives Essential Energy's Representative a written claim for an Extension of Time with full supporting details of the claim; and
- (c) the Contractor has taken all steps at its own cost to minimise the effect of the delay, including without limitation, reallocation of resources or rescheduling works.

If Essential Energy's Representative considers a delay has occurred which meets all of the conditions precedent of clauses 21.1(a), 21.1(b) and 21.1(c), then Essential Energy's Representative shall extend the Date for Practical Completion by the number of days which Essential Energy's Representative considers reasonable and shall notify the Contractor of the number of days extension and the adjusted Date for Practical Completion.

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Where more than one event (or the impact of more than one event) causes concurrent delays and the cause of at least one of those event but not all of them is not a Delay Event, then to the extent that the impact of the delays is concurrent, the Contractor will not be entitled to an Extension of Time for that period of time when the impact of such delays is concurrent.

## **21.2 ESSENTIAL ENERGY'S REPRESENTATIVE MAY EXTEND**

At any time, Essential Energy's Representative may, pursuant to this clause, and without being obligated to do so, grant an Extension of Time to the Contractor for the benefit of either Party regardless of whether or not the Contractor has made a claim for Extension of Time.

## **21.3 DELAY COSTS**

Where the Contractor has been granted an Extension of Time under clause 21.1 for any delay caused by:

- (a) a Delay Event referred to in clause 21.1(a)(i); or
- (b) any other event for which payment of extra costs for delay or disruption is provided in the relevant Purchase Order Contract,

Essential Energy shall pay to the Contractor such extra direct costs (excluding corporate overheads and similar charges and profit) as are necessarily and reasonably incurred by the Contractor by reason of the delay.

Nothing in this clause 21.3 shall oblige Essential Energy to pay extra costs for delay which have already been included in another payment under the relevant Purchase Order Contract.

## **21.4 LIQUIDATED DAMAGES**

- (a) If Practical Completion is not achieved by the Date for Practical Completion, the Contractor must pay or allow to Essential Energy the amount for liquidated damages at the rate set out in the relevant Purchase Order Contract for every day after the Date for Practical Completion until and including the Date of Practical Completion or the date that the relevant Purchase Order Contract is terminated, whichever occurs first.
- (b) If after the Contractor has paid or allowed liquidated damages, the Date for Practical Completion is extended, Essential Energy shall repay to the Contractor any liquidated damages paid or allowed in respect of the period to and including the new Date for Practical Completion.
- (c) The Contractor's liability under this clause 21.4 for liquidated damages in respect of a Purchase Order Contract (and not in aggregate with any other Purchase Order Contract) is limited to the amount stated in the relevant Purchase Order Contract.
- (d) If the relevant Purchase Order Contract provides that liquidated damages do not apply or prescribe "Nil" or "N/A" or the relevant item is left blank or any equivalent to the above, then, without limiting any other right it may have, Essential Energy is entitled to general law damages for any delay by the Contractor in achieving Practical Completion by the Date for Practical Completion.

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- (e) The Parties agree that:
- (i) the amount stipulated as liquidated damages in a Purchase Order Contract is a genuine pre-estimate of the loss and damage which Essential Energy is likely to suffer and incur in the event that Practical Completion occurs after the Date for Practical Completion and does not constitute a penalty; but
  - (ii) if clause 21.4(a) is found for any reason to be void, invalid, or otherwise unenforceable or inoperative, so as to disentitle Essential Energy from recovering liquidated damages for the Contractor's failure to achieve Practical Completion by the Date for Practical Completion, Essential Energy will be entitled to recover damages from the Contractor for such failure under general law.

## **22. PAYMENT**

### **22.1 THE PURCHASE ORDER PRICE**

Subject to the performance by the Contractor of its obligations under a relevant Purchase Order Contract, Essential Energy will pay to the Contractor the Purchase Order Price as adjusted in accordance with the Purchase Order Contract.

The Parties acknowledge and agree that the Purchase Order Price:

- (a) includes all costs, expenses, fees and charges incurred by the Contractor in performing all its obligations under the Panel Agreement, these General Conditions and in connection with a Purchase Order Contract; and
- (b) will not be subject to any rise and fall, changes in the cost of plant, equipment, materials, taxation (other than GST), excise duty, fees, charges, foreign exchange adjustment or any other adjustment whatsoever except to the extent expressly provided by the Purchase Order Contract.

### **22.2 PAYMENT CLAIMS**

The Contractor may, in respect of each Purchase Order Contract, submit a payment claim to Essential Energy's Representative in respect of work performed under the relevant Purchase Order Contract by the Contractor at the times stated in the relevant Purchase Order Contract or if no time is stated on the last Business Day of each month.

Where the Panel Agreement provides for milestone payments, the Contractor has no entitlement to claim in respect of a milestone or stage of work an amount in excess of the payment limit prescribed against that milestone or stage of work in the relevant Purchase Order Contract.

In each payment claim the Contractor must include:

- (a) the Contractor's opinion as to the value of the work performed by the Contractor to the date of the payment claim and notification of all other Claims which the Contractor then has against Essential Energy under the Panel Agreement, these General Conditions or a Purchase Order Contract;



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- (b) sufficiently detailed evidence to enable Essential Energy's Representative to assess the claim;
- (c) a statutory declaration, in a form acceptable to Essential Energy, from a representative of the Contractor who is in a position to know the facts attested to, stating that:
  - (i) all subcontractors of the Contractor engaged in the work under a Purchase Order Contract have been paid all moneys that are due and payable to those subcontractors up to the date of submission by the Contractor of its payment claim; and
  - (ii) all employees of the Contractor who have been engaged in the work under a Purchase Order Contract have been paid all moneys that are due and payable to them up to the date of submission by the Contractor of its payment claim; and
- (d) a Statement in the form set out in Schedule 2, duly completed and signed and attaching a relevant Certificate of Currency (as referred to in that Statement).

Essential Energy's Representative may request additional information in respect of any payment claim (valid or otherwise) and if so requested the Contractor must promptly provide any additional information so requested.

Unless a Purchase Order Contract expressly provides otherwise, the Contractor is not entitled to payment for any item of unfixed plant or materials not incorporated into the Works.

## **22.3 PAYMENT SCHEDULE**

Within 10 Business Days after receipt of a payment claim validly submitted under clause 22.2, Essential Energy's Representative must, unless Essential Energy agrees to pay the whole of the amount claimed, assess the payment claim and provide a payment schedule to the Contractor and Essential Energy. The payment schedule must identify the payment claim to which the payment schedule relates and certify the amount Essential Energy's Representative reasonably considers is due to the Contractor or Essential Energy, as the case may be, setting out the reasons for the difference.

Essential Energy's Representative may allow in any payment schedule adjustment for amounts paid under a Purchase Order Contract and amounts that otherwise may be retained, deducted or claimed by Essential Energy from the Contractor (whether or not there has been a final determination as to the amount claimed or the amount claimed is disputed) under or in connection with these General Conditions and the relevant Purchase Order Contract.

## **22.4 PAYMENTS**

Essential Energy must (subject to its right to set-off under clause 22.10) pay the Contractor the amount certified in a payment schedule as being payable by Essential Energy to the Contractor (or if no payment schedule is provided to the Contractor, the whole of the amount claimed), no later than the later of:

- (a) to the extent permitted by law, the date of satisfaction of the pre-conditions in clauses 10.2, 22.2, and 30; and



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(b) if the payment claim relates to Works carried out or performed in:

- (i) the State of Queensland, 10 Business Days; or
- (ii) otherwise, 15 Business Days,

after a payment claim is validly made under clause 22.2.

The Contractor must pay to Essential Energy any amount certified in a payment schedule as being payable by the Contractor to Essential Energy no later than 10 Business Days after the provision of the relevant payment schedule to Essential Energy and the Contractor under clause 22.3.

## **22.5 FINAL PAYMENT CLAIM**

Within 30 days after the later of the completion by the Contractor of all Defect rectification work and the expiry of the Defects Liability Period, the Contractor must submit to Essential Energy's Representative a final payment claim endorsed "Final Payment Claim". The final payment claim must state all monies which the Contractor considers to be due to it from Essential Energy in connection with the relevant Purchase Order Contract and the work under that Purchase Order Contract.

Notwithstanding any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract, upon the expiration of the period for lodging the final payment claim, to the extent permitted by law, any Claim which the Contractor could have made against Essential Energy and has not made is barred.

## **22.6 FINAL PAYMENT SCHEDULE**

Within 10 Business Days after the receipt of the Contractor's final payment claim, Essential Energy's Representative must assess the final payment claim and unless Essential Energy agrees to pay the whole of the amount claimed, issue a final payment schedule to Essential Energy and the Contractor. The final payment schedule must identify the payment claim to which the payment schedule relates and certifying the final payment amount due and payable by Essential Energy to the Contractor or by the Contractor to Essential Energy, as the case may be.

Essential Energy's Representative may allow in the final payment schedule adjustment for amounts paid under the relevant Purchase Order Contract and amounts that otherwise may be retained, deducted or claimed by Essential Energy from the Contractor (whether or not there has been a final determination as to the amount claimed or the amount claimed is disputed) under these General Conditions and the relevant Purchase Order Contract.

## **22.7 FINAL PAYMENT**

Subject to the satisfaction of any pre-conditions to payment set out in a Purchase Order Contract (including the receipt of the Tax Invoice referred to in the next paragraph), then:

- (a) if a final payment schedule has been issued under clause 22.6, unless the Contractor not later than 7 days after the issue of the final payment schedule gives a notice to Essential Energy that a dispute or difference has arisen under clause 28.1, Essential Energy must (subject to its right to set-off under clause 22.10) pay to the Contractor or the Contractor must pay to Essential Energy, as the case may be, the amount certified in the final payment schedule, where the payment claim relates to Works carried out or performed in:

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- (i) the State of Queensland, within 10 Business Days; or
  - (ii) otherwise, within 15 Business Days,
- after a payment claim is validly made under clause 22.5; and
- (b) if a final payment schedule has not been provided under clause 22.6, unless the Contractor not later than 17 days after the issue of the final payment claim gives a notice to Essential Energy that a dispute or difference has arisen under clause 28.1, Essential Energy must pay to the Contractor the amount of the final payment claim, where the payment claim relates to Works carried out or performed in:
- (i) the State of Queensland, within 10 Business Days; or
  - (ii) otherwise, within 15 Business Days,
- after a payment claim is validly made under clause 22.5.

The Party entitled to receive payment must issue the other Party with a valid Tax Invoice before the due date for payment.

## **22.8 EFFECT OF PAYMENT AND PAYMENT SCHEDULES**

Any payment made by Essential Energy to the Contractor is deemed to be a payment on account only and is not evidence of the value of the work (except as provided under clause 22.6) or that the work has been satisfactorily completed. Nor does the issue of a payment schedule or a final payment schedule constitute approval of any work or other matter and does not prejudice any Claim by Essential Energy.

## **22.9 SATISFACTORY EVIDENCE**

Without limiting any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract, if the Contractor fails to provide to Essential Energy's Representative satisfactory evidence in accordance with clause 22.2(b), 22.2(c) or 22.2(d), the Contractor is not entitled to payment under or in connection with these General Conditions or a Purchase Order Contract and Essential Energy is not obliged to make any payment to the Contractor until evidence to the satisfaction of Essential Energy's Representative is provided.

## **22.10 SET OFF**

Despite any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract and without limiting Essential Energy's other rights and remedies, Essential Energy may, at any time, and from time to time, deduct or set-off from either or both of:

- (a) any money payable by Essential Energy to the Contractor under a Purchase Order Contract; and
- (b) the security (being the Bank Guarantees) provided by the Contractor under a Purchase Order Contract,

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any money due or reasonably claimed to be due from the Contractor to Essential Energy under or in connection with a Purchase Order Contract.

## **22.11 INTEREST**

If any moneys due and payable to either Party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable thereon at the rate prescribed under section 101 of the *Civil Procedure Act 2005* (NSW) from the date upon which or the expiration of the period within which they should have been paid up until and including the date upon which the moneys are paid.

## **23. PRACTICAL COMPLETION**

### **23.1 NOTICE**

The Contractor must give Essential Energy's Representative at least 14 days notice of the date upon which the Contractor anticipates that Practical Completion will be reached.

### **23.2 CERTIFICATE OF PRACTICAL COMPLETION**

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor shall in writing request Essential Energy's Representative to issue a Certificate of Practical Completion. Within 14 days of the receipt of the request, Essential Energy's Representative shall give to the Contractor and to Essential Energy a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.

When Essential Energy's Representative is of the opinion that Practical Completion has been reached, Essential Energy's Representative may issue a Certificate of Practical Completion, whether or not the Contractor has made a request for its issue.

### **23.3 EFFECT OF CERTIFICATE**

The issue of a Certificate of Practical Completion shall not constitute approval of any work or other matter and nor shall it prejudice any Claim by Essential Energy or the Contractor.

## **24. INDUSTRIAL RELATIONS**

### **24.1 COMPLIANCE**

Without limiting clause 17.1, the Contractor must comply, and must ensure that all of its employees, subcontractors and agents comply, with all Laws in respect of industrial and workplace matters, including:

- (a) all state and federal legislation and legally enforceable codes of practice which apply or may apply to the work under a Purchase Order Contract or the Site; and
- (b) all applicable binding and legally enforceable agreements, awards and workplace agreements.

The Contractor must make available upon reasonable notice whatever documents and records Essential Energy's Representative requests concerning compliance with this clause.

## **24.2 INDUSTRIAL DISPUTES**

The Contractor:

- (a) must take all possible steps and measures to avoid and minimise the consequences of industrial disputes of any kind; and
- (b) is responsible for and assumes all risks of and incidental to all actions, matters, bans, limitations and disputes (whether lawful or unlawful) in relation to industrial relations or employment issues both on and off the Site with its employees and those of its subcontractors and agents.

## **25. WORK HEALTH AND SAFETY & CHAIN OF RESPONSIBILITY**

### **25.1 GENERAL OBLIGATIONS**

Without limiting clause 17.1, the Contractor must comply, and must ensure that its workers, including its employees, subcontractors and agents comply, with all Laws, standards and codes of practice in respect of workplace health and safety matters which apply or may apply to the work under a Purchase Order Contract or the Site (including the WHS Act and the WHS Regulations) and any health and safety policies, procedures and requirements issued by Essential Energy or any relevant Authority to the Contractor from time to time.

The Contractor will upon request by Essential Energy demonstrate compliance with the requirements of this clause 25.1, including by providing evidence of measures taken to achieve such compliance.

### **25.2 APPOINTMENT AS PRINCIPAL CONTRACTOR**

Essential Energy, as the party commissioning the work under a Purchase Order Contract, hereby:

- (a) appoints, so far as Essential Energy may relevantly and validly do so, the Contractor as the 'principal contractor' for executing work under a Purchase Order Contract pursuant to clause 293 of the WHS Regulations; and
- (b) authorises the Contractor to have management or control of the Site to the extent necessary to discharge the duties imposed on a 'principal contractor' under Chapter 6 of the WHS Regulations,

and the Contractor hereby accepts its appointment as the 'principal contractor' for that work and must ensure that it complies with and fulfils the obligations of 'principal contractor' under the WHS Regulations.

The Contractor acknowledges that regardless of whether or not Essential Energy has validly appointed the Contractor as 'principal contractor' for the purposes of the WHS Regulations the Contractor must, in any event, comply with and fulfil the obligations of a 'principal contractor' as if the Contractor had been validly appointed as the 'principal contractor' for the purposes of the WHS Regulations including:

- (c) ensuring that signs are installed at the Site that:
  - (i) show the Contractor's name and telephone contact numbers (including an after hours telephone number);

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- (ii) show the location of the site office for the work under a Purchase Order Contract, if any; and
  - (iii) are clearly visible from outside the Site;
- (d) ensuring that, so far as is reasonably practicable, the Site is secured so as to prevent unauthorised access;
- (e) the preparation and maintenance of the work health and safety management plan that meets the requirements of the WHS Regulations and AS/NZS 4801:2001;
- (f) ensuring that, so far as is reasonably practicable, each person who is to carry out work in relation to a Purchase Order Contract is, before commencing work, made aware of:
  - (i) the contents of the work health and safety management plan for the work in relation to a Purchase Order Contract, to the extent it relates to the work carried out by the person; and
  - (ii) the person's right to inspect the work health and safety management plan under the WHS Regulations;
- (g) ensuring that, so far as is reasonably practicable, each person who is to carry out work in relation to a Purchase Order Contract is made aware of any changes to the work health and safety management plan which are relevant to the work that person is carrying out;
- (h) ensuring that, so far as is reasonably practicable, the following aspects at the Site are without risks to health and safety:
  - (i) the storage, movement and disposal of construction materials and waste;
  - (ii) the storage of plant that is not in use;
  - (iii) traffic in the vicinity of the Site that may be affected by the work under a Purchase Order Contract; and
  - (iv) essential services at the workplace; and
- (i) the responsibility to provide or ensure subcontractors provide safe work method statements to the Contractor.

### **25.3 ADDITIONAL OBLIGATIONS UNDER THE WHS ACT AND THE WHS REGULATIONS**

The Contractor must:

- (a) where the Contractor is a designer (as defined in the WHS Act) of the work under a Purchase Order Contract or any part of the work under a Purchase Order Contract, give Essential Energy a written report that specifies the hazards associated with the design of the works that create a risk to the health and safety

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of persons who are to carry out the work under a Purchase Order Contract (“**Safety Design Report**”);

- (b) ensure, so far as is reasonably practicable, that any other person who is a designer (as defined in the WHS Act) of the work under a Purchase Order Contract or any part of the work under a Purchase Order Contract, gives to Essential Energy a Safety Design Report;
- (c) without limiting clause 5.2, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons at the Site that have a duty with respect to the same matter under the WHS Act;
- (d) manage hazards and risks which have been identified in any Safety Design Report(s) that specify the hazards associated with the design of the work under a Purchase Order Contract or any part of the work under a Purchase Order Contract; and
- (e) comply with all relevant requirements in the WHS Regulations with respect to excavation work.

### 25.4 SITE WHS PLANS

The Contractor:

- (a) must provide Essential Energy with a copy of the site specific work health and safety management plan and other registers, records and documents which the Contractor is required to prepare and maintain in connection with the obligations of a ‘principal contractor’ under Part 6.4 of the WHS Regulations; and
- (b) warrants that compliance with its work health and safety management plan will enable the Contractor to discharge the obligations of a principal contractor under the WHS Regulations.

### 25.5 PREVENTATIVE MEASURES

The Contractor must take all possible and reasonably practicable steps and measures to eliminate risk to health and safety and to avoid and minimise the consequences of work health and safety issues.

### 25.6 HEAVY VEHICLE NATIONAL LAW

The Contractor shall be responsible for providing and maintaining the safety of all of its heavy vehicle transport activities. This responsibility includes but is not limited to ensuring that the Contractor’s business practices, decisions, policies, directions, management, contracts and employee training associated with the use of a heavy vehicle on a road complies with the requirements of the Heavy Vehicle National Law, any related regulations and standards and/or direction by any relevant Authority to the Contractor, its employees or third parties effecting the Contractor’s transport activities.

The Contractor must ensure, so far as reasonably practicable, the safety of its transport activities relating to heavy vehicles and so far as reasonably practicable eliminate (or where not reasonably practicable to eliminate, minimise) public risks and ensure that its conduct does not directly or indirectly cause or encourage contraventions of any Laws applicable to heavy vehicle transport activities or contraventions by other parties in the Chain of Responsibility.

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If requested by Essential Energy, the Contractor must provide copies of its policies and any other evidence to demonstrate that it has met and is meeting at all times its obligations under this clause 25.6 and the Heavy Vehicle National Law.

If, during the course of its performance of the work under a Purchase Order Contract, the Contractor becomes aware of its, its employees or its sub-contractor's contravention or reasonably suspected contravention of the requirements of the Heavy Vehicle National Law, it must notify Essential Energy of this incident as soon as possible and within 24 hours provide Essential Energy with a written report detailing the particulars of incident.

Essential Energy shall be entitled, but shall be under no obligation, to issue directions in relation to heavy vehicle safety issues and the Contractor shall, at its own cost, comply with those directions to ensure the highest level of safety in its transport activities.

## **25.7 NOTICE**

The Contractor will as soon as possible notify Essential Energy in writing of any act, fact or circumstances associated with the activities of the Contractor or any other person relevant to the ability of the Contractor to perform the work under a Purchase Order Contract in a manner that is safe and without risks to health.

The Contractor must:

- (a) immediately notify Essential Energy of any accident, notifiable incident (being an incident which is notifiable under any work health and safety legislation (including the WHS Act or the WHS Regulations)), injury or property damage which:
  - (i) occurs during the performance of the work under a Purchase Order Contract; or
  - (ii) is associated with the work under a Purchase Order Contract; and
- (b) within 24 hours of any such accident, incident or damage, provide a written report to Essential Energy giving complete details of the accident, incident or damage, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

## **25.8 RELEASE AND INDEMNITY**

To the maximum extent permitted by law, the Contractor releases and indemnifies Essential Energy from and against any damage, expense, loss, cost, liability or claim by or against Essential Energy arising out of or in connection with a breach by the Contractor of its obligations under this clause 25.

## **25.9 APPOINTMENT UNAFFECTED**

The Contractor acknowledges and agrees that it has the sole authority for, and management and control of, the Site and all safety matters involved in the work undertaken by the Contractor (including ensuring that the Site and the means of entering the Site are at all times safe and without risk to health), which authority shall remain unaffected despite any approval, authorisation, direction, instruction, order, permission, request or requirement of the Essential Energy's Representative or Essential Energy or the operation of any other clause of the Panel Agreement, these General Conditions or a Purchase Order Contract.



## **26. ENVIRONMENTAL PROTECTION**

### **26.1 COMPLIANCE**

Without limiting clause 17.1, the Contractor must comply, and must ensure that its employees, subcontractors and agents comply, with all Laws concerning Environmental matters, including Laws concerning land use, development, pollution, contamination, waste disposal, toxic and hazardous substances, climate change, greenhouse gases, energy use or efficiency, water use or access and conservation of natural or cultural resources, which apply or may apply to the work under a Purchase Order Contract and with other Environmental requirements issued by Essential Energy or any relevant Authority to the Contractor from time to time.

Where any Environmental requirements issued by Essential Energy are inconsistent with an Approval, the Contractor must comply with the Approval.

The Contractor will upon request by Essential Energy demonstrate compliance with the requirements of this clause 26.1, including by providing evidence of measures taken to achieve such compliance.

The Contractor must prepare and maintain throughout the performance of the work under a Purchase Order Contract an environmental management plan which complies with the requirements of ISO 14001:2004. This plan can be part of or separate to the site specific work health and safety management plan required under clause 25.2.

### **26.2 PREVENTATIVE MEASURES**

The Contractor must, in carrying out the work under a Purchase Order Contract, take all necessary steps and measures to prevent harm or damage to the Environment.

### **26.3 HAZARDOUS SUBSTANCES AND MATERIALS**

Where the Contractor intends to bring onto the Site any material or substance which may be hazardous to the Environment, the Contractor must, prior to doing so, give information to Essential Energy's Representative in respect of such material or substance. The information must include plans for the safe handling, storage and use of the material or substance and precautions to be taken.

### **26.4 CONTAMINATION AND POLLUTION**

The Contractor agrees to take such steps as are required:

- (a) to minimise any contamination or pollution of the Site or of land or premises within the vicinity of the Site; and
- (b) to prevent, in connection with the work under a Purchase Order Contract, the release by its employees, subcontractors and agents of any pollutant to the Environment.

The Contractor undertakes to remove, and to bear and indemnify Essential Energy against all costs and expenses of any kind in respect of the presence or removal of pollutants, contaminants or any other waste on any premises caused or contributed to by the Contractor or any employee subcontractor or agent of the Contractor arising out of the performance of these General Conditions or a Purchase Order Contract. Such removal shall



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be in accordance with the requirements of codes of practice for the safe removal of such materials and any other Laws that relate to the removal of such materials.

## **26.5 CONTRACTOR'S RESPONSIBILITY FOR NOISE AND NUISANCE**

Without limiting any other obligation under or in connection with the Panel Agreement, these General Conditions or a Purchase Order Contract, the Contractor shall perform work under a Purchase Order Contract so as to avoid nuisance and to minimise inconvenience to others (including neighbours), disturbance, vibration, shock and noise arising from construction activities.

The Contractor has no Claim against Essential Energy arising from or in connection with compliance with its obligations under this clause 26.5 including where such compliance requires the Contractor to carry out more work, use more or alternative constructional plant or incur more cost.

## **26.6 NOTICE OF ENVIRONMENTAL INCIDENT**

The Contractor must promptly notify (or immediately notify if immediate notice is required for Essential Energy to comply with Law) Essential Energy in writing of any accident, incident or damage which occurs during the performance of the work under a Purchase Order Contract or is associated with the work under a Purchase Order Contract which may trigger a requirement under any applicable Law concerning the Environment for any Party to notify an Authority of that accident, incident or damage.

Within 24 hours of any such accident, incident or damage, the Contractor must provide a written report to Essential Energy giving complete details of the accident, incident or damage, including the results of investigations into its cause and any recommendations or strategies for prevention of a recurrence.

## **26.7 NOTICE OF COMPLAINT**

The Contractor must notify Essential Energy in writing within 24 hours of receipt of any:

- (a) complaint received from a resident in the area surrounding the Site relating to the work carried out at the Site; or
- (b) complaint, notice, direction or request received from an Authority or stakeholder relating to the work carried out at the Site.

## **27. DEFAULT AND TERMINATION**

### **27.1 NOTICE OF CONTRACTOR DEFAULT**

If the Contractor commits a substantial breach of the Panel Agreement, these General Conditions or of a Purchase Order Contract then, without limiting any other right it may have, Essential Energy may by notice in writing serve upon the Contractor a notice entitled "Notice of Contractor Default".

A substantial breach of the Panel Agreement, these General Conditions or a Purchase Order Contract includes:

- (a) a failure to comply with a lawful and reasonable direction of Essential Energy's Representative given under clause 8.2;

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- (b) a failure to provide the Bank Guarantees as security in accordance with clause 9.1;
- (c) a failure to insure in accordance with clause 10.2;
- (d) a failure to comply with the standard of materials and workmanship required by the relevant Purchase Order Contract;
- (e) a failure to proceed with the work under a Purchase Order Contract with due expedition and without delay or within the time set out in the relevant Purchase Order Contract as required under clause 12.1;
- (f) where the Contractor's liability to Essential Energy under clause 12.4 in respect of any Purchase Order Contract is equal to or exceeds the liability cap referred to in clause 21.4; and
- (g) where clause 34.1 applies, where the Contractor's liability to Essential Energy is equal to or exceeds the liability cap referred to in clause 34.1.

A substantial breach of a Purchase Order Contract is deemed to be a substantial breach of the Panel Agreement and these General Conditions.

## **27.2 CONTENTS OF NOTICE OF CONTRACTOR DEFAULT**

A Notice of Contractor Default given under this clause 27 must:

- (a) state that it is given under clause 27;
- (b) identify and particularise the substantial breach complained of; and
- (c) specify a time not less than 14 days from the date the Notice of Contractor Default is given within which the Contractor is either to remedy the breach or to show cause to Essential Energy's satisfaction why Essential Energy ought not exercise its rights under clause 27.3.

## **27.3 FAILURE BY CONTRACTOR TO REMEDY/SHOW CAUSE**

If the Contractor fails within the time specified in a Notice of Contractor Default either to remedy the substantial breach or to show cause to Essential Energy's satisfaction why Essential Energy ought not exercise its rights under this clause 27.3, Essential Energy may by notice in writing to the Contractor engage others to, or itself, carry out any part or the whole of the remaining work under the relevant Purchase Order Contract or terminate the Panel Agreement or the relevant Purchase Order Contract or both (including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining work under the relevant Purchase Order Contract).

If Essential Energy engages others to carry out or itself carries out any part or the whole of the remaining work under a Purchase Order Contract, Essential Energy's Representative must determine the reasonable cost so incurred by Essential Energy and any other loss or damage sustained by Essential Energy as a consequence and the same will constitute a debt due and owing by the Contractor to Essential Energy.

If Essential Energy terminates the Panel Agreement or a Purchase Order Contract or both under this clause 27.3 or clauses 27.4 or 27.9 it will have the same entitlements and the Contractor will have the same liabilities as each would at law, had the Contractor repudiated

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the Panel Agreement or the relevant Purchase Order Contract (or both), and Essential Energy terminated the Panel Agreement or the relevant Purchase Order Contract (or both) by acceptance of the Contractor's repudiation.

#### **27.4 CONTRACTOR UNABLE OR UNWILLING TO COMPLETE**

If the Contractor advises Essential Energy that the Contractor is unable or unwilling to complete performance of under the Panel Agreement or a Purchase Order Contract (or both), Essential Energy may immediately (and without serving upon the Contractor a Notice of Contractor Default but must otherwise provide written notice to the Contractor) exercise its rights under clause 27.3 to engage others to, or itself, carry out any part or the whole of the remaining work under the Panel Agreement or Purchase Order Contract, or terminate the Panel Agreement or the relevant Purchase Order Contract (or both), including after first exercising its rights to engage others to, or itself, carry out any part or the whole of the remaining work under the relevant Purchase Order Contract.

#### **27.5 PROCEDURE UPON TERMINATION OR TAKING WORK OUT OF HANDS**

Notwithstanding any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract, if Essential Energy terminates the Panel Agreement or a Purchase Order Contract or both for whatever reason (including for its convenience) or engages others to carry out or itself carries out any part or the whole of the remaining work under the relevant Purchase Order Contract, Essential Energy may without payment of compensation to the Contractor (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or a Purchase Order Contract):

- (a) take possession of all documents (including design documentation), information and the like in the Contractor's possession which is connected with the Works and reasonably required by Essential Energy to facilitate completion of the Works;
- (b) take an assignment of the Contractor's rights and benefits under any subcontracts, including any warranties and guarantees, that relate to the work under the relevant Purchase Order Contract. The Contractor must do all things necessary to effect such an assignment; and
- (c) take possession of such goods, plant, equipment and other things on or about the Site as are owned or used by the Contractor and are reasonably required by Essential Energy to facilitate completion of the Works. Such of the goods, plant, equipment and other things which are surplus will be returned to the Contractor on completion of the Works subject to the Contractor satisfying any debt to Essential Energy as determined under clause 27.3.

#### **27.6 ESSENTIAL ENERGY'S DEFAULT**

If Essential Energy is in breach of its obligation to pay an amount under clause 22.4, then without limiting any other right it may have, the Contractor may by notice in writing serve upon Essential Energy a notice entitled "Notice of Essential Energy Default".

#### **27.7 CONTENTS OF NOTICE OF ESSENTIAL ENERGY DEFAULT**

A Notice of Essential Energy Default given under clause 27 must:

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- (a) state that it is given under clause 27;
- (b) identify and adequately particularise the amount not paid under clause 22.4; and
- (c) specify a time not less than 14 days from the date the Notice of Essential Energy Default is given within which Essential Energy must either make payment of the amount or compromise the claim of the Contractor to the Contractor's satisfaction or identify the basis on which it is entitled to refrain from paying the amount required under clause 22.4.

## **27.8 FAILURE BY ESSENTIAL ENERGY TO MAKE PAYMENT/COMPROMISE CLAIM**

If, the Contractor is entitled to serve a Notice of Essential Energy Default and having been served with a valid Notice of Essential Energy Default, Essential Energy fails within the time specified, either to make payment of the amount required under clause 22.4 or fails to compromise the claim to the satisfaction of the Contractor (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 22.4, the Contractor may by notice in writing to Essential Energy, expressly referring to this clause 27.8, suspend the whole or any part of the work under the relevant Purchase Order Contract. If Essential Energy remedies the breach, the Contractor shall promptly lift the suspension.

If within 7 days of the date of a suspension under this clause 27.8 Essential Energy fails to compromise the claim to the satisfaction of the Contractor (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 22.4, the Contractor may by notice in writing to Essential Energy terminate the Purchase Order Contract under which the relevant work is being performed. In such event or in respect of a notice from the Contractor under clause 27.9, the Contractor will, in respect of the relevant Purchase Order Contract, be entitled to:

- (a) be paid any outstanding amounts due to the Contractor under a payment schedule issued under the relevant Purchase Order Contract;
- (b) be paid an amount for the value of work done in the period between when the last payment claim was submitted and the date that the relevant Purchase Order Contract was terminated, as determined by Essential Energy's Representative (acting reasonably) in accordance with that Purchase Order Contract;
- (c) be paid the cost of materials reasonably ordered by the Contractor for the Works, which the Contractor is liable to accept (and which cannot be cancelled without unavoidable loss being incurred), but only if the materials become the property of Essential Energy upon payment as determined by Essential Energy's Representative (acting reasonably);
- (d) be paid the reasonable cost of removal of plant and equipment as determined by Essential Energy's Representative;
- (e) subject to the exercise of any right of recourse that Essential Energy may have to the Bank Guarantees under clause 9.2, have returned all Bank Guarantees; and
- (f) be paid an amount representing the reasonable cost of performing the Contractor's obligations under clause 27.5.

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The Contractor agrees that the entitlements under this clause 27.8 will be the Contractor's full compensation for all work performed in respect of the Panel Agreement, these General Conditions and the relevant Purchase Order Contract (as applicable), and for any Claims of the Contractor arising out of or in connection with that Purchase Order Contract or its termination under this clause 27.8.

## **27.9 INSOLVENCY**

Without prejudice to any other right either Party may have, a Party may, to the extent permitted by law, terminate the Panel Agreement and/or any and all Purchase Order Contracts by notice in writing to the other Party upon the date stated in the notice if the other Party is insolvent or:

- (a) being a person:
  - (i) has judgment entered against him or her in any court in any jurisdiction;
  - (ii) commits an act of bankruptcy;
  - (iii) has a sequestration order made against his or her estate;
  - (iv) lodges a debtor's petition; or
  - (v) calls a meeting of his or her creditors with a view to entering into, or enters into, any form of compromise or arrangement with his or her creditors; or
- (b) being a company:
  - (i) calls a meeting of its creditors with a view to entering into, or enters into, any form of compromise or arrangement with its creditors;
  - (ii) an order is made or resolution passed for its winding up (except for the purpose of reconstruction or amalgamation with the consent of the other which consent may not be unreasonably withheld);
  - (iii) an order is made for the appointment of a liquidator or provisional liquidator;
  - (iv) makes an assignment for the benefit of or enters into any arrangement or composition with its creditors or an administrator is appointed to it or it is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth); or
  - (v) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), it is taken to have failed to comply with a statutory demand.

Notwithstanding any other clause of the Panel Agreement, these General Conditions or a Purchase Order Contract, where and from the date Essential Energy is entitled to terminate the Panel Agreement and/or any Purchase Order Contract under this clause 27.9, Essential Energy will be taken to have become entitled to recourse to all security still held by Essential Energy and the Contractor will have no entitlement to (or to make any Claim in

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respect of) and Essential Energy will have no obligation to return to the Contractor any security still held by Essential Energy.

## **27.10 TERMINATION FOR CONVENIENCE**

Without limiting any other right available to Essential Energy under the Panel Agreement, these General Conditions or a Purchase Order Contract or at law, Essential Energy may at any time and for whatever reason (including its convenience) terminate a Purchase Order Contract upon providing 14 days prior written notice to the Contractor (or such longer period as may be agreed by the Parties). In such circumstance the Contractor's entitlements will be limited to those set out in clause 27.8.

## **28. DISPUTE RESOLUTION**

### **28.1 NOTICE**

If a dispute or difference arises between Essential Energy and the Contractor out of or in connection with the work under a Purchase Order Contract, the Works, the Panel Agreement, these General Conditions or a Purchase Order Contract (including in respect of a determination or assessment made by Essential Energy's Representative under a Purchase Order Contract), then either Party may give the other a written notice specifying the dispute or difference. The notice must specify in reasonable detail the nature of the dispute or difference and, if the Party serving the notice makes any Claim, the notice must specify in reasonable detail the legal basis of the Claim.

Neither Party will commence proceedings (other than for injunctive or other urgent relief) in respect of any such dispute or difference before a notice under this clause 28.1 has been served and the procedure in clauses 28.2 and 28.3 have been complied with.

### **28.2 MEETING**

If a dispute or difference notified under clause 28.1 has not been settled within 7 days of the date of the notice, either Party may require by further notice in writing to the other, that a person holding a position of senior management of each of Essential Energy and the Contractor meet and undertake negotiations in good faith and on a without prejudice basis with a view to resolving the dispute or difference.

If such a meeting is required by either Party, within 7 days of the receipt of the further notice, each Party must ensure attendance on its behalf by a person holding a position of senior management.

### **28.3 MEDIATION**

If the dispute or difference is not resolved within 21 days of the giving of notice under clause 28.1, the dispute or difference is referred to mediation. If the Parties cannot promptly agree on a mediator then a mediator will be nominated by the Resolution Institute.

The Parties must pay the mediator's remuneration in equal shares. Each Party must pay its own costs of the mediation.

The Resolution Institute Mediation Rules will apply to the mediation.

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## **28.4 CONTINUED PERFORMANCE**

Notwithstanding the existence of a dispute or difference, the Parties must continue to perform their respective obligations under the Panel Agreement and each Purchase Order Contract.

## **29. BAR ON CLAIMS**

To the extent permitted by law, the Contractor will not have any right to make any Claim against Essential Energy and will be absolutely barred from making such a Claim, unless the Contractor gives to Essential Energy:

- (a) a written notice not later than 28 days after the Contractor first knew, or ought to have known, about the circumstances on which the Claim is based, that it intends to make a Claim; and
- (b) a further written notice within 28 days of the notice under clause 29(a) providing detailed particulars of the basis for and the quantification of the Claim sufficient to enable Essential Energy to make an informed assessment of the merits of the Claim,

unless, in circumstances where another provision of these General Conditions or a Purchase Order Contract provides a procedure for the making of the Claim, the Contractor complies in all respects with the requirements in those other provisions (including as to time).

Updates of the information required in the notice under clause 29(b) for a Claim based on ongoing events or circumstances shall be submitted by the Contractor to Essential Energy at weekly intervals until the events or circumstances have ceased.

## **30. GST**

Save for defined terms in a Purchase Order Contract, words or expressions used in this clause 30 which have a particular meaning in the GST law (as defined in the GST Act) and including any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context requires otherwise.

Except where express provision is made to the contrary, and subject to this clause 30, the consideration to be paid or provided under or in connection with a Purchase Order Contract is exclusive of any GST.

To the extent that any supply made under or in connection with a Purchase Order Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.

To the extent that one Party is required to reimburse another Party for costs incurred by the other Party, those costs do not include any amount in respect of GST for which the other Party is entitled to claim an input tax credit.

To the extent that any consideration to be paid or provided under this a Purchase Order Contract represents a decreasing or increasing adjustment because of an adjustment event in relation to a taxable supply:



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- (1) the supplier must notify the recipient of the refund, credit or further amount payable on account of GST by the supplier issuing to the recipient an adjustment note (or a cancellation note together with a tax invoice) within 5 Business Days of becoming aware of the adjustment event; and
- (2) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate on account of GST within 10 Business Days of receipt of the adjustment note or tax invoice.

To the extent that any consideration payable to a Party under or in connection with a Purchase Order Contract is determined by reference to a cost incurred by a Party, or is determined by reference to a cost, price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

A Party's right to payment under a Purchase Order Contract is subject to a valid Tax Invoice being delivered to the recipient of the taxable supply.

### **31. SECURITY OF PAYMENT**

The Contractor acknowledges, for the avoidance of doubt, that to the extent Essential Energy has an entitlement to issue a payment schedule(s) (or its equivalent) or any other document or notice under the Security of Payment Act, it may do so by Essential Energy's Representative who acts as Essential Energy's agent in that regard.

The Contractor must provide to Essential Energy's Representative as soon as possible in the circumstances, a copy of any notice or document:

- (a) served by the Contractor on Essential Energy under or in connection with the Security of Payment Act; and
- (b) received by the Contractor from any third party in connection with the Project where that notice or document is provided under the Security of Payment Act. In such event, Essential Energy may, in its absolute discretion, pay such third party the money that it is owed by the Contractor and the amount of such payment will be a debt due from the Contractor to Essential Energy. Payment by Essential Energy of any amount under this clause 31(b) will not relieve the Contractor of any of its obligations and liabilities under or in connection with the Panel Agreement, these General Conditions or a Purchase Order Contract.

Without limiting Essential Energy's rights pursuant to any other clause of the Panel Agreement, these General Conditions or a Purchase Order Contract, the Contractor is liable for and indemnifies Essential Energy against all loss, costs, damages and expense (including legal fees on an indemnity basis) or liability arising out of or in connection with:

- (c) a suspension pursuant to the Security of Payment Act by a subcontractor to the Contractor of;
- (d) the Contractor's failure to pay an amount claimed pursuant to the Security of Payment Act by a subcontractor to the Contractor for; or
- (e) an adjudication application issued by a subcontractor to the Contractor under the Security of Payment Act in connection with,

work which forms part of or is incidental to the work under a Purchase Order Contract.



## **32. CIVIL LIABILITY**

The Parties agree that to the maximum extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising out of or in connection with the Panel Agreement, a Purchase Order Contract or the work under a Purchase Order Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or on the basis of quantum meruit, quasi contract or of any other principle of law or equity.

The Contractor further agrees that each subcontract into which it enters includes the following terms:

- (a) to the extent permitted by law, the operation of Part 4 of *Civil Liability Act 2002* (NSW) shall be excluded in relation to all rights, obligations and liabilities arising out of or in connection with the subcontract or the work of the subcontractor whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or on the basis of quantum meruit, quasi contract or of any other principle of law or equity; and
- (b) the subcontractor warrants in favour of Essential Energy that the subcontractor will not seek to rely upon any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in any proceedings taken by Essential Energy against the Contractor or the subcontractor arising out of or in connection with the work of the subcontractor required to be executed by it under the subcontract.

## **33. CONFIDENTIALITY AND CONFLICTS OF INTEREST**

### **33.1 CONFIDENTIALITY**

Each Party must keep confidential:

- (a) information so designated in writing by the other Party as confidential or which the Party receiving the information ought to reasonably know is confidential; and
- (b) all aspects of the Panel Agreement, these General Conditions, any RFQ and a Purchase Order Contract and all matters arising from the work under a Purchase Order Contract and the Works,

and must not disclose these details to any third party without the written approval of the other Party except:

- (c) to the extent required by any Law (including the *Government Information (Public Access) Act 2009* (NSW));;
- (d) to enable performance of the Panel Agreement, these General Conditions or a Purchase Order Contract;
- (e) where the disclosing Party is Essential Energy:
  - (i) to obtain the benefit of the Panel Agreement Conditions or a Purchase Order Contract;
  - (ii) at the request of Parliament, a Parliamentary Committee or a Minister; or

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- (iii) for reasons of government accountability;
- (f) disclosure to a professional adviser for the purposes of the Panel Agreement, these General Conditions or a Purchase Order Contract; or
- (g) if such information is in the public domain other than by reason of a breach of this clause by the other Party.

To the extent that a Party may disclose such information to a third party under this clause, that Party must, before disclosing that information, ensure that the third party is bound by similar confidentiality obligations as contained in this clause 33.1.

Neither Party shall use or allow for publication or broadcasting any information concerning the Project or the Works in any media without the written approval of the other Party. Each Party shall refer to the other Party any enquiries concerning the Project from any media.

This clause 33.1 survives the expiry or termination of these General Conditions and any Purchase Order Contract, regardless of the cause of that expiry or termination.

## **33.2 CONFLICT OF INTEREST**

The Contractor warrants that as at:

- (a) the date of the Panel Agreement; and
- (b) the date that each Purchase Order is issued,

the Contractor does not have an interest or duty which conflicts or may conflict with any interest of Essential Energy ("**Conflict of Interest**") and is not aware of any Conflict of Interest which may arise.

If the Contractor becomes aware of a Conflict of Interest or a potential Conflict of Interest, the Contractor must notify Essential Energy in writing as soon as possible in the circumstances.

## **34. LIMITATION OF LIABILITY**

### **34.1 LIMITATION OF LIABILITY**

Subject to clause 34.2 below, the Contractor's maximum aggregate liability to Essential Energy under all Purchase Order Contracts created in a Relevant Period is limited to ten million dollars, unless otherwise set out in the relevant Purchase Order Contract.

### **34.2 EXCEPTIONS**

Clause 34.1 does not apply to the Contractor's liability:

- (a) in respect of any liability under clause 10.1(c) or 10.1(d);
- (b) in respect of the Contractor's failure to effect and maintain insurance in accordance with clause 10;
- (c) to the extent that insurance proceeds are received, or would have been received but for an act or omission of the Contractor, under insurances required by the

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Panel Agreement, these General Conditions or a Purchase Order Contract in respect of that liability;

- (d) in respect of a breach by the Contractor of clause 16;
- (e) in respect of any liability under clause 16.2;
- (f) under clause 19 in respect of rectifying Defects and the costs incurred by Essential Energy in respect of Defects; or
- (g) arising out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence.

## **35. EXCLUSION OF CONSEQUENTIAL LOSS**

### **35.1 EXCLUSION OF CONSEQUENTIAL LOSS**

Despite any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract to the contrary, but subject to 35.2, to the extent permitted by law, neither Party is liable to the other Party whether under, arising out of or in any way connected with the Panel Agreement, these General Conditions or a Purchase Order Contract, without limitation, by way of indemnity, for breach of contract, in tort (including negligence), in equity, under statute or otherwise for any:

- (a) loss of profit;
- (b) anticipated loss of profit;
- (c) loss of production;
- (d) loss of opportunity;
- (e) loss of use;
- (f) third party pure economic loss (except to the extent covered by liquidated damages); or
- (g) other losses that do not naturally rise from an event or breach.

### **35.2 EXCEPTIONS**

Clause 35.1 does not apply to:

- (a) the Contractor's liability:
  - (i) in respect of any liability under clause 10.1(c) or 10.1(d);
  - (ii) in respect of the Contractor's failure to effect and maintain insurance in accordance with clause 10;
  - (iii) to the extent that insurance proceeds are received, or would have been received but for an act or omission of the Contractor, under insurances required by the Panel Agreement, these General Conditions or a Purchase Order Contract in respect of that liability;

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- (iv) in respect of a breach by the Contractor of clause 16;
  - (v) in respect of any liability under clause 16.2;
  - (vi) if and to the extent liquidated damages are payable under clause 21.4 or if liquidated damages are void or unenforceable whether by termination of the Panel Agreement or a Purchase Order Contract or otherwise or if liquidated damages do not apply, general damages liability for delay; or
  - (vii) to the extent that such liability arises out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence.
- (b) Essential Energy's liability to the extent that such liability arises out of or in connection with criminal conduct, fraud, wilful misconduct, wilful default, or gross negligence of Essential Energy or its employees or agents.

## **36. GENERAL**

### **36.1 NOTICES**

Any notice to be given or served under or in connection with the Panel Agreement, these General Conditions or a Purchase Order Contract must be in writing and delivered by hand, in the ordinary mail, or email at the address stated in Schedule 1 of the Panel Agreement (in the case of the Contractor) or in the relevant RFQ (in the case of Essential Energy), except in the case of notices to be given or served under or in connection with clause 27 or 28 in which case such notices must be delivered by registered mail to the postal address stated in Schedule 1 of the Panel Agreement (in the case of the Contractor) or in the relevant RFQ (in the case of Essential Energy).

A notice sent by ordinary or registered mail to:

- (a) an address in Australia within the same city or town is taken to have been received 4 Business Days after the date on which the notice was posted;
- (b) an address in Australia outside of the same city or town is taken to have been received 6 Business Days after the date on which the notice was posted; and
- (c) an address outside Australia is taken to have been received 7 Business Days after the date on which the notice was posted.

The Contractor, Essential Energy and Essential Energy's Representative must each notify the others in writing of any change of contact details.

A notice sent by email is taken to have been received on the day it is sent if sent before 4pm on a Business Day and on the next Business Day if sent after 4pm. An email is not taken to have been received if the sender's computer reports that the message has not been delivered or if it is not received in full and legible form and the addressee notifies the sender of that fact within 6 hours after the transmission ends or by 12 noon on the Business Day on which it would be otherwise treated as given or received, whichever is later.

## **36.2 GOVERNING LAW**

The law governing the Panel Agreement and any Purchase Order Contract is the law of New South Wales.

## **36.3 ENTIRE AGREEMENT**

The Panel Agreement, these General Conditions and the relevant Purchase Order Contract contains the entire agreement and understanding between the Parties on everything connected with the subject matter of the Panel Agreement and each Purchase Order Contract.

## **36.4 WAIVER**

The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given and only if given in writing.

## **36.5 SEVERABILITY**

The Parties agree that a construction of the Panel Agreement, these General Conditions and any Purchase Order Contract that results in all provisions being enforceable is to be preferred. If a part of these General Conditions or a Purchase Order Contract is illegal or unenforceable or otherwise invalid, then such invalidity will not affect the validity of any other part of the Panel Agreement, these General Conditions and a Purchase Order Contract (except to the extent made necessary by such invalidity).

## **36.6 INDEMNITIES**

The indemnities in the Panel Agreement, these General Conditions and any Purchase Order Contract are continuing, separate and independent obligations and survive termination.

## **36.7 PERSONAL PROPERTY SECURITIES ACT**

A term defined in the PPS Law has the same meaning when used in this clause.

Essential Energy may, by notice to the Contractor at any time, require the Contractor to take all steps, provide information (including serial numbers) or do any other thing that Essential Energy considers necessary or desirable to:

- (a) ensure that these General Conditions and any Purchase Order Contract (or any related document) or any security interest arising under either of them, is enforceable against the Contractor or any third party;
- (b) protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of Essential Energy under these General Conditions and any Purchase Order Contract (or any related document); or
- (c) overcome any defect or adverse effect arising from the PPS Law on Essential Energy's security position or the rights or obligations of Essential Energy under or in connection with these General Conditions and any Purchase Order Contract

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or any encumbrance or document contemplated by these General Conditions and any Purchase Order Contract.

### 36.8 REPRESENTATIONS

Each Party has entered into the Panel Agreement, and will enter into any and each Purchase Order Contract, without relying on the representation by any other Party or any person purporting to represent that Party, provided that such representation was not fraudulent, misleading or deceptive. If any representation was made by a Party to another Party, the other Party must ensure that representation is reflective of or included in (as applicable) the terms of the Panel Agreement or the relevant Purchase Order Contract, and seek independent legal advice as required to confirm the foregoing.

## 37. SMALL BUSINESS CONTRACTS

If a Purchase Order Contract constitutes a "small business contract" within the meaning of the Australian Consumer Law (at Schedule 2 of the *Competition and Consumer Act 2010* (Cth)), these General Conditions are amended as follows:

(a) clause 2.4 is amended to read as follows:

Essential Energy may at any time within 90 days after receipt of the Quotation, issue to the Contractor a Purchase Order in respect of the services and work the subject of the RFQ.

The Purchase Order Price will be determined in accordance with the relevant RFQ and the Quotation.

(b) clause 2.6A is amended to read as follows:

(a) The Contractor acknowledges that:

- (i) amendments or updates may be made by Essential Energy to these General Conditions from time to time and posted on Essential Energy's website (or otherwise notified by Essential Energy to the Contractor); and
- (ii) any amendment or update to these General Conditions will only apply to a Purchase Order Contract that is created after the amendment or update has been posted on Essential Energy's website (or otherwise notified by Essential Energy to the Contractor) (**Date of Amendment**).

(b) If the Contractor, acting reasonably, disagrees with any amendment or update made to these General Conditions under clause 2.6A(a):

- (i) the Contractor must notify Essential Energy in writing of the amendment or update to which it objects, and the parties will endeavour to negotiate, in good faith, the relevant amendment or update (Amendment Dispute); and
- (ii) notwithstanding clauses 2.5 and 2.6, whilst an Amendment Dispute is on foot, unless the parties agree otherwise in writing:

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- (A) no Purchase Order Contract between Essential Energy and the Contractor will be deemed to have been created under clause 2.5 in respect of any Purchase Order issued by Essential Energy to the Contractor between the Date of Amendment and the date the Amendment Dispute is resolved; and
- (B) Essential Energy may, in its sole discretion, withdraw any Purchase Order it issues to the Contractor between the Date of Amendment and the date the Amendment Dispute is resolved, in which case no Purchase Order Contract will be deemed to have been created under clause 2.5 in respect of that Purchase Order even following the resolution of the Amendment Dispute.

(c) the first paragraph clause 7.1 is amended to read as follows:

Should either Party encounter any discrepancies, contradictions, omissions, ambiguities, errors, faults or inconsistencies in or between the documents comprising a Purchase Order Contract ("**Discrepancy**"), it must promptly notify the other Party in writing.

(d) clause 7.3 is amended to read as follows:

Except in respect of any documents:

- (a) identified in the relevant item in the relevant RFQ (or any Purchase Order) as forming part of a Purchase Order Contract; or
- (b) provided to the Contractor by Essential Energy for the purposes of setting out in accordance with clause 12.2,

information or documents of any nature provided by or on behalf of Essential Energy to the Contractor at any time, whether before or after the date of the Panel Agreement (other than the Contract Documents and notices issued by Essential Energy or Essential Energy's Representative under these General Conditions or a Purchase Order Contract) were furnished and are furnished to the Contractor for its convenience only and, to the extent permitted by law, were not and are not guaranteed whether in terms of their accuracy or otherwise.

Any document supplied by Essential Energy to the Contractor remains (as between Essential Energy and the Contractor) the property of Essential Energy and must be returned to Essential Energy upon request. The Contractor may keep one copy of any such document for its own records.

(e) the last paragraph of clause 9.2 is amended to read as follows:

The Contractor is not entitled to and must not seek an injunction against or otherwise restrain either Essential Energy or the issuer(s) of the Bank Guarantees preventing a demand or payment under the Bank Guarantees (and whether the demand extends to the whole of the Bank Guarantees or part thereof) provided that Essential Energy has sought recourse to the Bank Guarantees in the circumstances permitted under this clause 9.2.

(f) the first paragraph of clause 11.1 is amended to read as follows:

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The Contractor must not novate the Panel Agreement or any Purchase Order Contract or assign any right, benefit or interest under the Panel Agreement or a Purchase Order Contract without the prior written consent of Essential Energy. This consent must not be unreasonably withheld, but may be subject to reasonable conditions.

(g) clause 11.2(b) is amended to read as follows:

Approval to subcontract must not be unreasonably withheld but may be conditional upon the subcontract including any conditions reasonably required by Essential Energy, including:

- (a) provision that the subcontractors shall not assign, novate or subcontract without the consent in writing of the Contractor;
- (b) provisions which may reasonably be necessary to enable the subcontractor to fulfil the Contractor's obligations to Essential Energy; and
- (c) requirements for collateral warranty deeds (including a deed proposed by Essential Energy).

(h) clause 27.5 is amended to read as follows:

Notwithstanding any other provision of the Panel Agreement, these General Conditions or a Purchase Order Contract, if Essential Energy:

- (a) terminates the Panel Agreement or a Purchase Order Contract or both for whatever reason (including for its convenience) or engages others to carry out or itself carries out any part or the whole of the remaining work under the relevant Purchase Order Contract, Essential Energy may without payment of compensation to the Contractor (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or a Purchase Order Contract) take possession of all documents (including design documentation), information and the like in the Contractor's possession which is connected with the Works and reasonably required by Essential Energy to facilitate completion of the Works; and
- (b) exercises any of its rights under clause 27.3, 27.4 or 27.9, Essential Energy may without payment of compensation to the Contractor (unless expressly provided to the contrary in the Panel Agreement, these General Conditions or a Purchase Order Contract):
  - (i) take an assignment of the Contractor's rights and benefits under any subcontracts, including any warranties and guarantees, that relate to the work under the relevant Purchase Order Contract. The Contractor must do all things necessary to effect such an assignment; and
  - (ii) take possession of such goods, plant, equipment and other things on or about the Site as are owned or used by the Contractor and are reasonably required by Essential Energy to facilitate completion of the Works. Such of the goods, plant, equipment and other things which are surplus will be returned to the Contractor on completion of the Works subject to the Contractor satisfying any debt to Essential Energy as determined under clause 27.3.

(i) clause 27.8 is amended to read as follows:



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If, the Contractor is entitled to serve a Notice of Essential Energy Default and having been served with a valid Notice of Essential Energy Default, Essential Energy fails within the time specified, either to make payment of the amount required under clause 22.4 or fails to compromise the claim to the satisfaction of the Contractor (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 22.4, the Contractor may by notice in writing to Essential Energy, expressly referring to this clause 27.8, suspend the whole or any part of the work under the relevant Purchase Order Contract. If Essential Energy remedies the breach, the Contractor shall promptly lift the suspension.

If within 7 days of the date of a suspension under this clause 27.8 Essential Energy fails to compromise the claim to the satisfaction of the Contractor (acting reasonably) or fails to identify any basis on which it is entitled to refrain from paying the amount required under clause 22.4, the Contractor may by notice in writing to Essential Energy terminate the Purchase Order Contract under which the relevant work is being performed. In such event or in respect of a notice from the Contractor under clause 27.9, the Contractor will, in respect of the relevant Purchase Order Contract, be entitled to:

- (a) be paid any outstanding amounts due to the Contractor under a payment schedule issued under the relevant Purchase Order Contract;
- (b) be paid an amount for the value of work done in the period between when the last payment claim was submitted and the date that the relevant Purchase Order Contract was terminated, as determined by Essential Energy's Representative (acting reasonably) in accordance with that Purchase Order Contract;
- (c) be paid the cost of materials reasonably ordered or manufactured by the Contractor for the Works, which the Contractor is liable to accept (and which cannot be cancelled without unavoidable loss being incurred), but only if the materials become the property of Essential Energy upon payment, as determined by Essential Energy's Representative (acting reasonably);
- (d) be paid the reasonable cost of removal of plant and equipment as determined by Essential Energy's Representative;
- (e) subject to the exercise of any right of recourse that Essential Energy may have to the Bank Guarantees under clause 9.2, have returned all Bank Guarantees;
- (f) be paid an amount representing the reasonable cost of performing the Contractor's obligations under clause 27.5; and
- (g) be paid an additional payment on account of lost profits in the sum of 2% of the difference between the Purchase Order Price and the total of all amounts paid and payable to the Contractor for all work carried out up to and including the date of termination determined in accordance with clauses 22 and 28.

The Contractor agrees that the entitlements under this clause 27.8 will be the Contractor's full compensation for all work performed in respect of the relevant Purchase Order Contract, and for any Claims of the Contractor arising out of or in connection with that Purchase Order Contract or its termination under this clause 27.8.

- (j) clause 29 is amended to read as follows:

Where the Contractor proposes to make a Claim against Essential Energy, the Contractor must give to Essential Energy:

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- (a) a written notice not later than 28 days after the Contractor first knew, or ought to have known, about the circumstances on which the Claim is based, that it intends to make a Claim; and
- (b) a further written notice within 28 days of the notice under clause 29(a) providing detailed particulars of the basis for and the quantification of the Claim sufficient to enable Essential Energy to make an informed assessment of the merits of the Claim,

Updates of the information required in the notice under clause 29(b) for a Claim based on ongoing events or circumstances shall be submitted by the Contractor to Essential Energy at weekly intervals until the events or circumstances have ceased.

- (k) clause 32 is amended to read as follows:

The Parties agree that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is, to the maximum extent permitted by law, excluded in relation to the obligations and liabilities of the Contractor under or in any way in connection with the Panel Agreement, a Purchase Order Contract or the work under a Purchase Order Contract with respect to the apportionment of any liability (whether arising in contract, tort, or otherwise) as between the Contractor and any of its employees, subcontractors or agents.

## **38. SUSTAINABILITY**

### **38.1 CONDUCT AND DIVERSITY**

- (a) The Contractor:
  - (i) acknowledges Essential Energy's continued commitment to environmentally, economically and socially sustainable business practices; and
  - (ii) in carrying out its obligations under the Panel Agreement and a Purchase Order Contract:
    - (A) warrants that it will uphold high standards of ethics and honour global and local labour laws, human rights and environmental responsibilities; and
    - (B) have regard to Essential Energy's Sustainability Strategy (available on Essential Energy's website).
- (b) The Contractor must:
  - (i) treat its Personnel with respect and dignity; and
  - (ii) use best endeavours to:
    - (A) provide equal opportunity and, to the extent reasonably possible, advancement opportunities for all employees regardless of age, colour (dis)ability, ethnicity, race, gender, gender identity, gender expression, marital status,

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- pregnancy/maternity, national origin, sexual orientation or religion;
- (B) promote pay equality, diversity and inclusion (including through training and awareness initiatives or programs to recruit and develop diverse talent);
- (C) provide a work environment free of discrimination, harassment, intimidation and bullying; and
- (D) protect Personnel in raising concerns about business conduct.

## **38.2 ENVIRONMENT**

- (a) In performing its obligations under the Panel Agreement and a Purchase Order Contract, the Contractor must:
  - (i) to the extent reasonably possible, minimise the use of hazardous substances and materials;
  - (ii) make reasonable efforts to:
    - (A) reduce waste generated, energy consumption and any other potentially adverse impacts of its activities on biodiversity and natural capital;
    - (B) use environmentally friendly materials, packaging and transportation; and
    - (C) meet industry best practices and standards in relation to the monitoring and reporting of energy use and greenhouse gas emissions; and
  - (iii) where possible, and to the extent feasible and economically viable, actively support and promote the reuse and recycling of any redundant or discarded items or other materials, or any components of any of them, in connection with the Panel Agreement and a Purchase Order Contract, including working towards implementing processes and practices that facilitate the reuse of such items, materials or components and ensuring that the recycling of any such items, materials or components is in accordance with applicable laws.
- (b) The Contractor must review and report to Essential Energy on opportunities to improve environmental sustainability outcomes over the Term, if and as such opportunities arise. The Contractor must utilise such opportunities when directed by Essential Energy to do so, subject to the Parties agreeing any reasonable amendments to the fees and payment arrangements directly associated with the relevant opportunities.
- (c) The Contractor must provide to Essential Energy such information and written documentation, as may be required by Essential Energy from time to time, to verify and evaluate the Contractor's compliance with this clause 38.2, including in respect of the Contractor's sustainability efforts related to the reuse and recycling of items or materials (or any components of any of them).

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### **38.3 MODERN SLAVERY**

- (a) The Contractor must not (and must take reasonable steps to ensure that any entity it owns or controls or which is in the Contractor's supply chain do not) engage in any Modern Slavery Practice or undertake any other act which could constitute an offence involving Modern Slavery.
- (b) The Contractor warrants, at all times, that:
  - (i) it is not aware (including through the making of reasonable inquiries) of any circumstance within its operations or supply chains (or in those of any entity it owns or controls) that could give rise to an official investigation or prosecution of an offence involving Modern Slavery; and
  - (ii) to the best of its knowledge and belief, having made reasonable enquiries, neither it nor any related entity or any entity in the Contractor's supply chain has been convicted of any offence involving Modern Slavery.
- (c) The Contractor must:
  - (i) conduct, and ensure each entity it owns or controls or which is in the Contractor's supply chain conducts, business in a manner so as to reduce the risk of Modern Slavery in their respective operations and supply chains;
  - (ii) as appropriate, develop and maintain policies and procedures, and implement due diligence processes and training for Personnel, to avoid engaging (whether directly or indirectly) in Modern Slavery;
  - (iii) comply, and take reasonable steps to ensure any entity it owns or controls complies, with the Modern Slavery Laws;
  - (iv) promptly upon Essential Energy's request, provide Essential Energy with a copy of any statement or report the Contractor is required to prepare under any Modern Slavery Law;
  - (v) comply with any reasonable policies, procedures, investigations or additional conditions relating to Modern Slavery notified by Essential Energy to the Contractor from time to time during the Term;
  - (vi) promptly provide Essential Energy with all Information required for Essential Energy to comply with Essential Energy's reporting obligations under the Modern Slavery Laws; and
  - (vii) notify Essential Energy promptly upon becoming aware of any complaint or allegation that the Contractor, or any related entity or entity in the Contractor's supply chain, has engaged in Modern Slavery and take reasonable steps to respond to the complaint or allegation, including in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant code of practice or conduct or other guidance issued by the Anti-slavery Commissioner. The Contractor must notify Essential Energy in writing

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of the action it is taking to address the complaint or allegation, which must be satisfactory to Essential Energy (acting reasonably).

- (d) If the Contractor subcontracts any of its obligations (including any part of the Services) in accordance with these General Conditions and Essential Energy notifies the Contractor that it requires the following to be complied with in respect of a particular subcontractor, the Contractor must:
  - (i) implement an appropriate system of due diligence which ensures the subcontractor takes reasonable steps to reduce the risk of Modern Slavery in the subcontractor's supply chains and in any part of the subcontractor's business or operations; and
  - (ii) include in the relevant subcontract provisions that are reasonably consistent with the provisions of this clause 38.3, having regard to the nature and origin of the procurement.
- (e) In addition to any other right or remedy of Essential Energy, Essential Energy may, in its sole discretion, terminate the Panel Agreement or a Purchase Order Contract or both, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Contractor under the relevant Purchase Order Contract and unpaid up until the date of termination), if the Contractor breaches any Modern Slavery Law or if the Contractor, or any entity that it owns or controls, commits an offence involving Modern Slavery.

## **38.4 SUSTAINABILITY PERFORMANCE REGIME**

- (a) This clause 38.4 applies to a Purchase Order Contract if the parties agree:
  - (i) any 'Key Performance Indicators' relating to Essential Energy's Sustainability Strategy (available on Essential Energy's website) that the Contractor is required to achieve; and
  - (ii) the methodology and frequency for the assessment of those Key Performance Indicators,

under a Purchase Order Contract (**Sustainability Performance Regime**).
- (b) The parties agree that:
  - (i) the Sustainability Performance Regime will facilitate compliance with Essential Energy's Sustainability Strategy (available on Essential Energy's website); and
  - (ii) Essential Energy will assess the Contractor's compliance with each Key Performance Indicator in accordance with the methodology, and at the frequency, agreed by the parties under clause 38.4(a)(ii).
- (c) The Contractor's failure to achieve:
  - (i) a Key Performance Indicator on two (2) or more occasions; or
  - (ii) two (2) or more different Key Performance Indicators,

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in accordance with the Sustainability Performance Regime will constitute a substantial breach of the relevant Purchase Order Contract.

- (d) The Contractor must keep sufficient records of its performance as against each Key Performance Indicator to enable Essential Energy to assess the Contractor's compliance with each Key Performance Indicator, and the Contractor must provide such records to Essential Energy within 5 Business Days of a written request from Essential Energy.

### **38.5 NO DEROGATION**

For the avoidance of doubt, nothing in this clause 38 derogates from the Contractor's other obligations or liabilities arising under the Panel Agreement or a Purchase Order Contract, and the obligations or liabilities in this clause 38 are in addition to the Contractor's obligations and liabilities set out in any other document comprising the Panel Agreement or a Purchase Order Contract.

### **38.6 DEFINITIONS**

In this clause 38:

- (a) any word, expression, reference or term used in this clause 38 which is defined in clause 1.2 and is not specifically defined in this clause 38 shall, unless the context otherwise indicates, have in this clause 38 the same meaning as in clause 1.2; and
- (b) each term set out below has the meaning given to it in this clause 38.6(b):
- (i) **Anti-slavery Commissioner** means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).
  - (ii) **Information** may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the Privacy Act or information which tends to identify individuals.
  - (iii) **Key Performance Indicator** means a Key Performance Indicator agreed by the parties in respect of a Purchase Order Contract under clause 38.4(a)(i).
  - (iv) **Modern Slavery** has the meaning given to that term in the Modern Slavery Laws, and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.
  - (v) **Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth) and the *Modern Slavery Act 2018* (NSW), and any and all rules or regulations enacted in connection with any of those Acts, as in force and updated from time to time.
  - (vi) **Modern Slavery Practice** includes any one or more of the following:

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- (A) using any form of forced, imprisoned, indentured, bonded, or involuntary labour, child labour or deceptive recruitment practices;
  - (B) requiring Personnel to work more than the local legal limits on regular and overtime hour;
  - (C) save for short periods where legally required to do so for the purposes of administering employment, retaining the passports and/or identity documents of Personnel or any potential Personnel;
  - (D) denying Personnel the right to freely associate and collectively bargain within the boundaries of applicable laws;
  - (E) save where required by law, paying wages to any individual other than Personnel;
  - (F) providing wages and benefits which contravene applicable laws; and
  - (G) if any Personnel are migrant workers, providing migrant workers with any lesser entitlements than given to local employees.
- (vii) **Personnel** means the Contractor's officers, employees, subcontractors, consultants and all personnel of subcontractors and consultants within the contractual chain.
- (viii) **Sustainability Performance Regime** has the meaning given to it in clause 38.4(a).

**SCHEDULE 1****VARIATION ORDER**

**Date issued:**

**Project:**

**Project Number:**

**Contract:**

**Variation Number:**

**To:** \_\_\_\_\_ (“**Contractor**”)

**From: ESSENTIAL ENERGY (ABN 37 428 185 226) (“Essential Energy”)**

Pursuant to clause 14 of the General Conditions, Essential Energy directs the following Variation:

\_\_\_\_\_

The amount the Contractor is entitled to be paid for the Variation is:

**\$**

\_\_\_\_\_

The Contractor's entitlement to an Extension of Time is:

- (1) where Essential Energy's Representative has accepted a variation quotation under clause 14.2(a) of the Contract, then as set out in the variation quotation, being [insert] days; or
- (2) in all other cases, subject to and in accordance with clause 21 of the General Conditions.

..... (signature)

(Essential Energy's Representative)



**SCHEDULE 2****Combined Subcontractor's Statement and Supporting Statement**

For the purposes of this Statement the terms "principal", "head contractor", "subcontractor" and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

The Contractor is both a "head contractor" in terms of the *Building and Construction Industry Security of Payment Act 1999*, and a "subcontractor" in terms of the *Workers Compensation Act 1987*, *Payroll Tax Act 2007* and *Industrial Relations Act 1996*, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor to sign the statement).

Relevant legislation includes *Workers Compensation Act 1987*, s175B; *Payroll Tax Act 2007*, Schedule 2 Part 5; *Industrial Relations Act 1996*, s127; and *Building and Construction Industry Security of Payment Regulation 2008*, cl 4A.

Information, including Notes, Statement Retention and Offences under various Acts, is included at the end of this Schedule.

<b>Main Contract</b>	(Business name of the Contractor)	ABN:	
Contractor:		ABN:	<b>(Note 2)</b>
of	(Address of the Contractor)		<b>(Note 3)</b>
has entered into a contract			
with	(Business name of the Principal)		

Contract number/identifier

**Subcontracts**

The Contractor has entered into contracts with the subcontractors listed in the attachment to this

Statement.

**Period**

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 Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

- (a) The abovementioned Contractor has either employed or engaged workers or subcontractors during **(Note 6)** the above period of this contract. Tick if true and comply with (b) to (h) 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 (e) to (h) below. You must mark one box.

- (b) All workers compensation insurance premiums payable by the Contractor in respect of the work **(Note 7)** done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated.
- (c) All remuneration payable to relevant employees for work under the contract for the above period **(Note 8)** has been paid.
- (d) Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, **(Note 9)** the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement.
- (e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, **(Note 10)** the Contractor 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.
- (f) All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as in dispute).
- (g) The Contractor is complying with the requirements of clauses 33.8 to 33.11 (as applicable) and has deposited all cash security and retention moneys held under Subcontracts into a trust account.

Signature Full name

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.*

#### Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

### Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. 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 of the *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 1987* 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.

In terms of s 13(8) of the *Building and Construction Industry Security of Payment Act 1999* a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

**Further Information**

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website <http://www.osr.nsw.gov.au>, or NSW Industrial Relations website, <http://www.industrialrelations.nsw.gov.au>. Copies of relevant legislation can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**SCHEDULE 3****REQUEST FOR QUOTATION (RFQ)****RFQ NO. [INSERT]**

Date:

Essential Energy (ABN 37 428 185 226) a statutory state owned corporation established by the *State Owned Corporations Act 1989* (NSW) and constituted by the *Energy Services Corporations Act 1995* (NSW) of PO Box 5730 Port Macquarie, NSW, 2444 ("**Essential Energy**") requires each entity that receives this RFQ to provide a Quotation in response to this RFQ within **[insert]** Business Days, in accordance with the Panel Agreement and associated General Conditions ("**Contract**"). Any entity that provides a Quotation in response to this RFQ ("**Contractor**") must have regard to the information and details contained in this RFQ.

Capitalised terms used in this RFQ, which are not otherwise defined in this RFQ, have the meaning given to them in the Contract.

The Contractor acknowledges that:

- 1 Essential Energy may issue to any number of third parties requests for quotations in respect of the work the subject of this RFQ;
- 2 Essential Energy does not, by inviting a Quotation from the Contractor bind itself to issuing a Purchase Order or accepting the Contractor's Quotation;
- 3 if Essential Energy does not issue a Purchase Order in respect of the work the subject of this RFQ: (a) such work shall not form a part of any work to be undertaken pursuant to any agreement between Essential Energy and the Contractor; (b) the Contractor shall not be entitled to any payment for or in connection with the same; (c) the Contractor releases and discharges Essential Energy from any Claim it has or may have against Essential Energy arising out of or in connection with this RFQ, the Contractor's Quotation and Essential Energy's assessment and determination of the same; and (d) this provision is without limitation to any Claim the Contractor is expressly entitled to make against Essential Energy under any Purchase Order Contract created with respect to this RFQ; and
- 4 Essential Energy does not guarantee and makes no representation that the Contractor will have an opportunity to perform any services under or in connection with this RFQ.

The Contractor's Quotation should be returned to Essential Energy marked to the attention of **[insert EE contact person]**.

**Details**

- |    |                                      |            |  |
|----|--------------------------------------|------------|--|
| 1. | <b>Contract Documents</b>            | Clause 1.2 | 1. Panel Agreement<br>2. Special Conditions to this RFQ, if any;<br>3. General Conditions (including Schedules);<br>4. <b>[insert other]</b> |
| 2. | <b>Date for Practical Completion</b> | Clause 1.2 | <b>[insert]</b>  |
| 3. | <b>Defects Liability Period</b>      | Clause 1.2 | <b>[insert]</b>  |

(if nothing stated, 12 months)

4.	<b>Essential Energy's Representative</b>	Clause 1.2	<b><i>[insert]</i></b>
5.	<b>Project</b>	Clause 1.2	<b><i>[insert description]</i></b>
6.	<b>Site</b>	Clause 1.2	<b><i>[insert]</i></b>
7.	<b>Works</b>	Clause 1.2	<b><i>[insert description, including attachments if necessary]</i></b>
8.	<b>Date for access to Site</b>	Clause 5.1	<b><i>[insert]</i></b>
9.	<b>Hours and days for access to Site</b>	Clause 5.1	<b><i>[insert]</i></b>
10.	<b>Documents to be supplied by the Contractor - number of copies</b>	Clause 7.2	<b><i>[insert]</i></b>
11.	<b>Documents furnished to the Contractor by Essential Energy which are excepted from clause 7.3</b>	Clause 7.3	<b><i>[insert]</i></b>
12.	<b>Amount of each Bank Guarantee</b>	Clause 9.1	<b><i>[insert]</i></b>
13.	<b>Parent Company Guarantee - clause applies?</b>	Clause 9.5	<b><i>[insert Yes or No]</i></b> (if nothing is stated, clause applies)
14.	<b>Public Liability Insurance to be taken out by Contractor</b>	Clause 10.2	Amount \$ <b><i>[insert]</i></b> (minimum) from the Date of this Panel Agreement and any Purchase Order Contract to the expiry of the last Defects Liability Period under the last Purchase Order Contract
15.	<b>Insurance for any plant and equipment supplied by the Contractor for use on the Site to be taken out by Contractor</b>	Clause 10.2	Amount \$ <b><i>[insert]</i></b> (minimum) from the Date of this Panel Agreement and any Purchase Order Contract to the expiry of the last Defects Liability Period under the last Purchase Order Contract
16.	<b>Works Compensation Insurance to be taken out by Contractor</b>	Clause 10.2	Amount: As per statutory requirements from the Date of this Panel Agreement and any Purchase Order Contract to the expiry of the last Defects Liability Period under the last Purchase Order Contract

17.	<b>Motor Vehicle Third Party Insurance to be taken out by Contractor</b>	Clause 10.2	Amount \$20 million from the Date of this Panel Agreement and any Purchase Order Contract to the expiry of the last Defects Liability Period under the last Purchase Order Contract
18.	<b>Other Insurances to be taken out by Contractor</b>	Clause 10.2	<p><b><i>[insert] Amount \$[insert]</i></b></p> <p><b><i>[Note to EE: If Contract Works Insurance is required, then insert the following:</i></b></p> <p><b>Contract Works Insurance</b></p> <p>Amount: Purchase Order Price plus:</p> <p><b><i>[\$[insert]</i></b> for demolition and removal of debris;</p> <p><b><i>[\$[insert]</i></b> for consultant's fees;</p> <p><b><i>[\$[insert]</i></b> for the value of material or other things to be supplied by Essential Energy; and</p> <p><b><i>[\$[insert]</i></b> or <b><i>%[insert]</i></b> for the additional amount or percentage of the above, from the date of the issue of the Purchase Order to the expiry of the last Defects Liability Period]</p>
19.	<b>Work which cannot be subcontracted without approval</b>	Clause 11.2	<p><b><i>[insert maximum amount and/or description of works]</i></b></p> <p>(if nothing stated, all work cannot be subcontracted without the approval of Essential Energy)</p>
20.	<b>Variation response</b>	Clause 14.1	<p><b><i>[insert time period]</i></b></p> <p>(if nothing stated, within 5 days of the direction)</p>
21.	<b>Approvals not being obtained by the Contractor</b>	Clause 17.4	<b><i>[insert]</i></b>
22.	<b>Other Delay Events</b>	Clause 21.1	<p>1. Wet weather on the Site which prevents any work being carried out on any part of the Site in excess of 3 days per month;</p> <p><b><i>[insert other events, if any]</i></b></p>
23.	<b>Other events for which extra delay costs are payable</b>	Clause 21.3	<b><i>[insert]</i></b>
24.	<b>Liquidated Damages Rate</b>	Clause 21.4	<b><i>[\$[insert dollar amount]</i></b> per calendar day

25.	Maximum amount of Liquidated Damages	Clause 21.4	<i>[insert]</i>		
26.	Contractor to submit payment claims	Clause 22.2	<i>[if progress payment regime]</i> - The 25th day of each month, except in respect of December, which shall be the 15th day of the month  <i>[if milestone payment regime]</i> - <table><tr><td>Milestone</td><td>Milestone Amount</td></tr></table> <i>[insert description]</i> <i>[insert]</i>	Milestone	Milestone Amount
Milestone	Milestone Amount				
27.	Other requirements of Practical Completion	Clause 23.2	<i>[insert other requirements of Practical Completion (if any)] – some examples which might be relevant depending on the nature of the Works are listed below</i>  <ul style="list-style-type: none"><li>- <i>within 14 days prior to and as a precondition to Practical Completion, give Essential Energy all warranties, guarantees, operating manuals, maintenance manuals, a draft set of “as built” drawings and any other documents or information applicable to the Works which are required by these General Conditions.</i></li><li>- <i>as soon as reasonably practicable after Practical Completion and as a precondition to the receipt of final payment under clause 22.7, provide Essential Energy with the final set of “as built” drawings.</i></li><li>- <i>the Works (including equipment, plant services and installation as the case may be) to have been demonstrated to the satisfaction of Essential Energy’s Representative to perform as required by the relevant Purchase Order Contract;</i></li><li>- <i>the Contractor has provided to Essential Energy’s Representative all warranties, guarantees and manuals and drawings required under the Purchase Order Contract or reasonably requested by Essential Energy’s Representative, in a format acceptable to Essential Energy’s</i></li></ul>		



***Representative, and any other warranties which are reasonably commercially available from suppliers and manufacturers for the equipment, plant or materials used in or provided for the Works;***

- ***the Contractor has performed the following:***
  - ***the handing over of all information reasonably required by Essential Energy's Representative for the operation and maintenance of the Works;***
  - ***the removal of all rubbish and surplus material from the Site, other than plant and equipment required for the carrying out of the Contractor's obligations in the Defects Liability Period; and***
  - ***the procurement of all Approvals from all necessary authorities to the extent that the Contractor is required by a Purchase Order Contract to procure the same.]***

28.	<b>Limitation of liability</b>	Clause 34	<b>\$[insert]</b>
29.	<b>Essential Energy's Representative postal address for service of notices</b>	Clause 36.1	Address: <b>[insert]</b>
30.	<b>Essential Energy's Representative's email address for service of notices</b>	Clause 36.1	Email: <b>[insert]</b>
31.	<b><i>Other [if there are any details or variances from the Contract to be included, insert those here. If extensive, consider including separately as a Special Condition(s) below.]</i></b>		

## SPECIAL CONDITIONS

(APPLYING TO ANY PURCHASE ORDER CONTRACT UNDER THIS RFQ)

- 1 *[Insert any special condition(s) required for the works proposed to be carried out by the Contractor under this RFQ. If none, insert "None stated." NOTE: ANY ADDITIONAL SPECIAL CONDITIONS THAT ARE NOT PURELY SCOPE RELATED WILL NEED TO BE CHECKED/SIGNED OFF BY LEGAL BRANCH BEFORE INCLUDING IN THE CONTRACT]*

SCHEDULE 4  
PURCHASE ORDER



ABN: AU37428185226  
Vendor: 000000000

Purchase Order No. 0000000000

Date	Revision	Page
30/09/2019		1
Project Name	Ship via	
Buyer	Product	Currency
Ship To:	332356	AUD

Bill To: ACCOUNTS PAYABLE  
LOCKED BAG 28  
CHAPTON NSW 2440  
Australia

Line-Sch	ItemDescription	Quantity	UOM	Unit Price	Extended Amt (Excludes GST)	Due Date
----------	-----------------	----------	-----	------------	--------------------------------	----------

Sub Total:  
Total GST:  
Total PO Amount